

**OPTIMISED SOLUTIONS**  
Standard Terms and Conditions of Business

Purchase of goods and services from Optimised are subject to the following terms and conditions. By agreeing to purchase or receive goods or services from Optimised, you accept the following terms and conditions, without limitation or qualification. These terms are available in soft copy on The Company's website at [www.optimisedsolutions.com.au/standardterms.pdf](http://www.optimisedsolutions.com.au/standardterms.pdf)

These conditions also apply to all quotations and other pre-contractual dealings by The Company. All such dealings are invitations to treat only; no such dealings constitute an offer on the part of The Company to enter into any contractual commitment on any particular terms or at all. No contract will in any event come into existence unless and until accepted by The Company, or otherwise in writing, and then only the basis referred to in the previous paragraph.

Optimised may amend these conditions from time to time at its discretion (prospectively but not retrospectively). It will display the latest version on its web site under the link above. Each version is identified by its revision date and version.

**1. INTERPRETATION – IN THESE CONDITIONS:**

- 1.1 Conditions means these Conditions of Provision of Goods and Services;
- 1.2 Customer or The Customer means a person, firm or corporation, jointly and severally if there is more than one, that requests goods or services from Optimised;
- 1.3 Computer Systems means The Customer's servers and operating systems, networks, UPS, backup systems, virus protection systems, e-mail systems, Internet, systems and workstations;
- 1.4 Goods means all products and other goods (including any software) supplied by Optimised to The Customer;
- 1.5 Services means all services supplied by Optimised to The Customer;
- 1.6 Optimised (also referred herein as "The Company") means Velocity Systems Group Pty Ltd (ABN 64 118 296 503);
- 1.7 Intellectual Property Rights means copyright, trade marks, design rights and patents including rights to apply for, and pending applications in respect of, any of them and in any jurisdiction (whether in Australia or not);
- 1.8 Party and Parties means severally and not jointly The Company and/or The Customer as the context requires.  
Confidential Information means, in relation to a Party, its confidential information (in the sense of information that is specifically designated by it as confidential or, by reason of its nature or the circumstances generally, may reasonably be considered confidential. This confidential information includes the terms and methods by which services are to be supplied or have been supplied pursuant to this Agreement.

- 1.9 The clause headings are for ease of reference only and shall not be relevant to interpretation;
- 1.10 The words 'include' and 'including' are to be construed as importing the term 'without limitation'

**2. BASIS OF CONTRACT**

- 2.1 Unless otherwise agreed by The Company in writing, these Conditions apply exclusively to every contract for the sale of goods or the provision of services by The Company to The Customer and cannot be varied or supplanted by any other terms or conditions without the prior written consent of The Company.
- 2.2 Any written quotation or work order provided by The Company to The Customer concerning the proposed supply of goods or services is valid for 7 days and is an invitation only to The Customer to place an order based upon that quotation. Prices and delivery dates on all quotes provided by The Company are subject to change and availability. Any errors and omissions in any quotes provided are excluded. These Conditions may be supplemented by additional terms in the relevant document which are not inconsistent with these Conditions.

**3. CHARGES AND PAYMENT**

- 3.1 For Cash Accounts, payment for goods and services must be made by credit card or direct deposit on or prior to the completion of the provision of goods or services.
- 3.2 For Approved Credit accounts payment for goods and services must be made within 7 days unless otherwise approved in writing by The Company.
- 3.3 All The Company onsite visits are chargeable and are charged in half hour units after the first hour. Any part thereof is chargeable at the same rate as a full half hour.
- 3.4 For onsite visits call-out fees may be applied at rates dependent on The Customer's suburb.
- 3.5 All remote support (including that performed via the The Company remote support system and via telephone) is chargeable and is charged in 15 minute increments.
- 3.6 Where there is any change in the costs incurred by The Company in relation to the goods or services, The Company may vary its price for goods or services in order to take account of any such change, without giving notice to The Customer.
- 3.7 Any sum payable under the Agreement which under applicable legislation is properly subject to GST shall be increased by the addition of GST at the prevailing rate. The Party from which payment is due shall make payment accordingly. The other Party shall promptly issue and deliver to that Party an invoice valid for GST purposes to enable the applicable GST to be reclaimed without delay as an input tax credit by the Party making payment
- 3.8 The Customer shall pay all reasonable out of pocket expenses (including telephone, parking, mileage, accommodation, and airfares) incurred by The Company in providing the Services, and The Company shall retain and provide copies of receipts on request.
- 3.9 If The Customer disputes the whole or any portion of the amount claimed in an invoice submitted by The Company, The Customer shall make due payment of the portion of the amount stated in the invoice which is not in dispute and shall notify The Company in writing (within seven days of receipt of invoice) of the reasons for disputing the balance. If it is resolved that some or all of the amount in dispute ought properly to have been paid at the time it was invoiced, then The Customer shall pay the amount

