



Annexures A - Terms of Trade

1. Definitions and interpretation

1.1 Definitions

(a) In these Terms of Trade (**Terms**):

Additional Charge means:

- (1) 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 Austindo's then current prices.
- (2) expenses incurred by Austindo, at the Customer's request or reasonably required as a result of the Customer's conduct.

Austindo means **Austindo Consulting Services Pty Ltd (ABN 64 096 990 733)**, being the supplier of Goods or Services on the Quote and includes Austindo's agents, related entities, permitted assigns and successor entities.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Goods and/or Services are being 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 Austindo 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, trademarks, patents and registered designs.

Loss includes, but is not limited to, costs (including, but not limited to, party to party legal costs and Austindo'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.

PPSA means the *Personal Property Security Act 2009* (Cth) and any regulation made at any time under the PPS Act (each as amended from time to time); and

Proceeds has the same meaning under the PPSA.

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

Security Interest means any security interest defined by the PPSA and created by the supply of Goods or Services by Austindo to the Customer.

Services means the services to be provided by Austindo to the Customer in accordance with a Quote and these Terms and includes the supply of Goods.

1.2 Interpretation

In these Terms, unless the context otherwise requires:

- (a) a reference to writing includes email and any other communication by Austindo;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause is a reference to a clause of these Terms;
- (d) a reference to a party to these Terms 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; 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:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

2. General

2.1 Application of Terms

- (a) These Terms apply to all transactions between the Customer and Austindo relating to the provision of Goods and Services, including all quotations, contracts and variations. It is an express and material term of any agreement between the Customer and Austindo, that these Terms take precedence over any terms contained in any document of the Customer or elsewhere.
- (b) Each Customer order signifies acceptance by the Customer of these Terms (which may be amended from time to time), as well as the conditions (if any) that may be incorporated on any Quote or communication to the Customer by Austindo. Any terms and conditions sought to be introduced by the Customer's order will be disregarded and form no part of the contract between Austindo and the Customer.
- (c) Credit (and credit terms) may be granted to the Customer in Austindo's sole and absolute discretion and may be withdrawn or varied at any time by Austindo.
- (d) Austindo may decline any Order received from the Customer. This includes (but is not limited to), where Goods may be unavailable for any reason, or where credit limits cannot be agreed upon, or credit limits have been exceeded.
- (e) 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. If the Customer requests a variation to its order, Austindo may levy an additional charge and/or extend the time for delivery. A variation request by the Customer will only be effective if accepted by Austindo in writing.
- (f) Austindo 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.

3. Quotes

- (a) Austindo may provide the Customer with a Quote. Any Quote issued by Austindo is valid for 30 days from the date of issue unless otherwise expressly stated by Austindo.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery and/or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to Austindo.
- (d) The Customer must signify its acceptance of the quote by submitting an Order to Austindo (in the approved form, if applicable).
- (e) Austindo 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. Austindo will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the Quote for the purposes of these Terms.



- (f) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate provided for convenience only and does not form part of the agreement between the Customer and Austindo.

4. Orders

- (a) A Customer Order must:
 - (i) clearly identify the Goods or Services (and quantities) ordered;
 - (ii) Identify the applicable Austindo quote (if any);
 - (iii) Specify the required date of delivery; and
 - (iv) be signed by an authorised representative of the Customer
- (b) Placement of an Order by the Customer signifies acceptance by the Customer of these Terms and the most recent Quote (if applicable). The parties agree that any terms and conditions that the Customer attempts to introduce to this agreement on any Order do not bind the parties.
- (c) Austindo may refuse a Customer Order, including (but not limited to) where:
 - (v) Goods are unavailable for any reason whatsoever;
 - (vi) credit limits cannot be agreed upon or have been exceeded; or
 - (vii) 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 Austindo, associated with the Customer under the same or another supply contract, has not been received by Austindo.
- (d) Once an Order has been placed by the Customer, it cannot be cancelled unless Austindo otherwise agrees in writing.
- (e) Where an Order is cancelled, the Customer indemnifies Austindo against any Losses incurred by Austindo as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled. This clause shall not merge on completion.

5. Variations

- (a) The Customer may, by written notice, request a variation to its Order. Any such variation will only take effect if expressly agreed to in writing by Austindo.
- (b) Austindo may do any or all of the following:
 - (i) issue a revised Quote;
 - (ii) raise an Additional Charge (in accordance with its most recent charge rates);
 - (iii) extend the timeframe for delivery,as a result of the requested variation.
- (c) A revised Quote issued by Austindo 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 and/or Services.

6. Customer obligations

- (a) In consideration for the provision of the Goods and/or Services, the Customer agrees to pay Austindo the Price.



