

TERMS OF TRADE

1. Interpretation and Construction

1.1 Definitions

In these Terms of Trade, unless the context requires otherwise, the following words have the following meanings:

Seller means Jobman Pty Ltd ACN 141 550 647;

Customer means any person, organisation, or other entity that has requested the supply of goods and/or services from the Seller as stated on any order, Quotation, invoice or document;

goods means any goods available for sale by the Seller to the Customer, at the Customer's request, including the Software;

Intellectual Property means all processes, procedures, methodologies, techniques and/or inventions whether registered trademarks, designs, patents or not registered;

Order means any order made by the Customer from the Seller for the supply of goods and/or services;

Quotation means any quotation issued by the Seller to the Customer for the supply of goods and/or services;

Price means the price payable for the supply of goods and/or services in accordance with clause 4;

services means any services to be rendered by the Seller to the Customer, at the Customer's request;

Software means the Jobman management and tracking software and any related software or electronic products created or owned by the Seller; and

Terms means these terms of trade which apply to any supply of goods and/or services by the Seller to the Customer.

1.2 Construction

- (a) a reference to these terms or another agreement between the parties includes any variation or replacement;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the masculine includes the feminine and neuter and vice versa;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes, employees, agents and permitted assigns;
- (f) an obligation, agreement, representation or warranty on the part of or in favour of two or more persons binds, and/or is for the benefit of them jointly and severally;
- (g) a reference to anything is a reference to the whole or any part of it; and
- (h) references to parties or clauses are, unless otherwise stated, references to the parties and clauses contained in these Terms.

2. Supply of Goods and/or Services

- 2.1 The Seller may issue a Quotation upon the Customer's request or otherwise accept an Order for the supply of goods and/or services from the Customer.
- 2.2 Any Quotation issued by the Seller remains open for acceptance from the time stated on the Quotation or otherwise for 30 days unless withdrawn earlier. All Quotations are estimates only and are subject to withdrawal, correction or alteration at any time prior to the Seller's acceptance of the Customer's request. All amounts and prices stated on the Quotation are as at the date of the Quotation.
- 2.3 The Seller may specify a minimum order value and impose a surcharge if an Order is for a value of less than the minimum order value.

- 2.4 An Order will identify the goods or services ordered and the quantity required and refer to any Quotation pursuant to which the Order is made.
 - 2.5 The Seller may supply and the Customer must accept goods/services which vary from the goods and/or services ordered by the Customer so long as such variations are not material. Any variation of an Order requested by the Customer is only accepted if the Seller agrees in writing.
 - 2.6 The Seller may cancel or terminate any Order at any time without cause, in the Seller's absolute discretion and in that event, the Seller will repay the Customer any money paid by the Customer and the Seller is not liable for any loss or damages in any respect arising from any cancellation.
 - 2.7 The Seller reserves the right, whether or not an Order has been accepted and without notice to the Customer to withhold supply to the Customer and will not be liable for loss or damage resulting directly or indirectly from such action, including if the services cannot be rendered for any reason whatsoever, if the Customer is in default of these Terms or if the Seller has determined in its absolute discretion that credit should no longer be extended to the Customer.
 - 2.8 If the Customer cancels any Order, the Customer remains liable and will indemnify and keep indemnified the Seller for any and all loss is suffered (whether direct or indirect) by the Seller as a direct result of the cancellation (including but not limited to loss of profits).
- ### 3. Acceptance
- 3.1 The Customer warrants that it has the power to enter into this agreement, is solvent and able to pay its debts as and when they fall due, and this agreement creates a binding and legal obligation and all information provided to the Seller by the Customer is true and correct in all material respects.
 - 3.2 The Customer acknowledges these Terms apply to any Quotation or Order or other supply of goods and/or services and the Customer accepts the Terms without amendment and agrees to be bound by them.
 - 3.3 The Customer agrees that the Terms apply over any other document or agreement to the extent of any inconsistency.
 - 3.4 These Terms constitute an offer by the Seller to enter into an agreement with the Customer. If the Customer accepts this offer, the Customer will have entered into an agreement with the Seller and will be bound by these Terms, including being billed in accordance with them. Acceptance of these Terms may be by:
 - (a) the Customer signing and returning a copy of these Terms;
 - (b) the Customer giving the Seller instructions or using the goods and/or services of the Seller after receiving these Terms;
 - (c) the Customer not advising the Seller that it takes issue with the Terms within 14 days after the Seller provides these Terms to the Customer; or
 - (d) oral acceptance.
 - 3.5 If the Customer is the trustee of a trust, then in addition to that entity the trustee agrees to bind all trusts of which the entity is a trustee from time to time.
- ### 4. Payment and Price
- 4.1 The Price is the price determined by the Seller, in its absolute discretion, the price in accordance with the Quotation, the price on any invoices rendered by the Seller or the Price as at the date of supply in accordance with the Seller's current price list. The Customer agrees if there is any change to cost or rates for insurance, duties, exchange rates, labour or any other amounts used to calculate the Price or amounts stated on the Quotation or if those inputs increase in cost then the Customer will be liable for the increase and such increase forms part of the Price.

