

SUPPLY OF GOODS AND/OR SERVICES

TERMS AND CONDITIONS

1. APPLICATION OF TERMS AND CONDITIONS

The Customer agrees to purchase the Goods and/or Services from the Supplier on these Terms and Conditions and this Agreement.

2. TERM

This Agreement commences on the Commencement Date and continues for the Term unless terminated earlier in accordance with this Agreement.

3. ACCEPTANCE OF THESE TERMS AND CONDITIONS

3.1 Any instructions received by the Supplier from the Customer in relation to the following:

- (a) acceptance of the Fees;
- (b) supply of the Goods and/or Services;
- (c) the Customer's acceptance of the Goods and/or Services supplied by the Supplier, which includes acceptance via any electronic or online portal,

will constitute acceptance of these Terms and Conditions.

3.2 Where more than one Customer has entered into this Agreement, each Customer shall be jointly and severally liable for all payments of the Fees.

3.3 The Customer shall give the Supplier not less than seven (7) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, email address, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause 3.

4. FEES AND PAYMENT

4.1 The Fees are as indicated in the Order Form.

4.2 The Customer agrees to pay the Fees.

4.3 GST and other taxes and duties that may be applicable will be shown separately and are not included in the Fees.

4.4 The Customer must pay the Supplier the Fees for Goods and/or Services as follows:

- (a) for supply of parts / equipment servicing, within thirty (30) days of the end of the month of the invoice date;
- (b) for sale of vehicles / equipment, 20% deposit payable at the time of ordering and remaining balance payable prior to collection or delivery; and
- (c) for major works / inspections / repairs / projects:

(i) for vehicle and/or equipment inspections (including 10-year and other statutory crane inspections):

(A) 30% deposit plus a pre-agreed inspection fee, payable at the time of ordering; then

(B) 30% progress fee at four (4) weeks, payable upon receipt of invoice (NB there is no payment grace period as with supply of parts / equipment servicing); then

(C) final 40% when inspection is completed, payable upon receipt of invoice (NB there is no payment grace period as with supply of parts / equipment servicing); and

(ii) for all other major works / repairs (including repairs resulting from inspections which are not general or regular servicing) / projects, the full amount is payable upon receipt of invoice (NB there is no payment grace period as with supply of parts / equipment servicing),

or as otherwise agreed by the Supplier.

4.5 Subject to clause 4.4, payment of Fees for Goods and/or Services sold or supplied by the Supplier to the Customer must be made:

- (a) in the case of supply of parts and/or servicing:
 - (i) if by direct debit, pursuant to the Direct Debit Request and these Terms and Conditions; or
 - (ii) if a Credit Application has been executed by the Parties, pursuant to the Credit Application and these Terms and Conditions; or

(b) in the case of any other Goods and/or Services (including capital sales of vehicles and equipment and/or major works/inspections and/or projects) by cleared cheque or Electronic Transfer of Funds (EFT), or as otherwise directed by the Supplier.

4.6 Payment of Fees is deemed to be made:

- (a) if by Electronic Transfer of Funds (EFT) – on the date upon which those funds are cleared by the Customer's bankers;
- (b) if cash is tendered – on the date it is tendered; and
- (c) if a cheque (bank or otherwise) or other negotiable instrument is tendered – on the date upon which the cheque or other negotiable instrument is negotiated and cleared in full by the Customer's bankers.

4.7 The Customer must reimburse the Supplier for any expenses (including but not limited to administrative,

storage or delivery costs) incurred by the Customer as a result of any cancelled order for whatever reason.

4.8 If the Parties agree to any variation of the Goods and/or Services, the Supplier will advise the Customer in writing of any corresponding variation in the Fees. Unless the Customer objects in writing to any corresponding variation in the Fees within seven (7) days of receiving the written notification of such variation, the Customer is deemed to have accepted the varied Fees.

4.9 The Supplier reserves the right to withhold delivery or supply of the Goods and/or Services in the event the Customer has not made full payment or payment of Fees is overdue, as the case may be.

5. DELIVERY OF GOODS

5.1 Unless otherwise agreed between the Parties, the Supplier will deliver the Goods to the Customer to the Customer's nominated Delivery Address.

5.2 The Goods are estimated to be available within the estimated timeframe specified in the Order Form or as agreed between the Parties.

5.3 The Supplier will notify the Customer as soon as possible if the Supplier becomes aware of any delay in the delivery of Goods.

5.4 If the Supplier delivers the Goods to the Customer's nominated Delivery Address, the Customer must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery and in the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier will be entitled to charge a reasonable fee for re-delivery.

5.5 If applicable, the Supplier may deliver the Goods by separate instalments and each separate instalment will incur delivery costs and must be invoiced and paid in accordance with the provisions in these Terms and Conditions.

5.6 The Supplier's failure to deliver up the Goods will not entitle either Party to treat the Agreement as repudiated.

5.7 The Supplier will not be liable for any loss or damage to the Customer resulting from late delivery of the Goods for any reason (including but not limited to changes to the Customer's requirements or variations to the Agreement).

5.8 The Customer shall inspect all Goods upon delivery (or after installation if applicable) and shall, within forty-eight (48) hours from the time of delivery, give notice to the Supplier of any shortfall in quantity or any defects in the Goods.