- (b) The Customer warrants that it will:
- (i) Procure all necessary licences, permits and regulatory approvals (at its own expense) for Austindo to provide the Goods or Services;
 - (ii) Provide Austindo with all information and documentation it reasonably requires to provide the Goods or Services;
 - (iii) provide worksites that are safe and suitable for the provision of the Goods or Services;
 - (iv) ensure any of its worksites comply with work health and safety laws and any other relevant safety standards, legislation or regulation;
 - (v) only use Austindo's parts and labour with respect to the Goods or Services; and
 - (vi) promptly do any other act that Austindo reasonably requires so that Austindo can perform its obligations under these Terms.
- (c) If Austindo determines, in its sole and absolute discretion, that any Customer site is unsafe for its personnel, then Austindo may delay performance until the site is made safe by the Customer (at the Customer's expense).

7. Invoicing and payment

- (a) In consideration for the provision of the Goods or Services, the Customer agrees to pay the Supplier the **Price**. The Price is:
- (i) the amount set out on the applicable Quote;
 - (ii) as provided on the applicable Austindo invoice; or
 - (iii) as otherwise provided by Austindo.
- (b) Austindo 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;
 - (ii) progressively during the provision of the Goods or Services;
 - (iii) upon completion of the provision of the Goods or Services.
- (c) The Customer must pay any invoice issued by Austindo in full and within 14 days of a valid tax invoice being issued to the Customer, unless expressly stated otherwise in the Quote.
- (d) If any invoice is due but unpaid, Austindo may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (e) Austindo may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to Austindo.
- (f) The Customer is not entitled to retain any money owing to Austindo despite any default or alleged default by Austindo of these Terms, 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 clause affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (g) The Customer is to pay Austindo on demand interest at the rate of 14% per annum on all overdue amounts owed by the Customer to Austindo, calculated daily.



- (h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees (on a solicitor-client basis) and internal costs and expenses of Austindo, are to be paid by the Customer as a debt due and payable under the Terms.
- (i) The Customer and Austindo 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.

8. Additional Charges

- (a) Austindo may require the Customer to pay Additional Charges in respect of Costs incurred by Austindo 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 Austindo 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 cancellation by the Customer of an Order where cancellation results in Loss of Austindo, storage costs for goods not collected from Austindo within two weeks of the date on which the Goods are manufactured, fabricated, created or formed at the rate set out in the Quote, photocopying, communication costs, couriers, packing and handling, Government or council taxes or charges, additional work required by the Customer or any other occurrence which causes Austindo to incur costs in respect of the Customer's Order additional to the quoted cost.

9. Acceptance

- (a) If the Customer fails to advise Austindo in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 48 hours 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.
- (b) To the maximum extent permitted by law, the Customer waives its rights to any claims with respect to the Goods or Services after the period specified in clause 9(a) has elapsed.
- (c) Nothing in this clause 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 in Goods supplied to the Customer pursuant to these Terms does not pass to the Customer until all money (including money owing in respect of other transactions between Austindo and the Customer) due and payable to Austindo by the Customer have been fully paid.
- (c) Where Goods are supplied by Austindo to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Austindo in respect of those Goods, the Customer:
 - (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints Austindo 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 Austindo with respect to the Goods under applicable law;
 - (iii) must be able upon demand by Austindo to separate and identify as belonging to Austindo Goods supplied by Austindo 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) agrees that Austindo may repossess the Goods if payment is not made within 14 days (or such longer time as Austindo may, in its complete discretion, approve in writing) of the supply of the Goods; and



- (vi) the Customer grants an irrevocable licence to Austindo or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this clause 10. The Customer indemnifies Austindo in respect of any damage to property or personal injury which occurs as a result of Austindo entering the Customer's premises.
- (d) Where Goods are supplied by Austindo to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Austindo in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with Austindo that the ownership of the New Goods immediately passes to Austindo. The Customer will hold the New Goods on trust for Austindo until payment of all sums owing to Austindo whether under these Terms or any other contract have been made and Austindo may require the Customer to store the New Goods in a manner that clearly shows the ownership of Austindo.
- (e) For the avoidance of doubt, under 10(d), the ownership of the New Goods passes to Austindo 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 clause 10(c) the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business 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 Austindo - in a separate account - until all amounts owed by the Customer to Austindo 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 Austindo upon Austindo giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints Austindo as its attorney.
- (g) Where Goods are supplied by Austindo to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by Austindo in respect of those Goods, the Customer acknowledges that Austindo has a right to register and perfect a personal property security interest.