forthwith. In the event that the Parties cannot agree on the disputed amount, they shall resolve the dispute in accordance with the dispute resolution process provided for in clause 22.

**4. PAYMENT DEFAULT**

- 4.1 If The Customer defaults in payment by the due date of any amount payable to The Company, or if any cheque drawn by The Customer is dishonoured, then all money which is then due as well as all monies that are payable by The Customer to The Company at a later date on any account, shall be due and payable immediately without the requirement of any notice to The Customer, and The Company may, without prejudice to any other right or remedy available to it:-
  - (a) charge The Customer interest on any sum due at the rate of 2% above the corporate reference rate of The Company's principal banker. This interest shall be calculated daily and compounded every 30 days for the period from the due date until the date of payment in full; and
  - (b) charge The Customer for all expenses and costs (including debt collection commission and fees, legal costs on a full indemnity basis and dishonoured cheque fees) suffered or incurred by The Company resulting from the default and in The Company taking whatever action it deems appropriate to recover any amounts due (which, for the avoidance of doubt, shall include engaging Dun & Bradstreet or other debt collection agency to seek to recover the amounts due); and
  - (c) cease or suspend for such period as The Company thinks fit, supply of any further goods or services to The Customer; and
  - (d) by notice in writing to The Customer, terminate any contract with The Customer so far as unperformed by The Company without effect on the accrued rights of The Company under any contract.
- 4.2 Clause 4.1 may also be relied upon, at the option of The Company:
  - (a) where The Customer is an individual, he or she becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
  - (b) where The Customer is a corporation, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, provisional liquidator, administrator, receiver or receiver and manager appointed, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of The Customer.

**5. PASSING OF PROPERTY**

- 5.1 Until full payment in cleared funds is received by The Company for all goods supplied by it to The Customer, as well as other amounts owing to The Company by The Customer, including amounts owing for any services related to the installation of any such goods:
  - (a) title and property in all goods remain vested in The Company and do not pass to The Customer;
  - (b) The Customer must hold the goods as fiduciary bailee and agent for The Company;
  - (c) The Customer must keep the goods separate from its goods and maintain the labelling and packaging of the goods; The Customer is required to hold the proceeds of any sale of the goods on trust for The Company in a separate account however failure to do so will not affect The Customer's obligation to deal with the proceeds as trustee;
  - (d) The Company and its agents and employees may without notice, enter any premises where it suspects the goods or any part of such goods may be and remove them, notwithstanding that they may have been attached to other goods not the property of The Company, and for this purpose The Customer irrevocably licenses The Company to enter such premises and also indemnifies The Company from and against all costs, claims, demands or actions by any party arising from such action;
  - (e) The Company shall have authority to retake, sell or otherwise deal with and/or dispose of all or any part of such goods.

**6. COOPERATION – ACCESS AND SUPPORT**

- 6.1 The Customer shall, where relevant, ensure The Company has full and safe access (including any applicable security clearance) to the Site and any necessary equipment, materials and information. The Customer shall ensure that The Company is provided with all facilities, services and accessories reasonably required, and generally cooperates with The Company, to enable The Company to comply with its obligations under the Agreement and perform its work.
- 6.2 The Customer shall, where relevant, provide on request a suitably qualified or informed person to accompany The Company's personnel and to advise The Company on project requirements, access, security procedures and any other matter within The Customer's knowledge or control which will assist The Company in complying with its obligations under the Agreement.

