

OEM TECHNOLOGY SOLUTIONS PTY LTD
STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

Unless the context otherwise requires then in construing this Agreement:

- 1.1 "Agreement" means the entire contractual agreement between the parties.
- 1.2 "OEM" means OEM Technology Solutions Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of OEM Technology Solutions Pty Ltd (including all its employees and subcontractors).
- 1.3 "Project" means the letters or other documents prepared by OEM to provide Services.
- 1.4 "Proposal" means the letters and other documents prepared by OEM and submitted to the Client to describe the scope of work to be undertaken, the personnel and equipment proposed to be utilized, and the amount or method of calculation of the fee and reimbursable expenses.
- 1.5 "Services" means those professional services and/or the supply of equipment specifically described in Proposal. If the Proposal does not exist then the term means the professional Services to be performed by OEM and/or the supply of equipment as agreed between the Client and OEM.
- 1.6 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.7 "Background Intellectual Property" means all information, knowledge, specifications, plans, systems, processes, techniques, software, hardware, and copyright material (including, but not limited to, computer programs, documentation, drawings, writings, designs, drafts or definitions), patentable material or other intellectual property which OEM has developed in the course of its business, which belong to OEM prior to the commencement of this Agreement, or is of a generic nature and is developed in the course of this Agreement, and to which OEM asserts its rights.
- 1.8 "Foreground Intellectual Property" means the items specifically described in the Proposal as Foreground Intellectual Property.
- 1.9 "Consequential Loss" means without limitation, any indirect, incidental, subsequent, or other loss or damages, either in contract or in tort, including but not limited to any loss of profits.
- 1.10 "Specifications" means the Specifications set out in the Proposal.
- 1.11 "Documentation" shall mean all documentation, plans or designs which are supplied to the Client as part of the Services provided by OEM.
- 1.12 "Product" shall mean all goods supplied to the Client by OEM at the Buyer's request from time to time (whether manufactured by OEM or by any other third party and whether or not supplied in conjunction with any Services).
- 1.13 For the purposes of this Agreement (where the context so permits) the terms 'Services', 'Documentation' or 'Product' shall each be interchangeable for one another.
- 1.14 "Fee" shall mean the cost of the supply of Documentation, Product and/or Services as agreed between OEM and the Client (subject to clause 5 of this contract).

2. ACCEPTANCE

- 2.1 Any instructions received by OEM from the Client for the supply of Services and/or the Client's acceptance of Services supplied by OEM shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of OEM.
- 2.3 None of OEM's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of OEM in writing nor is OEM bound by any such unauthorised statements.
- 2.4 The Client shall give OEM not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by OEM as a result of the Client's failure to comply with this clause.

- 2.5 All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by OEM or otherwise contained in catalogues, price lists and other advertising matter of OEM are approximate only and are intended to be by way of general description only and therefore shall not form part of this Agreement unless certified by OEM in writing (in any event they shall remain subject to recognised industry tolerances). OEM shall not be deemed to have agreed to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced to OEM prior to the delivery of Documentation, Product or Services and signed by the Company.
- 2.6 Any performance figures given by OEM are based on OEM's knowledge and experience and are such as the Company may reasonably expect to obtain on test. OEM shall be under no liability for damages for failure to attain performance figures unless OEM has specifically guaranteed them in writing (in any event they shall remain subject to recognised industry tolerances relevant to such figures).
- 2.7 Where a Proposal specifies or recommends site commissioning services, it is the Company's opinion that those services be accepted to obtain any performance figures given. If however the services are not accepted by the Client then no performance figures are guaranteed and the Client accepts all responsibility for the products or services provided.

