Protech Partners Pty Ltd ACN 678 095 433 – Terms and Conditions

1. Definitions

1.1 "**Agreement**" means these terms and conditions.

1.2 "**Company**" means Protech Partners Pty Ltd ACN 678 095 433, its successors and assigns or any person acting on behalf of and with the authority of Protech Partners Pty Ltd.

1.3 "**Customer**" means the customer, its successors and assigns or any person acting on behalf of and with the authority of the customer as described on any application, quotation or other form as provided by the Company to the Customer.

1.4 "**Goods**" means all goods, products and/or services supplied by the Company to the Customer at the Customer's request (and includes Services) and are as described on the invoices, quotations, or any other forms as provided by the Company to the Customer from time to time.

1.5 "**Insolvency Event**" means any of the following events concerning the Customer:

(a) if an administrator, liquidator, receiver, receiver and manager or other controller (as defined in the Corporations Act 2001) is appointed to, or over, any of the property or undertaking of the Customer;

(b) if the Customer becomes bankrupt;

(c) if a controlling trustee is appointed to, or over, any of the property or undertaking of the Customer;

(d) the Customer or the Customer property or undertaking becomes subject to a personal insolvency arrangement under part X Bankruptcy Act 1966 or a debt agreement under part IX Bankruptcy Act 1966;

(e) if the party is unable (or taken under applicable legislation to be unable) to pay its debts when they become due and payable;

(f) if the Customer ceases to carry on business;

(g) the Customer stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts;

(h) if any event happens in Australia or any other country or territory in respect of the Customer that is similar to any of the events or circumstances referred to in this definition;

(i) any mortgagee, chargee or secured party taking or indicating the intention of taking any action or the exercise of any rights under any security of which a party is the grantor, mortgagor, charger or guarantor; or

(j) any step is taken (including an application or order made, petition presented, proceedings commenced, or a resolution passed or proposed in a notice of meeting for any of the actions described in paragraphs (a) to (i) of this definition.

1.6 "**Intellectual Property Rights**" includes but is not limited to all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including business, company or trade names, domain names, inventions, design rights, know-how, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information, moral rights, trade secrets, goodwill, relevant registrations or applications for registration, and rights (including derivative rights) in any patent, copyright, trademark, trade dress, industrial design and trade name), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

1.7 **"PPSA"** means the *Personal Property Securities Act 2009 (Cth)* and its associated Regulations as amended

1.8 "**Pre-existing IP Rights**" means Intellectual Property Rights in all materials owned by the Company.

1.9 "**Price**" means the price payable for the Goods and/or Services as agreed between the Company and the Customer in accordance with clause 3 of this Agreement.

1.10 "**Services**" means all Services supplied by the Company to the Customer and includes but not limited to audio visual control system programming, commissioning, system configuration, consulting, reprogramming and reconfiguring, system tuning, real time monitoring, training and drafting, documenting systems and any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.11 "**Usual Rates**" means:

(a) Commission Services - $126 per hour, with three-hour minimum charge;

(b) Programming Services - $150 per hour, with three-hour minimum charge;

(c) Service Calls - $302 first hour, with one-hour minimum charge and $131 per 15 minute increments after the first hour; and

(d) Travel - $77 per hour, plus travel costs plus a 5% surcharge. Travel inside of Brisbane Metro Area is not charged.

2. Acceptance

2.1 The Customer is taken to have accepted and is immediately bound by these terms and conditions if the Customer accepts any quotation and/or provides the Company with any instructions for the supply

of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Customer has entered into this Agreement, the Customers shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Customer, the terms and conditions are binding and can only be amended with the written consent of the Company, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Company.

2.4 The Customer shall give the Company not less than fourteen (14) days prior written notice of:
- (a) if the Customer is a company or a trustee, any proposed change of control or ownership of the Customer;
- (b) any change in the Customer's name; and/or
- (c) any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).

2.5 The Customer is solely liable for any loss, liability, expense, claim or damage (howsoever arising) caused to or suffered or sustained by the Company as a result of the Customer's failure to comply with this clause.