**7. CONFIDENTIALITY**

- 7.1 A Party shall not, without the prior written approval of the other Party, disclose any of the other Party's Confidential Information provided that:
  - (a) A Party shall not be in breach of sub-clause 7.1 in circumstances where it is compelled by law to disclose the other Party's Confidential Information; and
  - (b) The Company may disclose the terms of the Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- 7.2 Each Party shall take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of the Agreement, comply with sub-clause 7.1 as if they were themselves party to the Agreement.
- 7.3 On termination, expiry or performance of the Agreement each of the Parties shall promptly upon request by the other confirm to the other that it has destroyed all documents and records (including computer files) insofar as they may contain any Confidential Information belonging to the other.
- 7.4 This clause 7 shall survive the termination, expiry or performance of the Agreement.

**8. RISK AND INSURANCE**

- 8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise in respect of the goods shall pass to The Customer immediately upon delivery of the goods to the premises nominated by The Customer.

## 9. PERFORMANCE OF CONTRACT

- 9.1 Any period or date for delivery of goods or provision of services stated by The Company is intended as an estimate only and is not a contractual commitment. The Company will use its reasonable endeavours to meet any estimated dates for delivery of the goods or completion of the services.
- 9.2 Please note that all quotes made for services by The Company are estimates only. From time to time, unpredictable circumstances may give rise to additional work required to reconstruct or to get your systems running the way you want them to run. Please note that any such work required, as well as any additional work requested or required of our technicians, over and above that estimated (including any time taken to rectify system functionality or recover lost data on any of your systems), is payable by The Customer at standard hourly rates over and above any quoted prices. At all times The Company will notify you as soon as practicable, if such our of scope variations arise or if a task requested is an out of scope task.

## 10. WARRANTIES

- 10.1 All goods and services supplied shall be free from defects in materials and workmanship for a period of 10 days from the date of delivery.
- 10.2 If The Company is not able to diagnose the cause of any hardware or software problem, then no charge will apply to The Customer. The Company does not warrant that it will be able to fix all problems that it diagnoses.
- 10.3 Nothing in this clause 10 is intended by the parties to be, and shall not be construed or interpreted to be, a representation, term, warranty or condition that the operation, use or functionality of any goods or products supplied by The Company (including any software) will be uninterrupted or error free. Customer understands and accepts that all such goods and products (and information technology and communications products generally), may have errors (or "bugs") and may encounter unexpected problems, and accordingly Customer may experience downtime and errors in the use of the goods and products. Without limiting the obligations set out in clause 11, Customer will put in place reasonable internal procedures and processes to enable it to minimise any inconvenience and any adverse impact of any such downtime or error.
- 10.4 The Company shall not be liable for the repair or supply of spare parts for any Computer Systems of The Customer not supplied by The Company. The Customer may notify The Company in writing of any defect or suspected defect in any Computer Systems not supplied by The Company. The Company shall, to the extent necessary, and as soon as practicable after receiving notice from The Customer, inspect, replace or manage the repair of the Computer Systems concerned and may charge The Customer for doing so.
- 10.5 The Company shall perform the Services in accordance with all relevant legislation (including subordinate legislation) and with Australian Standards in a professional and efficient manner and shall exercise due care, skill and diligence and judgement in the performance of the Services.
- 10.6 In the event that any part of the Services performed by The Company does not, in the reasonable opinion of the Parties, comply with sub-clause 10.5, then The Customer may require that The Company re-perform the work at its own cost and without delay.