5.9 If the Customer requires the Supplier to deliver the Goods, the risks in the Goods pass to the Customer at the instance when the Supplier (or its agent) first moves the Goods in order to effect the delivery. The Customer indemnifies and shall keep indemnified (to the fullest extent permitted by law) the Supplier and its Personnel from and against all claims and demands in respect of any loss or damage whatsoever and whenever caused to any person whatsoever, whether by way of death of, or injury to, any person of any nature or kind, accident or damage to

property or to the Goods, delay, financial loss or otherwise arising from the transport of the Goods to the Customer (except if the loss or damage is caused by the Supplier or its agent's negligence).

6. STORAGE COSTS

6.1 The Customer must pay the Supplier for any expenses (including but not limited to administrative, storage or delivery costs) incurred by the Supplier as a result of any cancelled order for whatever reason.

6.2 The Supplier reserves the right to make a reasonable charge for the storage costs for the Goods if delivery instructions are not provided by the Customer within seven (7) days of a request by the Supplier for such instructions or if the Customer fails to take delivery of the Goods.

7. CUSTOMER'S WARRANTY

7.1 The Customer warrants that it will comply with all applicable legislation and regulations in operating or using the Goods, including without limitation any relevant equipment operating codes or software licence requirements, and that it will comply with all applicable equipment operating standards, good equipment operating practice and, the manufacturer's manual.

7.2 The Customer will indemnify the Supplier and hold it harmless in respect of all claims, costs, damages, expenses and losses which the Supplier may incur or suffer arising out of any failure or default in respect of the Customer's obligations under this clause 7 including without limitation any remedial or rectification action in respect of improper or unlawful installation or operation of the Goods.

7.3 Where the Customer is a trustee:

- (a) The Customer warrants that it has full power and authority for the benefit purposes and objects of the trust to make these Terms and Conditions on behalf of the trust and that it shall be bound by these Terms and Conditions both personally and as trustee; and
- (b) The Customer confirms that the trustee shall be liable for the account and that in addition the assets of the trust shall be available to meet payment of the account.

7.4 Where the supply of Goods and/or Services includes installation of Goods, the Customer warrants that it has full authority to permit installation at the relevant premises and authorises the Supplier or its appointees full and unrestricted access during reasonable hours to carry out the installation and for site inspections, documentation, delivery and service connections and agrees to assist the Supplier in carrying out these tasks.

8. RISK, TITLE AND THE PERSONAL PROPERTY SECURITIES ACT

8.1 Goods supplied by the Supplier to the Customer will be at the Customer's risk upon:

- (a) collection by the Customer; or

- (b) delivery to the Customer's custody, possession or control,
whichever is the sooner.
- 8.2 It is the Customer's responsibility to insure the Goods after the risks in the Goods passes to the Customer.
- 8.3 Ownership of the Goods remains with the Supplier until all the amounts owing by the Customer to the Supplier (including without limitation the Fees and other debts owing to the Supplier) have been paid in full. If payment is not received as and when due, the Supplier reserves the right to enter the place where the Goods are without further notice and remove and repossess the Goods (even if they have been installed). The Supplier is entitled to recover, in addition to any other damages, the costs of so doing.
- 8.4 Until all the amounts owing by the Customer have been paid in full the Customer may sell the Goods in the ordinary course of its business but only as trustee and agent of the Supplier. The Customer must store the Goods in such a manner that they are readily distinguishable from other goods held by the Customer so they clearly show that they are the property of the Supplier. The Customer must not represent to any third party that it is acting for the Supplier, and the Supplier will not be bound by any contracts with third parties to which the Customer is a party.
- 8.5 The Customer must hold the sale proceeds it receives from any sale of the Goods as trustee and agent for the Supplier. All such sale proceeds must be placed in an ADI account separate from its own monies and the Customer must not allow any person to have control of, or grant a Security Interest over, the proceeds or the accounts in which they are held. The Customer must make immediate payment to the Supplier from the accounts in which the sale proceeds are held of all amounts which may be owing by the Customer to the Supplier.
- 8.6 The Customer acknowledges that the Agreement and these Terms and Conditions constitute a Security Agreement and the Customer grants a Security Interest in favour of the Supplier in all the Goods supplied by the Supplier to the Customer from time to time. The Customer grants to the Supplier a Purchase Money Security Interest. Further, the Customer grants to the Supplier a Security Interest in the Customer's All Present and After Acquired Property to secure the as security for the Goods and performance of its obligations under this Agreement.
- 8.7 The Customer accepts, acknowledges and agrees that:
- (a) The Supplier can, without notice to the Customer, affect and maintain a Registration (in any manner that the Supplier considers appropriate) of its Security Interest on the PPSR in relation to any Security Interest contemplated or constituted by the Agreement including but not limited to the Supplier's Goods, Services, contract rights or Intellectual Property; and
- (b) Pursuant to section 275(6) of the Personal Property Securities Act, the Customer agrees the Supplier is not required to disclose to an interested person information pertaining to the Supplier's Security Interest unless required to do so pursuant to the Personal Property Securities Act or at law generally.
- 8.8 The Customer will:
- (a) sign any documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) and/or assistance which the Supplier may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR;
- (b) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the Personal Property Securities Act in respect of the Goods, including any Services, without the prior written consent of the Supplier;
- (c) give the Supplier not less than seven (7) days' written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business activities);
- (d) indemnify the Supplier against any costs the Supplier incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the Personal Property Securities Act and any costs the Supplier may incur in the course of enforcing any of its rights under this Agreement, the Personal Property Securities Act or at law generally; and
- (e) procure from any persons considered by the Supplier to be relevant to its security position, such agreement and waivers as the Supplier may at any time reasonably require.
- 8.9 The Customer undertakes not to register, or permit to be registered, a Financing Statement or a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement in favour of a third party without the Supplier's prior written consent.
- 8.10 If Chapter 4 of the Personal Property Securities Act would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Customer agrees that the following provisions of the Personal Property Securities Act will not apply to the enforcement of the Agreement:
- (a) Section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer;
- (b) Section 96 (when a person with an interest in the whole may retain an accession);
- (c) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
- (d) Section 125 (obligation to dispose of or retain collateral);

