

STANDARD TERMS & CONDITIONS OF SUPPLY

DEFINITIONS AND INTERPRETATION

Definitions In this Standard Terms and Conditions of Supply, unless the context otherwise requires, the below listed terms have the following meaning

“ACL” means the Australian Consumer Law in the Competition and Consumer Act 2010 (Cth)

“Agreement” means the commercial relationship between the Supplier and the Purchaser comprising the Quotation, the Purchase Order, this Standard Terms and Conditions of Supply together with any Supplemental Conditions.

“Business Day” means a working day being a day that is not a Saturday, a Sunday or a public holiday in the State of New South Wales or in the State or Territory where the Services are to be performed.

“Contracts” means the Quotation and this Standard Terms & Conditions of Supply together with any Supplemental Conditions issued by Bovara Pty Ltd

“Customer” means the Purchaser

“Defect” means any aspect of the Goods supplied not in accordance with this Agreement, or any damage, error, omission, non-conformity, malfunction, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services.

“Dollar” or “\$” means a reference to Australian currency unless specified otherwise. “Goods” means any product, item, commodity, material or other thing supplied under this Agreement.

“GST” means Goods and Services Tax as set out in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Law” means legally binding enforceable requirements set out in any statute, ordinance, code or regulations and includes other instruments made pursuant to it.

“Order” means Purchase Order

“Party” means a party to this Agreement.

“Purchaser” means the legal entity identified as the purchaser on a properly issued Purchase Order.

“Purchase Order” means a purchase order issued by the Purchaser to the Supplier and includes any Quote referenced on the Purchase Order, specifications or drawings that may be contained in, or annexed to it.

“Purchase Price” means the amount as appears in the Purchase Order including any amendments to the Purchase Price as agreed between the Parties.

“Quote” or “Quotation” means any quotation or tender offer to supply the Goods or Services by the Supplier to the Purchaser is an invitation to the Purchaser to make an offer through a Purchase Order.

“Services” means the services (if any) listed in the Purchase Order as varied in accordance with this Agreement from time to time.

“Statement of Works” or “SOW” means the description of the Goods to be supplied or Services to be performed in the Quote and Purchase Order which, where appropriate, identifies inclusions and exclusions within the SOW

“Supplemental Conditions” means additional terms and conditions that may apply to engineering, technical assistance, services, training, the supply of goods for projects (with or without commissioning and/or installation) and any supply and/or delivery outside of Australia

“Supplier” means Bovara Pty Ltd.

“Tax Invoice” means a tax invoice for GST purposes.

“Variation Proposal” means the variation proposal provided to the Purchaser

Interpretation In this Standard Terms and Conditions of Supply, except where the context otherwise requires:

the singular includes the plural and vice versa;

a reference to a gender includes all other genders;

a reference to a definition that is capitalised may also be a reference to such definition in lower case;

another grammatical form of a defined word or expression has a corresponding meaning;

a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure of, this Agreement;

a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;

a reference to time is to the time in New South Wales, Australia;

a reference to a party is to a party to these Terms and Conditions;

a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

a reference to a Law includes any consolidations, amendments, re-enactments or replacements;

if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

The Contracts apply to every sale, hire, or licence arrangement, for the supply of Goods and/or provision of Services, by Bovara Pty Ltd, to a Customer..

By submitting an Order to Bovara Pty Ltd for Goods or Services to be provided to the Customer by Bovara Pty Ltd, the Customer:

- i. acknowledges and agrees that any supply of Goods and/or Services by Bovara Pty Ltd will be subject to the Agreement; and

- ii. submits an offer to Bovara Pty Ltd, to acquire Goods and/or Services from Bovara Pty Ltd, in accordance with the Agreement.

1. QUOTATIONS

A Quotation from Bovara Pty Ltd is for information purposes only, is not an offer to form an Agreement by the parties, and does not impose any obligation on Bovara Pty Ltd to sell or provide Goods and/or Services at the prices described in the Quotation.

Bovara Pty Ltd will use all reasonable endeavours to state accurately the price of Goods and Services or delivery times applicable at the time of making the Quotation. Quotations are issued on an errors and omissions excepted basis and Bovara Pty Ltd may correct any clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgment or invoice

Goods which are quoted or indicated as ex-stock are subject to prior sale and any delivery time quoted is made without commitment.

Any price or contractual delivery dates, arrangements or other details stated in the Quotation are subject to change and must be confirmed and accepted in writing by Bovara Pty Ltd before Bovara Pty Ltd will be bound to those prices, dates, arrangements or other details.

The price stated in any Quotation is only for the supply of those Goods or Services specified in the quotation, and does not, unless otherwise specified in writing by Bovara Pty Ltd, apply to any lesser or greater quantities of the Goods or Services, or to Goods or Services of a different type, or to delivery periods extending beyond Bovara Pty Ltd's standard delivery timeframes.

2. ORDERS AND FORMATION OF AGREEMENT

Any Order placed by a Customer constitutes an offer by the Customer to buy Goods at the prices described in the Order. Bovara Pty Ltd may, in its own absolute discretion, accept or reject any Order. Unless or until Bovara Pty Ltd accepts an Order, an Agreement between the parties is not formed. An Agreement between the parties will be formed only once Bovara Pty Ltd accepts an Order placed by a Customer..

3. ENTIRE AGREEMENT

Unless otherwise agreed in writing and signed by an authorised Officer of Bovara Pty Ltd, the Contracts override and exclude any terms or conditions in, or referred to in, any negotiations or course of dealing between Bovara Pty Ltd and the Customer, or set out or referenced in the Customer's order or other correspondence.

For the avoidance of doubt, when a Customer places an Order with Bovara Pty Ltd for Bovara Pty Ltd to supply and deliver Goods and/or Services, the Customer accepts that such supply and delivery of Goods and/or performance of Services will be made to the exclusion of any other of the Customer's terms and conditions, save and except only if such other terms and conditions have been accepted, in part or full, by Bovara Pty Ltd in writing which is signed by an authorised Officer of Bovara Pty Ltd. Bovara Pty Ltd's failure to object to Customer's additional or conflicting terms accompanying any Order will not operate as a waiver or acceptance by Bovara Pty Ltd.

If there is any inconsistency between the provisions of the Quotation, these Terms & Conditions and the Supplemental Conditions, then the Quotation will prevail to the extent of the inconsistency. In the event of a conflict between the Contracts and the Order, the former shall prevail

In all other respects the Agreement constitutes the entire agreement between Bovara Pty Ltd and the Customer in relation to the Goods and/or Services requested in the Order.

4. VARIATIONS TO SUPPLY OF GOODS AND/OR SERVICES

At any time after a Customer has placed an Order, and prior to shipment of the Goods and/or performance of the Services, the Purchaser may by notice in writing, request that a supply of Goods and/or Services be cancelled or varied.

Bovara Pty Ltd may reject or accept any such request by a Customer. If Bovara Pty Ltd accepts a request for variation, Bovara Pty Ltd may impose adjustments to price, scheduling and any other factors relative to the variation.

