

## TERMS AND CONDITIONS OF TRADING (2008)

### 1. DEFINITIONS

In these Terms and Conditions:

- (a) "Applicant/s" means the Director or Directors or person or persons described as Applicant/s in the Application.
- (b) "Application" means the Application for Credit Account attached hereto that forms part of these Terms and Conditions.
- (c) "Business Hours" means between the hours of 8:30am and 5:00pm weekdays but excluding public holidays.
- (d) "Client" means the company, person or persons described as Client in the Application.
- (e) "Goods" means the goods and/or services described in the Quotation/s, Proposal/s, Project Implementation Plan/s and Invoice/s for goods sold and/or services rendered to the Client by the Supplier at the Client's or Applicant's/s' request.
- (f) "Indirect and Consequential Loss" means loss of profit, loss of revenue, loss of opportunity
- (g) "Intellectual Property" means intellectual property rights of any kind including rights in or relating to an invention, discovery or new process (whether patentable or not), copyrights, trademarks, service marks, patents, designs, semi-conductor or circuit layout rights, trade, business or company names, rights to web sites or domain names, computer hardware and software, internet protocol addresses and any other rights to the registration of such rights (whether created in Australia or elsewhere and whether registered or not and whether protected by statute or not and including formulae and know-how).
- (h) "Invoice" means a tax invoice (for the purposes of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended, supplemented or replaced from to time).
- (i) "Project" means that piece of work that has been defined and agreed between the Supplier and the Client that sets out the deliverables within an agreed timeframe and budget and as is set out in the Proposal and Project Implementation Plan.
- (j) "Statement of Work" means a proposal or quotation or purchase order relating to the Services to be performed by the Supplier that is agreed by the parties which describes the Services and any deliverables to be supplied by the Supplier.
- (k) "Supplier" means **L7 Solutions Pty Ltd ACN: 108 279 778 ABN: 78 108 279 778**
- (l) "Supplier Maximum Liability Amount" means an amount equal to the aggregate amount of purchase prices for Services delivered or to be delivered under the Contract, paid or payable by the Client to the Supplier.
- (m) "Terms and Conditions" means the Terms and Conditions of Trading contained herein.
- (n) "Warranty" means the warranty of the manufacturer of the Goods referred to herein and in Quotations, Proposal/s, Project Implementation Plan/s and Invoice/s of the Supplier.

### 2. GENERAL

These Terms and Conditions form part of the Application and come into effect upon acceptance by the Supplier of the Client's fully-completed Application. The Supplier shall communicate its acceptance or rejection of an Application by providing the Client with written notice within 21 (twenty-one) days of receipt of the Application. All written notices from the Supplier shall be deemed to have been given and received in accordance with Clause 8 (service of notices) contained in these Terms and Conditions.

### 3. VARIATION

These Terms and Conditions may be amended, replaced, or deleted from time to time by the Supplier and those Terms and Conditions so altered shall bind the Supplier and the Client after notice of the altered Terms and Conditions has been forwarded to the Client in accordance with these Terms and Conditions. Any request by the Client for variation of these Terms and Conditions shall be made in writing to the Supplier and if the Supplier accepts any such variation, such acceptance shall be made in writing to the Client in accordance with these Terms and Conditions. Unless expressly accepted in writing by the Supplier prior to delivery of the Goods, any variations of or additions to these Terms and Conditions in a Client's purchase order or order form shall be deemed to be inapplicable. The Supplier shall have an absolute discretion to refuse to make any amendment to these Terms and Conditions.

### 4. PLACING AN ORDER

Where the Client places an order with the Supplier, such order shall be made by way of email, facsimile, telephone, Australia Post or hand-delivery as follows:-

- (a) by email to: [solutions@l7.com.au](mailto:solutions@l7.com.au)

- (b) by facsimile to: (08) 9221 8199
- (c) by telephone to: (08) 9221 7744
- (d) by Australia Post to: PO Box 3044 Adelaide Terrace Perth WA 6832
- (e) by hand-delivery either personally or via courier to: Level 14 256 Adelaide Tee Perth WA 6000

If a Client places an order by telephone in accordance with Clause 4(c) above that order must be confirmed in writing by the Client within twenty-four (24) hours of such order in accordance with Clauses 4(a), 4(b), 4(d) and 4(e) above.

Where the Client requires a purchase order number to be quoted on the Invoice(s) issued by the Supplier to the Client, the Client must provide a written purchase order clearly citing the relevant purchase order number within twenty-four (24) hours of such order in accordance with this Clause 4 .

## **5. QUOTATIONS**

Quotations are valid for a period of thirty (30) days from date of issue by the Supplier or as otherwise specified in the Quotation. Prices given in any Quotation by the Supplier are applicable to that Quotation only and will not apply in any other instance. Any person who accepts the Quotation warrants that he is the Client or is duly authorised by the Client to place the order.