3. ROLE OF OEM

- 3.1 In performing Services OEM shall exercise the degree of skill, care and diligence normally exercised by the members of the engineering profession performing services of a similar nature in accordance with the ethics of the engineering profession.
- 3.2 If OEM is required to exercise its professional judgment between the Client and a third party with whom the Client has a contract then he shall do so independently and as required by the terms of that contract.
- 3.3 OEM shall use all reasonable efforts to inform itself of the Client's requirements for the Project and for that purpose OEM shall consult the Client throughout the performance of the Services.
- 3.4 If OEM considers that the information, documents and other particulars made available to him by the Client are not sufficient to enable OEM to provide the Services in accordance with this Agreement OEM may advise the Client who shall then provide such further assistance, information, or other particulars as necessary in the circumstances.
- 3.5 If OEM becomes aware of any matter which will change or which has changed the scope or timing of the Services then he will give notice to the Client and the notice will contain, as far as practicable in the circumstances, particulars of the change.
- 3.6 If the Client requests from OEM a change to product or Services Specifications, they must do so in writing. OEM will accept any reasonable changes to Specifications and if the changes will result in an increase to the Fee, then OEM will provide the Client with an estimate of the additional costs associated with the changes, and an estimate of the expected impact upon the timing of the Services. If the Client accepts in writing, then the Client is taken to accept the additional costs and the new time table, and OEM will commence work on the Specification changes. If there are any disputes in relation to the Specification changes, the additional costs or the timetable, then these shall be resolved in accordance with clause 17.
- 3.7 OEM shall provide Products and perform the Services in a timely manner to the extent that it is within OEM's control to do so. OEM will not be liable for any delays in delivering Products or Services to the Client and failure to meet a delivery date shall not affect the performance by either party of their obligations under this or any other contract or agreement, nor shall OEM be liable for any loss or damage incurred by the Client as a result of a delivery being late.
- 3.8 If the Services include giving to the Client an estimate of the likely costs for a Project, OEM warrants only that they will exercise the reasonable skill, care and diligence of Engineers in their professional opinion of those costs.

4. ROLE OF THE CLIENT

- 4.1 The Client shall as soon as practicable make available to OEM all information, documents and other particulars relating to the Client's requirements for the Project. The Client warrants that there is no legal impediment to providing the information to

