

# POINT DESIGN SOLUTIONS, TERMS AND CONDITIONS OF TRADE

## 1. RECITALS

**1.1)** Point Continuum Pty Ltd ACN:121 171 953 trading as Point Design Solutions ABN:59 121 171 953

Unit 7, 47 Monash Ave, COMO, WA, 6152.

gary@point-ds.com.au, 08 9328 1700

Point Design Solutions carries on the business type of supplying Products and Services to: Commercial Customers, Non-Commercial Customers

**1.2)** The client has requested and has agreed to enter into this agreement for the purpose of supplying products or services to the purchaser in accordance with this agreement and the attached order or quote.

**1.3)** Point Design Solutions intends to utilise the Personal Property Securities Act 2009,

## 2. DEFINITIONS AND INTERPRETATION

In these terms of Trade, unless the context indicates otherwise:

**ACL** means the Australian Consumer Law under the Consumer and Competition Act 2010 (Cth) as Amended;

**Agreed Delivery Address** means the address for delivery or collection of the products or services as nominated in an order or subsequently agreed in writing by the parties, or as specified in item 3 of the schedule;

**Business Day** means any day other than a Saturday, Sunday, or public holiday in Western Australia;

**Collateral** means property that is subject of a security interest;

**Client** means the person named in item 1 of the schedule;

**Confidential Information** means all of the following: (a) the trade secrets of any party; (b) the names of all past, present, and prospective retail customers, including all records regarding products or services sold or supplied to them; (c) the names of all past, present, and prospective employees of such party; (d) the party's past, present, and prospective systems, methods and procedures used in the operation of such party's business; (e) any other oral, written, electronic or recorded information of any party's business, products or services, financial condition, operations, assets or liabilities; (f) any documentary information that is marked "confidential", "private", "secret", "in confidence" or "not to be disclosed"; (g) all notes, analyses, summaries, compilations, studies projections, forecasts budgets, price list or records of any party that is marked confidential or which by its nature is confidential.

Confidential information excludes information (a) generally available in the industry other than as a result of a wrongful disclosure, (b) independently acquired or developed by a party without breach of this agreement, or (c) available to a party on a non-confidential basis from a third person not bound by any confidentiality agreement or fiduciary obligation owed to the other party.

**Grantor** means the person who has the interest in property to which a security interest is attached;

**GST** means goods and services tax as defined under the GST Act;

**Handling and Delivery Charges** means any handling and delivery charges for products or services that are notified to by the person in charge of delivery, including those relating to packaging, freight, handling, and insurance, and any credit card or other bank transaction fees;

**Local Currency** means the local currency of the client as agreed at the time of order (for example, Australian dollars in Australia, Pounds sterling in the United Kingdom and Euro for other EU countries);

**Material** means any material in which the client may have intellectual property rights provided by the client for use by Point Design Solutions in the production, development and supply of the products or services to the client;

**Order** means an order in writing for the purchase and supply of products or services placed by the client in accordance with these terms of trade;

**Order Confirmation** means the written confirmation of Point Design Solutions acceptance of an order in whole or in part, setting out the details of the order accepted, including but not limited to the products or services (including the quantity, if applicable) that Point Design Solutions will supply to the client, the amount due in respect of the order (based on the fees including any discounts plus any Handling and Delivery Charges), the date by which payment must be received, and the estimated delivery date for the order;

**Goods and/or Services** means a product which is the subject of an order which has been accepted by Point Design Solutions;

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

**PMSI** means a purchase money security interest as defined by section 14 of the PPSA;

**Purchase Price** means the amount payable by the customer to Point Design Solutions for the products or services;

**Payment** means payment of any amount relating to products or services in accordance with these Terms and Conditions of Trade;

**Quote** means a quotation by for the supply of products or services containing details as specified in these Terms and Conditions of Trade;

**Secured party** means a person who holds the benefit of a security interest;

**Security agreement** means the security agreement set out in clause 8 (Security Interest and Title);

**Terms** mean these terms of Trade;

**Winding Up** means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.

In this agreement:

**a)** words importing any genders include all genders;

**b)** words importing the singular include the plural and vice versa;

**c)** a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;

**d)** a reference to a person includes anybody that is recognised by law in the territory as such, whether as a natural person or a body corporate;

**e)** a reference to a party to this agreement or another agreement or document includes the party's successors and permitted substitutes or assigns (and, where applicable, the party's legal representatives);

**f)** a reference to currency shall mean AUD exclusive of any taxes; and

**g)** a reference to legislation or regulations shall include all amendments and re-enactments.

## 3) OUTLINE AND ORDERING PRODUCTS AND/OR SERVICES

**3.1)** These Terms and Conditions of Trade apply to the supply of all products or services by Point Design Solutions to the client, from the date that the client accepts these Terms and Conditions of Trade.