- (e) Section 129 (disposal by purchase);
- (f) Section 130 (notice of disposal of collateral), to the extent that it requires the Supplier to give a notice to the Customer;
- (g) Section 132(3)(d) (contents of statement of account after disposal);
- (h) Section 132(4) (statement of account if no disposal);
- (i) Section 135 (notice of retention of collateral);
- (j) Section 142 (redemption of collateral); and
- (k) Section 143 (reinstatement of security agreement).
- 8.11 Notices or documents required or permitted to be given to the Supplier for the purposes of the Personal Property Securities Act must be given in accordance with the Personal Property Securities Act.
- 9. CUSTOMER'S WAIVER**
- 9.1 The Customer warrants that it has not relied on any representation made by the Supplier in any form (including but not limited to the Supplier's leaflets, catalogues, brochures, website) which has not been stated expressly in these Terms and Conditions or upon any descriptions, illustrations or specifications or any documentation provided by the Supplier.
- 9.2 The Customer acknowledges and agrees that, to the extent the Supplier has made any representation which is not otherwise expressly stated in these Terms and Conditions, the Agreement or in any other document, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 9.3 The Customer waives any right to rescind, terminate or cancel the Agreement with the Supplier or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Supplier and the Customer acknowledges that it is relying on its own skills and judgement when acquiring the Goods.
- 10. SUPPLIER'S WARRANTY**
- 10.1 Subject to the conditions of warranty set out in clause 7.1 the Supplier warrants that if any defect in any Goods of the Supplier becomes apparent and is reported to the Supplier within six (6) months of the date of delivery (time being of the essence) then the Supplier will either (at the Supplier's sole discretion) replace or remedy the Goods.
- 10.2 The conditions applicable to the warranty given by clause 10.1 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
- (i) failure on the part of the Customer to properly maintain any Goods; or
- (ii) failure on the part of the Customer to follow any instructions or guidelines provided by the Supplier; or
- (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
- (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
- (v) fair wear and tear, any accident or act beyond the parties' reasonable control or influence.
- (b) the warranty shall cease and the Supplier shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Supplier's consent.
- (c) in respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.
- 10.3 For Goods not manufactured by the Supplier, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 10.4 Any condition or warranty which would otherwise be implied in the Agreement is hereby excluded to the fullest extent permitted by law.
- 10.5 Where legislation implies in the Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty will be deemed to be included in the Agreement. However, the liability of the Supplier for any breach of such condition or warranty will be limited, at the option of the Supplier, to one or more of the following:
- (a) if the breach relates to Goods:
- (i) the replacement of the Goods or the supply of equivalent Goods;
- (ii) the repair of such Goods;
- (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (iv) the payment of the cost of having the Goods repaired; and
- (b) if the breach relates to Services:
- (i) the supply of the Services again; or
- (ii) the payment of the cost of having the Services supplied again.
- 10.6 The Customer must inspect the Goods on delivery and must within forty-eight (48) hours of delivery (time being of the essence) notify in writing the Supplier of any alleged defect, damage in the Goods or failure to comply with the description or quotation. The Customer must provide the Supplier the opportunity to inspect the Goods (**Inspection**)

within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer fails to give a written notice of the alleged defects or facilitate an Inspection for the Supplier, the Goods will be presumed to be free from any defect or damage and the Supplier is not liable to replace or repair the Goods.

- 10.7 The Supplier may repair or replace any Goods or part of any Goods with second-hand replacement parts of the same or similar age, use and quality as those Goods or part of any Goods subject to such second-hand parts being suitable for such purpose.
- 10.8 Notwithstanding any warranties about Goods where those Goods are vehicle or equipment parts, the Supplier does not provide any warranty and disclaims and does not accept any liability for any damage of loss arising out or in relation to the installation and use of such parts by the Customer or its Personnel in any work.

11. RETURNS

- 11.1 Goods will not be accepted for return other than in accordance with clause 10 above.
- 11.2 Goods must be returned in their original condition.
- 11.3 A restocking fee of fifteen percent (15%) of the value of any Goods returned may apply to such Goods returned after thirty (30) days from the date of their delivery.

