



## TERMS OF TRADE

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. DEFINITIONS

**Additional Charge** means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Seller's then current prices; and
- (b) expenses incurred by the Seller, at the Customer's request or reasonably required as a result of the Customer's conduct.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

**Customer** means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

**Goods** means any goods supplied by the Seller including those supplied in the course of providing Services.

**Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

**Loss** includes, but is not limited to, costs (including party to party legal costs and the Seller's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

**Order** means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

**PPS Law** means:

- (a) the Personal Property Security Act 2009 (Cth) (PPS Act) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

**Quote** means a written description of the Goods or Services to be provided, an estimate of the Seller's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

**Services** means the services to be provided by the Seller to the Customer in accordance with a Quote and these terms of trade.

**Seller** means Tramstar Pty Ltd [ACN 099 720 617] trading as Reglin Rubber or such other entity specified as the Seller of Goods or Services on the Quote and includes the Seller's agents and permitted assigns.

#### 1.2. INTERPRETATION

In these terms of trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Seller's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;



- (d) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
- (h) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
- (i) in all other cases, must be done on the next Business Day.

## 2. GENERAL

- (a) These terms of trade apply to all transactions between the Customer and the Seller relating to the provision of Goods and Services. This includes all quotations, contracts and variations. These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) The Seller may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.
- (d) These terms of trade shall not restrict, limit or avoid any provision under the Australian Consumer Law, and the parties acknowledge and accept that the terms of trade will be applied to the fullest extent where there is no legal conflict, or otherwise, to the extent permitted by law.

## 3. QUOTES

- (a) The Seller may provide the Customer with a Quote. Any Quote issued by the Seller is valid 21 days, unless otherwise specified in the Quote, which shall prevail.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include costs of delivery or installation of the Goods.
- (c) Quotes are based upon the cost of Goods and Services available at the time of preparation of the Quote and assume the timely supply by the Customer of any information that the Seller may require from the Customer in order to procure the ordered Goods.
- (d) Following provision of a Quote to the Customer, the Seller is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer completing an Order form and returning the form to the Seller.
- (e) The Seller reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Seller will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms of trade.



- (f) Quotes will specify the cost of the Supplier's Goods or Services in Australian dollars and unless otherwise specified, will not include any amount for GST.
- (g) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Seller.

#### 4. ORDERS

- (a) Every **Order** by the Customer for the provision of Goods or Services must be submitted in writing by the Customer to the Seller, and shall be subject to these terms of trade.
- (b) For any new Customer, the initial Order must be signed by the Customer or by an authorised representative of the Customer, which will constitute the Customer's acceptance of the terms of trade with respect to that initial Order, and all subsequent Order.
- (c) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods or Services ordered and a reference to the Seller's Quote to which that Order relates. Any costs incurred by the Seller in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (d) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Seller relating to that Order.
- (e) The Seller may in its absolute discretion, without any fault or liability to the Customer, refuse to provide any Goods or Services, where:
  - (i) the Goods are unavailable for any reason whatsoever;
  - (ii) the Supplier determines reasonably that the Customer does not have capacity to pay for the Goods or Services and the Customer ;
  - (iii) credit limits cannot be agreed upon or have been exceeded; or
  - (iv) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Seller, associated with the Customer under the same or another supply contract, has not been received by the Seller.
- (f) An Order cannot be cancelled without the prior written consent of the Seller. Where an Order is cancelled, the Customer indemnifies the Seller against any Losses incurred by the Seller as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.
- (g) A person signing these Terms and Conditions for and on behalf of the Customer is personally responsible for the due performance of the Customer's obligations as if the signatory was a Customer. If required by the Seller, the signatory will procure the execution of a guarantee and indemnity in favour of the Seller by the directors of the Customer that is a corporate or the committee members of a Customer that is an incorporated associated, in a form acceptable to the Seller's legal practitioner.

#### 5. VARIATIONS

- (a) The Customer may request that its Order be varied by providing a request in writing to the Seller. A request for a variation must be agreed to in writing by the Seller in order to have effect.



- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Seller or after the placement of an Order, the Seller reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Seller in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.
- (c) The Seller has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

## 6. INVOICING AND PAYMENT

- (a) The Seller may in its absolute discretion, issue an invoice to the Customer in any one or more of the following ways:
  - (i) prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Seller has not previously carried out work for the Customer or where the Seller chooses to do so;
  - (ii) at the end of each week before the Order is completed, the Seller may issue one or more invoices for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Seller's discretion either for work done to that point, work in the future or both) and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or
  - (iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Seller's charge for the work performed in completing the Order and for any Additional Charges.
- (b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:
  - (i) the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or
  - (ii) where no Quote has been provided by the Seller, the Seller's usual charges for the goods or services (or both) as described in the Order.
- (c) Unless clause 7 applies, the Customer must pay an invoice issued by the Seller to the Seller within 30 days of a valid tax invoice being issued to the Customer.
- (d) If any invoice is due but unpaid, the Seller may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (e) The Seller may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Seller.
- (f) The Customer is not entitled to retain any money owing to the Seller notwithstanding any default or alleged default by the Seller of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (g) Unless clause 7(g) applies, the Customer is to pay the Seller on demand interest at the rate of 10% per year on all overdue amounts owed by the Customer to the Seller, calculated daily.