11. Personal Property Securities Register

- (a) The Customer agrees and acknowledges that the title to goods supplied on credit is retained by the Supplier until such time that all debts are duly discharged, and that Austindo's title is not displaced by possession of the Goods by the Customer or any third party.
- (b) The Customer acknowledges and agrees that these Terms, and any subsequent sales agreements are an accepted and adopted Security Agreement between Austindo and the Customer for the purposes of the PPSA, and that a Security Interest exists in all Goods supplied to the Customer (and their proceeds). This Security Agreement between the parties includes any arrangements documented by emails or information or documents exchanged electronically.
- (c) In requesting Austindo provide Goods or Services, the Customer is deemed to have accepted this Security Agreement and any later amendments that may arise.
- (d) The Customer acknowledges, agrees and grants to Austindo, a Security Interest in:
 - (i) all Goods and any proceeds previously supplied or that will be supplied in the future by Austindo to the Customer; and
 - (ii) any proceeds that relate to the Goods purchased on credit by the Customer for the benefit of the Customer.
- (e) The above Security Interest secures all moneys owing by the Customer to Austindo under these Terms or otherwise.



- (f) The Customer acknowledges and agrees the Security Interest is a continuing and subsisting interest in the Goods with priority over any registered or unregistered general (or other) Security Interest and any unsecured creditor.
- (g) The Customer acknowledges that the Security Interest over Goods or their proceeds arising under these Terms as and where applicable will be a Purchase Money Security Interest (PMSI).
- (h) The Customer will do everything reasonably required of it by Austindo to enable Austindo to register its Security Interests with the priority it requires and to maintain those registrations, including to correct a defect in a financing statement.
- (i) The Security Interests arising under this clause 11 will be perfected by Austindo prior to the Customer obtaining possession of the Goods and the parties confirm they have not agreed that any Security Interest arising under this clause attaches at any later time.
- (j) Austindo does not need to give the Customer any notice under the PPSA (including notice of the financing statement or verification statement) unless required by the PPSA.
- (k) Any time the Customer makes a payment to Austindo, irrespective of whether the payment is made under or in connection with this Agreement, Austindo may apply that payment:
 - (i) first to satisfy an obligation that is not secured;
 - (ii) second, to satisfy an obligation that is secured, but not by a PMSI;
 - (iii) third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
 - (iv) fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source.
- (l) For the avoidance of doubt and without prejudice to Austindo's rights under the PPSA, the Customer:
 - (i) may sell the Goods to its customers and if it does so, then Austindo will have a Security Interest in the proceeds of sale; and
 - (ii) will, where and when applicable and instructed by Austindo, implement, maintain and comply in all material respects with, procedures for the perfection of Security Interests, including taking all steps under the PPSA to perfect continuously any such Security Interest.
- (m) The Customer agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132, 134, 135, 142, 143 and 157 of the PPSA will not apply to the enforcement of those Security Interests.
- (n) The Customer agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including these Terms as the Security Agreement between the Customer and Austindo.
- (o) The Customer will notify Austindo immediately in writing if the Customer changes its name or address for service, contact details or if there are any changes required under the PPSA in respect of these Terms.
- (p) The Customer's right to possession of Goods still owned by Austindo under these Terms will cease if:
 - (i) the Customer being an individual, commits an act of bankruptcy; or,
 - (ii) the Customer being a corporation, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding up, or the Customer enters into a deed or scheme of arrangement; or
 - (iii) the Customer ceases or threatens to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice; or
 - (iv) the Customer fails to comply with any demand for payment issued by Austindo; or



- (v) the Customer is in breach any of these Terms or is in default of any other agreement with Austindo.
- (q) The Customer agrees that Austindo is entitled to exercise the rights contained in section 123 of the PPSA and enter any premises where the Goods supplied by Austindo are still unpaid for, repossess such Goods. The Customer agrees to indemnify and keep Austindo indemnified in respect of any claims, actions and costs that may arise against Austindo in relation to the removal, repossession and sale of the Goods pursuant to these Terms including any claims brought by third parties.
- (r) The Customer agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to Austindo by the Customer, as is equivalent to the Austindo's estimation of the market value of the Goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Customer has in relation to the Goods.
- (s) Until any obligations owed to Austindo by the Customer are discharged in full, the Customer must not give Austindo a written demand or allow any other person to give Austindo a written demand requiring Austindo to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR, a financing change statement.
- (t) The rights and obligations of Austindo and the Customer under the Terms will be binding on, and will be of benefit to, each of the party's successors, permitted assigns, heirs, executors and administrators.