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- 4.2 The Customer must pay the Seller a non-refundable deposit of 40% of the Price for outright or upfront purchases before any goods and/or services are supplied.
- 4.3 Customers who elect to pay a subscription fee must pay the Seller an administration fee in full, to be determined by the Seller in its sole discretion based the size of the Customer's business and the amount of users as well as an ongoing set monthly fee.
- 4.4 The Customer must pay the Seller in full for all hardware items purchased prior to delivery.
- 4.5 Unless stated otherwise, the Price is exclusive of Australian goods and services tax (**GST**).
- 4.6 The Customer agrees that GST at the prevailing rate at the date of invoice will be included in the amount due and payable on the Price and is payable by the Customer in full at the same time as payment of the Price. The Customer must also pay any other taxes, charges, duties or imports that may be applicable in addition to the Price, unless expressly included in the Price.
- 4.7 Unless stated otherwise, time for payment is of the essence and will be payable as nominated by the Seller, and may be altered or revoked at any time without notice to the Customer, either on or before the delivery of the goods and/or services, seven (7) days following the date of any invoice provided by the Seller to the Customer or otherwise as stated on the invoice.
- 4.8 Payment must be made by electronic payment, credit card or by any other payment method nominated by the Seller.
- 4.9 The Seller may charge to the Customer a fee for overdue payments or Customer bank fees imposed on payments including credit card payments.
- 4.10 If a Customer's account for an outright purchase of the Software exceeds the Customer's current payment terms, the Software will be deemed not paid in full and an administrative restriction will be applied to the use of the Customer's site (referred to as "limp mode"). Further training, updates and support will also be placed on hold until the account is paid in full. The Seller accepts no liability whatsoever for any loss or damage that may result from the Customer's site being subject to any administrative restrictions due to the Customer's default of payment terms.
- 4.11 The Seller offers a five (5) year fair use policy for outright and upfront purchases of the software, referred to as a "sunset clause". The sunset clause takes effect from the time of the Customer's purchase. Subsequent licensing will be transferred to the current monthly subscription model and terms to reflect the value of the software previously purchased after the five (5) years of use expires.
- 4.12 If a Customer experiences financial hardship, Seller may, in its sole discretion, place some or all of the Customer's outstanding payments on hold for a negotiated period without cancelling the Customer's service. Requests must be submitted in writing to the Seller at accounts@jobman.com.au. Requests will then be verified and where appropriate, approved by the Seller in writing.
- 4.13 If the Customer elects to opt-out of the annual maintenance package (and thereby does not pay the applicable annual maintenance fee/s), the Customer's site will not be updated and the client will be unable to utilise the Seller's support system. Customers who elect to opt-out of the annual maintenance package become an "unsupported customer" unless otherwise agreed with, and approved by, the Seller in writing. If an unsupported customer wishes to opt back in to the annual maintenance package and become a "supported customer" the Customer will have to pay the current license pricing for annual updates and maintenance, as well as an administration fee.
- 4.14 Customers who have purchased Jobman outright or upfront and opt-in to the annual maintenance package will receive a minimum of four (4) hours of training and support, for the clients. For Customers with subscriptions, training and support are charged in addition to the Software.
- 4.15 The training and support provided by the Seller to Customers that falls outside that included in the annual maintenance package will be allocated to support tickets lodged.
- 4.16 An internal agent of the Seller will review support tickets lodged by Customers in a timely manner. Support tickets are to be labelled in the below categories for greater reporting purposes:
- (a) Bug Fixes;
 - (b) Integrations;
 - (c) Training / Infrastructure; and
 - (d) Paid development and feature requests.
- 4.17 Bug fixes: There is no cost to the Customer for bug fixes; however it is at the Seller's sole discretion as to what issues are properly categorised as bug fixes, as opposed to training issues, development and/or feature requests.
- 4.18 Integrations: The charge for connecting the Software to the various third-party applications is included when purchasing these modules.
- 4.19 Training/infrastructure: The time spent by an internal agent for resolving any of these support tickets is charged in 15-minute increments. This time is deducted from the training/support hours attributed to Customers. Once all the support/training time/hours are used, the Customer must purchase additional time/hours from the Seller. If the Customer does not purchase further time/hours, then support tickets, and phone and email support will not be available to the Customer. There is no expiry date for the time/hours credited to a Customer's account.
- 4.20 Feature requests: Customer requested development that falls outside of the Software functionality is subject to a billable development scoping fee, and development charges will be applicable for these requests. These additional charges will be provided during the scope and quote stage, and once the Seller has all the necessary information to evaluate the requested development. Any development undertaken by the Seller is placed in a queue determined by the Seller in its sole discretion, as to its priority.
- 5. Unpaid Invoices, Interest and Costs**
- 5.1 On delivery of the software, regardless of use, monies outstanding must be paid in full by the stated invoice due date. The Seller may charge the Customer interest on the unpaid amount to be accrued daily from the date when payment becomes due until the date of payment at the rate of fifteen per cent (15%) per annum both before and after any judgment obtained by the Seller.
- 5.2 The Customer is not entitled to set off, deduct or otherwise withhold payment of any amount due and owing to the Seller including where the Customer has disputed the invoice or alleged amounts are owed or will become owing by the Seller to the Customer.
- 5.3 If invoices or monies outstanding are not paid in full by the due date for payment, the Seller may, in addition to any other remedies available to it under these Terms or at law, disable, discontinue or otherwise prevent or limit the Customer's continued use of, or access to the goods and services offered by the Seller, and the Customer hereby releases the Seller from, and indemnifies the Seller in respect of, any claims for direct and/or indirect loss or damage suffered by the Customer and any third parties as a result.