- OEM and that OEM has the right to use the information for the purposes of providing any Products and Services.
- 4.2 The Client shall as soon as practicable make arrangements to enable OEM to enter upon the Site and other lands as necessary to enable OEM to perform the Services.
- 4.3 Unless the parties specifically agree otherwise in the Proposal, the Client shall as soon as practicable obtain all approvals, authorities, licenses and permits which are required from governmental, municipal or other responsible authorities for the lawful implementation and completion of the Project.
- 4.4 The Client agrees that the Services do not include any services which are properly carried out by other professions such as legal or accounting and if other such professional services are required the Client shall obtain these services at his own cost.
- 4.5 The Client shall make available to OEM at the place and at the time specified in the Proposal the equipment and facilities specified in the Proposal.
- 4.6 The Client shall appoint a person to act as his representative and give written notice to OEM of the name of the person so appointed. The Client agrees that the person appointed shall have authority to act on behalf of the Client for all purposes in connection with this Agreement.
- 4.7 If the Client becomes aware of any matter which may change the scope or timing of the Services or the Project then the Client will give written notice to OEM.
- 4.8 The Client shall carry out the additional special obligations set out in the Proposal.
- 4.9 The Client shall co-operate with OEM and shall not interfere with or obstruct the proper performance of the Services.
- 4.10 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to him by any servant or agent of OEM and the Client acknowledges that he buys the Services relying solely upon his own skill and judgement.
- 5. PAYMENT TO OEM FOR SERVICES, DOCUMENTATION & PRODUCTS**
- 5.1 At OEM's sole discretion the Fee shall be either;
- as indicated on invoices provided by OEM to the Client in respect of Services supplied; or
 - the Fee as at the date of delivery of the Services according to OEM's current price list; or
 - OEM's proposed Fee which shall be binding upon OEM provided that the Client shall accept in writing OEM's proposal within thirty (30) days.
- 5.2 The Client acknowledges that currency exchange rates cited on a written Proposal are indicative only as they are subject to fluctuation, therefore OEM may adjust final pricing at invoice date so that it is reflective of the particular exchange rate that applies on that day.
- 5.3 The amount or the method of calculation of the Fee for the Services is set out in the Proposal. In consideration of the promise by OEM to perform the Services the Client promises to pay OEM the Fee and the reimbursable expenses in accordance with the Proposal at the times and in the manner set out in this Agreement. The prices quoted are based on the quantities quoted. OEM reserves the right to amend the pricing should there be any variation between OEM's quoted quantities and the Client's purchase order quantity.
- 5.4 In addition to the payment referred to in clause 5.3 the Client agrees to indemnify OEM for all costs and expenses incurred by OEM in connection with the matters set out in the Proposal.
- 5.5 At OEM's sole discretion a non-refundable deposit may be required prior to the provision of any Services.
- 5.6 At or about the end of each payment period specified in the Proposal OEM will give to the Client an account for the Services performed, and for reimbursable expenses incurred, prior to the date of the payment claim. The Client shall pay the full amount owing in respect of each account within seven (7) days of issue of the account, or by the due date as stated on the account or in the Proposal (which at OEM's sole discretion (for certain approved Clients) may be either fourteen (14), thirty (30), forty-five (45) or sixty (60) days from of issue of the account. If no time is stated at all then payment shall be due on delivery of the Services.
- 5.7 If the Client disputes the whole or any portion of an account submitted by OEM to the Client (the Client agrees to pay those portions of the account which are not in dispute) then the Client shall notify OEM in writing within three (3) business days of the receipt of the account of its reasons for disputing the account. Both parties shall then attempt to resolve the dispute within a reasonable period failing which clause 17 shall apply.
- 5.8 Payment may be made by cheque, bank cheque, or by credit card (plus a surcharge of up to five (5%) of the Fee), or by direct credit, or by any other method as agreed to between the Client and OEM.
- 5.9 The Fee shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any Proposal given by OEM.
- 5.10 If the performance of the Services is delayed beyond a reasonable period for any reason other than a breach of this Agreement by OEM the client shall pay to OEM a reasonable sum of money to cover the consequential costs and expenses suffered by OEM as a result of the delay. If the parties are unable to agree upon an appropriate sum then the matter shall be referred for determination in accordance with this agreement.
- 5.11 If the engagement of OEM is terminated for any reason other than for breach of this agreement by OEM then OEM shall be entitled to pro rata payment for the Services carried out and consequential costs and expenses incurred as a result of the termination for the period up to and including the date of termination.
- 5.12 The Fee for the Services performed under this Agreement has been calculated on the assumption of both parties that the Services are to be provided under circumstances normally pertaining to the carrying out of the type of project in question. The parties agree that if OEM is required to perform the Services in circumstances other than those normally pertaining to such a project or if there is a change in the scope, timing or order of the Services then OEM shall be entitled to additional payment of an amount which is reasonable in the circumstances.
- 5.13 The Client shall upon request from OEM provide security in the form of an unconditional undertaking given by a Bank approved by OEM in the amount stated in the Proposal: and
- the security will be maintained effective until there has been payment to OEM for all amounts to which OEM is entitled under this Agreement;
 - the security shall be available to OEM whenever OEM may be entitled to the payment of monies by the Client under or in consequence of this Agreement as if the security were a sum of money due to OEM by the Client.
- 5.14 If after the date of this Agreement there is any change to the laws, by-laws, regulations or ordinances of the Commonwealth of Australia or a State or Territory of Australia or any statutory authority and that change directly or indirectly increases or decreases the costs or reimbursable expenses incurred by OEM in performing the Services then the fee and reimbursable expenses otherwise payable to OEM under this Agreement shall be increased or decreased accordingly.
- 6. ENGINEERING SERVICES**
- 6.1 Any engineering or technical services provided by OEM not already covered by any other clause herein or other condition of contract as applicable will be charged at the applicable hourly labour rate, including travel and standby/waiting time, plus expenses at cost plus twenty percent (20%).
- 7. LABOUR RATES**
- 7.1 Applicable labour rates are publicised in OEM's price list. All labour rates are valid for services performed during Business Days between the hours of 8:30am to 5:30pm Monday to Friday excluding public holidays. The day rate means eight (8) hours of labour supplied during these hours. Labour services provided outside these hours will be charged in the following manner:
- 1.5 times the standard labour hourly rate for after hours labour services provided between 5:30pm and 10:00pm on Business Days.
 - 2.0 times the standard labour hourly rate for late night labour services provided between 10:00pm and 8:30am on Business Days.
 - 2.0 times the standard labour hourly rate for weekend labour services provided between 5:30pm on Friday and 8:30am on Monday or anytime during a public holiday.