## **6. VALIDITY**

Unless otherwise stated therein all Quotations, Proposals and Tenders are issued subject to confirmation by the Supplier on receipt of an order.

## **7. CHANGE IN ADDRESS AND/OR OWNERSHIP**

The Client and the Applicant/s must advise the Supplier in writing of any change of ownership of the Client or of any change of address for forwarding of invoices, statements, accounts and notices, no later than fourteen (14) days prior to any such change of address or proposed change of ownership and the Client shall remain liable for payment for all Goods supplied to the Client until such time as the Supplier receives written notice of such change or changes and releases the Client on terms satisfactory to it. The Supplier may withhold such release in its absolute discretion.

## **8. SERVICE OF NOTICES**

Any notice given by the Supplier to the Client shall be deemed to have been properly given if such notice is either posted to the last known trading address of the Client or to the address to which the Supplier normally renders its accounts to the Client or by transmitting such notice by facsimile transmission to the last known facsimile number of the Client or by electronically forwarding such notice by email to the last known email address of the Client. Receipt of such notices shall be deemed to have occurred TWO working days after posting or the day the facsimile transmission is transmitted or the electronic forwarding is emailed by the Supplier.

## **9. PRICES**

9.1 All reference to monetary sums and/or arrangements in the Contract is in Australian dollars. Pricing for Goods is based on Business Hours deployment.

9.2 Prices for Goods that are quoted "ex-stock" are firm for thirty (30) days from the date of Quotation or Proposal subject to existing stock being available.

9.3 Goods quoted "ex-stock" are subject to prior sale by the Supplier unless it is otherwise stated in writing in the Quotation or other correspondence.

9.4 Prices for Goods that are not quoted "ex-stock" are based on prices quoted to the Supplier by its suppliers and the rates of freight, foreign currency exchange, insurance premiums, customs duties, subcontracted labour, taxation, supply or usage known to the Supplier at the time of Quotation. Unless otherwise stated, in the event of any increase in these rates or in the price of components, services, products or goods quoted to the Supplier by its shippers before acceptance of any order or prior to delivery of the Goods to the Client then the cost to the Supplier associated with such increase/s shall be added to and form part of the purchase price and be payable by the Client accordingly, PROVIDED THAT notwithstanding the preceding provisions of this clause the cost of any increases in labour or labour-related overheads or materials that occur following the time of Quotation or acceptance of the Client's order by the Supplier but before delivery of the Goods, shall, unless otherwise stated in writing be added to the purchase price of the Goods that are being supplied by the Supplier.

9.5 If any pricing discount is agreed by the Client subject to a certain minimum quantity or value of Goods being purchased by the Client in a specified time period and the Client does not honor the purchase of the quantity or value specified within the period, then the Supplier shall be entitled to invoice the Client at the price per unit then normally charged by the Supplier for sales of similar quantities and delivery conditions.

## **10. GOODS AND SERVICES TAX, ETC.**

All prices quoted are exclusive of the Goods and Services Tax (GST) unless otherwise stated. Prices quoted as "firm" are also subject to increase if there are changes in taxation. All such taxes shall be payable by the Client and may be added to the purchase price by the Supplier as appropriate. It is the sole responsibility of the Client to provide written evidence of any exemption claimed for GST or other taxes or duties, and any error or omission in

such documentary evidence shall be to the account of the Client including penalties or fines levied by any competent authority in respect to such error or omission.

#### **11. STAMP DUTY, ETC.**

All legal costs, stamp duty and other expenses incurred by the Supplier in respect of any Application, the Contract or any written agreement with the Client of whatsoever nature, any guarantee, security document or other documentation required for the trading between the parties and other costs incidental thereto, shall be paid by the Client upon being invoiced by the Supplier to the Client.

#### **12. EXPENSES, ETC.**

The Client shall pay to the Supplier any costs, charges and expenses incurred in its enforcing its rights under the Terms and Conditions contained herein including but not necessarily limited to any Collection Agency commission, fees, costs and expenses or solicitors' fees, costs and expenses (on an indemnity basis) howsoever incurred and due and payable by the Supplier to such agent or solicitor as a consequence of any default by the Client or Applicants under the provisions of these Terms and Conditions AND the liability of the Client to pay such commission, fees, costs or other expenses associated therewith, arises immediately any account of the Client is placed in the hands of such Collection Agency or solicitor.

#### **13. PAYMENT TERMS**

13.1 The Client shall, unless otherwise agreed in writing, pay to the Supplier all monies owing pursuant to the Contract within fourteen (14) days of date of Invoice for the Goods sold in relation to which the monies are owed.