2.6 These terms and conditions bind the Customer both personally and as trustee of any trust of which the Customer is trustee.

2.7 Goods are supplied by the Company only on the terms and conditions of trade herein to the exclusion of any other express agreement by the parties in writing.

3. Price And Payment

3.1 The Price shall be:
- (a) if there is no prior quoted price, charged to the Customer at the Company's Usual Rates and as indicated on invoices provided by the Company to the Customer in respect of Goods and/or Services; or
- (b) the Company's quoted price (subject to clause 3.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days of such quotation.

3.2 The Customer acknowledges that:
- (a) the Company may require that a non-refundable deposit (being not less than 50% of the Price) be paid to it on acceptance of the Company's quotation and prior to the commencement of the supply of Goods and/or Services;
- (b) if a deposit is required, the delivery of the Goods and/or Services will be subject to and conditional on the Customer providing that deposit; and
- (c) if the delivery of the Goods and/or Services is subject to and conditional a deposit, the Company may delay commencement or suspend any Services or provision of Goods until that deposit is paid and, if not paid within 7 days of the time required for payment, may terminate its engagement with the Customer.

3.3 Should this Agreement be terminated, the Customer acknowledges and agrees that it will:
- (a) remain liable for the Price in respect of Goods provided to that time and any other Goods which cannot reasonable be reused or resold by the Company;
- (b) the costs of performance of any Services and/or the provision of Goods and any other fees for other items and expenses owing to the Company up until the time of termination;
- (c) be liable for and indemnify and must keep the Company indemnified against any and all losses, liabilities, expenses, claims or damages (howsoever arising) caused to or suffered or sustained by the Company arising as a result of that termination; and
- (d) any deposit paid by the Customer shall be retained by the Company and shall be applied to the foregoing.

3.4 At the Company's sole discretion, the Customer acknowledges and agrees that the Company reserves the right to vary the Price in the event of a variation to the Goods or Services subject to any quotation or the Customer requires additional or altered Goods or Services. If there is a variation, this will be recorded in a further quotation to be accepted by the Company and Customer.

3.5 The Customer acknowledges and accepts that the Price, or part thereof, may be quoted in a foreign currency (other than Australian Dollars). The Customer solely bears any risk in respect of any currency fluctuation between the date of the quotation and the date of delivery of the Goods and/or Services. The Company when issuing invoices will ensure the Price, or part thereof, expressed in a foreign currency are converted to Australian Dollars on the basis of the official exchange rate as at the date of the issuing of the invoice.

3.6 If the Customer requires work to be performed outside of the Company's normal trading hours then the Price shall be increased to include a service fee equal to the reasonable additional costs incurred by the Company in that regard.

3.7 All payments required to be made by the Customer to the Company shall be:
   (a) made in cleared funds by way of cash, bank cheque, direct credit or by credit card (a credit card surcharge may apply per transaction) or by any other method as agreed in writing between the Customer and the Company; and
   (b) within 7 days of demand or as otherwise stated in any relevant quotation or invoices provided by the Company to the Customer.

3.8 Time for payment for the Goods and/or Services shall be of the essence.

3.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must, at the time of payment of the Price, pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other contract for the sale of the Goods and/or Services. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Delivery Of Goods and/or Services

4.1 Delivery of the Goods and/or Services shall take place when the Customer takes possession of the Goods at the Customer's nominated address or the Services have been delivered to the Customer.

4.2 The costs of delivery are either included in the Price or is in addition to the Price.

4.3 The Customer acknowledges and accepts that the supply of Goods and/or Services for accepted orders may be subject to availability and if, for any reason, Goods and/or Services are not or cease to be available, the Company reserves the right to vary the Price with alternative Goods and/or Services.

4.4 The Customer shall co-operate with the Company and make all arrangements necessary to take delivery of the Goods and/or Services whenever they are required for delivery. The Company will not be liable for any loss or damage incurred by the Customer as a result of delivery being delayed or late. In the event that the Customer is unable to take delivery of the Goods and/or Services as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.