- 7.2 All labour services are charged at the applicable labour hourly rate in hourly increments. There is a minimum charge of four (4) hours for labour services occurring on site. This includes travel time to and from site, which is also charged at the applicable labour hourly rate.
- 8. OEM RESOURCE/S**
- 8.1 During the term of any engagement and for twelve (12) months thereafter, the Client shall not solicit, encourage, suggest or approach any current or former OEM resource, directly or indirectly to work for the Client or a competitor of OEM as a contractor or on a permanent basis. Nor shall the Client accept any suggestion or approach by any current or former OEM resource, directly or indirectly to work for the Client or a competitor of OEM as a contractor or on a permanent basis. Any approach by the Client to any OEM resource proposed, utilised or provided by OEM, or the acceptance of an approach by OEM resource, shall be breach of this Agreement and a placement fee of fifty thousand dollars (\$50K) excluding GST per OEM resource will apply and be payable to OEM by the Client.
- 9. SUPPORT SERVICES**
- 9.1 Requests by the Client for support services may be made to OEM in two ways:
- (a) telephoning OEM and providing the operator with contact details and phone number, and a description of the problem.
- (b) E-mail the request for support to tosupport@oem.net.au detailing contact details, return email address and a description of the problem.
- In either case OEM will log and allocate a priority to the request.
- 9.2 OEM will respond to the Client in an attempt to resolve the issue detailed in the request, in a timeframe that is in accordance with the priority allocated to the request.
- 9.3 A phone support fee, as publicised in OEM's price list will be charged for phone support to a maximum of fifteen (15) minutes per call. Where an issue is unable to be solved within this timeframe, a support service consultation will be required and charged at the applicable labour hourly rate, and the phone support fee will be waived.
- 9.4 An email support fee, as publicised in OEM's price list will be charged for email support. Where an email issue is unable to be solved within ten (10) minutes, a support service consultation will be required and charged at the applicable labour hourly rate, and the email support fee will be waived.
- 9.5 A software version control fee, as publicised in OEM's price list will be charged for software version control services, which includes the professional version control of the Client's software and a secure off-site copy of the Client's software. The software will be placed in the version control system and stored on CD or tape at OEM's secure off site location. All copyrights and confidentiality shall be observed.
- 10. MINIMUM ORDER VALUES**
- 10.1 The following minimum values will apply to Product orders supplied by OEM:
- (a) \$100.00 nett excluding GST for goods collected and charged to an account at our trade sales counter. If goods are collected and paid for in cash a minimum charge of \$50.00 nett excluding GST will apply.
- (b) \$250.00 nett excluding GST, delivery and freight charges for goods delivered to a Client's premises located within Australia.
- (c) \$1500 nett excluding taxes, delivery and freight charges for goods delivered to Clients internationally.
- 11. PACKING**
- 11.1 Unless stated otherwise in the Proposal, the price quoted includes packing in accordance with OEM's standard practices. Any additional or specialised packing requested by the Client or deemed necessary by OEM will be charged for in addition to the Fee quoted.
- 12. DELIVERY**
- 12.1 The Client must arrange to personally collect the Documentation and/or Products at OEM's address or arrange for the Documentation and/or Products to be collected by the Client's nominated carrier service. OEM may, on the Client's request, arrange for the Documentation and/or Products to be delivered by OEM or OEM's nominated carrier service, which will be at the Client's cost and added to the Fee.
- 12.2 Where carriage is the responsibility of OEM, OEM will repair or may replace free of charge contract Documentation and/or Product lost, or damaged in transit to the contractual point of delivery, provided that written notice of such loss or damage is given to OEM within three (3) days of delivery, or within the carriers conditions of carriage as affecting loss or damage in transit.
- 12.3 Delivery ("**Delivery**") of the Documentation and/or Products is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Documentation and/or Products at OEM's address; or
- (b) if OEM or OEM's nominated carrier delivers the Documentation and/or Products, at the time that the Documentation and/or Products are delivered to the Client's nominated address even if the Client is not present at the address.
- 12.4 The Client must take delivery by receipt or collection of the Documentation and/or Products whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Documentation and/or Products as arranged then OEM shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 12.5 Where OEM stores items under clause 12.4 OEM shall be entitled to present to the Client invoices for payment in accordance with clause 5 for the full value of the goods ready for delivery.
- 12.6 Claims for shortages in deliveries must be advised to OEM in writing within seven (7) days of the receipt of Documentation and/or Product.
- 13. RISK**
- 13.1 Risk of damage to or loss of Documentation and/or Products passes to the Client on Delivery and the Client must insure the Documentation and/or Products on or before Delivery.
- 13.2 If any Documentation and/or Products are damaged or destroyed following Delivery but prior to ownership passing to the Client, OEM is entitled to receive all insurance proceeds payable for the Documentation and/or Products. The production of these terms and conditions by OEM is sufficient evidence of OEM's rights to receive the insurance proceeds without the need for any person dealing with OEM to make further enquiries.
- 13.3 It shall be the Client's sole responsibility to remove any removable media (including, but not limited to, diskettes, CDs, DVDs or PC Cards) from any electronic goods prior to returning or submitting any such goods for repair or replacement by OEM.
- 13.4 OEM shall not be held liable for any loss or corruption of data or files (including, but not limited to, software programmes) resulting from servicing or repairs being undertaken on the Client's goods. It is the sole responsibility of the Client to back-up any data which they believe to be important, valuable or irreplaceable prior to bringing in electronic goods for servicing or repair by OEM.
- 14. PRODUCT & SERVICE WARRANTIES & UNDERTAKINGS**
- 14.1 OEM undertakes to use its best endeavours to ensure that the Products and Services supplied by OEM meet requested Specifications.
- 14.2 OEM extends to the Client all product warranties available from third party suppliers, and if requested in writing by the Client OEM shall make all reasonable endeavor in assisting the Client to obtain from the manufacturer the benefit of any guarantee or warranty which the manufacturer has offered.
- 14.3 In the event that a third party warranty does not apply, OEM warrants that the Products will be free from defects in material and workmanship under normal use and service in accordance with the Specifications for a maximum period of twelve (12) months or as stated in the Proposal, commencing from the date of delivery.
- 14.4 The warranty in clause 14.3 will not apply:
- (a) to any Product which has been repaired, modified or altered by the Client or a party other than OEM (excluding a third party approved by OEM in writing);
- (b) to any Product which has been the subject of misuse, negligence or an accident of someone other than OEM, or which has been stored other than in accordance with the storage instructions (if any);
- (c) to any product which is incompatible with any products or software not provided by or recommended by OEM.