Cancellation of an Order for standard products (as refenced in the Supplier's published product catalogue is acceptable provided the goods have not left the Supplier's premises

Cancellation of an Order for customised goods. The Purchaser shall pay to the Supplier:

- 0 % of a contact price if the Supplier's electrical engineering has not completed their drawings
- 10% of the contact price if the Supplier's design work has progressed to mechanical engineering team
- 30% of the contract price if the Supplier's mechanical engineers have completed their modeling diagrams which has progressed to a product order or
- 100% of the contact price if the cancellation is received 5 business days after the Purchaser's approval of the Supplier's design drawings

Bovara Pty Ltd in its absolute discretion may reject any of the Purchaser's request for a variation, especially where to do so would be unsafe, technically inadvisable or inconsistent with established engineering or quality guidelines and standards, or incompatible with Bovara Pty Ltd's own and/or the Manufacturer's design or manufacturing specifications or capabilities.

If the Customer requests that a supply of Goods and/or Services be cancelled prior to shipment, and the cancellation is accepted by Bovara Pty Ltd, then Bovara Pty Ltd may charge the Customer reasonable cancellation and restocking fees, including reimbursement for Bovara Pty Ltd's direct costs incurred in connection with the cancellation. Bovara Pty Ltd may charge cancellation fees associated with Goods ordered on a manufactured/assembled to order and/or indent-only basis up to the actual selling price of the Goods.

Any Goods which are non-stock or which are manufactured/assembled to order or otherwise manufactured and/or assembled to the Customer's specific requirements will be specially procured on the Customer's behalf. Once the Customer has ordered these Goods, Bovara Pty Ltd may refuse any subsequent purported cancellation or request for variation made by the Customer, and, once delivered, the Customer may not return these Goods or cancel the Order.

In fulfilling any Order, Bovara Pty Ltd may substitute Goods and may provide a latest superseding, revised or equivalent Goods having, in Bovara Pty Ltd's absolute discretion, comparable form, fit and function.

5. PRICE

All prices shown in any Bovara Pty Ltd publications including price lists, brochures, catalogues, electronic media and other advertising material are:

- 5.1. recommended selling prices only and there is no obligation on the part of any reseller to maintain these prices, and
- 5.2. subject to amendment and adjustment by Bovara Pty Ltd of such prices; and
- 5.3. issued on an errors and omissions excepted basis, and Bovara Pty Ltd may correct any clerical errors or omissions, whether in computation or otherwise in any quotation, acknowledgment or invoice.

At any time prior to formation of an Agreement all prices contained in Bovara Pty Ltd's advertising material, brochures or in any Quotation, are subject to change without notice and all Orders are accepted by Bovara Pty Ltd on the condition that they will be invoiced at the prices applying at the date of formation of the Contract, or the date of despatch of the Goods from Bovara Pty Ltd's premises, as Bovara Pty Ltd determines in its absolute discretion.

6. PERFORMANCE - Bovara Pty Ltd RECOMMENDS CUSTOMER VERIFY AND VALIDATE

Any performance figures given or represented by Bovara Pty Ltd for Goods and/or Services are based on Bovara Pty Ltd's and/or the Manufacturer's experience, and are figures that Bovara Pty Ltd and/or the Manufacturer expects to obtain on testing. Performance may vary due to a wide variety of environmental and operational circumstances arising when the Customer uses the Goods and/or Services, which may result in variation in performance figures achieved by the Customer.

Following submission of a Quotation or tender, Bovara Pty Ltd is not required to comply with any additional standards, specifications, rules or other requirements subsequently proposed by the Purchaser. If such additional standards, specifications, rules or other requirements are proposed by the Customer, Bovara Pty Ltd may decline to proceed with any resultant Order or vary the supply including the price.

7. DRAWINGS - Bovara Pty Ltd RECOMMENDS CUSTOMER VERIFY AND VALIDATE

Bovara Pty Ltd will comply with any specifications and drawings referred to in the Customer's Order only if such specifications and drawings have been produced to Bovara Pty Ltd prior to acceptance of the Order and Bovara Pty Ltd has agreed, in writing and signed by an authorised Officer of Bovara Pty Ltd, to such particular compliance.

If the Customer requests Bovara Pty Ltd to provide certified drawings, Bovara Pty Ltd may, at its discretion, provide such certified drawings at the Customer's reasonable expense. In the event that Bovara Pty Ltd provides such drawings, Bovara Pty Ltd recommends that in order to account for potential variations in environmental and operational circumstances in which the Goods and/or Services may be used, the Customer should undertake independent assessment and verification of all such drawings.

All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by Bovara Pty Ltd or otherwise contained in Bovara Pty Ltd's publications including price lists, brochures, catalogues, electronic media and other advertising material of Bovara Pty Ltd and/or the Manufacturer are approximate only and are intended to be by way of general description of the Goods and shall not form part of the Agreement between Bovara Pty Ltd and the Customer, unless otherwise specified by Bovara Pty Ltd in writing and signed by an authorised Officer of Bovara Pty Ltd, in which case, they shall be subject to recognised tolerances and rejection limits.

All specifications, drawings, illustrations, descriptions and particulars of weights, dimensions, capacity or other details including, without limitation, any statements regarding compliance with legislation or regulation, wherever they appear, are intended to give a general idea of the Goods and/or Services, and will not form part of the Agreement.

Bovara Pty Ltd shall take all reasonable steps to ensure the accuracy of any descriptions but relies on such information, if any, as may have been provided to it by its Manufacturers and Suppliers and to the fullest extent possible by law excludes all liability in contract or tort or under statute or otherwise for any error in or omission from such descriptions whether caused by Bovara Pty Ltd's negligence or otherwise.

The confidential information, intellectual property and copyright in any drawings, studies or other documents submitted by Bovara Pty Ltd to the Customer remains the property of Bovara Pty Ltd and/or the Manufacturer. The Customer must not use any drawings, studies or other documents submitted by Bovara Pty Ltd to the Customer for any purpose other than in accordance with these Terms & Conditions. The Customer must not transmit, disclose or make any drawings, studies or other documents submitted by Bovara Pty Ltd to the Customer available to any third parties without the prior written consent of Bovara Pty Ltd, save for the verification of design and/or drawings; and installation, commissioning and maintenance purposes associated with the use of the Goods and/or Services by the Customer.

Any drawings or other information requiring the purchasers approval shall be approved amended or rejected and returned by the Purchaser to the Bovara Pty Ltd within 14 days of the date of receipt by the purchaser of such drawings or other information or such other period as may be agreed in writing by Bovara Pty Ltd and the Purchaser. Any delay beyond such 14 day period or such other period agreed to shall constitute grounds for extension of time for Bovara Pty Ltd to perform its duties under the Agreement.

8. INTELLECTUAL PROPERTY

All intellectual property, including: copyright, patents, design rights, trademarks, software and licences in, or related to, Goods supplied by Bovara Pty Ltd, and/or Services provided by Bovara Pty Ltd, remains the property of Bovara Pty Ltd and/or the Manufacturer, and, unless Bovara Pty Ltd agrees to

the contrary in writing signed by an authorised Officer of Bovara Pty Ltd, the Customer has no right to re-use, re-license, or re-sell the intellectual property in any form to third parties.