## 11. CUSTOMER'S RESPONSIBILITIES

- 11.1 Customer shall be solely responsible for all data inputs, the manner of use of the goods by all those to whom it provides access and all outputs derived, and all other results of such processing.
- 11.2 Customer shall comply, at its own expense, with any recommendations and guidelines with respect to the use of the goods, including any adjustments or replacements required in respect of equipment and software that is incidental or collateral to the use of the goods.
- 11.3 Customer shall ensure that its operators are adequately trained and informed as to the use of the goods and shall comply with guidelines and procedures supplied by The Company and/or any third party manufacturer from time to time.
- 11.4 Customer shall promptly report errors or faults in the operation of any aspect of the goods or any provision of the services in accordance with applicable fault reporting procedures from time to time.
- 11.5 Customer shall perform general "housekeeping", testing, adjustment and/or maintenance as recommended by The Company in respect of any goods supplied by The Company in order to maximise the availability of and performance of the goods or permit performance by The Company of any of its obligations hereunder.
- 11.6 Customer agrees to exercise due care and carry out such precautions which may be recommended by The Company or otherwise required as a matter of prudence in connection with the performance by The Company of any of its obligations hereunder, for example, but without limiting the generality of the foregoing, advising its staff of system restarts or scheduled downtime, recording of error information, and will co-operate with other system administration activities such as, but not limited to, running diagnostic tests and operational readiness tasks.
- 11.7 The Customer shall as a fundamental term of these Conditions back up all software, data and files that are stored on its computer and Systems and/or on any other storage devices it may have prior to the arrival of The Company's technicians and prior to any repair or service of any computer equipment, hardware or software by The Company. The Company and/or its third party service providers shall not be responsible at any time for any loss, alteration or corruption of any such software, data or files: The Company shall not be liable for loss of any software or data loaded onto or held on any of The Customer's hardware.
- 11.8 Whilst The Company takes every precaution in the preparation of its information sheets, guides, web site and other literature, these documents and the particulars therein are for the Client's general guidance only and shall not constitute representations by The Company and the Company shall not be bound thereby.

## 12. PRIVACY

- 12.1 The Company will comply with its obligations under the Privacy Act 1988 and in accordance with its Privacy Policy which can be viewed at <http://www.optimisedsolutions.com.au/privacypolicy.pdf>. Customer must read and shall be deemed to have read the Privacy Policy. Customer agrees and consents irrevocably to The Company's use of Customer's personal information in accordance with the Privacy Policy.

## 13. LIABILITY:

- 13.1 To the full extent permitted by applicable law, all conditions, warranties, representations, indemnities and guarantees with respect to the goods and/or the services, or other goods or services that may be provided by The Company under these Conditions, that may otherwise be implied by statute, law, equity, trade custom, prior dealings between the Parties or otherwise (including, but not limited to, any implied warranty of merchantability, fitness for particular purpose, quiet enjoyment or non-infringement) are hereby expressly excluded.
- 13.2 Except to the extent specifically provided in these Conditions, The Customer's sole liability to The Customer for any and all breaches of any term or terms of these Conditions, whether express or implied, shall be limited, at the option of The Company to:
- (a) subject to sub-clauses 13.2.b and 13.2.c, the aggregate amount of the fees and charges paid by The Customer under these Conditions as at the date of the breach;
  - (b) in relation to goods if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):
    - (i) the replacement of the goods or the supply of equivalent goods; or
    - (ii) payment of the cost of replacing the goods or acquiring equivalent goods; or
    - (iii) the repair of the goods or payment of the cost of having the goods repaired; and
  - (c) in relation to services if supplied to Customer as a consumer (as defined in the Trade Practices Act 1974):
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again, as in each case The Company may elect.
- 13.3 In no event shall The Company be liable to Customer or to any third party under or in connection with these Conditions or in respect of the use of (or failure or performance of) the goods or the supply of the services for:
- (a) Malfunctions, problems or failures caused directly or indirectly by:
    - (i) any third party;
    - (ii) actions of The Company that were expressly or impliedly authorised by Customer, or by Customer's employees or agents;
    - (iii) reinstallation, accident, misuse, mismanagement or abuse by anyone other than the The Company;
    - (iv) alteration or modification of the goods or equipment by anyone other than the The Company;
    - (v) products (including any hardware or software) not licensed or supplied by The Company that are attached to or used with the goods;
    - (vi) Customer's failure to provide a proper operating and working environment for the goods;
    - (vii) damage during any movement, relocation or re-installation of the goods;
    - (viii) power surge or failure;
    - (ix) acts of God or acts outside The Company's control;
    - (x) any other condition not arising under normal operating conditions; or
    - (xi) normal wear and tear; or
  - (b) any loss or damage of any nature arising or caused directly or indirectly by any breach of The Customer's obligations or responsibilities set out in these Conditions.
- 13.4 Any replacement of parts under warranty will be carried out at the premises nominated by The Company. The cost and risk of transport of any defective part to the nominated premises is the responsibility of The Customer.
- 13.5 In no event will The Company be liable to The Customer or to any third party under or in connection with these conditions or in respect of the use of (or failure or performance of) the goods or the supply of the services for:
- (a) any loss of profit, business interruption, loss of or damage to goodwill, and/or any expectation benefit;
  - (b) Customer's liability to any third party; or
  - (c) incidental, consequential, special, exemplary or punitive damages of any nature, howsoever arising or caused, including without limitation the breach of these Conditions or any expiration or termination of these Conditions, whether such liability is asserted on the basis of statute, contract, tort (including negligence or strict liability), equity or otherwise, even if The Company has been advised of the possibility of such loss or damage.
- 13.6 The Company will not be liable for any loss or damage suffered by The Customer where The Company has failed to meet any delivery date or cancels or suspends the supply of goods or services.