**3.2)** The client accepts these Terms and Conditions of Trade when:

**a)** the client submits an order; or

**b)** the client accepts delivery of, or any part of, the products or services pursuant to an order or otherwise; or

**c)** the client makes a payment, or a partial payment, for any products or services supplied by Point Design Solutions.

**3.3)** Unless otherwise agreed by Point Design Solutions in writing, Point Design Solutions will not be bound by any conditions added by the client in an order (express or implied).

**3.4)** Orders may be placed verbally and via phone order or an order by email. The order or quote is not deemed accepted until the price is confirmed in writing or email. Price is specified in individual quotations by Point Design Solutions. Once an order or quote has been confirmed, the client can no longer cancel it.

**3.5)** The client may request a quote from Point Design Solutions relating to the potential supply of products or services.

**3.6)** If the client accepts the quote, the client must place an order within 30 days of the date of the quote. The client must contact Point Design Solutions directly to confirm its acceptance of the quote via email.

**a)** If the client does not accept the quote or the acceptance date for the quote has lapsed, the quote will be deemed expired. If the client later requests an order based on an expired quote, Point Design Solutions may issue a new quote with the updated purchase price.

**3.7)** Once the quote is confirmed and the order placed Point Design Solutions will process within a reasonable time after Order Confirmation. Point Design Solutions will discuss the urgency of each Order with the client and provide an estimated delivery date with the Order Confirmation.

**3.8)** All orders must indicate the following:

**a)** the products or services being ordered by product number, if available;

**b)** the quantity of products or services being ordered;

**c)** the agreed delivery address for the products or services;

**d)** the requested delivery date.

**3.9)** Following the receipt of an order from the client, Point Design Solutions will process the order and notify the client in writing through an order confirmation or an order rejection notice of its:

**a)** acceptance or rejection of the order in its entirety; or

**b)** acceptance of the order in part; or

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c) acceptance of the order subject to specified conditions.

**3.10)** Variations to the quote either by Point Design Solutions or by the client must follow this procedure:

A new quote form with variations will be issued by Point Design Solutions and the client may accept the new quote by emailing Point Design Solutions.

**3.11)** Any variation of an order or cancellation of an order must be agreed to in writing by Point Design Solutions.

**3.12)** Where possible, the Handling and Delivery Charges will be confirmed with the Order Confirmation and will be indicated on the invoice.

**3.13)** At the discretion of Point Design Solutions, a purchase order may be required prior to any orders being accepted.

## 4) PRICE

**4.1)** Unless otherwise agreed to in writing by Point Design Solutions, or by a Point Design Solutions authorised representative, subject to this clause 4, the price charged and payable for the products or services shall be the price in local currency at the date Point Design Solutions accepts the order, together with any applicable taxes, charges and delivery costs in relation to the products or services.

**4.2)** Prices contained in any quote or order for the supply of products or services are based on the cost prevailing and the specification supplied at the time of the quote or order. Point Design Solutions reserves the right to vary the price if:

**a)** there is any movement in the cost of supplying the products or services specified in the order; or

**b)** if the products or services specified in the order are varied from the products or services specified in the quote, and Point Design Solutions provides the client with reasonable notice of any such variation of price.

**4.3)** The prices for the products or services are inclusive of GST, any other taxes, duties, charges, and delivery costs. GST and any other applicable taxes, freight, duties, charges and costs will be payable by the client in addition to the price of the products or services.

## 5) PAYMENT TERMS

**5.1)** Acceptance of an order confirmation by a client will constitute acceptance of the price set out in the order confirmation unless otherwise agreed in writing by the parties.

**5.2)** Point Design Solutions payment terms are 14 Days unless otherwise agreed by Point Design Solutions in its sole discretion. Any amount not paid by the due date will incur interest at a rate of 4% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances, will the interest charge exceed 20% per annum.