- 14.5 OEM will not be liable in respect of any warranty claim for Products supplied under this Agreement unless the Client has returned the Products to OEM in accordance with OEM policy. Prior to returning Products for warranty evaluation, the Client must register the Product(s) for evaluation via OEM's service department. The Client shall apply for a Return Material Authorisation (RMA) number associated with the warranty evaluation. No Products will be accepted for evaluation without a valid RMA number. Product returned for warranty evaluation and found to be operational shall incur inspection and or test fees.
- 14.6 To the maximum extent permitted by law, the warranty under clause 14.3 is the only warranty given by OEM in respect of the Products and all implied conditions, warranties and undertakings are expressly excluded, including without limitation, any implied warranties as to merchantability or fitness for purpose.
- 14.7 To the maximum extent permitted by law, should OEM be liable for a breach of any conditions or warranties, OEM's liability for breach of any such condition or warranty shall be limited to:
- in the case of Products, to the repair or replacement of such Products, or paying for the cost of repair or replacement;
 - in the case of Services, the re-supply of Services or paying for the cost of re-supplying the Services (to be carried out at OEM's premises).
- 14.8 There are no expressed or implied warranties given by OEM in respect of Proprietary software. The only warranty that is applicable is the warranty supplied by the owner of the software and the Client agrees to comply with all reasonable conditions of such warranty.
- 14.9 Nothing herein, contained shall be read or applied so as to purport to exclude, restrict, modify or have effect of excluding, restricting or modifying the application in relation to the supply of any Products or Services pursuant to this Agreement of all (or any part of) the Competition and Consumer Act 2010 (as amended) or any other relevant State or Territorial legislation which cannot be excluded, restricted or modified.
- 15. INDEMNITIES**
- 15.1 OEM indemnifies and shall keep indemnified the Client from and against all actions, suits, claims and demands, proceedings, liabilities, losses, damages and costs (including legal costs on an indemnity basis) charges and expenses (but excluding any Consequential Loss) ("Loss") incurred or suffered indirectly from or in connection with:
- any unlawful or negligent act or omission of OEM in respect of the design and or manufacture of a Product; or
 - any demand, proceeding, or claim of patent infringement by a third party against the Client in relation to the design or manufacture of any part of the Product.
- Except to the extent that such Loss is caused directly by the negligence of the Client.
- 15.2 The Client indemnifies and shall keep indemnified OEM from and against all actions, suits, claims and demands, proceedings, liabilities, losses, damages and costs (including legal costs on an indemnity basis) charges and expenses (but excluding any Consequential Loss) ("Loss") incurred or suffered indirectly from or in connection with:
- any unlawful or negligent act or omission of the Client in relation to the use of the Product; or
 - subject to clause 15.1(a) any demand, claim or loss arising out of injury to person, damage to property arising out of use of the Product; or
 - any demand or claim of patent infringement by a third party against OEM in relation to the application of a Product.
- Except to the extent that such Loss is directly caused by the negligence of OEM.
- 15.3 The Client agrees that they will comply with all instructions of OEM in relation to the fitting installation and use of Product. Notwithstanding such compliance the Client shall keep OEM indemnified against all claims expenses and liabilities of whatever nature including without limiting the generality of the foregoing claims for death, personal injury, damage to property and/or consequential loss including loss of profit which may be brought against OEM or which OEM may sustain, pay, or incur arising out of the manufacture or sale of Product, unless the same is directly and solely attributable to any breach of contract or by negligence of OEM or its authorised employees or agents.
- 16. INTELLECTUAL PROPERTY RIGHTS, COPYRIGHT, CLIENT CONSENTS, SOFTWARE & HARDWARE SECURITY.**
- 16.1 The Client acknowledges that OEM is in the business of developing customised engineering applications for Clients. OEM will develop plans, systems, and processes of a nature which will be used for future clients. OEM shall retain intellectual property rights with respect to the Background Intellectual Property (including, but not limited to, work papers, planning processes, software, hardware and development tools) and copyright in all drawings, reports, specifications, bills of quantities, calculations, other documents, software and hardware provided by OEM in connection with the project shall remain vested in OEM.
- 16.2 OEM acknowledges that some material developed specifically for the Client and customised for the Client's specific circumstances may be Foreground Intellectual Property. The Foreground Intellectual Property will be set out specifically in the Proposal, and OEM will assign all of its rights, title and interest in the Foreground Intellectual Property to the Client upon payment of the Fee set out in the Proposal.
- 16.3 The Client shall retain title to all tangible property, such as drawings and other documents, information, knowledge or confidential information of the Client, or any other technical information, know-how or trade secrets of the Client which may have been provided to OEM in the course of this Agreement. All copies of such documents will be returned by OEM to the Client at the end of this Agreement.
- 16.4 Nothing in clauses 16.1 to 16.3 shall prevent OEM from using in the future, the general and specific knowledge gained as part of performance of the Services in work not related to this Agreement.
- 16.5 Nothing in clauses 16.1 to 16.3 shall prevent OEM from using in the future, the Intellectual property developed during the course of this Agreement, provided that OEM shall de-identify the Client.
- 16.6 If during the course of providing the Services, OEM develops, discovers, or first reduces to practice a concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of OEM and the Client shall not use, infringe or otherwise appropriate the same without first obtaining the written consent of OEM.
- 16.7 If during the course of providing the Services OEM discovers, or is first to practice a concept, or develops a product or process capable of being patented, then the Client shall be entitled to negotiate a royalty licence to use the same during the life of the works comprising the Project.
- 16.8 If OEM makes a request in writing, the Client shall consent to OEM referring to the Client in a list of clients on OEM's website, promotional material or other documentation, and such consent shall not be unreasonably withheld.
- 16.9 OEM may with the consent of the Client publish, either alone or in conjunction with others, articles, photographs and other illustrations relating to the project.
- 17. DISPUTE DETERMINATION**
- 17.1 If the Client and OEM are in dispute regarding any matter arising out of this Agreement, then either party may by notice in writing served on the other require that such dispute be resolved by the determination of an independent third party acceptable to both parties. The other party may accept this course of action or seek arbitration under Clause 9.4. If the parties cannot agree on an independent third party within seven (7) days of the date of service of the notice then either party may request the President for the time being of the Institution of Engineers, Australia, to nominate the third party. The third party who has been agreed upon or appointed shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the Client and OEM.
- 17.2 Disputes under or arising out of the Agreement may be referred to the arbitration of a person to be agreed between the Client and OEM. If the parties fail to agree within one (1) month of one party giving the other notice in writing of a dispute, then either party may request the President for the time being of the Institution of Engineers Australia to appoint an arbitrator and the arbitrator shall be so appointed.
- 17.3 The costs of any arbitration proceedings shall be borne as the arbitrator may direct.