13.2 If payment is not made in accordance with these Terms and Conditions then all monies owed to the Supplier by the Client shall immediately become due and payable and shall be paid by the Client within seven (7) days of the date of demand and the Supplier shall be entitled to charge and be paid interest on all overdue accounts on the outstanding balance of the Invoice from the date of the Invoice until the date of actual payment on a daily balance basis at a rate of interest pursuant to Section 152 of the Supreme Court Act 1935 (WA), in addition to any costs associated with recovering the debt.

13.3 Notwithstanding that the Client may conduct a credit facility with the Supplier, the Supplier shall not be bound to deliver Goods to the Client until all monies owing and overdue to the Supplier by the Client for prior orders and/or requests are paid to the Supplier. If the Supplier elects as a result of the Client's prior indebtedness to the Supplier not to deliver Goods, the delivery or completion date referred to in any request or order shall be replaced by a date to be specified by the Supplier after the date of satisfaction of the Client's prior indebtedness to the Supplier.

13.4 Any failure by the Supplier to insist upon strict performance of any term or condition of the Contract for the granting of a temporary extension of time in which to pay, between the Client and the Supplier or any term or condition hereof shall not constitute nor be construed or be taken either directly or by implication as a waiver thereof or a waiver of any similar or subsequent breach and the rights of the Supplier to enforce these Terms and Conditions and those of the Contract shall remain valid and subsisting.

13.5 Payment is deemed to have been made upon receipt of the full amount of each Invoice issued to the Client by the Supplier by either direct deposit into the Supplier's bank account or if payment is received by cheque from the Client, the clearance of that cheque by the Client's bankers.

13.6 The Client shall pay all monies owed to the Supplier without any set-offs or counter claims whatsoever.

#### **14. DELIVERY**

14.1 Unless otherwise specified, the time for delivery of the Goods shall start to run upon the resolution of all technical and commercial terms including receipt by the Supplier of any advance payment and of any applicable security for the remaining purchase price.

14.2 The Supplier's ability to deliver the Goods is expressly contingent on the timely performance by Client of all of the Client's obligations under the Quotation and these Terms And Conditions. The Supplier is not liable to the Client or otherwise for any delay in delivery of the Goods.

14.3 Times or dated of delivery of the Goods provided to the Client are estimates only unless expressly guaranteed by the Supplier in the Quotation. Every reasonable effort will be made to give delivery on time, however failure to do so shall not confer a right of cancellation or refusal of delivery on Client or render Supplier liable for any damages direct or indirect sustained by the Client as a result thereof.

14.4 If the Supplier is unable to supply the Goods in accordance with any agreed time schedule arising from the fault of the Client or the Client's agents or subcontractors, the Client shall nevertheless pay the Supplier in accordance with clause 13.

14.5 If the Client is unable or unwilling to accept physical delivery of the Goods at the time agreed or otherwise specified, the Supplier shall arrange for the storage of the Goods at the risk and cost of the Client, including all transportation, warehousing and other consequential costs.

#### **15. FORCE MAJEURE**

15.1 Should the Supplier be prevented from providing Goods on any order at any time by reason of an Act of God or strikes, lockouts, riots, fires, inclement weather, war, insurrection or civil disturbance, failure of

information technology systems, accident, non-delivery of materials or parts to the manufacturers by their suppliers, delays loss or damage in transit, the unavailability of shipping or air cargo space, government action or any other causes or contingencies beyond the Supplier's control or the control of the Supplier's suppliers, the time for providing such Goods to the Client shall be extended until the cause or causes preventing such delivery, provision and/or services has ceased or the order or request has at the Supplier's option been annulled without any penalty or expenses to or claims against the Supplier AND FURTHER should the Supplier be prevented from providing the Goods requested by the Client by reason of any of the causes aforementioned, the Supplier shall be entitled to provide or deliver such part of the Goods as it is able and the Client shall accept those Goods and the Supplier shall be entitled to charge the Client for those Goods pursuant to the request of the Client and the Client shall pay progress Invoices for partial supply of Goods.

#### **16. SALES AND TECHNICAL LITERATURE**

Illustrations and descriptive literature supplied by the Supplier to the Client represent generally the goods specified therein but may not comply in all respects with the Goods that are the subject of the Quotation or supply. Due to a policy of continued product and services improvement, technical specifications are subject to change without notice by the Supplier at its sole discretion.