12. EXCLUSION OF LIABILITY

- 12.1 In no event will the Supplier or its Personnel be liable for any action, damage, claim, liability, cost, expense or Loss the Customer may incur or that may arise from any damage, breakdown, fault or other defect in any equipment which results from crane inspections, including boom or component load tests, where the components of the Customer's crane or equipment being tested or inspected are not new components that have been fitted by the Supplier.
- 12.2 Where the Goods and/or Services comprise vehicle and/or equipment inspections:
- (a) the Supplier does not guarantee:
- (i) that all or any of the components of the vehicle or equipment being inspected are original components or replacement components, which have been manufactured by the manufacturer of the vehicle or equipment being inspected; or
- (ii) the authenticity of the registration, mileage, VIN number, engine number or the vehicle or equipment service history; and
- (b) the inspection can only describe and/or identify defects actually found and/or which are reasonably capable of being found upon visual consideration of the vehicle or equipment being inspected at the time of the inspection and the Supplier cannot be held responsible for any latent defects which are later discovered.

- 12.3 The Customer agrees that the Supplier or its Personnel will not be liable to the Customer for any actions, claims, or Loss in any way arising out of or relating to the Goods for an amount greater than the Fees paid by the Customer to the Supplier under this Agreement.
- 12.4 In no event will the Supplier or its Personnel be liable for any special, incidental, indirect, consequential or punitive damages, costs expenses or Losses of any kind, lost profits, lost revenue, economic loss, loss of goodwill, loss of management time, loss of production, loss of opportunity, expectation loss, failure to realise anticipated savings, or lost or incorrect data; or
- 12.5 In no event will the Supplier or its Personnel be liable for any delay, including a Force Majeure Event or breach or default under this Agreement, in circumstances where the delay, breach or default is caused by anything beyond the Supplier's control, whether or not the Supplier may have been able to foresee the occurrence of the thing or had taken any steps to avoid its consequences. During any delay, the Supplier's obligations under the Hire Agreement are suspended.
- 12.6 This clause 12 will apply regardless of the form of action, damage, claim, liability, cost, expense or Loss whether in contract, statute or tort (including without limitation to negligence) or otherwise. To the extent that this clause refers to persons other than the Supplier, the Supplier holds the benefit of this clause on trust for them.
- 12.7 The Customer acknowledges that the collection, storage and provision of data on local and remote servers presents inherent security risks and risk of loss. It agrees that it will not hold the Supplier liable for any loss, theft or corruption of any data collected, stored or provided by the Supplier or any damage that the Goods and/or Services may cause to any of the Customer's existing infrastructure that does not directly result from the gross negligence of the Supplier.

13. AUSTRALIAN CONSUMER LAW

Nothing in the Agreement is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law, except to the extent permitted by the Australian Consumer Law.

14. GST

- 14.1 Fees are exclusive of GST.
- 14.2 If any supply under this Agreement is a Taxable Supply, then the Party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice.

15. INTELLECTUAL PROPERTY

- 15.1 The Customer expressly agrees and acknowledges that:
- (a) any Intellectual Property in the Supplier's Goods and/or Services (whether unregistered, registered or registrable) is the property of the Supplier; and

- (b) nothing in the Agreement is intended to provide the Customer with any interest in the Intellectual Property in the Supplier's Goods and/or Services.
- 15.2 The Customer agrees that it must not copy, alter, modify or in any other way interfere with (including but not limited to reverse engineering) the Goods or the Intellectual Property in the Goods. The Customer must not do anything that may infringe on the Supplier's Intellectual Property Rights.
- 16. NON-SOLICITATION**
- 16.1 During the term of this Agreement, the Customer must not, and it must procure that its Related Bodies Corporate do not, whether directly or indirectly, poach, solicit for employment, employ, entice away or engage any of the Supplier's current or previous Personnel or Personnel of any of its Related Bodies Corporate (together, "Relevant Personnel") unless:
- (a) the Supplier has provided its prior written approval;
- (b) the Relevant Personnel have responded to an advertisement for employment made to the public at large; or
- (c) the Relevant Personnel had, at the time of accepting an offer of employment or engagement with the Customer or its Related Bodies Corporate, ceased being the Relevant Personnel for a continuous period of at least 6 months.
- 16.2 This clause does not apply to any persons who are Relevant Personnel and who are expressly engaged by both Parties at the Commencement Date.
- 17. CUSTOMER'S INDEMNITY**
- The Customer continually indemnifies the Supplier and the Supplier's Personnel against any claim or proceeding that is made, threatened or commenced, and against any liability, Loss, damage or expense (including legal costs on a full indemnity basis) any of them incurs or suffers, as a direct or indirect result of any of the following:
- (a) a breach of this agreement including any warranty;
- (b) a wilful, unlawful or negligent act or omission by the Customer or by any of the Customer's Personnel; or
- (c) damage to or loss of any of the Supplier's property.
- 18. DEFAULT AND CONSEQUENCES**
- 18.1 Neither Party shall take any action (including legal action) against the other Party for a default of the Agreement without first giving the defaulting Party written notice specifying the default and providing the defaulting Party with seven (7) days to rectify such.
- 18.2 Interest on overdue payments of any invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of twelve percent (12%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 18.3 If the Customer defaults in payment (including by way of dishonoured cheque) of any invoice when due, the Customer will indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in pursuing the debt including legal costs (on a solicitor and own Customer basis) and the Supplier's debt recovery costs.
- 18.4 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Supplier may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under these Terms and Conditions. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.
- 18.5 Without prejudice to the Supplier's other remedies at law the Supplier is entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer is the subject of an Insolvency Event.
- 19. SECURITY AND CHARGE**
- Subject to clause 13 and the Personal Property Securities Act, as security for the Customer's obligations and liabilities under this Agreement:
- (a) the Customer and/or the Guarantor hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of their legal and equitable interest (both present and future) of whatsoever nature held in any and all real and personal property;
- (b) without limiting the generality of the charge in this clause, the Customer and/or the Guarantor agree, on the Supplier's request, to execute any documents and do all things necessary required by the Supplier to register a mortgage, absolute caveat, security interest or other instrument of charge over any real property or personal property, or both, and against the event the Customer and/or the Guarantor fail to do so within a reasonable time of being so requested, the Customer and/or the Guarantor irrevocably and by way of security, appoint any credit manager or solicitor engaged by the Supplier to be the Customer and/or the Guarantor's true and lawful attorney to execute and register such instruments; and
- (c) the Customer and/or the Guarantor will indemnify the Supplier on a full indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such security interest, charge, caveat or mortgage document.