**5.3)** The client must pay GST and any other taxes, duties and government charges imposed or levied on the goods in connection with any order. Unless otherwise indicated, the price and all other consideration for any supply made under any order is inclusive of GST imposed on the supply.

**5.4)** The client's liability to pay for the products or services will not be offset, reduced or affected in any way as a result of any returns of, or credits or rebates relating to, the products or services, unless otherwise agreed in writing by Point Design Solutions.

**5.5)** Payments must be made according to the methods selected by Point Design Solutions. Point Design Solutions may select from one of the following methods of payment:

**a)** payments to be received in full upon making an order;

**b)** products or services to be delivered on credit to the client;

**c)** payment of a 50% deposit upon making an order and payment of the remainder upon delivery of the products or services.

**5.6)** If products or services are delivered to the client on credit, the following conditions apply:

**a)** The client must sign the Credit Application annexed to these terms; and

**b)** The client must pay a tax invoice provided by Point Design Solutions within 14 Days of the date of issue unless otherwise agreed by Point Design Solutions in its sole discretion.

**5.7)** Point Design Solutions reserves the right to revoke at any time any credit extended to the client because of the client's failure to make any payment when due or for any other reason.

**5.8)** The client may pay for products or services in full by direct deposit, business or company cheque, cash on delivery, credit card (surcharge of 1.75% applies) excluding AMEX.

**5.9)** Point Design Solutions reserves the right to pass any debts incurred under this agreement to a debt collection agency, whereby debt collection fees will be added. In addition to any outstanding amounts, the client agrees to indemnify Point Design

Solutions for all legal costs (on a solicitor and client or full indemnity basis, whichever is greater) and other expenses incurred by Point Design Solutions in connection with a demand, action, or other proceeding (including mediation, out of court settlement or any action taken for recovery of the debts from the client) arising out of a breach of the terms of this agreement, including the failure by the client to pay an amount by the due date.

**5.10)** In the event of a default in payment Point Design Solutions reserves the right to suspend or terminate supply to the client and list customer with a credit reporting agency.

**5.12)** Default interest pursuant to clause 5.2 shall be payable on demand and calculated daily from the date the payment was due to the actual date that the payment is made in full.

**5.13)** Any payment the client makes to Point Design Solutions shall first be credited against any default interest accrued pursuant to this clause 5 to the actual date of payment.

**5.14)** If as a consequence of an instruction from the client, Point Design Solutions delays or suspends (but not cancels) an order or any part of an order for a period of 3 days or more, Point Design Solutions may:

**a)** request the payment in full for all work in progress relating to the relevant order at the time of suspension; and/or

**b)** vary the price for the uncompleted portion of the relevant order.

**5.15)** The client may not cancel an order, or any part of it, without Point Design Solutions written consent, which may be withheld in Point Design Solutions absolute discretion.

**5.16)** Without prejudice to Point Design Solutions right to refuse consent for the client to cancel an order, under clause 3.11, as a condition of giving such consent may require that the client pay any and all costs reasonably incurred by in relation to the cancelled order or the cancelled part of the order plus a reasonable profit to the date of cancellation. Point Design Solutions reserves the right to charge a cancellation fee of \$150.00

**5.17)** Point Design Solutions may in writing cancel an order or delivery of an order without liability to the client (save as required by relevant laws) if:

**a)** Point Design Solutions reasonably forms the opinion that the client is insolvent or at material risk of insolvency;

**b)** the client fails to pay any amount for the products or services on the due date; or

**c)** Point Design Solutions reasonably forms the opinion that supplying products or services to the client may have a negative impact upon Point Design Solutions business or commercial reputation or image.

## 6) DELIVERY

**6.1)** The estimated delivery date for an Order is indicative only. Transit times are provided by the courier selected for the order for products and excludes weekends and holidays. The client acknowledges and agrees that Point Design Solutions shall not be liable for any loss or damage arising from any delay in the delivery of an Order.

**6.2)** The client acknowledges and agrees that Point Design Solutions engage third party service providers for the delivery of products.