## 14. COPYRIGHT IN SOFTWARE

- 14.1 The Company will not be responsible to The Customer or any third party for any breach of any software licence in respect of software provided to The Company by The Customer to be installed on a Customer's Computer Systems, or any software running on The Customer's current systems.
- 14.2 The Customer hereby warrants that it has a valid licence in respect of such software and shall indemnify The Company against any loss, damage, costs, harm or other expense whatsoever arising either directly or indirectly.

## 15. CANCELLATION

- 15.1 If, through circumstances beyond the control of The Company, The Company is unable to effect delivery or provision of goods or services, then The Company may cancel The Customer's order (even if it has already been accepted) by notice in writing to The Customer.
- 15.2 If The Customer gives less than 4 hours notice to The Company to cancel any request for on-site service, then The Company may charge a cancellation fee of \$80 for the loss and damage caused.

## 16. NO REPRESENTATION OR RELIANCE

- 16.1 The Customer acknowledges that neither The Company nor any person acting on behalf of The Company has made any representation or other inducement to it to enter into these Conditions, except for representations or inducements expressly set out in these Conditions.
- 16.2 The Customer acknowledges and confirms that it does not enter into these Conditions in reliance on any representation or other inducement by or on behalf of The Company, except for representations or inducements expressly set out in these Conditions.