20. CONFIDENTIALITY

20.1 Each Party (the “**Recipient**”) must keep confidential, and not disclose, any Confidential Information of the other Party (the “**Discloser**”) except:

- (a) as permitted under this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) to the Recipient’s Personnel, professional advisers and insurers; or
- (d) where the Recipient is compelled to do so by Law, provided that it gives the other Party written notice prior to disclosure.

20.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed in connection with this Agreement.

20.3 The Recipient must:

- (a) maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;
- (b) notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of this Agreement by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient’s expense; and
- (c) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.

20.4 Upon request from the Supplier, the Customer must procure its Personnel that are engaged in the performance of this Agreement to execute a confidentiality undertaking, agreement or deed in the form acceptable to the Supplier.

20.5 The following are exceptions to clauses 20.1 and 20.2:

- (a) that at the time of disclosure, the information is in the public domain;
- (b) information that is required by Law to be communicated to a person who is authorised by law to receive it;
- (c) disclosure to a court, arbitrator, expert, board of enquiry or administrative tribunal in the course of proceedings or determinations by before him or it;
- (d) disclosure to any person who is required or authorised by this Agreement to perform any function under this Agreement;
- (e) information that is necessary to be disclosed to any bank or other financial institution in connection with the organisation of that Party’s financial affairs;
- (f) information that is necessary to be disclosed to any legal counsel, accountant or other professional adviser in connection with the Party’s affairs provided

that the disclosee is bound by an obligation of confidentiality in regard to the information disclosed; or

- (g) information that is necessary to be disclosed to the Party’s Personnel, auditors and other necessary persons for the purpose of all or any of the matters pertaining to this Agreement.

21. DIRECT DEBIT REQUEST

21.1 This clause applies if the Customer has granted the Supplier authority to arrange for funds to be debited from the Supplier’s Account nominated on the Direct Debit Request.

21.2 In this clause 21:

- (a) **Account** means the bank account or credit card account (as the case may be) held at the Financial Institution which the Supplier is authorised to arrange for funds to be debited.
- (b) **Debit Day** means the day that payment by the Customer to the Supplier is due.
- (c) **Direct Debit Request** means the Direct Debit Request attached to this Agreement.
- (d) **Debit Payment** means a particular transaction where a debit is made.
- (e) **Financial Institution** means the Customer’s bank or financial institution where the Account is held.

21.3 By signing the Direct Debit Request, the Customer authorises the Supplier to arrange for funds to be debited from the Account. This Agreement and the Direct Debit Request sets out the terms of the direct debit arrangement between the Parties.

21.4 The Supplier only arrange for funds to be debited from the Account as authorised in the Direct Debit Request.

21.5 If the Debit Day falls on a day that is not a Business Day, the Supplier may direct the Financial Institution to debit the Account on the following Business Day. If the Customer is unsure about which day their Account has or will be debited, the Customer should contact their Financial Institution.

21.6 The Supplier may vary any details of a Direct Debit Request at any time by giving the Customer at least fourteen (14) days’ written notice.

21.7 Subject to clauses 21.8 and 21.9, the Customer may change the arrangements under a Direct Debit Request by contacting the Supplier in writing.

21.8 If the Customer wishes to stop or defer a debit payment, the Customer can either:

- (a) give the Supplier three (3) Business Days’ notice in writing before the next Debit Day; or
- (b) arrange it through the Bank.