**6.3)** Upon delivery of the products or services:

**a)** the client must promptly visually inspect the products or services;

**b)** within 24 hours of finding any defective products, give notice to Point Design Solutions of the defects along with photographic evidence if appropriate;

**c)** arrange for such products to be returned to Point Design Solutions at the client's expense; and

**d)** If no notice is given in that time, the products or services will be deemed to be fit for purpose except in respect to any relevant defects not reasonably apparent on inspection.

**6.4)** Point Design Solutions will do all things commercially reasonable to replace any defective products or services.

## 7) EXCLUSIONS AND LIMITATIONS

**7.1)** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these terms and Conditions, that are not contained in it, are excluded to the fullest extent permitted by law.

**7.2)** Any liability arising in relation to products or services the subject of the order or supply to the client, arising and whether for consequential loss or otherwise, including any liability arising by virtue of any representation or warranty, whether express or implied by law, is hereby excluded to the fullest extent permitted by law.

**7.3)** No warranty is given and Point Design Solutions will not be liable for:

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- a) alterations to products or services for which is not responsible;
- b) damage or failure caused by unusual or non-recommended use or application of the products or services; or
- c) loss caused by any factors beyond our control.

**7.4)** Point Design Solutions will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by the client or any other person resulting from any act or omission by (including breach, termination or non-observance of the terms of an order or agreement which incorporates these terms and Conditions)

**7.5)** Point Design Solutions total liability for breach of these terms and Conditions or breach of Point Design Solutions contractual obligations or duties at law or in equity (howsoever arising) is limited at the option of Point Design Solutions to:

- a) the replacement of the products or services or the supply of equivalent products or services;
- b) the repair or rectification of the products or services;
- c) the payment of the cost of replacing the products or services; or
- d) the payment of the cost of the repair or rectification of the products or services.

**7.6)** If Point Design Solutions obtains products or services from a third party in order to carry out the client's instructions or complete an order:

- a) Point Design Solutions will not be liable for any breach of these if that breach is as a result or is connected with the supply by a third party of such products or services;
- b) Point Design Solutions acquire such products or services as agent for the client not as principal and will have no liability to the client in relation to the supply of these products or services;
- c) any claim by the client in relation to the supply of such products or services must be made directly against that third party; and
- d) the client must pay for such products or services and Point Design Solutions will give the client notice of any such third-party charges as applicable.

**7.7)** ACL rights: In circumstances where the client is acquiring products or services from Point Design Solutions as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, acknowledges and agrees that certain statutory guarantees and rights shall apply to the client as provided by relevant laws but subject to these terms and Conditions as applicable and where permitted by relevant laws.

**7.8)** No restriction: Nothing in these terms and Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the clients of products or services in various circumstances.

**7.9)** Unfair contract: If section 23 of the ACL applies to any provisions in these terms and Conditions, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

## **8) SECURITY INTEREST AND TITLE**

**8.1)** This clause 8 only applies when the terms relate to the provision of products only or products as well as services.

**8.2)** This clause 8 sets out the security agreement between Point Design Solutions and the client.

**8.3)** The client (Grantor) grant to Point Design Solutions (Secured party) a Purchase Money Security Interest (PMSI) in the products or services (Collateral) as security for all or part of the payment for the products or services.

**8.4)** Our security interest attaches to the collateral by virtue of the client's possession of the products or services as bailee under clause 8.7.

**8.5)** Point Design Solutions may, without notice, apply to register a financing statement with respect to the PMSI described in this clause 8.3.

**8.6)** Until full title in the products or services has passed to the client, the client will ensure that the products or services are identifiable and distinguishable:

- a) from any other products that may be in the client's possession; and
- b) as to each particular Invoice of products or services.

**8.7)** Point Design Solutions will retain absolute title over the products or services until:

- a) Point Design Solutions has received Payment in full in respect of the products or services;
- b) Point Design Solutions registers a financing statement as described in clause 8.4; or
- c) the client sells the products or services in the manner prescribed under clause

8.10.

**8.8)** After delivery of the products or services, until the full Payment has been made the client shall possess the products or services as bailee only.

**8.9)** Until Payment in full for the products or services has been received by Point Design Solutions, Point Design Solutions may, without notice, seize the products or services if a default event occurs or the client is in breach of these Terms and Conditions of Trade.

**8.10)** For the purposes of carrying out seizure under clause 8.9, Point Design Solutions may without notice, enter the client's premises and seek any or all remedies provided under Chapter 4 of the PPSA and any other remedies provided at law or in equity or otherwise.