- 16.3 Without limiting the generality of clauses 16.1 and 16.2, Customer understands and hereby confirms that:
- (a) its decision to enter into these Conditions was, and is, not based on any promise, representation, statement, warranty or undertaking made or given by The Company or any person on its behalf in relation to the capacity, uses or benefits that might or would be derived or obtained from the goods or services, except as expressly set out in clause 10, and
  - (b) Customer has relied on its own skill and judgement in deciding to purchase and acquire the goods and services.
- 17. LEGAL STATUS OF PARTIES**
- 17.1 The Company is an independent contractor without the authority to bind The Customer by contract or otherwise. Neither The Company nor any of The Company's personnel is an agent or employee of The Customer by virtue of the Agreement.
- 17.2 The Agreement does not create or evidence any partnership or agency or any relationship of trust between the Parties except to the extent, if any, expressly provided.
- 17.3 The obligations of The Customer under the Agreement are joint and several, as opposed to several, in any case where there is more than one person involved as The Customer.
- 18. SUB-CONTRACTING**
- 18.1 The Company may sub-contract a third party organization for the performance of the Agreement or any part of the Agreement upon obtaining The Customer's prior written consent which will not be unreasonably withheld or delayed by The Customer in relation to a reputable third party with demonstrated technical skills and service capability.
- 18.2 The Company may, without the consent of The Customer, engage individuals on a sub-contract or consultancy basis, whether or not operating under a corporate structure, to assist in the provision of Services.
- 18.3 The Customer may not sub-contract a third party organization for the performance of the Agreement or any part of the Agreement without The Company's prior written consent which may be given or withheld at its sole discretion and subject to any conditions it may think fit.
- 19. TERMINATION**
- 19.1 Either Party may terminate the Agreement immediately by notice to the other in writing if the other:
- (a) Is in breach of any term of the Agreement:
    - (i) in circumstances where the breach in question is material in the sense of having or being reasonably likely to have a significant adverse effect on the terminating Party or its business; or
    - (ii) in circumstances where the breach in question is not material in the sense specified above but has not been remedied within fourteen days of written notice by the terminating Party to the other specifying the breach and requiring it to be remedied;
  - (b) Becomes, threatens or resolves to become, or is in jeopardy of becoming, subject to any form of insolvency administration;
  - (c) Ceases or threatens to cease conducting its business in the normal manner; or
  - (d) Is or becomes unable to pay its debts as they fall due (including within the meaning of the Corporations Act) or is presumed under the Corporations Act to be insolvent.
- 19.2 The Company may terminate the Agreement immediately by notice in writing to The Customer if The Customer:
- (a) In the case of a partnership - dissolves, threatens or resolves to dissolve or is in jeopardy of dissolving; or
  - (b) In the case of a natural person - dies.
- 19.3 The Party terminating the Agreement under sub-clause 19.1 or sub-clause 19.2 may in addition:
- (a) retain any moneys paid;
  - (b) charge a reasonable sum for work performed in respect of which work no sum has been previously charged;
  - (c) be regarded as discharged from any further obligations under the Agreement; and
  - (d) pursue any additional or alternative remedies provided under the Agreement or by law.
- 20. INTELLECTUAL PROPERTY RIGHTS**
- 20.1 The title to all Intellectual Property Rights in all documents, materials and information provided by The Customer to The Company for the purpose and in the performance of the Services shall remain at all times with The Customer.
- 20.2 The Customer grants to The Company the right to use such Intellectual Property Rights (on a non-exclusive and non-terminable basis and free of royalty or other payment) to the extent necessary or expedient for it to perform the Services.
- 20.3 The title to all Intellectual Property Rights in all documents, materials and information provided by The Company to The Customer for the purpose and in the performance of the Services shall remain at all times with The Company.
- 20.4 The title to all Intellectual Property Rights in all documents, materials and information created by The Company for the purpose and in the performance of the Services shall (subject to sub-clause 20.5) remain at all times with The Company subject to a non-exclusive and non-terminable licence (free of royalty or other payment) in favour of The Company (including its successors but otherwise subject to clause 7) for the purpose of its business.
- 20.5 These rights will only pass to The Customer upon final payment to The Company in cleared funds of all sums payable by The Customer under the Agreement.
- 21. ENTIRE AGREEMENT**
- 21.1 The Agreement constitutes the entire Agreement between the Parties and supersedes all prior representations, agreements, statements and understandings, whether made orally or in writing.
- 22. DISPUTES**
- 22.1 Any disputes arising in connection with the Agreement which cannot be settled by negotiation between the Parties or their representatives shall, unless otherwise expressly agreed, first be referred to mediation before a mediator selected by the then current President of the Queensland Law Society.
- 22.2 Prior to referring a matter to mediation pursuant to sub-clause 22.1, the Parties shall:
- (a) formally refer the dispute to their respective contract managers for consideration;