21.9 The Customer may cancel the authority for the Supplier to debit the Account at any time by either:

- (a) giving the Supplier five (5) Business Days' notice in writing before the next Debit Day; or
- (b) arranging it through the Bank.
- 21.10 It is the Customer's responsibility to ensure that there are sufficient clear funds available in the Account to allow a debit payment to be made in accordance with the Direct Debit Request.
- 21.11 If there are insufficient clear funds in the Account to meet a debit payment, the Customer:
- (a) may be charged a fee and/or interest by the Financial Institution;
- (b) may also incur fees or charges imposed or incurred by the Supplier; and
- (c) must arrange for the debit payment to be made by another method or arrange for sufficient clear funds to be in the Account within seven (7) days so the Supplier can process the debit payment.
- 21.12 The Customer should check any Account statement to verify that the amounts debited from the Account are correct.
- 21.13 If the Supplier is liable to pay GST on a supply made in connection with this Agreement, then the Customer agrees to pay the Supplier on demand an amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.
- 21.14 The Customer agrees to indemnify the Supplier for any costs incurred by the Supplier as a result of the Customer providing incorrect Account details.
- 21.15 If the Customer believes that there has been an error in debiting the Account, the Customer should notify the Supplier directly by telephone and confirm such telephone notice in writing to the Supplier as soon as possible so that the Supplier can resolve the Customer's query without undue delay. Alternatively, the Customer can take such matters up with the Financial Institution direct.
- 21.16 If the Supplier concludes as a result of their investigations that the Account has been incorrectly debited, the Supplier will respond to the Customer's query by providing the Customer with reasons and any evidence for this finding.
- 21.17 If the Supplier concludes as a result of their investigations that the Account has not been incorrectly debited, the Supplier will respond to the Customer's query by providing the Customer with reasons and any evidence for this finding.
- 21.18 The Customer should check:
- (a) with the Financial Institution whether direct debiting is available from the Account as direct debiting is not available on all accounts or services offered by financial institutions;
- (b) the Account details which the Customer has provided to the Supplier are correct by checking them against a recent Account statement; and
- (c) with the Financial Institution before completing the Direct Debit Request if the Customer has any queries about how to complete the Direct Debit Request.
- 22. DISPUTE RESOLUTION**
- 22.1 If any dispute arises out of or in connection with this Agreement or the interpretation of its terms (a "Dispute"), a Party may not commence any court proceedings relating to the dispute unless this clause has first been complied with, except where that Party seeks urgent interlocutory relief.
- 22.2 The parties will attempt to resolve any Dispute as follows:
- (a) Either Party may notify the other Party in writing of the occurrence of a Dispute and the Parties must meet within seven (7) days or such other time as agreed to discuss and attempt to resolve the Dispute.
- (b) On receipt of the notice specified in clause 22.2(a), the Parties must use their reasonable efforts to expeditiously resolve the Dispute.
- (c) If the parties cannot resolve the Dispute within fourteen (14) days after the first meeting between the Parties specified in clause 22.2(a), or any further period as the Parties may agree to in writing, the Dispute must (at the instigation of any Party) go to mediation.
- (d) The mediation is to be conducted in accordance with the Australian Disputes Centre's Mediation Guidelines with a mediator as agreed by the Parties or, failing agreement, as appointed by the Australian Disputes Centre.
- (e) The mediation will be confidential, and the Parties must equally bear the mediator's costs to the Dispute, and each Party must also bear their own legal costs.
- (f) If the Dispute is not resolved at mediation within fourteen (14) days of the first mediation meeting then any Party is at liberty to claim their costs against the other parties, including the costs referred to in clause 22.2(e), and either Party may commence legal proceedings.
- 22.3 The Parties must continue to perform their obligations under this Agreement, including the payment of any Fees, while any Dispute is being resolved in accordance with this clause 22.
- 23. TERMINATION**
- 23.1 Either Party may terminate this Agreement by giving the other Party not less than one (1) months' written notice.
- 23.2 The Supplier may terminate this Agreement immediately by written notice to the Customer if the Customer:
- (a) through its conduct, brings the Supplier into disrepute;
- (b) breaches this Agreement and does not remedy the breach within fourteen (14) days of receipt of written notice from the Supplier specifying the breach; or



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- (c) is the subject of an Insolvency Event.
- 23.3 The Customer may terminate this Agreement immediately by written notice to the Supplier if the Supplier:
- (a) ceases to hold any applicable licence relating to the class of Services it provides to the Customer, or has conditions or restrictions imposed on such licence or licences which are unacceptable to the Customer, acting reasonably;
 - (b) breaches this Agreement and does not remedy the breach within fourteen (14) days of receipt of written notice from the Customer specifying the breach; or
 - (c) is the subject of an Insolvency Event.
- 23.4 Nothing in this clause 23 limits the Supplier's rights to receive its Fees for all Goods and/or Services provided by the Supplier to the Customer up to the date of such termination.
- 24. FORCE MAJEURE**
- If the Supplier is delayed, hindered, or otherwise prevented from complying with its obligations under this Agreement by reason of events or circumstances beyond the reasonable control of the Supplier including by reason of a Force Majeure Event, or any other circumstances affecting the supply of Goods and/or Services (or both), the Supplier is not liable to the Customer for any loss or damage which is or may be suffered by the Customer whether as a direct or indirect result of any such events or circumstances.
- 25. PRIVACY AND PERSONAL INFORMATION**
- 25.1 The Customer and the Guarantor agree for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and the Guarantor in relation to credit provided by the Supplier.
- 25.2 The Customer and the Guarantor agree that the Supplier may exchange information about the Customer and the Guarantor with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess any credit application by Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of the Customer and the Guarantor.
- 25.3 The Customer and the Guarantor consent to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) of the *Privacy Act 1988*).
- 25.4 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Customer and the Supplier or required by law from time to time:
- (a) provision of Goods and/or Services; and/or
 - (b) marketing of Goods and/or Services by the Supplier, its agents or distributors in relation to the Goods and/or Services; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods and/or Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods and/or Services.
- 25.5 The Supplier may give information about the Customer and the Guarantor to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer and/or the Guarantor; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer and/or the Guarantor.
- 26. SPECIAL CONDITIONS**
- 26.1 The Parties agree that they will be bound by any Special Conditions set out in the Order Form.
- 26.2 In the event of any conflict in the interpretation of the Special Conditions and any part of this Agreement, the provisions of clause 27.4 apply.
- 27. GENERAL**
- 27.1 This Agreement, the Special Conditions, the Order Form, any other schedules or annexures, and any documents referred to here, together with these Terms and Conditions, contain the whole of the Agreement between the parties and no understanding, arrangement or provision not expressly set forth in this Agreement or these Terms and Conditions is binding upon the parties.
- 27.2 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.
- 27.3 These Terms and Conditions and any Agreement to which they apply shall be governed by the laws of Western Australia and the Parties unconditionally submit to the jurisdiction of the courts of Western Australia.
- 27.4 The documents comprising the Agreement will be read in the following order of precedence:

- (a) the Special Conditions specified in the Order Form (if any);
 - (b) the Order Form;
 - (c) these Terms and Conditions; and
 - (d) any schedules, annexures or other attachments.
- 27.5 Where any conflict occurs between the provisions contained in these Terms and Conditions, such provisions will be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from these Terms and Conditions without otherwise diminishing the enforceability of the remaining provisions of these Terms and Conditions.
- 27.6 In the event of any breach of the Agreement or any of these Terms and Conditions by the Supplier the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Fees.
- 27.7 The Customer shall not be entitled to set off against or deduct from the Fees any sums owed or claimed to be owed to the Customer by the Supplier.
- 27.8 The Supplier may by notice in writing to the Customer reduce any Fees or other charges or costs payable to the Supplier under this Agreement by any fee, credit, rebate or other amount which is payable to the Supplier under or in connection with this Agreement.
- 27.9 Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the parties.
- 27.10 The Supplier may license or sub-contract all or any part of its rights and obligations (including supplying of the Goods and/or Services) without the Customer's consent.
- 27.11 The Supplier reserves the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change.
- 27.12 The failure by the Supplier to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision.
- 27.13 The Agreement and/or the Terms and Conditions are binding and can only be amended with the written consent of both Parties.
- 27.14 The Customer acknowledges the Supplier does not make under this Agreement or these General Terms and Conditions or outside thereof any representations or warranties regarding goods and services or any matter (including but not limited to descriptions, illustrations and performance contained in any of the Supplier's catalogues, price lists or any other advertising or marketing materials) which is or might be relevant to the Customer buying or selling goods and services other than the representations or warranties expressed here.

28. DEFINITIONS AND INTERPRETATION

28.1 Definitions

In this Agreement, the following definitions have the corresponding meanings unless the contrary intention appears:

- (a) **ADI** means authorised deposit-taking institution and has the same meaning given in the *Banking Act 1959* (Cth).
- (b) **Agreement** has the meaning given in clause 27.1.
- (c) **Australian Consumer Law** means the *Australian Consumer Law (Competition and Consumer Act 2010* (Cth)) as enacted and incorporated by each applicable Australian State and Territory.
- (d) **Australian Disputes Centre** means the Australian Disputes Centre Limited (ABN 87 003 042 840) and includes any other body as may replace, assimilate or merge with it.
- (e) **Business Day** means a day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.
- (f) **Commencement Date** means the earlier of:
 - (i) the date specified as the Order Date on the Order Form;
 - (ii) the date on which this Agreement is executed by the Parties, or the date the last Party executed this Agreement if the Parties did not execute this Agreement on the same date; or
 - (iii) the date the Supplier commenced supplying the Goods and/or Services specified on the Order Form.
- (g) **Confidential Information** in relation to a Party means information of a confidential nature including but not limited to information about its business, operations, strategy, administration, technology, affairs, customers, clients, Personnel or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.
- (h) **Controller** means, in relation to a person, a controller (as defined in the Corporations Act), trustee in bankruptcy, receiver, receiver and manager, administrator, liquidator (whether provisional or otherwise) of that person or that person's property or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.
- (i) **Corporations Act** means the *Corporations Act 2001* (Cth).
- (j) **Credit Application** means the customer credit application at the front of this Agreement.
- (k) **Customer** means the entity named as such in the Order Form, including its successors and assigns or any person acting on behalf of and with its authority.