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5.4 The Customer is liable for all costs and disbursements incurred by the Seller or its appointed agents in recovering payment of any outstanding invoice or in enforcing its rights under these Terms, including, but not limited to, legal costs on an indemnity basis, debt collection costs, mercantile agents' costs and/or commission and bank dishonour fees.

5.5 The Seller is entitled to retain any goods or other documents held on the Customer's behalf pending payment of any outstanding monies by the Customer.

6 Title

6.1 Unless and until the Seller receives full payment in cleared funds of all monies due for all goods and/or services supplied by it to the Customer, as well as all other amounts owing to the Seller by the Customer and the Customer has complied with all obligations pursuant to these Terms:

- (a) title and property in all goods vests in the Seller and does not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for the Seller and must return the goods, including goods in transit which have not yet been delivered to the Customer, upon the Seller's request;
- (c) the Customer holds the benefit of its insurance of the goods on trust for the Seller and must pay to the Seller the proceeds of insurance in the event the goods are lost, destroyed or damaged;
- (d) the Customer must keep the goods separate from its goods and maintain the Seller's labelling and packaging;
- (e) the Customer must not charge or otherwise grant an interest over the goods while they remain the Seller's property;
- (f) the Customer must not convert, process or otherwise commingle the goods but if the Customer does so, then it holds the commingled good on trust for the benefit of the Seller and must sell or dispose of the commingled good to the Seller, on the direction of the Seller;
- (g) the Customer may sell or dispose of the goods only in the ordinary course of business in its capacity as agent for the Seller and if the Customer sells or disposes of the goods then the Customer must hold the proceeds on trust for the Seller and deliver up the proceeds to the Seller on demand;
- (h) the Customer must hold the proceeds of sale of the goods on trust for the Seller in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee; and
- (i) the Seller may without notice, enter any premises where it suspects the goods are and recover possession of the goods, notwithstanding that they may have been attached to other goods and not the property of the Seller, and for that purpose the Customer irrevocably licences the Seller to enter such premises and indemnifies the Seller from and against all costs, claims, demands, or actions by any party arising from such action.

6.2 The Seller is entitled to commence legal proceedings to recover any outstanding monies from the Customer regardless of ownership of the goods.

7 Risk and Insurance

- 7.1 The risk in goods and/or services passes to the Customer upon software site access being provided by the Seller.
- 7.2 The Customer is liable for the insurance and must maintain at its own cost an insurance policy of insurance with a reputable Australian insurer to cover all risks which may reasonably arise.
- 7.3 Notwithstanding the passing of risk, all goods delivered by the Seller to the Customer remain the property of the Seller until all goods supplied by the Seller to the Customer have been paid for in full. If the goods are lost,

damaged or destroyed after delivery but prior to ownership passing to the Customer pursuant to these Terms the Seller is entitled to receive all insurance proceeds payable for the goods.

8 Warranties

- 8.1 To the extent permitted by law, the Seller does not provide any warranty in relation to the goods. The only warranties in relation to the goods are warranties provided by the developer and not the Seller and to the extent that the rights in any developer's warranties are required to be assigned to the Customer, the developer's warranties are assigned and title of those warranties passes with the goods. The Seller is not liable to the extent that any developer is liable under a developer's warranty, unless required by law.
- 8.2 The Seller expressly denies and excludes any warranties or conditions which would otherwise be implied to the maximum extent possible by law including but not limited to merchantable quality, suitability, fitness of purpose, quality, suitability, or otherwise. The Seller acknowledges that these Terms do not exclude any statutory warranties which may be implied pursuant to the *Competition and Consumer Act 2010* (Cth).
- 8.3 The Customer acknowledges and agrees that:
 - (a) the Customer will rely on its own knowledge and expertise with respect of the purpose of the goods and any advice or assistance given by or on behalf of the Seller will be accepted at the Customer's risk and will not be deemed to have been given as an expert or adviser or be otherwise relied on by the Customer; and
 - (b) the Seller will not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particulars provided with respect to the intended use of any goods or otherwise) which are not precisely and accurately communicated in writing to the Seller prior to agreement for supply of goods and/or services.

9 Defects in Goods

- 9.1 The Customer will inspect the goods immediately upon delivery and carry out any tests which a prudent Customer would carry out and use their best endeavours to minimise loss and damage arising from any defect.
- 9.2 All claims for credit for defective goods must be notified to the Seller immediately. The Customer will give written notice to the Seller of any alleged defect, fault, irregularity or failure of the goods within 5 business days from the date of delivery and provide full particulars of the claim made.
- 9.3 The Seller must be given reasonable opportunity to inspect and test the goods in respect of which the claim is made, otherwise the Customer will not be entitled to any credit. Unless otherwise agreed, no return or request for credit will be approved until the Seller by its representative has inspected the goods on which the credit is claimed and agrees that the goods are defective. Until this inspection, the Customer is responsible for maintaining proper care of the goods and if this does not occur, the Seller reserves its rights not to accept the claim.
- 9.4 If the Customer does not make any claim pursuant to clause 9.2, the Seller does not accept any claims and the Customer is deemed to have accepted the goods and the Customer is not entitled to reject the goods or claim any remedy whatsoever (including but not limited to damages) against the Seller.
- 9.5 If the Customer requests the Seller to develop customised goods and/or services, then the Customer accepts all responsibility for testing the goods and/or services to confirm they meet the Customer's requirements and specifications. The Seller will not be liable for any loss or damage resulting