12. Intellectual Property Rights

- (a) Unless otherwise agreed by Austindo, all Intellectual Property rights in connection with the Goods or Services are reserved by Austindo.
- (b) Unless specifically agreed in writing between Austindo and the Customer, all Intellectual Property Rights in any works created by Austindo on behalf of the Customer vest in and remain the property of Austindo.
- (c) The Customer warrants that any Intellectual Property it provides to Austindo will not cause Austindo to infringe any patent, registered design or trademark in the execution of the Customer's Order. The Customer agrees to indemnify Austindo against any action taken by a third party against Austindo in respect of any such infringement.
- (d) Subject to payment of all invoices due in respect of the Goods or Services, Austindo grants to the Customer a perpetual, non-exclusive licence to use the works created or produced by Austindo in connection with the provision of Goods or Services under these Terms for the purposes contemplated by the Order.

13. Agency and assignment

- (a) The Customer agrees that Austindo may at any time appoint or engage an agent to perform an obligation of Austindo arising out of or pursuant to these Terms.
- (b) Austindo 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 provided that the assignee agrees to assume any duties and obligations of Austindo owed to the Customer under these Terms.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms without the prior written consent of Austindo.

14. Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Customer breaches or is alleged to have breached these Terms for any reason (including, but not limited to, defaulting on any payment due under these Terms) and fails to remedy that breach within 7 days of being given notice by Austindo to do so;



- (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) 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);
 - (d) any assignment for the benefit of creditors;
 - (iv) the Customer purports to assign its rights under these Terms without Austindo's prior written consent;
 - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, Austindo may:
- (i) terminate these Terms;
 - (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 10(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 on account of Goods or Services or otherwise.
- (c) In addition to any action permitted to be taken by Austindo under clause 14(b), on the occurrence of an event of default all invoices will become immediately due and payable.

15. Termination

In addition to the express rights of termination provided in these Terms, a party may terminate these Terms by giving 30 days written notice to the other party.

16. Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, Austindo's liability for breach of any term implied into these Terms by any law is excluded.
- (b) For the avoidance of doubt, Austindo shall not be liable for any loss, damage or harm suffered by the Customer in connection with a breach of any of the Customer's obligations under these Terms.
- (c) Unless expressly stated, Austindo makes no warranties under this Agreement.
- (d) All information, specifications and samples provided by Austindo in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (e) Austindo gives no warranty in relation to the Services provided or supplied. Under no circumstances is Austindo 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 including in



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.
- (f) Any advice, recommendation, information, assistance or service given by Austindo in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. Austindo 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.
- (g) To the fullest extent permissible at law, Austindo 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 Term, negligence, strict liability or otherwise, even if Austindo has been advised of the possibility of damages.
- (h) The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.
- (i) The Australian Consumer Law may give to the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, Austindo'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.

17. Indemnity

- (a) The Customer indemnifies and keeps indemnified Austindo, 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 Austindo or, for which Austindo 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 including, but not limited to any legal costs incurred by Austindo in relation to meeting any claim or demand or any party/party legal costs for which Austindo is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms.
- (b) The Customer indemnifies and keeps indemnified Austindo, its servants and agents in respect of any Loss Austindo incurs arising from the Customer's breach of the Terms, including but not limited to an event of default under clause 14.

18. Force majeure

- (a) If circumstances beyond Austindo's control prevent or hinder its provision of the Goods or Services, Austindo is free from any obligation to provide the Goods or Services while those circumstances continue. Austindo may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond Austindo's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, pandemic or epidemic, 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.



19. Caveatable Interest

- (a) The Customer hereby charges all their right, title and interest (if any) to any or all real property now owned or partly owned, or in the future may become owned, solely or jointly by the Customer (Secured Property), to better secure the monies outstanding, with the due and punctual observance and performance of all the obligations of the Customer under these Terms. The Customer acknowledges that Austindo may at its discretion register a caveat on the Secured Property in respect of the interest conferred on it under this clause 19.
- (b) The Customer grants to Austindo the right to appoint a receiver and sell the Secured Property in the event the Customer commits an event of default.

20. Dispute resolution

- (a) If a dispute arises between the Customer and Austindo, 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 20.
 - (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 clause 20.
 - (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 clause.
- (b) 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 five Business Days (or other period as agreed).
- (c) 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 are operating 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. This clause 20 survives termination of these Terms.
- (d) Despite the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms, subject to any other term of these Terms.
- (e) 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.

21. General

- (a) These Terms governed by the laws of New South Wales and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
- (b) These Terms and any Quotes and written variations agreed to in writing by Austindo represent the whole agreement between the parties relating to the subject matter of these Terms.
- (c) These Terms supersede all oral and written negotiations and communications by and on behalf of either of the parties.



- (d) In entering into these Terms, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by Austindo or any of its employees or agents relating to or in connection with the subject matter of these Terms.
- (e) If any provision of these Terms 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 invoice (or as varied pursuant to this clause 21) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by e-mail to the e-mail 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 third Business Day after posting; or if sent by e-mail before 5.00 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) The Customer may only change its postal or email address for service by giving notice of that change in writing to Austindo.