**8.11)** The client may only sell all or any of the products or services in respect of which full payment has not been received to a third party if:

- a) Point Design Solutions have not exercised our right to seize the products or services under clause 8.8;
- b) the sale is a bona fide transaction at market value in the ordinary course of business; and
- c) all proceeds of sale of those products or services is: immediately paid to Point Design Solutions; or
- d) held on trust for in a separate account, payable immediately on demand.

**8.12)** Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on in the client favour

**8.13)** The client agrees to waive the client's right to receive from Point Design Solutions, a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to these terms and Conditions and this security agreement.

**8.14)** The client shall immediately notify Point Design Solutions in writing of any change of name.

**8.15)** The client acknowledges receipt of a copy or due notice of these Terms and Conditions of Trade and this security agreement.

## **9) INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION**

**9.1)** If the client provides Point Design Solutions with material to be used in the supply of the products or services:

- a) the client warrants and represents to Point Design Solutions that any products or services supplied to the Point Design Solutions will not infringe the intellectual property rights of any third party; and
- b) the client indemnifies and will keep the indemnified from and against any and all claims, liabilities, obligations, expenses or damages which may suffer or incur as a result or in connection with the representation or warranty in clause 9.1(a) being untrue or breached.

**9.2)** The client grants to Point Design Solutions a non-exclusive royalty free license throughout the universe to use all intellectual property rights in all materials for so long as necessary or convenient for the production of the products or services and the matters contemplated in relation to the delivery of the relevant products or services.

**9.3)** Point Design Solutions is the exclusive owner of all of the Point Design Solutions intellectual property in the products or services, including any intellectual property provided in conjunction with a quote, e.g. designs.

**9.4)** The client may not challenge or dispute Point Design Solutions ownership of the intellectual property.

**9.5)** The client must not do anything or omit to do anything which could detrimentally affect the ownership of the Point Design Solutions intellectual property.

**9.6)** The client must not use any of Point Design Solutions intellectual property for any other purpose without the prior written consent of Point Design Solutions, including but not exclusive to using the Point Design Solutions intellectual property to have products and Services manufactured by a third party.

**9.7)** Each Party undertakes not to use or disclose to any other person or entity any of the other Party's Confidential Information and will only use such Confidential Information in good faith and for the proper purposes of this Agreement and subject to any restrictions imposed by the Party that is the provider of the Confidential Information.

## **10) DISPUTE RESOLUTION**

**10.1)** Where a dispute arises between the parties, the complainant party will set out in writing and in English what it regards the dispute to be, informing the respondent party:

- a) the nature of the dispute; and
- b) what outcome the complainant wants; and

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c) what action the complainant party requires in order to settle the dispute.

**10.2)** Both parties will make every effort to resolve the dispute through negotiation and will in so doing act in good faith.

**10.3)** For mediation under this agreement:

a) if the parties cannot agree under clause 10.2 within 21 days, either party may refer the matter to a mediator; and

b) if the parties cannot agree about who should be the mediator, either party may ask the Chief Executive Officer (at that time) of the Australian Commercial Disputes Centre to appoint a retired Judge or court officer or practicing barrister of at least 10 years admission to the Bar to act as the mediator and that mediator will act as mediator of the dispute;

c) the mediator may decide the time and place for mediation;

d) the parties or their legal representative(s) must attend the mediation and try in good faith to resolve the dispute through mediation;

e) the parties are equally liable for the costs of mediation and the costs of the mediator under this part unless they agree otherwise. The parties must pay their own costs for attending at or being represented at the mediation;

f) nothing in this clause affects the right of a party to take legal proceedings under this agreement, if mediation fails to resolve the dispute;

**10.4)** Nothing contained in the dispute resolution procedures above will deny or delay and party seeking immediate injunctive relief from an appropriate court where in the reasonable opinion of the party the failure to obtain such relief would cause irreparable damage to the party concerned.

**10.5)** These dispute resolution procedures will not apply to events giving rise to a right of termination of this agreement where there is no legitimate dispute as to the occurrence of that event.

