

Digga – Terms and Conditions - Goods and Services

1. Definitions

In these Conditions:

"Agreement" means these Conditions and each order for the supply of Goods or Services accepted by Digga.

"Australian Consumer Law" means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

"Authorised Officer" means a current Director of Digga.

"Business Day" means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Queensland.

"Conditions" means these Terms and Conditions of Sale.

"Confidential Information" means, in relation to each party (for the purposes of this definition, Discloser), all information disclosed by or on behalf of the Discloser, concerning or relating to:

- (a) the fee structure set out in this Agreement;
- (b) know-how, trade secrets, ideas, marketing strategies, operational information, technical information and financial information;
- (c) proprietary software tools, business processes, project management methodologies and tools, software testing and verification methods, solution architecture models and solutions;
- (d) its business affairs (including products, services, customers and suppliers); and
- (e) other information, which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential,

but excluding any such information:

- (f) which is publicly known;
- (g) which is disclosed to the other party without restriction by a third party (other than the Discloser) and without any breach of confidentiality by that third party; or
- (h) which is developed independently by other party without reliance on any of the confidential information.

"Corporations Act" means *Corporations Act 2001* (Cth).

"Customer" means a person, jointly and severally if there is more than one, acquiring goods or services from Digga.

"Digga" means Digga Australia Pty Ltd ABN 86 010 443 875 of 4 Octal Street, Yatala, Queensland, Australia and any of its wholly owned subsidiaries.

"Event of Default" has the meaning given to it in clause 5.1.

"External Administrator" means an

administrator, controller (as that term is defined in the Corporations Act, trustee, provisional liquidator, liquidator or any other person holding or appointed to an analogous office or acting or purporting to act in an analogous capacity).

"Goods" means any goods supplied by Digga to the Customer, and includes any output or deliverable borne from performance of the Services;

"GST" means any goods or services or value added tax, including GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

"GST Law" means has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Insolvency Event" means:

- (a) in relation to any corporation:
 - i. its Liquidation;
 - ii. an External Administrator is appointed in respect of the corporation or any of its property;
 - iii. the corporation ceases or threatens to cease to carry on its business;
 - iv. the corporation being deemed to be, or stating that it is, unable to pay its debts when they fall due;
 - v. any other ground for Liquidation or the appointment of an External Administrator occurs in relation to the corporation;
 - vi. the corporation resolves to enter into Liquidation; or
 - vii. an application being made which is not dismissed or withdrawn within ten Business Days for an order, resolution being passed or proposed, a meeting being convened or any other action being taken to cause or consider anything described in paragraphs (1) to (6) (inclusive) above;
- (b) in relation to an individual, that person becoming an insolvent under administration as defined in section 9 of the Corporations Act; and
- (c) in relation to any person, anything analogous to or having a similar effect to anything described above in this definition under the law of any relevant jurisdiction.

"Intellectual Property Rights" means all intellectual property rights including all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

"Liquidation" means:

- (a) a winding up or liquidation (whether voluntary or involuntary), provisional liquidation, dissolution, bankruptcy or

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- other analogous proceeding; or
- (b) an arrangement, assignment, composition or moratorium with or for the benefit of creditors or any class or group of creditors (including an administration or arrangement under part 5.3A of the Corporations Act).

“Obligation” means any obligation, commitment, liability, covenant, undertaking or duty whether arising by operation of law, in equity or by statute and whether expressed or implied.

“Personal Information” means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion, and includes Sensitive Information and any other information captured in the definition of “personal information” under the Privacy Law.

“Personnel” of a party means any Related Body Corporate, Related Entity, employee, officer, agent, contractor, or professional adviser of that party.

“PPS Act” means the Personal Property Securities Act 2009 (Cth).

“PPS Legislation” means, as the context permits or requires, all or any of:

- (a) the PPS Act;
- (b) the PPS Regulations; and
- (c) any other legislation, or any amendment to any existing legislation made at any time, resulting from or enacted as a consequence of, the PPS Act or the PPS Regulations.

“PPSR” means the Personal Property Securities Register established under section 147 of the PPS Act.

“PPS Regulations” means, as the context permits or requires, all or any of:

- (a) the Personal Property Securities Regulations 2010 (Cth); and
- (b) any other legislation, or any amendment to any existing legislation made at any time, resulting from or enacted as a consequence of, the PPS Act or the PPS Regulations.

“Price” means the price stated in Digga's tender, quote, price schedule, email or letter, as agreed between Digga and the Customer, and subject to clause 3;

“Privacy Law” means:

- (a) the *Privacy Act 1988* (Cth); and
- (b) any legislation from time to time in force in any:
 - i. Australian jurisdiction; and
 - ii. Non-Australian jurisdiction (to the extent that a party is subject to the laws of that jurisdiction), affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of data.