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- from the Customer's failure to fully and properly test the customised goods and/or services developed by the Seller.
- 9.6 The Seller is not obliged to provide a refund or a credit however, the Seller may do so in its sole discretion and if the Seller does not agree then the Customer will not be entitled to cancel the whole or part of any Order and the Customer will indemnify the Seller against loss or damage suffered by the Seller. If, in the Seller's absolute discretion, the Seller agrees to over a refund, the Seller may impose an administrative charge of an amount equivalent to 10% of the credit claimed in addition to any other out of pocket expenses and costs incurred by the Seller.
- 9.7 Subject to the *Competition and Consumer Act 2010* (Cth), the Seller is not liable for defective goods where the defect or damage was caused or partially caused by the Customer failing to fully or properly implement, install and/or maintain the goods, using the goods for a purpose other than what the goods were designed for, the continuing use of the goods after any defect became apparent or if the defect or damage should have been apparent to a reasonably prudent user of the goods, failure to follow any directions or instructions in relation to the goods provided by the Seller or by fair wear and tear, accident or any event of force majeure.
- 9.8 Notwithstanding anything contained in these Terms, if the Seller is required by law to accept a return, then the Seller will accept the return of goods on the conditions imposed by law.
- 10 Release and Indemnity**
- 10.1 The Customer hereby releases and indemnifies and agrees to keep the Seller indemnified from any and all costs, damages, liabilities, expenses or losses including indirect, consequential losses (including but not limited to loss of profit), that the Seller may incur in relation to the Customer or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by the goods supplied or services performed, any defect or fault in workmanship or design or their use, a breach of these Terms or for any other reason whatsoever.
- 11 Limitation of Liability**
- 11.1 The Customer agrees, to the fullest extent possible by law, in relation to any cost, damage, liability, expense or loss (including those contributed to or caused by the Seller's negligence or breach of any condition or warranty), if the Customer is not a consumer pursuant to the *Competition and Consumer Act 2010* (Cth), to limit any claim made to the Seller, in the Seller's absolute discretion to: the value of any express warranty provided by the Seller to the Customer or any warranty to which the Customer is entitled; replacement of the goods or services or the supply of equivalent goods; repair of the goods; repayment of the purchase price in the event that payment has been received from the Customer; or payment of the cost of replacing, repairing or acquiring equivalent goods. In no circumstances will the Seller be liable for any amount in excess of the Price.
- 11.2 If the Seller is required to replace the goods or remedy the services pursuant to the *Competition and Consumer Act 2010* (Cth) but cannot do so for any reason whatsoever, the Seller may refund the Price, if the Price has been paid by the Customer.
- 11.3 The Customer specifically agrees that the Seller is not responsible for any damages caused either to the goods supplied or as a result of the malfunction of the goods in the event that such goods are in any way adapted to a use to which they are not specifically intended or the goods have added to or altered in any way other than by a person approved or authorised by the developer or Seller.