- 17.4 Notwithstanding any other provisions of this agreement, in the event of any dispute arising between the Client and OEM, then either party may institute proceedings in a court of competent jurisdiction for determination or resolution of such dispute PROVIDED ALWAYS that once either avenue of dispute resolution is commenced, it will not be acceptable for either party to refer the dispute to the alternative method of dispute resolution and the decision of the Court or arbitrator to whom the dispute was first referred shall be final and binding subject to any rights of appeals as provided by the terms of this agreement or as provided by law.
- 18. TERMINATION OF SERVICES**
- 18.1 The client may by notice in writing served on OEM terminate the Client's obligations under this Agreement:
- if OEM is in breach of the terms of this Agreement and the breach has not been remedied within twenty-eight (28) days (or longer period as the Client may allow) of the service by the Client on OEM of a notice requiring the breach to be remedied; or
 - if the Client serves on OEM a notice requiring that this Agreement be terminated on a date specified in the notice being not less than sixty (60) days after the date of issue of the notice.
 - once the Client has given notice under clause (b) OEM shall only be required to meet its obligations in regards to purchased orders already placed by the Client prior to the giving of such notice. Acceptance of any further purchase orders from the Client shall be at OEM's sole discretion.
- 18.2 OEM may by notice in writing served on the Client terminate OEM's obligations under this Agreement:
- if the Client is in breach of the conditions of clause 5 of this Agreement; or
 - if the Client is in breach of the provisions of any other part of this Agreement and the breach has not been remedied within twenty-eight (28) days (or such longer period as OEM may allow) of the service by OEM on the Client of a notice requiring the breach to be remedied; or
 - if OEM serves on the Client a notice requiring that the Agreement be terminated on a date specified in the notice being not less than sixty (60) days after date of the notice.
- 18.3 Termination shall be without prejudice to any claim which either party may have against the other in respect of any breach of the terms of the Agreement which occurred prior to the date of determination.
- 19. CANCELLATION OF ORDERS FOR PRODUCT**
- 19.1 The Client acknowledges that purchase orders once placed may not be cancelled except with the written approval of OEM.
- 19.2 In the event that OEM agrees that the Client may cancel a purchase order the Client shall remain liable to OEM for any and all loss incurred (whether direct or indirect) by OEM as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20. THE PRIVACY ACT 1988**
- 20.1 The Client agrees for OEM to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by OEM.
- The Client agrees that OEM may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 20.2 The Client consents to OEM being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 20.3 The Client agrees that personal credit information provided may be used and retained by OEM for the following purposes
- (and for other purposes as shall be agreed between the Client and OEM or required by law from time to time):
- the provision of Services; and/or
 - the marketing of Services by OEM, its agents or distributors; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 20.4 OEM may give information about the Client to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Client;
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 20.5 The information given to the credit reporting agency may include:
- personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Client's application for credit or commercial credit and the amount requested;
 - advice that OEM is a current credit provider to the Client;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of OEM, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - that credit provided to the Client by OEM has been paid or otherwise discharged.
- 21. CONFIDENTIALITY**
- 21.1 Notwithstanding the consents given in clause 19 both OEM and the Client agree that they must:
- keep confidential all information concerning this Agreement, including information regarding products the Project and Intellectual Property.
 - keep confidential all information concerning the other party or its business, to the extent that the information was obtained in connection with this Agreement.
 - Only use the other party's confidential information for the purpose of performing its obligations under this agreement.
- 21.2 Nothing in the provisions of clause 21.1 shall restrict the disclosure of such information:
- where the information has come into the public domain other than through the fault of the party disclosing the information.
 - where the party is required to disclose certain confidential information by law, a court or tribunal (whether or not arising out of or in connection with this Agreement).
 - to the extent necessary to brief a party's legal or financial advisors about the parties affairs but only where such advisors are also required to keep the information confidential.
 - by the party receiving the information to its employees provided that they have a need to know and are required to keep the information confidential.
- 22. DEFAULT & THE CONSEQUENCES OF DEFAULT**
- 22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month