  - (b) refer the dispute to the respective chief executive officer (or other appropriate representative) of each Party if the respective contract managers are unable to resolve the dispute after five days (or such other period as is agreed between the Parties) from the date of referral; and
- 22.3 The mediation will be conducted in the English language as a structured negotiation between the parties facilitated by the mediator who shall at all times act impartially, at such venue as may be agreed between parties, or failing agreement, at the chambers or office of the mediator.
- 22.4 All costs of mediation shall be shared equally between the parties.
- 22.5 Each party will bear its own travel and accommodation expenses and any legal fees they incur associated with the mediation.
- 22.6 If mediation fails, then the dispute, difference or question may be resolved by any other method the parties see fit, including litigation.
- 22.7 The mediator shall not act as an arbitrator or any other decision maker and any decision or expressed view of the mediator shall not be binding on the parties.
- 22.8 Each party agrees to act in good faith and use their best endeavours to resolve any such dispute before and during (and after, if such dispute is not resolved by the end of) any such mediation.
- 22.9 The performance of this agreement shall continue throughout the conduct of any mediation proceedings pursuant to this clause 22.
- 23. PARTIES RIGHTS**
- 23.1 An express statement of a right of either Party under the Agreement is without prejudice to any other right of that Party expressly stated in the Agreement or existing at law.
- 24. VARIATION**
- 24.1 A specific version of this Agreement shall not be varied except by Agreement in writing signed by both Parties. The Company may at its sole discretion charge The Customer for agreeing to any variation taking due account of costs (both internal and external) likely to be incurred by it as a result and with the addition of its usual margin for all Equipment or Services concerned.
- 25. FURTHER ASSURANCE**
- 25.1 Each Party shall do or cause to be done all things necessary or expedient to give full effect to the Agreement (including execution of documents) and refrain from doing or causing to be done anything that may hinder or delay due performance of the Agreement.
- 26. SOLICITATION OF EMPLOYEES AND CONTRACTORS**
- 26.1 The Customer shall not solicit for employment, either directly or indirectly, any person or technician who is employed or contracted by The Company. This restriction shall apply both during the course of the Agreement and for a period of eighteen months after the date of final payment to The Company in cleared funds of all amounts payable by The Customer under the Agreement.
- 26.2 If in breach of sub-clause 26.1, The Customer shall pay (as a pre-estimate of liquidated damages and not as a penalty) a sum equal to six months of employment or engagement with The Company and for clarity to be calculated by multiplying the hourly rate paid to the person concerned by 8 hours x 5 days x 26 weeks.
- 26.3 The Customer shall promptly advise The Company if a person who is employed or contracted by The Company seeks to be employed or contracted by The Customer.
- 27. FORCE MAJEURE**
- 27.1 Should either party be affected by a force majeure, not arising out of its own negligence, which may include, but not be limited to floods, fires, storms or other natural disasters, any civil or labour unrest such as strikes, lockouts, riots or actions on the part of a government or other authority which interfere with a party's ability to meet its obligations under this Agreement including embargoes, prohibitions or similar actions, that party shall immediately advise the other of the force majeure.
- 27.2 Any delay or inability by a party to perform its obligations under this Agreement shall not be deemed a breach if the delay or inability to perform is as a result of the force majeure of which the other party has been notified.
- 27.3 Should the force majeure continue for a period of more than twenty (20) Business Days, the parties will have discussion to determine what, if any, steps should be taken to remedy the situation in a fair and equitable fashion or to allow for the termination of this Agreement.
- 28. SURVIVAL OF AGREEMENT**
- 28.1 Subject to any provision to the contrary, the Agreement shall endure to the benefit of and be binding upon the Parties and their successors, trustees, permitted assignees and receivers but shall not endure for the benefit of any other persons.
- 28.2 The provisions of the Agreement which are capable of having effect after its termination, expiry or performance shall remain in full force and effect thereafter. Termination, expiry or performance of this Agreement shall not affect the accrued rights of either Party.
- 29. SEVERABILITY**
- 29.1 If any provision of this Agreement is determined to be void, illegal or unenforceable by any law or regulation of any government or by any court, such provision will be severed from this Agreement and the remaining parts, terms and provisions will remain enforceable.
- 30. GOVERNING LAW**
- 30.1 This Agreement is governed by and must be construed according to the law applying in Queensland. The Parties hereby irrevocably submit to the exclusive jurisdiction of the courts of Queensland.
- 31. NOTICES**
- 31.1 All notices required by this Agreement shall be made in writing and shall be in the English language and sent to the address or fax number of the recipient using the details most recently notified by the recipient to the sender in writing.
- 31.2 Notices shall be hand delivered or sent by certified mail, courier or by facsimile. If hand delivered or sent by courier, notice will be effective on the date of receipt. If sent by facsimile, on the date of transmission and if by certified mail, three (3) days after being posted.