Use of Goods which contain, or are to be used with, standard or custom software or firmware may be subject to the Customer's acceptance of additional terms and conditions in separate Bovara Pty Ltd or third-party licence agreements (Third Party Licence Agreements). Where there is a conflict between any term of a Third Party Licence Agreement and these Terms & Conditions, the Third Party Licence Agreement will prevail to the extent of the inconsistency.

In the absence of a Third Party Licence Agreement, the Customer is granted a non-exclusive, non-transferable and royalty free licence to use the intellectual property solely in conjunction with and to enable the use and maintenance of the Goods, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the intellectual property.

9. COMPLIANCE WITH LAWS AND INSTRUCTIONS

The Customer is solely responsible for obtaining all necessary permits and licences to comply with all applicable legislation, regulations, by-laws or rules (if any) having the force of law in connection with the installation and operation of the Goods.

The Customer must comply with all instructions provided by Bovara Pty Ltd or the Manufacturer in relation to the fitting, installation, use and proper maintenance of the Goods and/or the Services and as a condition precedent of any claim under Warranty.

10. INSURANCE

The Customer shall obtain and keep current any insurance necessary and required to address risks allocated pursuant to these Terms & Conditions. The Customer shall, if requested by Bovara Pty Ltd to do so, provide to Bovara Pty Ltd a certificate of currency of such insurance.

11. RISK AND TITLE

The Customer acknowledges and agrees expressly that, unless otherwise specified in writing by Bovara Pty Ltd, Goods will be delivered to the Customer's EXW Incoterms 2020 and that risk, and responsibility for costs of freight and insurance, passes to the Customer at the time that Bovara Pty Ltd loads the Goods transport deck.

The Customer acknowledges and agrees expressly that, unless otherwise specified in writing by Bovara Pty Ltd, the property in, and legal and equitable title to, the Goods, remains with Bovara Pty Ltd and does not pass to the Customer, unless and until Bovara Pty Ltd has received in full (in cash or cleared funds) all sums due from the Customer to Bovara Pty Ltd, in relation to the Goods, and in relation to all other Goods previously supplied to the Customer by Bovara Pty Ltd.

Until the Customer has fully paid for the Goods in full and ownership passes to the Customer:

- 11.1. Bovara Pty Ltd is and remains the legal and equitable owner of the Goods;
- 11.2. the Customer holds the Goods as a fiduciary agent and bailee for Bovara Pty Ltd;
- 11.3. the Customer must hold the Goods as Bovara Pty Ltd's bailee, insure the Goods against all usual risks to full replacement value, not pledge or allow any lien, charge or other interest to arise over Goods; and
- 11.4 Bovara Pty Ltd may enter the Customer's premises or elsewhere at any time without notice to inspect the Goods.

To the extent (if any) that the property in and legal title to the Goods has passed to the Customer by operation of law, then Bovara Pty Ltd has a specific lien over the Goods until paid for in full.

If the Customer becomes insolvent, passes a resolution for winding up, or a court shall make an order to that effect, or a receiver or administrator is appointed over any assets or undertaking of the Customer, then:

- 11.5. the Customer shall not sell, use or part with possession of the Goods, and Bovara Pty Ltd shall be entitled, without previous notice and without prejudice to Bovara Pty Ltd's other remedies, to retake possession of the Goods and for that purpose may enter upon any premises occupied or owned by the Customer.
- 11.6. the Customer waives the right to receive any PPSA notice in connection with Bovara Pty Ltd taking possession of the Goods;
- 11.7. the Customer:
 - 11.7.1. will be liable for all costs, losses, and damages incurred or suffered by Bovara Pty Ltd as a result of Bovara Pty Ltd retaking possession of the Goods or otherwise exercising its rights under this clause; and
 - 11.7.2. will indemnify Bovara Pty Ltd, and keep Bovara Pty Ltd indemnified, for all fees (including legal fees on a full indemnity basis), costs and expenses incurred or suffered as a result of any and all prosecutions, actions, demands, claims or proceedings brought by or against Bovara Pty Ltd in connection with retaking possession of the Goods or the exercise by Bovara Pty Ltd of its rights under this clause.

If the Goods are mixed, processed or used so that they lose their identity or are irrevocably incorporated in, mixed with or applied to other goods to make another item, then ownership of the Goods will pass to the Customer, however a portion of proceeds of sale of any such item equivalent to the cost for the unpaid Goods remains in trust for Bovara Pty Ltd until payment for the Goods is made in full.

The Customer may use or sell Goods in the ordinary course of business, and the Customer will then be the agent for Bovara Pty Ltd to the extent necessary to account for the proceeds of any such sale. The Customer must account to Bovara Pty Ltd for that part of the proceeds of any such sale which equates to the price of the Goods and shall hold that amount in a bank account on trust for and until paid to Bovara Pty Ltd.

In the event of any insurance payment by the insurer to the Customer in relation to the Goods, the Customer shall hold any insurance monies received by the Customer for Goods owned by Bovara Pty Ltd in a bank account on trust for and until paid to Bovara Pty Ltd.

Bovara Pty Ltd's rights as an unpaid seller will not be affected by Bovara Pty Ltd retaining title to Goods.

12. PERSONAL PROPERTY SECURITIES ACT

Defined terms in this clause have the same meaning as those given to them in the Personal Property Securities Act PPSA 2009 (Cth).

The Customer and Bovara Pty Ltd acknowledge that these Terms & Conditions constitute a Security Agreement for the purposes of s20 of the PPSA and give rise to a Purchase Money Security Interest ("PMSI") in favour of Bovara Pty Ltd over the Goods supplied to the Customer as Grantor pursuant to these Terms & Conditions.

The Goods supplied or to be supplied under these Terms & Conditions fall within the PPSA classification of "Other Goods" acquired by the Customer pursuant to these Terms & Conditions.

The Customer will execute such documents and do such further acts as may be required by Bovara Pty Ltd to perfect the Security Interest granted to Bovara Pty Ltd under the PPSA by registration and ensure that until all of the obligations of the Customer are discharged and fully satisfied, Bovara Pty Ltd's Security Interest remains perfected and has priority over all other Security Interests in the Collateral (except for the Security Interests that Bovara Pty Ltd has expressly agreed to sub-ordinate).

The Customer undertakes that it will not, without the prior written consent of Bovara Pty Ltd (which it may or may not grant in its sole discretion) change or permit the change of any of its details that are required to be included in the Financing Statement.

The Customer may not grant any Security Interest in all or any of the Goods except with the prior written consent of Bovara Pty Ltd (which may be withheld in its sole discretion).

The parties contract out of each provision of the PPSA which, under s115(1) a) - r) of the PPSA, they are permitted to contract out of.