“Related Body Corporate” includes any corporation that is deemed to be related to a person by virtue of the provisions of the Corporations Act.

“Related Entity” means a person which is a related entity within the meaning of that term

in section 9 of the Corporations Act.

“Security Interest” means:

- (a) An interest in or right:
 - i. reserved over property (including any retention of title to property or any right to set off or withhold payment of any deposit or other money);
 - ii. created or otherwise arising over property under a mortgage, charge, lien, pledge, trust or right;
 - iii. by way of security for the payment of a debt or other monetary Obligation or the performance of or compliance with any other Obligation; or
 - iv. which gives a person priority over unsecured creditors in relation to any property;
- (b) any instrument or transaction which reserves, constitutes or evidences the interests and rights referred to in paragraph (a); and
- (c) any other interest which is not included in paragraphs (a) or (b) and which constitutes or is defined as a security interest under the PPS Legislation.

“Sensitive Information” means Personal Information that includes information about an individual's racial or ethnic origin, political opinions or associations, religious or philosophical beliefs, trade union membership or associations, sexual orientation or practices, criminal record, health or genetic information, and some aspects of biometric information, and includes any other information captured in the definition of “sensitive information” under the Privacy Law.

“Services” means any services supplied by Digga to the Customer.

“Warranty” means any of the warranties provided by Digga to the Customer pursuant to:

- (a) clause 12;
- (b) in respect of specific items, the “Digga Product Warranty” document available on its website; and
- (c) any warranties implied by law.

“Warranty Claim” means a claim made by the Customer against Digga in accordance with clause 12.8 for any breach of any of the Warranties.

2. Basis of Agreement

2.1 These Conditions apply to, and are incorporated into, every Agreement for the supply of Goods or Services (or both) by Digga to the Customer and cannot be varied or supplanted by any other terms or conditions, unless agreed to by Digga (in writing by an Authorised Officer) and the Customer.

2.2 Any written quotation, tender, price schedule or letter provided by Digga to the Customer concerning the proposed supply of Goods or

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Services is valid for 30 days from its date of issue and is an invitation only to the Customer to place an order based upon that quotation, tender, price schedule or letter.

- 2.3 Any order placed by the Customer is an offer to Digga to supply the Goods or Services (or both) as set out in the order. An order will not be accepted and the Agreement to supply the Goods or Services (or both) will not be formed until such time as Digga communicates acceptance of the order to the Customer in writing or by electronic means or it has provided the Goods or Services. Once Digga communicates such acceptance or provides the Goods or Services, Digga and the Customer will be bound by these Conditions.
- 2.4 By placing an order or otherwise making an offer, the Customer acknowledges and agrees that:
- (a) the supply of Goods or Services (or both) by Digga will be subject to these Conditions;
 - (b) the Customer will be bound by these Conditions; and
 - (c) the Customer has read, understood and agreed to these Conditions.
- 2.5 The Customer must comply with the order procedure prescribed by Digga from time to time.
- 2.6 Where the particular model of a Good ordered is no longer available and has been replaced by a new model, Digga may (at its complete discretion) substitute the new model.

3. Pricing

- 3.1 Prices for the supply of Goods and Services are exclusive of:
- (a) GST;
 - (b) card payment processing fees (if applicable); and
 - (c) the cost of packing, freight, insurance and other charges arising from the point of dispatch of the Goods to the point of delivery.
- 3.2 In addition to the Price, the Customer must pay to Digga any amounts specified in clauses 3.1(a) to 3.1(c).
- 3.3 If the Customer requests any variation to the Goods or Services the subject of an Order, Digga may increase the Price to account for the variation. Digga will provide notice of the variation to the Price to the Customer for approval prior to giving effect to the order.
- 3.4 Where there is any change in the costs incurred by Digga in relation to the Goods or Services, Digga may vary the Price for any Goods or Services on order to take account of any such change. Digga will provide notice

to the Customer of such a change prior to delivery of the Goods or provision of the Services.