4.5 Delivery of the Goods and/or Services to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this Agreement.

4.6 The failure of the Company to deliver shall not entitle either party to treat this Agreement as repudiated.

4.7 The Company shall not be liable for any loss or damage due to failure by the Company to deliver the Goods and/or Services (or any of them) promptly, or at all, where such failure is due to circumstances beyond the control of the Company.

4.8 The Company has processes and procedures for the provision the Goods and/or Service. The Customer agrees to co-operate with the Company and to comply with such reasonable processes and procedures as advised to it by the Company from time to time.

5. Risk

5.1 Notwithstanding whether or not the Company retains ownership of the Goods and/or Services, all risk for the Goods and/or Services passes to the Customer on delivery.

5.2 If any of the Goods (not being Services) are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods and/or Services. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

5.3 Where the Customer or any third party has supplied materials, specifications or information to the Company in order that the Company can provide Goods and/or Services, the Customer acknowledges that the Company:
   (a) does not and will not check the completeness or accuracy of those materials, specifications or information;
   (b) accepts no liability for and makes no warranty or representation regarding the suitability of purpose, quality or any faults inherent in those materials, specifications or information or the Goods and/or Services once those materials, specifications or information are incorporated into them (if relevant); and
   (c) shall not be responsible for any defects in the Good or Services or any claim, loss, liability or damage howsoever arising from the use of those materials, specifications or information and the Customer releases and discharges the Company from any and all claim, loss, liability or damage.

5.4 The Customer shall indemnify the Company from and against all costs, liabilities and damages incurred caused as a result of the Company following the Customer's instructions.

6. Customer's Warranties and Indemnity

6.1 The Customer warrants to the Company, and the Company relies upon the following:
(a) the Customer shall obtain and pay for all approvals, consents or permits required for the Goods and/or Services prior to commencement for the provision of the Goods and/or Services by the Company;
(b) the Customer shall provide the Company with clear and unhindered access to the nominated address for installation and/or delivery of Goods or for the provision of Services so as to enable the Company to complete the provision of the Goods and/or Services;
(c) the Customer will ensure that any site relevant to the Good will be a smoke-free area while the Company, its employees, its officers or its agents are in attendance;
(d) in respect of the premises nominated by the Customer in which the Goods and/or Services are to be provided:
(i) are structurally sound;
(ii) there are no structural or non-structural defects that will affect the Company's ability to conduct and complete the works;
(iii) all Australian regulations, laws, codes, standards and practices have been complied with;
(e) instructions on the placement, installation and /or supervision for the Goods and/or Services shall be the sole responsibility of the Customer, the Company shall not be liable for errors or omissions arising from the Customer failing to comply with this clause.

6.2 The Company relies on the warranties set out in clause 6.1 and shall not be liable for any loss, damage or costs however resulting from the Customer's failure to comply with clause 6.1.

6.3 The Customer agrees to indemnify the Company in respect of any and all loss or liability that the Company or any third party may sustain or incur that in any way relates to or arises out of a breach of these terms and conditions or installation of the Goods and/or Services by the Company, its officers, employees, agents and contractors, including but not limited to:
(a) any personal injury, loss of income, expense, or property loss or damage of any kind;
(b) any legal and administration expenses (on a full indemnity basis) in any way relating to investigating and/or responding to, defending or prosecuting or settling any legal proceedings, claims, enquiries or investigations;
(c) any judgment or order obtained by any third party, including any interest;
(d) any exercise, or attempted or purported exercise, of the Company's rights under these terms and conditions; and
(e) any other claim that may be made against the Company whatsoever, except the extent that such claim relates to any loss caused by the Company's negligence.

7. Title

7.1 The Company and the Customer agree that ownership of the Goods (not being Services) shall not pass until:
(a) the Customer has paid the Company all amounts owing for the particular Goods; and
(b) the Customer has met all other obligations due by the Customer to the Company in respect of all agreements between the Company and the Customer.