Where the PPSA applies to action taken by Bovara Pty Ltd in relation to the Goods, the Customer: agrees that sections 120, 125, 142 and 143 of the PPSA will not apply; and waives its right to receive any notices under sections 95, 118(1)(b), 121(4), 123(2), 130, 132(3)(d), 1332(4) and 135 of the PPSA and any right to receive a Verification Statement under the PPSA.

The Customer agrees that Bovara Pty Ltd may apply to register its Security Interest in the Goods at any time before or after delivery of the Goods. The Customer irrevocably waives its rights under s157 of the PPSA to receive a notice of any Verification Statement in respect of Bovara Pty Ltd's Security Interest under these Terms & Conditions.

Each party waives its rights to receive anything from any other party under s275 of the PPSA.

The Customer acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the Security Interest granted to Bovara Pty Ltd under these Terms & Conditions.

13. GST

Prices stated are in Australian dollars, exclusive of GST and any transport and handling charges. The amount of GST payable will be calculated by multiplying the sum of the price for the Goods and/or Services plus any additional freight or other charges by the rate of GST applicable at the time of the supply. Bovara Pty Ltd will issue a tax invoice to the Customer in relation to any supply that is subject to GST.

The words "supply" and "tax invoice" in this clause have the same meaning as that given to them in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

14. PAYMENT OF INVOICES

For Customers without established trading accounts, the Customer shall, if Bovara Pty Ltd so requires, pay in full any invoice prior to commencement of procurement and/or manufacturing or otherwise prior to any despatch of the Goods.

For Customers with established trading accounts with credit facilities, the time of payment shall be of the essence of the Contract and the Customer shall pay any invoice within 30 days from the end of the month of invoicing, unless otherwise agreed by Bovara Pty Ltd in writing and signed by an authorised Officer of Bovara Pty Ltd. Should the 30-day payment deadline fall on a Saturday, Sunday, Public Holiday or Bank Holiday at the address where the payment is to be made or be in the month of February, payment is required no later than the last banking day of that month. Payment shall be made in Australian dollars.

Any supply of Goods and/or Services to an account with credit facilities will be subject to a credit limit, which Bovara Pty Ltd may apply and/or amend from time to time at its absolute discretion.

If the Customer fails to make any payment, of any invoice, or of any required milestone prepayment, by the date on which that payment is due, then Bovara Pty Ltd may, without prejudice to any other right or remedy, which Bovara Pty Ltd may otherwise have, and in addition to any such other right or remedy, take any action including the following:

- 14.1. suspend, defer or cancel any outstanding supply of any Goods and/or Services, which are to be supplied to the Customer, under these Terms & Conditions, or under any other arrangement, unless and until the overdue amount is paid in full;
- 14.2. appropriate any payment which payment is made toward payment for the Goods and/or Services being supplied under these Terms & Conditions, or which payment is made toward any other Goods and/or Services being supplied under any other arrangement, toward payment of the overdue payment, unless and until the overdue amount is paid in full;
- 14.3. charge interest (both before and after any judgment) on the amount unpaid, at the rate of 3% per annum above the overdraft rate payable by Bovara Pty Ltd to its bankers, unless and until payment is made in full (a part of the month being treated as a full month for the purpose of calculating interest); and
- 14.4. demand payment of the arrears as well as payment in advance, for any undelivered Goods and unprovided Services, and before proceeding with any procurement and/or manufacturing or making any further delivery of Goods and/or before proceeding with providing any Services, unless and until the overdue amount is paid; and
- 14.5. call on and give effect to any right that Bovara Pty Ltd may have in any security in place, including: guarantees given by directors or any other parties, secured real property, bank guarantees or any rights pursuant to the PPSA.

If payment of invoices is made contingent upon any of delivery, installation, test or commissioning, and if any of these stages are delayed to suit the Customer's wishes or convenience, or by reason of the Customer being unready, unavailable, or unable to take delivery or undertake installation, tests or commissioning, at the time, date and place allocated, then payment of invoices will be due in accordance with agreed payment terms from the date of the invoice, as if there had been no delays. Additionally, risk will pass to the Customer immediately upon the occurrence of the delay, and any storage by Bovara Pty Ltd necessitated by the delay will be at the Customer's risk and expense.

Bovara Pty Ltd may render partial invoices and require progressive payments and payment is due against each invoice rendered, not upon completion of supply. Bovara Pty Ltd may render invoices electronically and require payment by electronic funds transfer. If Bovara Pty Ltd permits payment by credit or debit card, then such payment is subject to validation and authorisation, both at the time of agreement and immediately prior to shipment and Bovara Pty Ltd may recover as a separate charge any processing fees and other administration costs incurred in processing the credit or debit card transaction.

If the Customer pays for Goods by cheque or direct funds transfer then payment only occurs when all cheques or funds transferred have been presented and cleared in full by Bovara Pty Ltd's bank.

The Customer must make all payments due under these Terms & Conditions without any set-off, counterclaim, deduction or condition unless Bovara Pty Ltd otherwise agrees in writing signed by an authorised Officer of Bovara Pty Ltd.

If Bovara Pty Ltd is required to take legal action to recover monies due to Bovara Pty Ltd from the Customer, then Bovara Pty Ltd may charge and recover from the Customer an amount to cover all and any costs (including legal costs) incurred by Bovara Pty Ltd in respect of such legal action.

15. FORCE MAJEURE

Bovara Pty Ltd will not be liable for any loss, damage or delay arising out of its failure or that of its Manufacturers and Suppliers to perform obligations under the Terms & Conditions, due to causes beyond its reasonable control. In the event of such delay, Bovara Pty Ltd's performance date(s) will be extended for such length of time as may be reasonably necessary to compensate for the cause.

If a cause for delay, which is beyond Bovara Pty Ltd's reasonable control, continues for a period of 90 days or more, Bovara Pty Ltd may (without affecting the accrued rights and obligations of the parties as at the date of termination) terminate this agreement immediately by written notice to the Customer.

16. TESTING

Prior to delivery of the Goods, Bovara Pty Ltd and/or the Manufacturer may, at its own expense, carry out any tests on the Goods in accordance with its own and any applicable standards and testing procedures. Any additional tests, procedures and associated documentation required by the Customer will be mutually agreed and will be provided only at the Customer's additional expense.

17. PACKING

Unless stated in the Quotation or otherwise in writing by Bovara Pty Ltd, the price quoted for supply of Goods includes standard Manufacturer's packaging and packing for shipment in accordance with Bovara Pty Ltd's standard practice. Any other packing and/or labelling and/or marking requirements specified by the Customer are not included in the price of the Goods unless acknowledged in Bovara Pty Ltd's quotation or in writing and signed by an authorised Officer of Bovara Pty Ltd. Bovara Pty Ltd may impose charges for additional packing and/or crating and/or labelling and/or marking requirements.

18. DELIVERY

Unless otherwise specified in writing by Bovara Pty Ltd, Goods will be delivered to the Customer subject to EXW Incoterms 2020 at Bovara Pty Ltd nominated warehouse.

Where the Customer requests, in an Order, that delivery is included in the supply of Goods, the Customer must pay for the cost of delivery by that method from the point of despatch of the Goods by Bovara Pty Ltd.