#### **17. GOODS MANUFACTURED (by the Supplier's suppliers) SPECIFICALLY FOR CLIENT TO CLIENT'S DESIGN**

Where the Goods are provided by the Supplier and/or manufactured by the Supplier's suppliers on the basis of information provided to the Supplier by the Client, the Supplier shall not be liable for and the Client releases the Supplier from any claims, demands, actions, proceedings and the like in respect of faulty or defective design to the extent that the fault or defect is attributable to the information or lack of information provided by the Client to the Supplier. The Client shall unconditionally indemnify the Supplier and hold it harmless against product liability and any other direct claims, demands, actions or proceedings made, brought or maintained against the Supplier by a third party arising out of defects in the design of the Goods to the extent that such defects are attributable to information provided by the Client to the Supplier or the failure by the Client to provide all material information to the Supplier.

#### **18. GOODS MANUFACTURED WITH LABEL OTHER THAN THAT OF MANUFACTURER**

The Supplier may, in its absolute discretion, accept orders and have its manufacturer's manufacture Goods of the manufacturer's proprietary design that are named, badged or labelled with a name or logo other than that of the Supplier's suppliers. In such cases, the Client covenants that the Client shall not:

- (a) market or use the Goods otherwise than in strict accordance with the manufacturer's specifications provided to the Client by the Supplier; and/or
- (b) misrepresent the Goods to third parties as being designed or manufactured by the Client.

The Client covenants with the Supplier that the Client shall indemnify and keep indemnified the Supplier against product liability and any other claims, demands, actions or proceedings made, brought or maintained against the Supplier by a third party attributable to the Client giving a warranty or making a representation in respect of the Goods extending beyond the terms of the manufacturer's Warranty in these Terms and Conditions.

#### **19. SECURITY**

The liability of the Client and/or Applicants shall not be abrogated, prejudiced or affected by the granting of time or credit or any indulgence or other concession or by any compounding, compromise, release, abandonment, waiver, variation, relinquishment or renewal of any security or any of the rights of the Supplier or by any neglect or omission to enforce any such rights. In the event of bankruptcy, liquidation or any scheme of arrangement with any creditors of the Client or Applicant/s THEN the Client and/or Applicant/s will not prove any claim in competition with the Supplier.

#### **20. INSTALLATION**

The Client acknowledges that the Goods must be installed and earthed (where applicable) in strict accordance with the manufacturer's specifications and all relevant Australian electricity and safety standards. The Client shall ensure that the Supplier, its employees, contractors and agents have full and safe access to the Client's premises and equipment at all reasonable times and are provided with such information, facilities and assistance as they reasonably require to enable the Supplier to perform its obligations under the Contract.

#### **21. NOTIFICATION OF NONCONFORMITY OF GOODS**

Subject to the rights, if any, conferred on the Client by the Trade Practices Act 1974 (Cth) (TPA), the Client shall inspect all Goods provided by the Supplier to the Client immediately upon receipt thereof for defect or any shortage or other nonconformity to an order for Goods and in the event of any alleged defect or shortage or other nonconformity to any order, the Client shall notify the Supplier no later than seven (7) days from date of delivery of the relevant Goods. The Client shall be deemed to have accepted the condition and conformity of the Goods to the order unless the Supplier receives such notification within the specified period.

## **22. CANCELLATION OR RETURNS**

Subject to the rights, if any, conferred on the Client by the TPA:

- (a) the Client shall not return Goods for credit without prior written approval of the Supplier;
- (b) if Goods are returned for any reason other than not meeting the manufacturer's specifications or an order is cancelled for any reason, a re-stocking fee of fifteen per cent (15%) of the purchase price of the relevant Goods will apply;
- (c) should any Goods returned not be in an as-new condition or should Goods be missing any items such as, but not limited to, manuals, cables and packaging, the Client will be invoiced for the cost to bring the Goods to an as-new condition;
- (d) the Client shall pay all freight, customs duty, taxation, transaction costs, import/export costs, finance costs, labour costs, penalties or fines, transport costs, and insurance charges relating to the return of the Goods to the Supplier or (if applicable) its manufacturer.

## **23. REPAIRS AND SERVICE**

Subject to any conditions or implied warranties that may be conferred on the Client by the TPA:

- (a) the Supplier gives no express warranty of any type; and
- (b) the Client shall pay all freight, customs duty, transaction costs, import/export costs, transport costs, and insurance charges, materials, consumables and labour costs relating to Goods returned to the Supplier or (if applicable) its manufacturer for repair.

## **24. LOSS OR DAMAGE IN TRANSIT OR STORAGE**

Any liability of the Supplier for loss or damage during transit or storage by the Supplier to any Goods or part thereof purchased by the Client is limited at the sole option of the Supplier either to the replacement or part thereof of such Goods or to credit the account of the Client with the value of such Goods or part thereof damaged.

## **25. PROCESS FOR CLAIM UNDER MANUFACTURER'S WARRANTY**

25.1 In order to affect any claim under the manufacturer's Warranty the Client or Applicant/s must firstly contact the Supplier to obtain instructions on the inspection and/or shipping of the Goods back to the Supplier.