7.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods and/or Services shall continue.

7.3 It is further agreed that:
(a) until ownership of the Goods passes to the Customer in accordance with clause 7.1 then the Customer is only a bailee of the Goods and must return the Goods to the Company on request;
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
(c) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company;
(d) the Company may recover possession of any Goods in transit whether or not delivery has occurred;
(e) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
(f) if the Customer fails to return the Goods to the Company then the Customer irrevocably authorises the Company or the Company's agent to enter upon and into land and premises owned, occupied and/or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and

(g) the Company may commence proceedings to recover the Price of the Goods notwithstanding that ownership of the Goods has not passed to the Customer.

8. Intellectual Property

8.1 The Company and the Customer acknowledge that all Pre-existing IP Rights remain the sole property of the owner. Ownership of Pre-existing IP Rights remains unchanged by this Agreement.

8.2 All Intellectual Property Rights that are delivered, developed or produced under this Agreement or any quote provided by the Company to deliver or supply the Goods and/or Services will be the sole property of the Company and the Customer assigns to the Company all its rights, title and interest in that it may have in the Intellectual Property Rights that is delivered, developed or produced under this Agreement or any quote to deliver or supply the Goods and/or Services.

8.3 In event that the Company provides or discloses any of its Pre-existing IP Rights to the Customer, the Customer agrees:

(a) to use the Pre-existing IP Rights of the Company solely for the purposes of which the Goods and/or Services are being provided for;

(b) to keep and maintain the Pre-existing IP Rights confidential; and

(c) not to disclose any of the Pre-existing IP Rights of the Company in any manner whatsoever to any third party, provided however, that the Customer may make disclosure of the Pre-existing IP Rights of the Company to a third party only if the Company gives its prior written consent to the disclosure or the disclosure is required under mandatory and non-excludable requirement of law.

8.4 The Customer warrants that it will not give permission to any third party to use any of the Intellectual Property Rights that are delivered, developed or produced under this Agreement for the performance of delivery of the Goods and/or Services.

8.5 The Company grants to the Customer a worldwide, exclusive, royalty-free, non-transferable license to use the Intellectual Property Rights that are delivered, developed or produced in supplying the Goods and/or Services to the Customer.

8.6 The Customer indemnifies the Company for any losses, damages, costs, expenses and other liabilities suffered or incurred by Company arising from any failure by the Customer to comply with its obligations under clause 8.5 but the Customer's liability to indemnify the Company will be reduced proportionately to the extent that liability relates to any loss caused by the Company's negligence.

9. Personal Property Securities Act

9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

9.2 Upon assenting to these terms and conditions in writing, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.

9.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);

(b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company;

(e) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by this Agreement.

9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.7 Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
9.8 The Customer must unconditionally ratify any actions taken by the Company pursuant to this clause 9.
9.9 Subject to any express provisions to the contrary nothing in this Agreement is intended to have the effect of contracting out of any of the provisions the PPSA.