Notwithstanding that Goods may be consigned for delivery by Bovara Pty Ltd at the direction of the Customer, unless Bovara Pty Ltd agrees in writing to the contrary, risk in the Goods passes to the Customer upon loading onto the transport vehicle deck.

In the event that the Customer requests in an Order that Bovara Pty Ltd arrange delivery, then unless Bovara Pty Ltd states in writing to the contrary:

- 18.1. all statements or representations made by Bovara Pty Ltd, about delivery times and costs, are made in good faith but are estimates only and are not statements or representations of fact;
- 18.2. any delivery period stated in any Quotation is subject to reconfirmation and commences from the date on which Bovara Pty Ltd receives sufficient information to proceed with supply of Goods, or from the date on which Bovara Pty Ltd provides written notice to the Customer to confirm that the Customer's Order has been received and accepted, and that a Contract has been formed, whichever is the later date;
- 18.3. dimensional weight calculations may apply. For safety reasons, hazardous goods cannot be shipped by air;
- 18.4. Bovara Pty Ltd may impose additional charges for delivery of certain items, for example those that are very large, heavy or hazardous;
- 18.5. a delivery charge per order, charged at the rate applicable at the time of delivery, will be applied on all orders which are delivered to the Customer's premises or to any premises or location otherwise specified by the Customer;
- 18.6. delivery will be made to the Customer's standard default address. Bovara Pty Ltd may use any method of delivery available to it. Where the Customer directs Bovara Pty Ltd to deliver the Goods to a location other than the Customer's standard default delivery address using Bovara Pty Ltd's standard method of transport, an additional delivery charge will apply.
- 18.7. the amount charged for Delivery will be shown as a separate item on all invoices. The delivery charge will not be applied to the supply of back orders from an original order.
- 18.8. when selecting a delivery method that includes 'No Signature Required', the Customer is authorising the Goods to be left at their unattended premises and in that event, the Customer assumes all risk of liability and loss of the Goods arising from the Customer choosing this delivery method.
- 18.9. time for delivery and/or performance shall not be of the essence. If delivery is delayed for any reason beyond Bovara Pty Ltd's reasonable control after the date on which the Customer is notified that the Goods or any completed items forming part of the Goods are ready for delivery, then Bovara Pty Ltd will notify the Customer when the reason for the delay is at an end and the delayed date and time for delivery of the Goods; and
- 18.10. the Customer acknowledges and agrees expressly that, Bovara Pty Ltd will use reasonable endeavours to meet delivery and/or performance estimates but Bovara Pty Ltd shall not in any circumstances, even where liability arises as a result of the negligence of Bovara Pty Ltd or its carriers, be liable to the Customer for any loss of profits or other loss, damages or penalty caused to the Customer by any delay in the delivery or any non-delivery of the Goods, or any part of the Goods.

Bovara Pty Ltd may deliver or perform and invoice by instalments. Failure to meet a scheduled delivery or performance date shall not prevent or restrict Bovara Pty Ltd from making further deliveries or rendering subsequent performance under the relevant Contract by instalment.

Any claims of shortage in deliveries must be advised to Bovara Pty Ltd in writing within 7 days of receipt of the Goods.

Bovara Pty Ltd is not responsible for any loss or damage to the Goods caused by or arising from transport or delivery of the Goods.

19. STORAGE

Unless otherwise specified in writing by Bovara Pty Ltd, Goods will be delivered to the Customer subject to EXW Incoterms 2020 at Bovara Pty Ltd nominated warehouse.

If the Customer fails to take delivery of the Goods in accordance with these Terms & Conditions, Bovara Pty Ltd may arrange suitable storage of such Goods at Bovara Pty Ltd's premises or elsewhere, and the Customer must, on demand, pay to Bovara Pty Ltd all costs of storage, insurance, demurrage, handling and other charges of and incidental to such storage.

20. INSPECTION OF GOODS DELIVERED AND/OR SERVICES PERFORMED

The Customer must inspect the Goods and/or Services and carry out any necessary testing as soon as reasonably practicable after delivery but in any case, no later than 7 days after delivery in the case of Goods, or performance in the case of Services.

Bovara Pty Ltd shall be liable for a defect in the Goods and/or Services, incomplete or failed delivery or performance, shortage of weight or quantity of the Goods and/or Services, only if the Customer gives notice in writing to Bovara Pty Ltd within 7 days of the date of delivery or performance.

The quantity of any consignment of Goods, as recorded by Bovara Pty Ltd upon despatch from Bovara Pty Ltd's place of business, shall, unless the Customer can provide evidence to the contrary, be conclusive evidence of the quantity received by the Customer on delivery.

21. RETURNS

Bovara Pty Ltd has policies relating to the return of Goods, which must be complied with before any returned Goods are accepted by Bovara Pty Ltd in exchange for credit, or such returned Goods are otherwise repaired or replaced. Prior to returning any Goods to Bovara Pty Ltd for any reason, the Customer must contact Bovara Pty Ltd and obtain authorisation for the return.

Standard products as listed in the published pricing lists of the vendor may be returned for credit (no refunded) provided the goods are followed

- are returned within 30 days of delivery (at the purchasers' expense) to the vendors warehouse and will be subject to a 30% restocking fee
- are accompanied by a delivery docket stating the vendors original invoice number and the reason for the return
- are returned in an unsoiled, undamaged and resalable condition in their original packing.
- Customed products are strictly non-refundable

Nothing in this clause purports to modify or exclude any conditions, warranties, guarantees and undertakings under the Australian Consumer Law and the Australian Consumer Law will operate and prevail to the extent of any inconsistency.

- 21.1. where Goods which have been supplied by Bovara Pty Ltd on a manufactured/assembled to order or indent only basis, Bovara Pty Ltd will not, unless agreed otherwise by Bovara Pty Ltd in writing, accept them for return, except where such Goods are faulty or have been wrongly delivered against Bovara Pty Ltd drawings and/or Bovara Pty Ltd specification sheets signed off by the Customer or its assigns prior to manufacture.
- 21.2. a factory seal may be affixed to the Manufacturer's packaging e.g. Bovara products. If this seal is broken the product is then an "open box" product and cannot be accepted by Bovara Pty Ltd for return in any circumstances.
- 21.3. goods must be undamaged, in their original condition and original unmarked and unsoiled packaging and returned to the Bovara Pty Ltd premises identified in any authorisation issued for return, quoting the authorisation number.
- 21.4. all Goods are to be returned at the Customer's risk and expense and are subject to inspection by Bovara Pty Ltd as a condition precedent to the issue of any credit or replacement.
- 21.5. the Customer is responsible for returning Goods to Bovara Pty Ltd and for providing proof of delivery of such return.