- (and at OEM's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes OEM any money the Client shall indemnify OEM from and against all costs and disbursements incurred by OEM in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, OEM's collection agency costs, and bank dishonour fees).
- 22.3 Without prejudice to any other remedies OEM may have, if at any time the Client is in breach of any obligation (including those relating to payment) OEM may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. OEM will not be liable to the Client for any loss or damage the Client suffers because OEM exercised its rights under this clause.
- 22.4 Without prejudice to OEM's other remedies at law OEM shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to OEM shall, whether or not due for payment, become immediately payable if:
- any money payable to OEM becomes overdue, or in OEM's opinion the Client will be unable to make a payment when it falls due;
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. TITLE

- 23.1 OEM and the Client agree that ownership of any Documentation or Products, shall not pass until:
- the Client has paid OEM all amounts owing to OEM; and
 - the Client has met all of its other obligations to OEM.
- 23.2 Receipt by OEM of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 23.3 It is further agreed that:
- until ownership of the Documentation and/or Products passes to the Client in accordance with clause 23.1 that the Client is only a bailee of the Documentation and/or Products and must return the Documentation and/or Products to OEM on request.
 - the Client holds the benefit of the Client's insurance of Documentation and/or Products on trust for OEM and must pay to OEM the proceeds of any insurance in the event of the Documentation and/or Products being lost, damaged or destroyed.
 - the Client must not sell, dispose, or otherwise part with possession of the Documentation and/or Products other than has been agreed between OEM and the Client, and then only in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Documentation and/or Products then the Client must hold the proceeds of any such act on trust for OEM and must pay or deliver the proceeds to OEM on demand.
 - the Client should not convert or process the Products or intermix them with other Products but if the Client does so then the Client holds the resulting product on trust for the benefit of OEM and must sell, dispose of or return the resulting product to OEM as it so directs.
 - the Client irrevocably authorises OEM to enter any premises where OEM believes Documentation and/or Products are kept and recover possession of the documentation and/or Products.
 - OEM may recover possession of any Documentation and/or Products in transit whether or not delivery has occurred.
 - the Client shall not charge or grant an encumbrance over the Documentation and/or Products nor grant nor otherwise give away any interest in the Documentation and/or Products while they remain the property of OEM.
 - OEM may commence proceedings to recover the Price of the Documentation and/or Products sold notwithstanding that ownership of the Documentation and/or Products has not passed to the Client.