- (h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Seller, are to be paid by the Customer as a debt due and payable under these terms of trade.
- (i) The Customer and the Seller agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

## **7. CREDIT**

These terms apply if the Seller accepts any order for Goods from the Customer on credit.

- (a) To the extent that there is any inconsistency between this clause 7 and any other clause in the terms of trade, the terms set out in this clause shall prevail.
- (b) The Customer has no entitlement to purchase Goods on credit unless, in the Seller's sole discretion, the Seller extends credit to the Customer.
- (c) Any Customer who wishes to purchase Goods on credit, must complete the Seller's Trade Credit Account Application Form, which must be signed by the Customer or an authorised representative of the Customer and approved by the Seller.
- (d) The Seller will reserve the right to, at any time and for any reason at the Seller's sole discretion, refuse the supply of any further Goods to the Customer on these credit terms. This applies regardless of whether the Seller has allowed the Customer to purchase of Goods on credit at any particular time. If at any time the Seller does refuse to grant the Customer credit for the purchase of Goods, this refusal does not affect the credit terms applicable to any amounts the Customer then owes the Seller for previous purchases.
- (e) If the Customer fails to comply with these terms or fails to pay any amount to the Seller when due, or becomes insolvent or bankrupt, the balance of the Customer's account will become due and payable immediately.
- (f) The Customer agrees that it will pay, without deduction or set off, the amount owing for Goods purchased by no later than the last day of the month following the date of the relevant invoice issue by the Seller from time to time unless otherwise agreed by the Seller in writing; ("due date").
- (g) Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank Cash Rate calculated daily and compounded monthly.
- (h) The Customer agrees to pay all costs and expenses (including legal costs) incurred by the Seller in connection with the recovery of overdue amounts and enforcing of any charge under this agreement.
- (i) If payment is not made within 60 days by the due date, the Seller may charge the Customer an administration fee of the greater of \$20.00 or 10% of the outstanding amount.

## **8. ADDITIONAL CHARGES**

- (a) The Seller may require the Customer to pay Additional Charges in respect of Costs incurred by the Seller as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Seller in order for it to provide the Goods or Services within the specified time frame (if any).
- (b) The imposition of Additional Charges may also occur as a result of:
  - (i) cancellation by the Customer of an Order where cancellation results in Loss to the Seller;



- (ii) storage costs for Goods not collected from the Seller within [number] weeks of the date on which the Goods are manufactured, fabricated, created or formed;
- (iii) photocopying, courier, packing or handling charges not included in the Quote;
- (iv) Government or council taxes or charges not included in the Quote; or
- (v) additional work required by the Customer or any other occurrence which causes the Seller to incur costs in respect of the Customer's Order additional to the quoted cost.

## 9. ACCEPTANCE OF GOODS

If the Customer fails to advise the Seller in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 5 Business Days of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

## 10. TITLE AND RISK

- (a) Risk in Goods passes to the Customer immediately upon delivery.
- (b) Property and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between the Seller and the Customer) due and payable to the Seller by the Customer has been fully paid.
- (c) Where Goods are supplied by the Seller to the Customer without payment in full, the Customer:
  - (i) is a bailee of the Goods until property in them passes to the Customer;
  - (ii) irrevocably appoints the Seller to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Seller with respect to the Goods under applicable law;
  - (iii) must be able upon demand by the Seller to separate and identify as belonging to the Seller Goods supplied by the Seller from other goods which are held by the Customer;
  - (iv) must not allow any person to have or acquire any security interest in the Goods;
  - (v) repossess the Goods if payment is not made in accordance with the invoice (or such longer time as the Seller may, in its complete discretion, approve in writing) of the supply of the Goods; and
  - (vi) the Customer grants an irrevocable licence to the Seller or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to the preceding sub-clause. The Customer indemnifies the Seller for any damage to property or personal injury which occurs as a result of the Seller entering the Customer's premises.
- (d) Where Goods are supplied by the Seller to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Seller in respect of those Goods, and:
  - (i) the Customer makes a new object from the Goods, whether finished or not;
  - (ii) the Customer mixes the Goods with other goods; or
  - (iii) the Goods become part of other goods (**New Goods**),



the Customer agrees with the Seller that the ownership of the New Goods immediately passes to the Seller. The Customer will hold the New Goods on trust for the Seller until payment of all sums owing to the Seller whether under these terms of trade or any other contract have been made. The Seller may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Seller.