22. RETURNS OF GOODS FOR REPAIR (NOT UNDER WARRANTY)

Notwithstanding that Bovara Pty Ltd has no obligation to repair Goods which are not under warranty or subject to a guarantee under Australian Consumer Law, Bovara Pty Ltd may accept such Goods for repair, on the following conditions:

- 22.1. Bovara Pty Ltd may charge a fee for inspection and preparation of a repair quotation and this fee shall be payable in the event that the Customer does not proceed with the repair;
- 22.2. the Customer is responsible for all forward and return delivery, risk and insurance costs and requirements;
- 22.3. any repairs that Bovara Pty Ltd undertakes under this clause are guaranteed for a period of 90 days from date of completion and only in respect of any replacement components that were used in the repair.

23. ENGINEERING, TECHNICAL ASSISTANCE, SERVICES AND TRAINING

Bovara Pty Ltd will provide Engineering, Technical Assistance, Services and/or Training in accordance with Bovara Pty Ltd's published rates in effect as of the date of such supply, unless otherwise stated by Bovara Pty Ltd in any Quotation.

Where applicable, all other associated expenses for air fares, vehicle and equipment hire, meals, accommodation, sub-contractors and miscellaneous out of pocket expenses will be separately itemised and charged at the cost to Bovara Pty Ltd plus 35 percent. Any required miscellaneous materials purchased by Bovara Pty Ltd to complete the scope of work will be separately itemised and charged at cost to Bovara Pty Ltd plus 55 per cent.

24. LOANS AND HIRE

Any Goods loaned or hired out by Bovara Pty Ltd must be returned by the recipient in the original packing, and in original condition, fair and reasonable wear and tear excepted.

Any Goods loaned or hired out to the Customer by Bovara Pty Ltd which are returned damaged or defective, due to reasons not covered by Bovara Pty Ltd's standard warranty provisions, will result in the Customer being charged for repair charges, or the cost of the Goods loaned or hired out, whichever is the lesser.

Any Goods loaned or hired to the Customer by Bovara Pty Ltd, which are not returned to Bovara Pty Ltd within the specified loan or hire period, shall be deemed to have been sold to the Customer, and the list price on the date for return of the loaned or hired Goods shall become due and payable by the Customer upon presentation of Bovara Pty Ltd's invoice.

25. WARRANTY/GUARANTEE NOT UNDER THE CONSUMER GUARANTEES ACT

If the Customer is not a Consumer as defined in the Australian Consumer Law, then Bovara Pty Ltd warrants that the Goods and/or Services, whether manufactured by Bovara Pty Ltd, its Manufacturers or its Suppliers, as published in Bovara Pty Ltd's price lists, brochures, catalogues, electronic media and other advertising material and supplied by Bovara Pty Ltd, shall, for a period of twelve months (or such other period as Bovara Pty Ltd shall specify in writing) from the date of despatch of the Goods from Bovara Pty Ltd's premises, in the case of Goods, or from the date of performance, in the case of Services, be free from defects, faulty workmanship, materials or design.

The warranties provided above shall be effective, and impose liability on Bovara Pty Ltd to give effect to such warranty, only if:

- 25.1. Bovara Pty Ltd is provided with written notice of the circumstances giving rise to the claim arising within 30 days of the occurrence of such circumstances; and
- 25.2. Bovara Pty Ltd is permitted to inspect Goods before they are repaired or replaced; and

25.3. the Customer returns the Goods or components to Bovara Pty Ltd's premises, at the Customer's expense; and

25.4. Bovara Pty Ltd is satisfied, by its own examination of the Goods, that any alleged circumstances giving rise to the claim have not been caused by:

25.4.1. improper use, installation, operation, damage due to accident, neglect, lightning, power surge, or from improper repair, alteration, modification or adjustment to the Goods; or

25.4.2. unusual deterioration or degradation due to physical, electrical, electromagnetic or noise environments.

Any repairs, alterations or other work carried out to the Goods by a person other than an authorised representative of Bovara Pty Ltd shall invalidate the warranty in this clause.

Any replacement Goods or repaired Goods will be guaranteed on these terms for any unexpired portion of the period of guarantee given on the original Goods and/or Services or 90 days whichever is the longer period. Any Goods which have been replaced will belong to Bovara Pty Ltd.

If the Customer requests or insists that warranty service be carried out on site or at the Customer's premises then any costs over and above the direct costs of replacing or repairing the Goods or the component parts of the Goods at Bovara Pty Ltd's premises shall be at the Customer's expense.

If the Customer requests or insists that warranty service (or any other service or attendance) be carried out on site or at the Customer's premises, the Customer grants to Bovara Pty Ltd and its employees, agents and representatives a right to enter onto its premises to effect any inspection, repair or replacement. The Customer shall ensure that Bovara Pty Ltd's employees, agents and representatives are provided with a safe and secure working environment while at its premises and the Customer shall be responsible for all electrical isolation and, where applicable, isolating any computers or processors requiring repair or replacement from its network and for making backup copies of any information on such computers or processors before Bovara Pty Ltd's arrival on site.

26. WARRANTEE/GUARANTEE UNDER CONSUMER GUARANTEE ACT (IF APPLICABLE)

The Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law may guarantee certain conditions, warranties and undertakings in relation to the Goods. To the extent they apply, these guarantees cannot be modified nor excluded by contract, and these Terms & Conditions do not purport to modify or exclude any conditions, warranties, guarantees and undertakings under the Australian Consumer Law.

If the Customer purchases Goods as a Consumer as defined in the Australian Consumer Law, then:

26.1. in the event of a breach by Bovara Pty Ltd of a guarantee imposed by the Australian Consumer Law, the Customer may be entitled to an identical replacement (or one of similar value if reasonably available), a refund or compensation for drop in value to the Goods, at the Customer's option.

26.2. in the case of a minor failure, the Customer may be entitled to have the Goods repaired, replaced or obtain a refund, at Bovara Pty Ltd's option.

To the extent permitted by law, Bovara Pty Ltd's liability for any loss, injury or damage, shall be limited to making good, by replacement or repair, at Bovara Pty Ltd's option, and at the Customer's expense in relation to costs over and above the direct costs of replacing or repairing the Goods or the component parts of the Goods at Bovara Pty Ltd's premises, any defects which appear under proper use.

This obligation will not apply if: the defect arises because the Customer has altered or repaired the Goods without the written consent of Bovara Pty Ltd; the defect arises because the Customer did not follow Bovara Pty Ltd's and/or the Manufacturers' instructions for storage, usage, installation, commissioning or maintenance of the Goods; the Customer has failed to notify Bovara Pty Ltd of any defect, where the defect should have been apparent on reasonable inspection; the Customer fails to notify Bovara Pty Ltd of the defect within 12 months (or such other period as Bovara Pty Ltd shall specify) of the date of despatch of the Goods or performance of the Services.

If the Customer purchases Goods as a Consumer as defined in the Australian Consumer Law then the following terms also apply:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to:

26.3. To cancel your service contract with us: and

26.4. To a refund for the unused portion, or to compensation for its reduced value: and

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

In order for a Customer to claim a guarantee under the Australian Consumer Law in relation to goods or services supplied by Bovara Pty Ltd, the defect must occur within the period of 12 months from the date of purchase of the goods or provision of the services.