24. SECURITY AND CHARGE

- 24.1 In consideration of OEM agreeing to supply the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 24.2 The Client indemnifies OEM from and against all OEM's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising OEM's rights under this clause.
- 24.3 The Client irrevocably appoints OEM and each director of OEM as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 24 including, but not limited to, signing any document on the Client's behalf.

25. PERSONAL PROPERTIES SECURITIES ACT 2009 (PPSA)

- 25.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 25.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Documentation and/or Products that have previously been supplied and that will be supplied in the future by OEM to the Client.
- 25.3 The Client undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which OEM may reasonably require to;
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 25.3(a)(i) or 25.3(a)(ii);
 - indemnify, and upon demand reimburse, OEM for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Documentation and/or Products charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of OEM;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Documentation and/or Products in favour of a third party without the prior written consent of OEM;
 - immediately advise OEM of any material change in its business practices of selling the Documentation and/or Products which would result in a change in the nature of proceeds derived from such sales.
- 25.4 OEM and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 25.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 25.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 25.7 Unless otherwise agreed to in writing by OEM, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 25.8 The Client must unconditionally ratify any actions taken by OEM under clauses 25.3 to 25.5.
- 25.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- ### **26. UNPAID OEM'S RIGHTS**
- 26.1 Where the Client has left any item with OEM for repair, modification, exchange or for OEM to perform any other service in relation to the item and OEM has not received or been tendered the whole of any moneys owing to it by the Client, OEM shall have, until all moneys owing to OEM are paid:
- a lien on the item; and

- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 26.2 The lien of OEM shall continue despite the commencement of proceedings, or judgment for any moneys owing to OEM having been obtained against the Client.
- 27. GENERAL MATTERS**
- 27.1 The failure by OEM to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect OEM's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.2 OEM and the Client each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of the other party in respect to all covenants and obligations of this Agreement.
- 27.3 Neither OEM nor the Client shall assign, sublet or transfer any right or obligation under the Agreement without the written consent of the other party. Furthermore unless specifically stated to the contrary in any written consent to an assignment, no assignment shall release or discharge the assignor from any obligation under this Agreement.
- 27.4 Nothing contained in this Clause shall prevent OEM from employing with his fee such persons or companies as he may deem appropriate to assist him in the performance of the Agreement.
- 27.5 If circumstances arise which require the services of a specialist or expertise which is outside of OEM's experience then OEM may with the prior approval of the Client engage an appropriate consultant. The consultant shall be engaged at the Client's expense and on his behalf, provided a schedule of fees is previously provided and approved. The Client shall not unreasonably withhold their consent to such an engagement.
- 27.6 A notice purported to be served under this Agreement shall be deemed to have been properly served if the same is in writing and is sent to the usual business address of the recipient by certified mail, facsimile or personal delivery for which a receipt is obtained.
- 27.7 All reference to monies in this Agreement shall be deemed to be references to Australian currency and all moneys to be paid shall be paid to the relevant party in places he may reasonably nominate in writing.
- 27.8 The agreement and all arbitrations arising out of it shall be governed by the laws of the State in which OEM has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 27.9 OEM may at any time change the structure of its practice to, or from, that of an incorporated company. In such case the present Agreement shall be deemed to have been replaced by an identical Agreement between the Client and OEM's practice in its new form.
- 27.10 The Client shall not set off against the Price amounts due from OEM to the Client.
- 27.11 OEM reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which OEM notifies the Client of such change. Except where OEM supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
- 27.12 The Client warrants that:
- (a) it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
 - (b) as at the date of this Agreement it is not aware of any published or issued patents which are either owned by, or licensed or assigned to any third party, which are likely to be infringed or give rise to claims of infringement by a manufacturer, use or sale of the products or Services in accordance with this Agreement.
 - (c) it does not have actual knowledge that the execution of this Agreement will:
 - (i) constitute a wrongful act in relation to a third party.
 - (ii) cause the warranting party to be in breach of any contract with a third party.
 - (iii) otherwise constitute an infringement by the warranting party of the rights of any third party.
- 27.13 Notwithstanding any other provision of this Agreement, OEM's total liability under this Agreement shall not exceed the amount actually paid by the Client to OEM under this Agreement.
- 27.14 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, flood, drought, storm or other event beyond the reasonable control of either party.