- 11.4 The Seller will not be liable for any loss of the Customer resulting from the failure of the Customer's server hardware. The Seller will utilise its best endeavours to attempt to restore the Customer's site on alternative cloud hosting as soon as practicable after being notified in writing by the Customer, however the Seller accepts no liability whatsoever for any loss in productivity or other consequential loss resulting from the failure of the Customer's server hardware.
- 11.5 The Seller will not be liable for any loss suffered by the Customer whatsoever whether directly or indirectly as a result or consequence of incorrect data entry, whether the data was entered by the Seller or the Customer.
- 11.6 The Seller will not be liable for any damages for personal injury or death, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligent act or omission of the Seller or its employees or agents or otherwise and the Customer acknowledges this limitation of liability and agrees to limit any claim accordingly.
- 11.7 No other term, condition, agreement, warranty, representation and/or understanding whether express or implied, in any extending to, otherwise relating to or binding upon the Seller other than these Terms is made or given by or on behalf of the Seller.
- 11.8 Notwithstanding anything in these Terms, a Customer will not be entitled to make any claim upon the Seller whatsoever if any amounts are outstanding from the Customer to the Seller.
- 12 Intellectual Property Rights**
- 12.1 The Customer acknowledges and agrees that it does not have any Intellectual Property rights in the goods and services provided by the Seller and that the Seller holds the Intellectual Property rights associated with the goods and services supplied. The Seller has the right to use the Intellectual Property in the goods and services, including where the Seller has developed or designed the goods and services for the Customer, and the Intellectual Property rights remain the property of the Seller and the Seller may offer said goods and services to other customers for a fee.
- 12.2 The Customer acknowledges that all designs or other specifications provided by it with respect to the goods will not cause the Seller to infringe any Intellectual Property right in provision of the goods and/or services and the Customer indemnifies the Seller against any action taken by a third party against the Seller with respect to any infringement relating to such design or specifications.
- 12.3 The Customer agrees not to deconstruct, decompile or reverse engineer any of the goods supplied by the Seller.
- 13 Security**
- 13.1 In order to secure the performance by the Customer of its obligations, the Customer, and where the Customer is unincorporated each proprietor of the Customer, hereby charges with payment of the moneys and compliance with all obligations owed by the Customer to the Seller all beneficial interests (freehold and leasehold) in real and personal property held now or in the future by the Customer or proprietor.
- 13.2 The Customer, and where applicable, each proprietor agrees that if demand is made upon it, him or her by the Seller, the Customer or, if applicable, that proprietor will immediately execute a consent to caveat, or a caveat or mortgage, as required by the Seller to secure the obligations pursuant to this clause 14. The Customer or, if applicable, each proprietor, irrevocably and by way of security appoints the Seller and any director, credit manager or solicitor engaged by the Seller to be its,