25.2 The Supplier reserves the sole right to determine whether any repair and/or replacement of Goods under the terms of the Warranty be carried out in situ or at a repair depot nominated by the Supplier or at the Supplier's premises.

25.3 The Client is responsible for all freight, insurance, transaction costs, and duties for the delivery and return of the Goods returned to and or from the Supplier and for all travel costs of representatives of the Supplier to and from the site at which the Goods are located and accommodation costs involved when inspecting and/or repairing the Goods and the Client and the Applicant/s agree that the Supplier is entitled to suspend compliance with its obligations under the manufacturer's Warranty until the Client pays all such costs.

## **26. MANUFACTURERS' WARRANTIES**

26.1 For the period of the term of the manufacturer's Warranty from the date of original dispatch of the Goods to the Client, the Goods will be, as based on the manufacturer's Warranty, free from defects in materials and workmanship and will perform the functions specified in the manufacturer's specifications. The manufacturer's Warranty does not and will not cover:

- (a) any defects if the Goods are not installed strictly in accordance with the manufacturer's recommendations including proper earthing;
- (b) any defects arising from any cause other than faulty materials or workmanship;
- (c) any defect notified to the manufacturer after the Goods have been abused, misused or operated under conditions exceeding the manufacturer's specifications;
- (d) any defect notified to the manufacturer after the Goods have been overhauled, altered, modified, repaired or interfered with by any person not authorised by the manufacturer;
- (e) any defect resulting from the negligence or maltreatment, inattention or interference of the Client, its servants, employees or any other third party;
- (f) the repair or replacement of component parts within the Goods where those parts have been subjected to conditions beyond the manufacturer's written specifications;
- (g) any defect in the Goods notified to the manufacturer later than the applicable term of the manufacturer's Warranty from the original despatch of the Goods to the Client;
- (h) With regard to products using batteries, the Client and the Applicant/s acknowledge that batteries are consumable items, which have an undetermined product life that depends upon conditions beyond the manufacturer's control including but not limited to environmental conditions of use and storage, technical application, and operational history of discharge and recharge. Batteries are to be replaced by the Client, at the Client's cost, at regular intervals.

26.2 Except as provided in these Terms and Conditions and except to the extent that the TPA or any other applicable legislation implies conditions and warranties into any agreement between the manufacturer or the Supplier and the Client and prohibits their exclusion, all express and implied warranties, guarantees and conditions under common law as to merchantability, description, quality, suitability or

fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are hereby expressly excluded and the manufacturer or the Supplier shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the manufacturer's or the Supplier's negligence or in any way whatsoever.

- 26.3 Where the Goods are other than those of a kind ordinarily acquired for personal, domestic or household use or consumption the manufacturer's or the Supplier's liability for breach of a condition or warranty implied by Division 2 of Part V of the TPA (other than Section 69) is hereby limited to, in the case of Goods, any one or more of the following at the discretion of the manufacturer and/or Supplier:
- (a) replacement of the Goods or supply of equivalent Goods;
  - (b) repair of the Goods
  - (c) payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
  - (d) payment of the cost of having the Goods repaired.
- 26.4 Where the Goods are other than those of a kind ordinarily acquired for personal, domestic, or household use or consumption the manufacturer's liability to the Client under Section 74H of the TPA is limited to a liability to pay to the Client an amount equal to:
- (a) the cost of replacing the Goods;
  - (b) the cost of obtaining equivalent Goods; or
  - (c) the cost of having the Goods repaired whichever is the lowest amount.
- 26.5 (a) If the Goods have been either replaced or repaired in response to a claim under the manufacturer's Warranty then the Warranty shall only continue to apply to the replaced or repaired Goods until the expiration of the original warranty period.
- (b) The exclusion of liability contained in Clause 26.3 shall also apply to all Goods supplied by the manufacturer in connection with the repair or replacement of the Goods again.
  - (c) The limitation of liability contained in Clauses 26.4 and 26.5 shall also apply to all Goods (other than those of a kind ordinarily acquired for personal, domestic or household use or consumption) that are supplied or provided by the manufacturer in connection with the repair or replacement of the Goods again.

## **27. OWNERSHIP**

27.1 Unless otherwise agreed, risk shall pass to the Client upon delivery of the Goods.

27.2 Notwithstanding that risk may have passed to the Client and/or the Applicant/s, title in and ownership to any Goods sold to the Client by the Supplier shall not pass to the Client but shall remain with the Supplier until receipt by the Supplier of the full purchase price of the Goods as invoiced by the Supplier.