## **11) RELATIONSHIP**

**11.1)** The parties acknowledge that they are not in partnership, there is no joint venture between them or franchise arrangement, and that the only relationship between them is that of client (in the case of the client) and as service provider (in the case of Point Design Solutions) in respect of the services on the terms in this agreement. Neither party may claim or hold itself out as having any other relationship, authority, right or entitlement to represent or act as agent of the other or to have any interest or shareholding in the other.

**11.2)** It is expressly agreed that nothing in this agreement will give rise to any fiduciary relationship between the client and Point Design Solutions and neither party owes any fiduciary duty to the other in respect of its conduct.

## **12) TERMINATION**

**12.1)** This Agreement may be terminated by either party if the other party commits a material breach. The procedure for termination is set out in this clause.

### **12.2) Client's Breach**

is entitled to terminate this Agreement by giving 14 days' prior Notice to that effect to the client if any of the following events occur:

a) The client fails to pay any amount owing to within 60 days of the date of a written request by to make payment;

b) The client becomes insolvent;

c) The client commits any breach of this agreement and fails to remedy that breach within 30 days of the date of a written request from to do so;

d) The client fails to follow any reasonable and lawful direction given by for the purposes of safeguarding Point Design Solutions intellectual property or confidential information; or

e) The client breaches any term of this agreement that is expressed to be an essential term.

**12.3)** Notwithstanding termination of this agreement, the obligations therein will continue to be binding on the parties and fully enforceable in respect to the rights and obligations of each party relating to:

a) the payment of any sum;

b) Product warranties;

c) Confidential Information;

d) return of property and transfer of Intellectual Property; and

e) obligations in this Clause and otherwise in the Agreement that are expressly intended to apply after termination.

## **13) GENERAL**

### **13.1) Variations**

This agreement may only be varied in writing signed by both the parties.

### **13.2) Waiver**

a) The waiver by any party of any right or entitlement or to claim in respect of any breach of this agreement must be in writing signed by the party so waiving. No

purported waiver that is not in writing and signed by the waiving party will have any effect whatsoever.

b) A waiver will not preclude that waiving party from relying upon any such right or entitlement arising in the future or to claim in respect of any subsequent breach of this agreement even if that future right, entitlement or subsequent is the same as that previously waived.

### **13.3) Notices**

a) All notices or requests given by either party to the other are deemed to have been properly given if posted by mail or emailed to the email addresses set out in Item 1 of the Reference Schedule.

b) Any notice or request sent by email will be deemed served on the day after being emailed. An email record will be conclusive evidence of the date of emailing. Any Notice or request sent by mail will be deemed served 14 days after the date of posting, not including the date of posting.

c) Any Notice or request sent by a party to the other must be signed by a director or officer of the sending party or appear on its face (where an email) to be so signed.

d) Either party may change its details for service of a Notice by serving a Notice on the other party setting out its new address for service or other contact address.

### **13.4) Confidentiality of Agreement**

All terms of this agreement shall be kept strictly confidential as between the parties. None of the parties to this agreement shall disclose any terms or information relating to, received, or developed in the course of this agreement relating to the agreement or the business of either party without prior written consent of the other party.

### **13.5) Force Majeure**

Except for obligations to make payment, delay or non-performance by any Party will be excused if such delay or non-performance is due to an event or events outside the Party's reasonable control, including but not limited to: acts of god, natural disasters, sabotage, accident, riot, shortage of supplies, equipment and materials, strikes and lockouts, civil unrest, or malicious damage.

### **13.6) Severability**

If any clause of this Agreement is invalid under any applicable such Law, the clause will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary, the invalid clause will be deleted from the Agreement and the remaining clauses will remain in full force and effect.

### **13.7) Counterparts**

This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and Agreement.

### **13.8) Entire Agreement**

This agreement represents the entire agreement between the parties relating to the subject matter of the agreement and supersedes all prior agreements, understandings, representations and warranties relating to the subject matter of this agreement.

**13.9)** Neither party has relied on or been induced by any representations or promises made to it prior to entering into this agreement in reaching its decision to enter into this agreement on these terms.

### **13.10) Governing Law and Jurisdiction**

It is agreed by the parties that this agreement is to be construed in accordance with the laws of Australia and each party covenants, that it submits to the jurisdiction of the courts of the state or territory in which the territory is located for the resolution of any dispute under the agreement. If the territory is the whole of Australia, then the parties submit to the jurisdiction of all state and territory courts and federal courts