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his or her true and lawful attorney to give effect to this clause 14 including but not limited to execute and register all documents.

13.3 The Customer indemnifies the Seller in relation to all of its costs and disbursements including legal costs on an indemnity basis incurred in exercising the Seller's right pursuant to this clause 13.

14 PPSA

14.1 Defined terms in this clause 14 have the same meaning as given to them in the *Personal Property Securities Act 2009* (Cth) ("PPSR").

14.2 The Seller and the Customer acknowledge that this agreement constitutes a Security Agreement and constitutes a Purchase Money Security Interest (PMSI) in favour of the Seller over the goods supplied or to be supplied to the Customer, as Grantor, pursuant to these Terms.

14.3 The Seller and the Customer acknowledge that the Seller, as Secured Party, is entitled to register its interest in the goods supplied or to be supplied to Customer, as Grantor, under these Terms on the Personal Properties Securities Register as collateral by registering a financing statement or financing change statement.

14.4 The Customer expressly waives its right to receive notification of or a copy of any verification statement with respect to the registration of a financing statement or a financing change statement relating to a security interest granted by the Customer to the Seller.

14.5 The Customer agrees to indemnify the Seller on demand for all costs and expenses, including legal costs and expenses on a solicitor and client basis, associated with the registration, amendment or discharge of any financing statement registered by or on behalf of the Seller or the enforcement or attempted enforcement of any security interest granted to the Seller by the Customer.

14.6 If the Customer is in default of its obligations and the Seller takes possession of any goods pursuant to its security interest, the Customer remains liable for the difference between the market value of the goods at the time they are sold by the Seller and the amount of the Customer's obligations for which it is in default.

14.7 The Customer agrees and undertakes to immediately notify the Seller of any change to its name, address or personal details and authorises the Seller to register a financing change statement without prior consent of the Customer.