27.3 The Client and the Applicant/s shall not sell, offer for sale or encumber or in any other way deal with or part with possession thereof except in the normal course of business. If the Client or Applicant/s on-sells the Goods to a third party prior to paying the Supplier the purchase price thereof, the Supplier shall be entitled to, and be paid within the Supplier's Terms and Conditions as specified herein, the full purchase price as invoiced by the Supplier of those Goods so on-sold.

27.4 The Client and Applicant/s shall at all times keep the Goods insured and maintain the Goods in a safe and marketable condition.

27.5 In the event that the Client defaults in payment of any monies owing to the Supplier or any term of a contract between the Client and/or the Applicant/s and the Supplier or if any credit facility is terminated by the Supplier, the Supplier shall have the right at its election (without giving notice) to the immediate return of the Goods and shall be entitled, and is hereby expressly authorised by the Client and the Applicant/s to enter upon the premises of the Client or Applicant/s or any other premises at which the Goods are stored to retake possession of the Goods supplied to the Client AND the Client and Applicant/s hereby expressly authorise and allow the Supplier or its representative, servant, agent or employee to enter any premises upon which the Goods are housed or stored for the purpose of retaking possession thereof.

27.6 The Supplier retains the right of resale of the Goods in the event that it or its agent retakes possession of the Goods and to be paid by the Client any and all shortfall between that purchase price and the debt owing to the Supplier AND for the cost of repair where damage to the Goods has occurred AND together with the damages suffered by the Supplier as a result of the default by the Client and/or Applicant/s such damages to include but not be limited to the legal costs and other expenses incurred in retaking possession of the Goods.

27.7 The Client and Applicant/s shall have no claim against the Supplier for any costs, losses, damages, expenses or any other monies or loss of whatsoever nature suffered by the Client and/or Applicant/s resulting from such repossession or attempted repossession.

## **28. INSURANCE**

28.1 Until final payment has been made by the Client to the Supplier with respect to the Goods, the Client shall insure all Goods for which it has had risk of loss against loss, damage by theft, fire, or other event for the full replacement value. Upon request by the Supplier, the Client shall name the Supplier as an additional insured (co-insured) and/or demonstrate to the Supplier's satisfaction evidence of such required insurance. All insurance proceeds shall be first used to pay the Supplier any outstanding portion of the purchase price of the Goods that were

lost, damaged or destroyed. Any excess proceeds shall belong to the Client. The Client hereby waives its rights of subrogation against the Supplier.

## **29. COMMISSIONING OF THE GOODS**

29.1 Unless otherwise expressly specified in a Quotation, the Supplier shall have no obligation to install, commission, start up, test (other than as provided in clause 32 (REPRESENTATIONS) thereof) or maintain the Goods.

29.2 If the Supplier expressly agrees to install, commission, start up, test or maintain the Goods, the Client will have the site clear and available and will, if required, provide water, steam, electricity, gas, fuel and other services essential to the installation, commissioning and continued functioning of the Goods prior to the arrival at the site of Supplier's employees or contractors.