- (e) For the avoidance of doubt, under paragraph 10(d), the ownership of the New Goods passes to the Seller at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Despite paragraph 10(c), the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:
  - (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Seller in a separate account, until all amounts owned by the Customer to the Seller have been paid; or
  - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Seller upon the Seller giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Seller as its attorney.
- (g) Where Goods are supplied by the Seller to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Seller in respect of those Goods, the Customer acknowledges that the Seller has a right to register and perfect a personal property security interest.
- (h) If:
  - (i) a PPS Law applies or commences to apply to these terms of trade or any transaction contemplated by them, or the Seller determines (based on legal advice) that this is the case; and
  - (ii) in the Seller's opinion, the PPS Law:
    - A. does or will adversely affect the Seller's security position or obligations; or
    - B. enables or would enable the Seller's security position to be improved without adversely affecting the Customer,

the Seller may give notice to the Customer requiring the Customer to do anything (including amending these terms of trade or execute any new Terms and Conditions) that in the Seller's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 10(h)(ii)(A) or improve the security position as contemplated in paragraph 10(h)(ii)(B). The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably practicable as required under this paragraph, in the Seller's opinion the Seller's security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, the Seller may by further notice to the Customer cancel these terms of trade. If this occurs, the Customer must pay to the Seller any money owed to the Seller by the Customer immediately.

## 11. INTELLECTUAL PROPERTY RIGHTS

- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Seller to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Seller for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Seller against all Losses incurred by the Seller in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.



- (b) Unless specifically agreed in writing between the Seller and the Customer, all Intellectual Property Rights in any works created by the Seller on behalf of the Customer vest in and remain the property of the Seller.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Seller grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by the Seller in connection with the provision of Goods or Services under these terms of trade for the purposes contemplated by the Order.

## 12. AGENCY AND ASSIGNMENT

- (a) The Customer agrees that the Seller may at any time appoint or engage an agent to perform an obligation of the Seller arising out of or pursuant to these terms of trade.
- (b) The Seller has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade provided that the assignee agrees to assume any duties and obligations of the Seller owed to the Customer under these terms of trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of the Seller.

## 13. DEFAULT BY CUSTOMER

- (a) Each of the following occurrences constitutes an event of default:
  - (b) the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 14 days of being given notice by the Seller to do so;
    - (i) the Customer, being a natural person, commits an act of bankruptcy;
    - (ii) the Customer, being a corporation, is subject to:
      - A. a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
      - B. a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
      - C. the entering of a scheme of arrangement (other than for the purpose of restructuring); and
      - D. any assignment for the benefit of creditors;
    - (iii) the Customer purports to assign its rights under these terms of trade without the Seller's prior written consent; or
    - (iv) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (c) Where an event of default occurs, except where payment in full has been received by the Seller, the Seller may:
  - (i) terminate these terms of trade;
  - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
  - (iii) refuse to deliver Goods or provide further Services;



- (iv) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
- (v) retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.
- (d) In addition to any action permitted to be taken by the Seller under paragraph 13(b), on the occurrence of an event of default all invoices will become immediately due and payable.

#### **14. TERMINATION**

In addition to the express rights of termination provided in these terms of trade, a party may terminate these terms of trade by giving 14 days written notice to the other party.

#### **15. EXCLUSIONS AND LIMITATION OF LIABILITY**

- (a) The Seller and the Customer acknowledge and agree that clause 15 shall be read and applied to the extent permitted under Australian Consumer Law.
- (b) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Seller's liability for breach of any term implied into these terms of trade by any law is excluded.
- (c) All information, specifications and samples provided by the Seller in relation to the Goods or Services are approximations only, and should not be relied upon. Subject to any guarantees under the Australian Consumer Law, variations from any information or specification, will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (d) Subject to the Australian Consumer Law, the Seller gives no warranty in relation to the Services provided or supplied. Under no circumstances is the Seller or any of its Sellers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims, including consequential damages and loss of profits or loss of revenues, as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services. This includes their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:
  - (i) any Goods or Services supplied to the Customer;
  - (ii) any delay in supply of the Goods or Services; or
  - (iii) any failure to supply the Goods or Services.
- (e) Any advice, recommendation, information, assistance or service given by the Seller in relation to Goods or Services or both, is given in good faith. It is provided without any warranty or accuracy, appropriateness or reliability. The Seller does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (f) To the fullest extent permissible at law, the Seller is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if the Seller has been advised of the possibility of damages.
- (g) The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.



- (h) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Seller's liability (if any) arising from any breach of those guarantees is limited with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods or with respect to Services to the supply of Services again or cost of re-supplying the Services again.

**16. INDEMNITY**

- (a) The Customer indemnifies and keeps indemnified the Seller, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Seller or, for which the Seller is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade including.
- (b) This includes, but is not limited to, any legal costs incurred by the Seller in relation to meeting any claim or demand or any party/party legal casts for which the Seller is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these terms of trade.

**17. FORCE MAJEURE**

- (a) If circumstances beyond the Seller's control prevent or hinder its provision of the Goods or Services, the Seller is free from liability and any obligation to provide the Goods or Services while those circumstances continue. The Seller may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Seller's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

**18. DISPUTE RESOLUTION**

- (a) If a dispute arises between the Customer and the Seller, the following procedure applies:
  - (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
  - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
  - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
  - (iv) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 14 Business Days (or other period as agreed).



- (b) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.
- (c) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- (d) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

#### 19. MISCELLANEOUS

- (a) These terms of trade are governed by the laws of the state where the Seller's registered office is situated and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
- (b) These terms of trade and any Quotes and written variations agreed to in writing by the Seller represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Seller or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (e) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.