14.8 The Customer agrees and undertakes not to agree, encourage or in any way allow another person or entity to register a financing statement without the prior written consent of the Seller and the Customer will provide written notice to the Seller upon becoming aware that of any other person or entity are taking steps to register a security interest with respect to the Customer.

14.9 The Customer agrees that to the maximum extent permitted by law, sections 130, 142 and 143 of the PPSA will not apply.

14.10 The Customer agrees, to the extent possible under law permitted by law to waive the following rights under the PPSA: receipt of a verification statement pursuant to section 157 and a statement of account where there is no disposal pursuant to section 130(4) or pursuant to section 132 where there is a disposal; to recover any proceeds pursuant to section 140; to object to the purchase of the collateral by the secured party pursuant to section 129; to receive notice of an intention to seize collateral pursuant to section 123; to receive notice of disposal of collateral pursuant to section 130; to receive notice of retention of Collateral pursuant to section 134 or to object to that notice pursuant to section 137; to redeem Collateral pursuant to section 142; to reinstate a security agreement

pursuant to section 143; to receive a notice of removal of accession under section 95; and any other right in favour of the Customer that can be lawfully contracted out of pursuant to section 115 of the PPSA which will not apply to these Terms or any security.

15 Statement of Debt

15.1 A certificate signed by a director, secretary, financial controller, credit manager or any other authorised person of the Seller will be prima facie evidence of the indebtedness of the Customer to the Seller.

16 Privacy and Credit Information

16.1 The Customer irrevocably authorises the Seller to make enquiries, exchange, collect and use a Customer's personal information including credit information and information relating to property, business or other solvency matter from time to time as the Seller may deem necessary which may include enquiries with persons nominated as trade references, financiers, any other credit provider, credit reporting bodies, any government department and/or any similar or other organisation (**Information Provider**) for the following purposes:

- (a) obtaining information on the credit position of the Customer;
 - (b) investigating the credit worthiness of the Customer in relation to the credit to be provided by the Seller; marketing purposes (unless the Customer has notified the Seller it wishes to opt out of direct marketing);
 - (c) to allow the Seller to provide a credit facility for the supply of goods and/or services to the Customer; to notify the credit provider of a default by the Customer;
 - (d) and to a credit reporting body to obtain a credit report or to permit a credit reporting body to maintain or update the Customer's credit file.
- 16.2 The Customer acknowledges that the information exchanged under clause 17.1 may include any information in relation to the Customer's creditworthiness or credit history.
- 16.3 The Customer consent and irrevocably authorises the Information Provider to disclose any information about the Customer in their possession to the Seller; the Seller may use any information which it holds for the purposes listed in clause 17.1; and may disclose any of the Customers' personal information to any interested person (including overseas third parties) for any purpose listed in clause 17.1, to the extent permitted by the *Privacy Act 1988* (Cth) and the Australian National Privacy Principles (if applicable).
- 16.4 To the maximum extent permitted by law, the Customer agrees (unless the Customer otherwise withdraws consent), to waive all rights under the *Privacy Act 1988* (Cth).

17 Default

- 17.1 Without prejudice to any other remedies available to the Seller, if the Customer becomes insolvent or appoints an administrator, receiver, receiver and manager, liquidator or trustee in bankruptcy or is in breach of any these Terms (including any term for payment), all monies become immediately due and owing to the Seller and the Seller may immediately:
- (a) terminate or suspend supply of goods and/or services;
 - (b) retain all monies paid and/or take immediate possession of any goods which have not been paid for;
 - (c) cease providing all future services;
 - (d) cancel all or any part of any order or request unfilled; and/or
 - (e) recover from the Customer any loss of profits arising from the Customer's default.
- 17.2 If the Seller exercises its rights pursuant to clause 17.1, it is not liable to the Customer for any consequential loss or damages suffered by the Customer.

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18 Customer Restructure

18.1 The Customer will provide written notice to the Seller of any change to its structure or management including change of director, shareholder, partnership, trusteeship or management or its details (including changes to its name or address). If the Customer fails to comply then the Customer agrees to indemnify the Seller from any resulting loss.