10. Defects, Warranties and Returns, Competition and Consumer Act 2010 ("CCA")

10.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions.
10.2 The Company's Goods are covered by a warranty against defective parts, with the exclusion of batteries and consumables, for a three (3) year period commencing from the date the Company installed the Goods at the installation address ('**Parts Only Warranty'**). To the extent a claim falls under the Parts Only Warranty, the warranty covers the repair and/or replacement of such failed component free of charge at the installation address. If the Customer wishes to make a claim under the Parts Only Warranty, it must notify the Company of the full details of the defect together with proof of purchase as soon as reasonably possible after any such defect becomes evident. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following notification if the Customer believes the Goods or would have reason to believe are defective in any way. The decision to repair or replace the component the subject of the Parts Only Warranty will be entirely at the discretion of the Company.
10.3 The Parts Only Warranty only applies to the Goods installed by the Company and does not cover any parts not supplied by the Company.
10.4 The benefits conferred by the Parts Only Warranty are in addition to all other rights and remedies in respect of the Goods which the Customer has under the CCA. Nothing in the Parts Only Warranty has the effect of excluding, restricting or modifying those rights.
10.5 The Company warrants that the Services provided will be performed substantially in accordance with the agreed upon scope of Services for a three (3) year period, commencing from the date the Company provides the Services to the Customer ('**Services Only Warranty'**). To the extent that a claim falls under the Services Only Warranty, the Company will rectify any defect in the Services carried out by the Company. If the Customer wishes to make a claim under the Servies Only Warranty, it must notify the Company of the full details of the defect together proof of payment as soon as reasonably possible after any such defect becomes. The Customer shall afford the Company an opportunity to inspect and test the Services within a reasonable time following notification if the Customer believes the Services are defective in any way. The decision to replace or rectify any of the Services the subject of the Services Only Warranty will be entirely at the discretion of the Company.
10.6 The Services Only Warranty does not extend to any claims caused by:
(a) alterations, modifications or changes made independently (and without the prior written consent of the Company) by you and/or any third party to the Services performed by the Company;
(b) any failure by you to properly maintain the Services;
(c) any failure by you to follow any instructions or guidelines provided in any instruction manuals, user guides or any similar documentation for the Services;
(d) the continued use of the Services after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user;
(e) fair wear and tear, or
(f) any accident or act of God.
10.7 The Company's Goods and/or Services come with guarantees that cannot be excluded under the CCA. For major failures with the Services, the Customer is entitled:
(a) to cancel its Services contract with us; and
(b) to a refund for the unused portion, or to compensation for its reduced value.
10.8 The Customer is also entitled to choose a refund or replacement for major failures with Goods. If a failure with the Goods and/or Services does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to a refund for the Goods and to cancel the contract for the Services and obtain a refund of any unused portion. The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods and/or Services (**Non-Excluded Guarantees**).
10.9 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
10.10 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and

conditions including but not limited to the quality or suitability of the Goods and/or Services. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

10.11 If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of the CCA.

10.12 If the Company is required to replace the Goods and/or Services under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods and/or Services.

10.13 If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card provided to the Customer by the Company at the Company's sole discretion;
(b) limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods;
(c) otherwise negated absolutely.

10.14 Subject to this clause 10, returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 10; and
(b) the Company has agreed that the Goods and/or Services are defective; and
(c) the Goods and/or Services are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
(d) the Goods and/or Services are returned in as close a condition to that in which they were delivered as is possible.

10.15 Notwithstanding clauses 10.1 to 10.14 (inclusive) but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

(a) the Customer failing to properly maintain or store any Goods and/or Services;
(b) the Customer using the Goods and/or Services for any purpose other than that for which they were designed;
(c) the Customer continuing the use of any Goods and/or Services after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Customer failing to follow any instructions or guidelines provided by the Company; or
(e) fair wear and tear, any accident, or act of God.

10.16 In the case of second hand Goods and/or Services, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods and/or Services prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Company has agreed to provide the Customer with the second hand Goods and/or Services and calculated the Price of the second hand Goods and/or Services in reliance of this clause 10.16.

10.17 The Company may in its absolute discretion accept non-defective Goods and/or Services for return in which case the Company may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods and/or Services plus any freight costs.

10.18 The Company will take all reasonable endeavours to ensure that its employees, its officers and its agents are free from injury and illness when in attendance with the Customer and at the nominated installation address. Provided reasonable endeavours were taken, the Company is not liable for any loss or damage caused by such injury or illness of the Company's employees, officers or agents.

10.19 This clause 10 is subject to clauses 5 and 6.

10.20 Notwithstanding anything contained in this clause 10, if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.

11. The Competition and Consumer Act 2010 ("CCA") and Fair Trading Act 1989 ("FTA")

11.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA and the FTA in each of the States and Territories of Australia except to the extent permitted by those Acts where applicable.