In order for the Customer to claim a guarantee under the Australian Consumer Law the Customer must immediately stop using the good and notify Bovara Pty Ltd of the defect.

In order for a Customer to claim a guarantee under the Australian Consumer Law in relation to goods or services supplied by Bovara Pty Ltd, the Customer must comply with the following procedure - contact Bovara Pty Ltd Customer Service at 1300 647 647 or by email at www.Bovara.com.au/contact

In order for a Customer to claim a guarantee under the Australian Consumer Law in relation to goods or services supplied by Bovara Pty Ltd, the Customer must bear the costs of returning any goods to Bovara Pty Ltd. If the defect is demonstrated to Bovara Pty Ltd's not unreasonable satisfaction, then Bovara Pty Ltd will reimburse the Customer for the reasonable costs of returning the goods to Bovara Pty Ltd.

If the Customer has benefits of a guarantee under the Australian Consumer Law, then that benefit is in addition to any other rights or remedies which the Customer may also have at law.

27. REPRESENTATIONS AS TO PERFORMANCE AND FITNESS FOR PURPOSE

Except as expressly set out in these Terms & Conditions and the Australian Consumer Law, Bovara Pty Ltd makes no warranty, representation or other statement in respect of the Goods, their quality or their fitness for any purpose, except as stated expressly in these Terms & Conditions, or as may otherwise be required by law.

The Customer acknowledges and agrees expressly that Bovara Pty Ltd can make no, and does make no, representation and provides no warranty in respect of any standard or custom software and firmware, supplied in connection with the Goods, (including that any such software shall be uninterrupted or free of errors, or that the functions contained therein shall meet or satisfy the Customer's intended use or requirements), except as stated expressly in these Terms & Conditions, or as may otherwise be required by law. Software programs are supplied on the strict understanding that Bovara Pty Ltd does not warrant their function to be free from defects or error.

In relation to any representation as to performance or fitness for purpose:

- 27.1. unless any performance figures, tolerances or characteristics have been specifically reviewed, and expressly warranted by an authorised Officer of Bovara Pty Ltd in writing, Bovara Pty Ltd's view is that environmental and operational circumstances will affect such figures, tolerances or characteristics and Bovara Pty Ltd recommends that the Customer conduct independent assessment and verification of the subject of the figures, tolerances and characteristics to determine their veracity, application and reliability of any representation; and
- 27.2. the responsibility for ensuring that Goods and/or Services are sufficient and suitable for a particular purpose is the Customer's, unless specifically stated in writing by an authorised Officer of Bovara Pty Ltd; and
- 27.3. the Customer acknowledges and agrees that Bovara Pty Ltd can accept no liability for any failure of the Goods or Services to comply with such criteria, whether attributable to Bovara Pty Ltd's negligence or otherwise; and
- 27.4. any advice or recommendation given by an employee of Bovara Pty Ltd which is not confirmed in writing by an authorised Officer of Bovara Pty Ltd, ought to be assessed and verified by the Customer, and is acted on entirely at the Customer's risk and Bovara Pty Ltd shall not be liable for any such advice or recommendation which is not so confirmed.

In the event of the Customer relying on any representation, warranty, statement, advice or recommendation, which proves to be incorrect, inaccurate or misleading, Bovara Pty Ltd's liability will be limited to the refund of the price paid for the Goods and/or Services to Bovara Pty Ltd or, at Bovara Pty Ltd's option, the supply of replacement Goods and/or Services which are sufficient and suitable, and in no event will Bovara Pty Ltd be liable for any consequential or indirect loss, including loss of revenue, profit or opportunity.

28. LIMITATION OF LIABILITY

28.1 Notwithstanding any provision to the contrary in the Agreement, this clause 28 sets out the full extent of Bovara Pty Ltd's obligations and liability to the Customer with respect to the Goods and/or Services under the Agreement. All other terms, conditions, warranties and representations that might otherwise be implied by statute or otherwise, are hereby expressly excluded, save for those that cannot be excluded, restricted or modified by law.

28.2 If the Customer is not deemed to be a Consumer by section 3 of the ACL:

- a) the Supplier will not be liable for any liability or loss not directly caused or contributed to by the Customer or by persons for whose acts or omissions the Purchaser is responsible;
- b) the Supplier will not be liable to the Customer for any indirect, consequential or special losses (including, without limitation, loss of profit, loss of income, loss of revenue or loss of business opportunity); and
- c) any liability of the Supplier, its employees, officers and directors shall in any event be limited in the aggregate to the amount of \$5,000.00.

28.3 If the Customer is deemed to be a Consumer by section 3 the ACL:

- a) Clause 28.2 above shall not limit or exclude, the liability of the Supplier for any failure by the Supplier to comply with a Consumer Guarantee ("CG") under the ACL;
- b) the liability of Supplier for any failure to comply with a CG is limited to payment of the cost of having the product and/or service supplied again; and
- c) the Supplier is deemed discharged from all liability to the customer for and in connection with the supply of product and/or service, whether under the law of contract, tort, or otherwise, on the expiration of the period of 12 months from the date of the transaction. The

Customer shall not thereafter be entitled to commence any action or claim whatsoever against Supplier in respect of the supply of product and/or service.

28.3 Each of the above clauses is separate and cascading. In the event that one provision is read-down or void, it does not affect the operation of the other provisions

29. GOVERNING LAW AND JURISDICTION IN THE EVENT OF DISPUTES

The parties hereby agree that application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded in relation to these Terms & Conditions and of any Contract between the Parties.

These Terms & Conditions are governed by the law in New South Wales, Australia and the Commonwealth of Australia.

The Parties submit to the exclusive jurisdiction of the courts of Victoria for the resolution of disputes arising under or in relation to these Terms & Conditions and of any Contract between the Parties.

30. SEVERABILITY

Any provision in these Terms & Conditions (or part thereof) which is invalid or unenforceable in any jurisdiction shall, if possible, be read down for the purpose of that jurisdiction, so as to be valid and enforceable, or otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction. Failure by Bovara Pty Ltd to enforce or partial enforcement by Bovara Pty Ltd of any provision of these Terms & Conditions will not be construed as a waiver by Bovara Pty Ltd of any rights under these Terms & Conditions.

31. WAIVER

Waiver of any right, power, authority, discretion or remedy arising on a breach of or default under an agreement in force between Bovara Pty Ltd and the Customer on these Terms & Conditions must be in writing and signed by the party granting the waiver.

32. ASSIGNMENT

The Customer must not assign or otherwise purport to transfer its rights or obligations under these Terms & Conditions to any other person without the prior written consent of Bovara Pty Ltd.

Bovara Pty Ltd shall be entitled, without the consent of or notice to the Customer, to assign the benefit, subject to the burden, of these Conditions and/or any Contract to a related body corporate (as defined in section 50 of the Corporations Act 2001 (Cth)) at any time.

33. NOTICES

Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party under these Terms & Conditions must be in legible writing and in English addressed to such address as the other party has specified to the sender of the notice.