## **30. PRIVACY ACT, 1988 (Cth)**

- (i) The Client and Applicant/s acknowledge that the Supplier has informed him, her or them in accordance with section 18N(1)(a) of the Privacy Act, 1988 that certain items of personal information about the Client and Applicant/s, contained in the Application and permitted to be kept on a credit information file might be disclosed to a Credit Reporting Agency.
- (ii) The Client and Applicant/s agree that in accordance with the provisions of section 18K (1) (a) (h) and/or section 18L (4) of the Privacy Act, 1988 that disclosure by a Credit Reporting Agency and/or use by the Supplier of the relevant information referred to in those sections may occur for the purposes of assessing the Application and the Client and Applicant/s acknowledge that this agreement shall continue to have effect to the duration of this Contract in the event that the Supplier approves the Application under the Terms and Conditions contained herein.
- (iii) The Client and Applicant/s HEREBY unconditionally agree that the Supplier shall be entitled to use the services of a Credit Reporting Agency from time to time to obtain information concerning the Client and/or the Applicants (and, with the consent of its Directors where the Client is a company, its Directors) in order to assess the Client's credit worthiness.
- (iv) The Client and Applicant/s acknowledge and agree and: (a) where the Applicant is a partnership, each of its Partners acknowledge and agree; (b) where the Applicant is a company, each of its Directors acknowledge and agree that:
  - 1. The Supplier may at any time, in relation to either the Applicant/s, a Partner or a Director, (a) disclose information contained in the Application concerning that person to: (i) a Credit Reporting Agency in accordance with Section 18E(8)c of the Privacy Act, 1988; (ii) another credit provider; (b) obtain a credit report from another credit provider about that person's commercial credit worthiness: (c) disclose information to another credit provider about that person's credit worthiness: (d) use information that concerns that person's commercial activities or credit worthiness pursuant to Section 18L(4) of the Privacy Act, 1988, following the receipt of a credit report for the purpose of assessing the Application (e) disclose a report concerning that person, or any information derived from such a report, to another credit provider who requests the report or information for the purpose of assessing an application by that person for credit.
  - 2. A Credit Reporting Agency in possession or control of a credit information file relating to either the Applicant/s or a partner or a director of the Client may disclose personal information contained in the file to the Supplier (a) pursuant to Section 18K(1)(a) or (b) of the Privacy Act, 1988, (b) pursuant to Section 18K(1) c of the Privacy Act, 1988.
- (v) The Client and Applicant/s HEREBY unconditionally agree and authorise the Supplier for the duration of the Contract and from time to time as the Supplier shall require, to seek information from a Credit Reporting Agency such consumer information about the Client and/or Applicant/s as shall be permitted to be kept by a Credit Reporting Agency, if the Application is for commercial credit AND to seek information about the Client and/or, Applicant/s as shall be permitted to be kept by a Credit Reporting Agency from time to time as the Supplier shall require, such commercial information if the Application is for consumer credit.
- (vi) The Client and Applicant/s HEREBY agree and authorise the Supplier to undertake any credit checking of trade references it requires now and from time to time to assess the Client's and/or the Applicant/s' ability to fully meet its and/or their obligations to pay the Supplier.
- (vii) If the Application is approved by the Supplier and the Client or Applicants name the Supplier as a reference to another party, the Client and Applicant/s hereby warrant that such other party shall be a credit provider as defined by the Privacy Act, 1988 and the Client and Applicant/s hereby authorise the Supplier to release to any such party any information in relation to the Client's account with the Supplier.
- (viii) The Client and Applicant/s hereby indemnify the Supplier against all losses or damages suffered by the Supplier in supplying that information to another credit provider and the Client and Applicant/s shall release the Supplier from all claims, demands, proceedings, suits, damages and losses of whatsoever nature suffered by the Client and/or Applicant/s arising therefrom.
- (ix) **Access to information:** The Client and Applicant/s may access any personal information that the Supplier

holds about it or them by contacting the Supplier's office on (08) 9221 7744.

### **31. DISPUTES**

31.1 Any dispute or difference arising under clause 29 (COMMISSIONING OF EQUIPMENT),36 (LIMITATIONS OF LIABILITY),31 (DISPUTES) and 32 (REPRESENTATIONS) hereof only shall be submitted to arbitration at the Institute of Arbitrators (WA) in accordance with and subject to the Institute of Arbitrators (WA) Rules for the Conduct of Commercial Arbitration.

### **32. REPRESENTATIONS**

32.1 Unless otherwise provided by any relevant legislation any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods is given in good faith but without any liability or responsibility on the part of the Supplier. The Client acknowledges that it has not relied upon or been induced by any representations of the Supplier not expressly set out in the Quotation or herein.

32.2 Any representation information or other data found in any advertisement catalogue, brochure or other document or other thing of the Supplier are approximate only and small derivations from there shall not invalidate the Contract (or part thereof) or be made the basis of any performance criteria. All drawings and technical data shall be in conformity with the Supplier's standard drafting procedures and the English language shall be used. The Client shall not make any changes to any drawings of the Supplier without the Supplier's prior written consent. If the Client changes any drawings without the Supplier's consent the Supplier may, at its sole discretion, invalidate any warranty given in respect thereof.

### **33. JURISDICTION**

The Contract shall be construed according to the laws of the State of Western Australia and the jurisdiction for the hearing of any dispute arising out of any contract between the Supplier and the Client and/or the Applicant/s for the sale of Goods shall be in the State of Western Australia.

### **34. ACCEPTANCE OF THIS APPLICATION FOR CREDIT**

If the Application is accepted by the Supplier and a credit facility is opened in the name of the Client with the Supplier, the Supplier shall notify the Client in writing within twenty-one (21) days of the date of the Application. The Client and/or the Applicant/s will not have a trading account on a credit account basis with the Supplier until and unless the Client receives that written notification of acceptance from the Supplier.

### **35. TERMINATION**

35.1 If:

- (a) the Client or Applicant/s fails to observe or perform any of the Contract;
- (b) any representations, warranties or undertakings made by the Client or Applicant/s are found to be incorrect or misleading when made;
- (c) either the Client or Applicant/s enters into any arrangement of whatsoever nature, whether formal or informal, with its or their creditors;
- (d) an encumbrance or security interest given by the Client or Applicant/s in favour of a third party other than the Supplier becomes enforceable;
- (e) there occurs in the opinion of the Supplier any change in the activities, financial standing or credit worthiness of the Client or Applicant/s which adversely affects its or their ability to perform or observe its or their obligations under the Contract;
- (f) the Supplier decides for any reason to cease to supply the Goods to the Client or the Applicant/s at anytime, with or without reason;

then the Supplier shall be entitled to terminate the Contract (in part (if applicable) or whole) forthwith and in such event, all monies owing by the Client to the Supplier shall become immediately due and payable and the Supplier shall have no obligation under this or any other contract to supply, or continue to supply, Goods to the Client.