19 Miscellaneous

19.1 **Force Majeure.** The Seller will not be or be deemed to be in default or breach of any agreement as a result of force majeure. Force Majeure will include national emergency, war, prohibitive government regulations or any cause beyond the reasonable control of the Seller including trade disputes which means that the goods and/or services cannot or are delayed in being provided by the Seller to the Customer.

19.2 **Notices.** A notice, demand, waiver, approval or other document given pursuant to these Terms must be in writing and may be given to the recipient by way of personal service, prepaid post, facsimile transmission or email transmission at the address of the party as provided from time to time.

19.3 **Severance.** If any provision or part of a provision of these Terms cannot be given effect or is declared void for any reason, the provision or part which cannot be given effect will be severed and the remaining provisions will remain valid, binding and enforceable on the parties.

19.4 **Waiver.** No rights under these Terms will be waived unless agreed in writing and signed by the Seller. The Seller does not waive a right if an extension or other forbearance is given to the Customer. No waiver of a provision of these Terms will be construed as a continuing waiver of the provision. A waiver by the Seller of any matter does not prejudice its rights in respect of any matter. Any non-exercise or partial exercise of or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.

19.5 **Variation.** All goods and/or services sold by the Seller are sold and supplied on these Terms, as amended from time to time by the Seller in its absolute discretion or otherwise agreed by the Seller in writing. The Customer agrees it is deemed to have notice of change to these terms and be bound by such variations as they appear on the Seller's website from time to time, whether or not the Customer has actual notice of any such variation.

19.6 **Assignment.** The Customer is not entitled to assign the benefits or obligations under these Terms to any entity without the Seller's prior written consent, which may be given in the Seller's absolute discretion. The Seller may assign all or any part of the benefits and obligations under these Terms without the requirement for the Customer's consent.

19.7 **Jurisdiction.** The provisions of these Terms and any agreement for supply of goods and service between the Seller and the Customer will be governed by the laws of the state of Western Australia each party irrevocably submits to the non-exclusive jurisdiction of the courts of the said state.

19.8 **Entire Agreement.** These Terms supersede all previous agreements, discussions and representations between the Seller and the Customer and constitute the entire agreement in relation to the agreement for provision of goods and/or services between the Seller and the Customer. All prior correspondence, negotiations or representations do not bind either party and either party is not entitled to rely upon them.

19.9 **Counterparts.** These Terms may be signed in any number of counterparts and each counterpart will together constitute one agreement.

This agreement may be executed and delivered by facsimile, electronically or by way of electronic signature and the receiving party may rely upon same as if it was an original document or signature.

20 Special Conditions

20.1 If the Customer elects to pay for a maintenance contract, the Seller will provide support via its ticket system and will, from time to time, update the Customer's site with the latest code. The Seller will invoice the Customer annually for the maintenance fee.

20.2 The Seller will provide bug fixes to the Customer at no cost. The Seller will provide a Quotation for any features or add-ons requested of the Seller by the Customer. If the Customer accepts the Quotation the Seller will invoice the Customer accordingly. The Seller will have sole discretion to determine whether an issue identified is a bug fix or a feature or add-on.

20.3 Any terms and conditions included in a Quotation from the Seller will be read in conjunction with these Terms, and to the extent there is any inconsistency between the two, the Quotation will prevail.

20.4 Customer data stored by the Seller on the Seller's computer servers will remain the property of the Customer. Customer data will be retained by the Seller for a period of three (3) months only after the Seller turns off the Customer's site. The Customer will pay an administrative fee, as determined by the Seller from time to time, for the Seller to retrieve the Customer's data and provide it to the Customer in CSV file format.

20.5 It is the sole responsibility of the Customer to populate and/or enter all necessary data into the software supplied by the Seller. The Seller accepts no responsibility for the population of the Customer's data and any services and/or prices quoted by the Seller does not allow or account for data entry unless the contrary intention is expressly stated in writing.

20.6 It is the sole responsibility of the Customer to notify the Seller of any changes to the Customers contact details.