34. RESOLUTION OF DISPUTES

These procedures are the exclusive procedures for the resolution of all such disputes between the parties under these Terms & Conditions.

In the event of a dispute arising in relation to these Terms & Conditions or to any Goods or Services supplied pursuant to these Terms & Conditions, the parties will use their best endeavours and attempt in good faith to promptly resolve the dispute by negotiation.

Negotiations shall be conducted in the English language between representatives of the parties who have authority to settle the dispute within 30 days of a party providing written notice to the other party of the matter and circumstances giving rise to the dispute (Notice of Dispute).

If the dispute has not been resolved within 30 days of a party giving a Notice of Dispute, the parties will further attempt in good faith to settle the dispute by non-binding third-party mediation.

If a mediator cannot be agreed upon within 10 days of a party giving a Notice of Dispute, either party may request the President of the Law Institute of New South Wales to appoint a mediator.

Mediation must take place within 90 days of the date of the Notice of Dispute. The Mediator's fees and expenses shall be apportioned equally to each side.

Any dispute not so resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in New South Wales, Australia.

35. AMENDMENT

Bovara Pty Ltd may review and amend these Terms & Conditions from time to time. Notification will be communicated in writing and will be applied to all orders placed by the Customer subject to clause 38.

36. VARIATION OF TERMS

These Terms & Conditions may only be varied, by written agreement of the Parties and in the case of Bovara Pty Ltd such variance must be signed by an authorised Officer of Bovara Pty Ltd.

37. GUARANTOR(S)

37.1 The guarantors referred in the execution clause 37.7 below acknowledge that the Agreement between the parties is at the request of the Customer and in consideration of the Agreement, the guarantors covenant for themselves their executors, administrators, assigns and successors with the Supplier as follows:-

Bovara Pty Ltd
25 Huntingwood Drive, Huntingwood, NSW, 2148
ABN 48 141 146 509

- (A) the guarantors unconditionally guarantee to the Supplier the payment, when demanded from the guarantors, of every sum of whatever nature payable by the Customer to the Supplier, including interest payable on moneys overdue or for damages or the costs which the Supplier incurs in the exercise or attempted exercise of any remedy or right conferred under the Agreement or under any equitable or implied rights of the Supplier;
 - (B) if the Customer fails to perform any of the covenants in the Agreement between the Supplier and the Customer, the guarantors shall indemnify and keep indemnified the Supplier from and against all actions, claims, costs and damages arising out of any such non-performance.
- 37.2 The guarantee and indemnity contained in sub-clause (1) shall remain in full force and effect notwithstanding termination or transfer of the Agreement.
- 37.3 The guarantee and indemnity contained in sub-clause (1) shall not in any way be affected by any of the followings:-
- (A) any variation with or without the consent or knowledge of the guarantors of any of the covenants of the Agreement;
 - (B) any breach of the obligations of the Customer with or without the consent or knowledge of the guarantors or the Supplier;
 - (C) the granting by the Supplier of any time, concession or indulgence to the Customer for the performance of any of the Customer's obligations;
 - (D) the Customer, being a company, being wound up or passing a resolution for its liquidation or entering into any composition or arrangement with its creditors or by the appointment by the Receiver, Provisional Liquidator or Official Manager;
 - (E) the Customer, being a person, becoming bankrupt or entering into any composition or arrangement with their creditors or assigning their estate or any part thereof for the benefit of creditors or becoming of unsound mind or dying;
 - (F) the giving of any notice of termination of the Agreement;
 - (G) the absence of any notice to the guarantors of default by the Customer in respect of the Agreement;
 - (I) any other circumstances or thing which but for this provision might determine or impair the operation of the guarantee or indemnity.
- 37.4 The liability of the guarantors shall not be affected by any claim or right to set-off or cross-action which the Customer may have or claim to have against the Supplier on any account nor shall the guarantors be entitled to set-off against the Supplier.
- 37.5 In the event of the bankruptcy or liquidation of the Customer, the guarantors shall not prove in any such bankruptcy or liquidation in competition with the Supplier and the guarantors irrevocably authorise the Supplier to prove as the attorney of the guarantors for all moneys which the guarantors may have paid on behalf of the Customer and to retain and carry to a suspense account and appropriate at the discretion of the Supplier any amounts so received until the Supplier shall have been paid one hundred cents in the dollar for the indebtedness of the Customer or the guarantors as the case may be. The guarantors waive in favour of the Supplier all rights which the guarantors at any time may have against the Supplier, the Customer or any other person estate or assets so far as is necessary to give effect to the Agreement.
- 37.6 Where there are two or more guarantors, the liability of the guarantors shall be joint and several.
- 37.7 Guarantor Signing clause:

SIGNED by the Guarantor in the presence of:)	
)	
)	
)	
)	
.....)
Signature of witness)	Signature of guarantor
)	
.....)
Name of witness (block letters))	Name of guarantor (block letters)
)	
.....)
Address of witness)	Address of guarantor

SIGNED by the Guarantor in the presence of:)	
)	
)	
)	
.....)
Signature of witness)	Signature of guarantor
)	
.....)
Name of witness (block letters))	Name of guarantor (block letters)
)	
.....)
Address of witness)	Address of guarantor

38. BANK GUARANTEE

- 38.1 The Customer shall deliver to the Supplier an unconditional Bank Guarantee with no expiry date equivalent to the amount equivalent to 3 instalment payments INCLUSIVE OF GST in the Supplier’s favour from a Bank carrying on business in Sydney. The Bank Guarantee shall be released to the Bank upon the Customer having performed and observed the obligations under the Agreement. The Bank Guarantee shall become payable to the Supplier upon breach or non-observance by the Customer of any of the terms or provisions herein contained. As a result of any breach or indemnity by the Customer of any of the covenants or provisions of the Agreement and provided further that such deduction or application shall not be deemed to waive the Customer’s breach nor shall any transfer of the Bank Guarantee or balance referred to below. Any part of the Bank Guarantee monies so paid in excess of the sums payable by reason of any breach or non-observance shall be accounted for to the Customer. Acceptance of the Bank Guarantee or payment thereunder shall not be deemed to satisfy or limit the rights of the Supplier.
- 38.2 If the Supplier shall transfer his reversionary estate in the Agreement, the Supplier shall be entitled, and is hereby authorised, to transfer such amount in the Bank Guarantee (or the balance thereof after deducting any money due to Supplier) to the transferee who shall hold such amount (or such balance) as Supplier subject to the provisions of this clause.

39. EQUITABLE CHARGE AND CAVEATABLE INTEREST

In consideration of entry into the Agreement, to secure the payment of the outstanding sum by the Customer, the Customer and/or the guarantors hereby grant to the Supplier, by way of an equitable charge, an interest in any real property held by them both present and future. Accordingly, the Customer and/or the guarantors hereby agree that the grant of the equitable charge entitles the Supplier to lodge a caveat on such real property and to take any steps to enforce the equitable charge.

These Terms & Conditions supersede all previous terms and conditions which have previously governed a contract for the sale of Goods and/or Services from Bovara Pty Ltd to the Customer.

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