35.2 If the Contract is terminated, Client shall indemnify the Supplier against all losses, damages and expenses incurred by the Supplier as a result of such termination which without in any way limiting the generality hereof shall include the value of any Goods supplied and work and labour performed to the date of termination not previously paid for together with the value of all work in progress in respect of the Goods in the course of manufacture and legal costs and disbursements calculated on a solicitor/client basis recovering such amounts. The Client shall pay all such loss, damages and expenses within fourteen (14) days from the date of receipt of notice specifying such losses, damages and expenses. If the Client fails to pay when so required, such losses, damages and expenses are recoverable by Supplier as liquidated and ascertained damages.

35.3 Any prepayments which may have been made to the Supplier in respect of the Contract and which have not already been otherwise allocated or appropriated shall be applied toward satisfaction of all and any moneys due to Supplier pursuant to the terms herein and any excess payment (if any) will be refunded by the Supplier to the Client.

### **36. LIMITATION OF LIABILITY**

### 36.1 Indirect and Consequential Loss

Notwithstanding any other provision of the Contract:

a) the Supplier has no liability to the Client, nor will the Client be entitled to make any Claim, in respect of any indirect or consequential loss incurred or sustained by the Client as a result of any act or omission of the Supplier (whether negligent or otherwise) or as a result of a breach of the Contract by the Supplier (except to the extent that the Supplier recovers under a policy of insurance under the Contract for indirect or consequential loss);

### 36.2 Limit Generally

a) The Supplier's liability to the Client in respect of any loss under the Contract in the aggregate for all Claims is limited to the greater of:

i) any amount recovered under insurance taken out or required to be taken out by the Supplier under the Contract; and

ii) the Supplier Maximum Liability Amount.

### 36.3 When Limits Do Not Apply

The Supplier's limitation of liability does not apply in respect of:

a) Loss arising in relation to damage to tangible property, personal injury, sickness or death;

b) Loss arising from a breach of confidence or misuse of Personal Information (as defined under the Privacy Act, 1988 (Cth));

c) Loss arising from any fraud, deliberate default, gross negligence or willful misconduct or any act or omission done or not done with a reckless disregard for the consequences, by the Supplier, its employees, or any other party for whom the Supplier is responsible.

## 37. NO SOLICITING

Subject to these Terms and Conditions, the Client must not, and must use its best endeavours to ensure that their Personnel do not, at any time:

(i) solicit, interfere with, or endeavour to entice away any employee of the Supplier; or

(ii) counsel, procure, or otherwise assist any person to do any of the acts referred to in this clause.

(b) Notwithstanding clause 37(a), the Parties have agreed that if during the period of engagement for a specific Statement of Work and for a period of 6 months following termination of the engagement of the specific Statement of Work of which an employee was engaged, then if an employee of the Supplier responds to an advertisement published by the Client that is targeted to a wide audience of potential applicants and an employee of the Supplier accepts an offer of employment with the Client, then the Client will pay the Supplier 50% of the Gross Commencement Salary (base salary plus superannuation at statutory percentage).

## 38. INTERPRETATION

Where the context so admits:-

(a) words importing the singular shall be deemed to include the plural and vice versa,

(b) words importing the masculine gender include all other genders and any obligation by two or more persons shall bind them jointly and severally AND any reference to any party shall include the administrators, executors and successors of that party (as the case may be),

(c) words importing persons include firms, corporations or other corporate bodies.

(d) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have corresponding meanings.

(e) the words "including", "such as", "particularly" and similar expressions do not imply limitation.

(f) the expression 'the Client' shall include any nominee of the Client as well as the persons signing these Terms and Conditions on behalf of the Client to whom credit may be given by the Supplier, alone, jointly or additionally to the Client specified herein.

(g) a reference to a deed, agreement (including this agreement) or other instrument or any provision of it is deemed to include a reference to that deed, agreement, instrument or provision as varied, supplemented, novated, assigned or replaced from time to time.

(h) the expressions 'Credit Reporting Agency', 'Commercial Credit' and 'Consumer Credit' have the same meanings as given these expressions in the Privacy Act, 1988 (Cth).

(i) a reference to a statute, regulation or provision of a statute or regulation ("statutory provision") includes a reference to that statutory provision as amended or re-enacted from time to time and a replacement statutory provision.

### L7 Solutions Pty Ltd

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