12. Personal Guarantee

12.1 If the Customer enters into this Agreement in its capacity as a company, trustee, partnership, association, corporation, government, governmental authority, instrumentality, state or agency of a state, the directors or individuals exercising control over the entity (as the case may be) (Guarantors) unconditionally and irrevocably guarantee to the Company the due and punctual payment of all the obligations of the Customer under this Agreement, including the payment of any money and indemnifies the Company against all loss, damage, costs and expenses suffered or insured by the

Company as a result of any failure to pay in a due and punctual manner any monies owed or as a result of any breach of any of the covenants and conditions contained in or implied by this Agreement.

12.2 The liability of the Guarantors is absolute and will not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Guarantors from their obligations in whole or in part including:

(a) the grant to the Customer or any other person of any time, waiver or other indulgence or concession, or the discharge or release of any other security held by the Company;
(b) any transaction or arrangement that may take place between the Company and the Customer or any other person;
(c) if an Insolvency Event effects the Customer;
(d) the Company exercising or refraining from exercising any other security or any of the rights, powers or remedies conferred on it by law or by this Agreement;
(e) the Customer's obligations under this Agreement or any part of it being or becoming wholly or partially illegal, void, voidable, or unenforceable;
(f) the failure by the Company to give notice to the Guarantors of any default by the Customer under this Agreement; or
(g) any legal limitation, disability, incapacity or other circumstances related to the Customer.

12.3 Each of the Guarantor's obligations under this Agreement:

12.4 are a principal obligation and will not be treated as ancillary or collateral to any other right or obligation however created or arising;

12.5 may be enforced against the Guarantor without the Company first being required to exhaust any remedy it may have against the Customer or to enforce any security it may hold with respect to the Customer's obligations under this Agreement;

12.6 is a continuing guarantee and indemnity for the whole of the Customer's obligations to the Company and is irrevocable and remains in full force and effect until discharged; and

12.7 will not be considered as wholly or partially discharged by the performance at any time of any of the Customer's obligations to the Company or by any settlement of account or by any other matter or thing whatever and will apply to the present and future scope of the Customer's obligations to the Company.

13. Default & Consequences of Default

13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per annum and such interest at such a rate after as well as before any judgment.

13.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including any legal costs on a solicitor and own Customer basis and the Company's collection agency costs.

13.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods and/or Services to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause 13.3.

13.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event if the Customer suffers and Insolvency Event.

14. Notices and Material

14.1 Any written notice given under these terms and conditions shall be deemed to have been given and received by handing the notice to the other party, in person; by leaving it at the nominated address of the party, by sending it by registered post to the nominated address of the party or if sent by email to the other party's last known email address.

14.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

14.3 The Company may send to the Customer such promotional material as the Company considers relevant to the Customer from time to time to the Customer's last known address and/or email address.

15. General

15.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 The expiry or termination of these terms and conditions does not affect the rights which have accrued before that expiry or termination or any rights and obligation of the parties which survive the expiry or termination.

15.3 Any reference in these terms and conditions to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended, extended or re-enacted.

15.4 These terms and conditions and any contract to which they apply shall be governed by the laws of the State of Queensland and each party submits to the non-exclusive jurisdiction of the courts of the State of Queensland.

15.5 The Customer acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

(a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this contract; and/or

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Company in respect of the Good and/or Services.

15.6 In the event such an error and/or omission occurs in accordance with clause 15.5, and is not attributable to the negligence and/or wilful misconduct of the Company; the Customer shall not be entitled to treat this Agreement as repudiated nor render it invalid.

15.7 The Company shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.

15.8 In the event of any breach of this Agreement by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services.

15.9 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Company nor withhold payment of any invoice because part of that invoice is in dispute.

15.10 The Company may license, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing the Company is fully discharged from its obligations to the Customer.

15.11 The Customer agrees that the Company may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change in writing.

15.12 This Agreement is personal to the Customer and the Customer may not assign the agreement without the Company's express written consent.

15.13 Neither party shall be liable for any breach of contract or liable for any defaults, delays, or failures to perform any of the party's obligations under the contract due to but not limited to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

15.14 The Customer warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

15.15 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.