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- (l) **Delivery Address** means the Customer's nominated delivery address as specified on the Order Form.
- (m) **Fees** means the price of the various amounts payable by the Customer under this Agreement for the Services and/or the Goods, specified and calculated in accordance with the Order Form and this Agreement.
- (n) **Force Majeure Event** means an event which is beyond the reasonable control of a Party and includes but is not limited to the following types of events:
- (i) an act of God;
 - (ii) war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, acts of terrorism, national emergency (whether in fact or in law) or martial law;
 - (iii) weather sufficiently inclement to prevent a Party from performing an obligation under this Agreement;
 - (iv) natural catastrophes, fire, earthquake, lightning or explosions;
 - (v) pandemic, epidemic or quarantine (including any government or governmental authority mandated lockdown which may include travel restrictions, restrictions on social interaction, restricted access to public spaces, or imposition of stay-at-home orders);
 - (vi) strikes, lock outs, slowdowns, stoppages and restraints of labour;
 - (vii) lawful restraints;
 - (viii) prolonged energy shortages;
 - (ix) prolonged embargoes or prolonged lack of availability from third parties of services, supplies, goods, equipment, vehicles or vehicle components, or raw materials;
 - (x) changes in laws or regulations; and
 - (xi) action or inaction by, or orders, judgments, rulings, decisions or enforcement actions of, any government, governmental authority or court of competent jurisdiction whether local, State or Federal (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely endeavours to obtain same),
- but **Force Majeure Event** does not include:
- (xii) financial distress nor the inability of either Party to make a profit or avoid a financial loss;
 - (xiii) changes in market prices or conditions; or
 - (xiv) a Party's financial inability to perform its obligations under this Agreement.
- (o) **Goods** mean goods or products supplied by the Supplier to the Customer (and where the context so permits shall include any supply of Services) as described in the Order Form.
- (p) **GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.
- (q) **GST Law** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (r) **Guarantor** means that person (or persons) or entity who agrees to be liable for the debts of the Customer on a principal debtor-basis pursuant to any Deed of Guarantee or similar Guarantee Agreement made between the Guarantor and the Supplier.
- (s) **Insolvency Event** means, in respect of a Party, any one or more of the following events or circumstances:
- (i) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
 - (ii) having a Controller or analogous person appointed to it or any of its property;
 - (iii) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other law;
 - (iv) seeking protection from its creditors under any law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
 - (v) any analogous event or circumstance to those described in clauses 28.1(s)(i) to 28.1(s)(iv) under any law.
- (t) **Intellectual Property** includes but is not limited to all trademarks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights owned or held by the Supplier. These rights include but are not limited to:
- (i) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
 - (ii) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.

- (u) **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity anywhere in the world in or in relation to copyright, trademarks, designs, patents, methodology, concepts, models, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:
- (i) all rights in all applications to register these rights including all rights to claim Paris Convention priority;
 - (ii) all renewals and extensions of these rights; and
 - (iii) all rights in the nature of these rights, such as moral rights.
- (v) **Loss** means:
- (i) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
 - (ii) liability;
 - (iii) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
 - (iv) cost or expense including legal costs on a full indemnity basis.
- (w) **Order Form** means the Order Form at the front of this Agreement.
- (x) **Party** means a party to the Agreement including but not limited to the Supplier and the Customer.
- (y) **Personal Property Securities Act** means the *Personal Property Securities Act 2009* (Cth).
- (z) **Personnel** means a Party's officers, directors, principals, employees, secondees, agents, consultants, partners, members, shareholders, affiliates, contractors and subcontractors.
- (aa) **Related Bodies Corporate** has the meaning given in the Corporations Act.
- (bb) **Security Agreement, Commingled Goods, Financing Statement, Financing Change Statement, Personal Property, All Present and After Acquired Property, Purchase Money Security Interest, Registration and Security Interest** have the meanings given to them in the Personal Property Securities Act.
- (cc) **Services** means the provision of the Supplier's:
- (i) services to undertake the contracted activities and works; and
 - (ii) any related Goods (and where the context so permits shall include any supply of Goods) supplied by the Supplier, as all described in the Order Form and includes any variations authorised under this Agreement.
- (dd) **Special Conditions** mean the special conditions (if any) to this Agreement as shown in the Order Form and referred to in clause 26.
- (ee) **Supplier** means Ronco Group Pty Ltd (ACN 152 316 679) of 33 Valencia Way, Maddington WA 6109 (Registered Office: L2, 102 Beaufort Street, Perth WA 6000), including its successors and assigns or any person acting on behalf of and with its authority.
- (ff) **Tax Invoice** has the meaning given in the GST Law and includes all taxation invoices for Goods and/or Services (whether interim or final) supplied by the Supplier to the Customer.
- (gg) **Taxable Supply** has the meaning given in the GST Law.
- (hh) **Term** means the period commencing on the Commencement Date and ending on:
- (i) any expiry date of the term specified on the Order Form; or
 - (ii) if no term is specified on the Order Form, the date on which both parties complete all of their obligations under this Agreement, as may be extended by the Parties' mutual written agreement.
- (ii) **Terms and Conditions** means these Terms and Conditions of Supply of Goods and/or Services pursuant to the Agreement.

28.2 Interpretation

In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) Headings are for convenience only and do not affect the interpretation of this Agreement.
- (b) The singular includes the plural and vice versa.
- (c) Words that are gender neutral or gender specific include each gender.
- (d) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (e) A reference to:
 - (i) "includes" means without limitation
 - (ii) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (iii) a Party includes its successors and permitted assigns;



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- (iv) a document includes all amendments or supplements to that document;
- (v) a clause, term, schedule or attachment is a reference to a clause, term, schedule or attachment to this Agreement;
- (vi) this Agreement includes all schedules and attachments to it;
- (vii) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
- (viii) any Act of Parliament includes any amendments or re-enactments of the same or any Regulations made under that Act; and
- (ix) a monetary amount is to Australian dollars (\$AUD).
- (f) An agreement on the part of two or more persons binds them jointly and severally.
- (g) When the day on which something must be done is not a Business Day, that thing must be done on the following Business Day.
- (h) No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it.

RGA002RoncoTermsConditions2022v6

RONCO GROUP PTY LTD (ACN 152 316 679)
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