4. Payment

- 4.1 Unless otherwise agreed, payment of the Price and any amount required to be paid under clause 3.1 must be made to Digga by the Customer prior to delivery of the Goods or the completion of Services.
- 4.2 If credit terms are provided by Digga, payment must be made in accordance with the Terms and Conditions of Provision of Credit as set out in Digga's Account Application Form, which will form part of these Conditions, or as otherwise agreed to in writing by an Authorised Officer.
- 4.3 Payment will not be deemed to have been made until the proceeds have cleared in Digga's nominated account.
- 4.4 For on-account Customers, Digga will provide the Customer with a tax invoice for GST purposes for Goods and Services provided, as required by law. The Customer must pay the amount invoiced in accordance with the terms set out in the invoice, or if no time for payment is given, in accordance with clause 4.1.
- 4.5 For off-account Customers, the Customer must pay the amount stated in the applicable written order, quote or invoice in accordance with the terms set out in that document, or, if no time for payment is given, in accordance with clause 4.1. A tax invoice for GST purposes will be provided on delivery of the Goods or Services, in accordance with applicable law.
- 4.6 Where a Customer's tax invoice or credit account remains unpaid after the due date for payment, Digga may decide in its sole discretion (without limitation to any other rights it may have) to stop the supply of any further Goods or Services until payment has been received, or a payment arrangement has been approved by Digga.
- 4.7 The Customer must pay a processing fee on payments made by credit or debit card (including American Express). Any such processing fee will be stated in the applicable order, quote or invoice, or on a payment terminal or verbally by a sales agent.
- 4.8 Any other payment terms with the Customer must be agreed in writing and signed by Digga.
- ### 5. Payment Default
- 5.1 An 'Event of Default' occurs where the Customer:
- (a) fails to make payment of the Price or any other amount required to be paid

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- under clause 3.1 for any Goods or Services supplied by Digga when said payment is due;
- (b) breaches any undertaking, obligation or other provision of the Agreement; or
- (c) suffers an Insolvency Event.

5.2 If an Event of Default occurs then all money which would become payable by the Customer to Digga at a later date on any credit account, becomes immediately due and payable without the requirement of any notice to the Customer, and Digga may, at its sole discretion and without prejudice to any other remedy available to it, do any or all of the following:

- (a) charge interest on the amount outstanding at a rate equal to the maximum overdraft rate fixed by the Commonwealth Bank of Australia plus 2.5% on a daily basis from the due date for payment until the amount outstanding (including the interest payable) has been paid in full;
- (b) charge the Customer for all expenses and costs (including legal costs and disbursements on an indemnity basis) incurred by it resulting from the default and in taking whatever action it deems appropriate to recover any sum due, on an indemnity basis;
- (c) cease or suspend for such period as Digga thinks fit, supply of any further Goods or Services to the Customer; and
- (d) by notice in writing to the Customer, terminate any Agreement with the Customer so far as unperformed by Digga, without effect on the accrued rights of Digga under any contract.

6. Retention of Title and Rights in Customer Equipment

6.1 Until such time as Digga receives full and final payment of the Price (and any additional amount payable under clause 3) in respect of Goods and Services supplied pursuant to an order accepted by it under clause 2.3:

- (a) title to, and property in, the Goods remain vested in Digga and does not pass to the Customer;
- (b) the Customer holds the Goods as bailee for Digga;
- (c) the Customer must:
 - i. keep the Goods separate from the Customer's own personal property (and the personal property of any third party), and clearly identified as the property of Digga;
 - ii. not cause or permit the Goods to become an accession or fixture to or commingled, processed or assembled with, anything (other than land) that is not part of the Goods or property of Digga;

- iii. maintain the labelling and packaging of Digga; and
 - iv. immediately deliver the Goods to Digga, if so directed by Digga;
- (d) the Customer is required to hold the proceeds of any sale, lease, licence or other disposal of the Goods on trust for Digga in an account separate from other moneys (however, failure to do so will not affect the Customer's obligation to deal with the proceeds as trustee), and must pay such proceeds to Digga in accordance with these Conditions (or otherwise, immediately upon request);
 - (e) Digga may with notice, enter any land or premises where it reasonably suspects the Goods are or may be located to determine the location or condition of the Goods or to repossess them, notwithstanding that the Goods may have been acceded or attached to property of a third party (or that property of a third party has acceded or attached to, or become commingled with, the Goods). For this purpose, the Customer irrevocably and unconditionally authorises or licences Digga to enter such land or premises and indemnifies Digga from and against all costs, claims, demands or actions by any party arising from such entry (except to the extent of negligence or wilful misconduct);
 - (f) Digga may keep, resell, lease, licence or deal in any other way with Goods repossessed pursuant to clause 6.1(e); and
 - (g) Digga will within 30 days of repossessing the Goods pursuant to clause 6.1(e) and being satisfied that those Goods are in good working order and condition and free from encumbrances:
 - i. give credit to the Customer in an amount equal to the value of the Goods (in Digga's reasonable opinion) against any amount owing by the Customer to Digga in connection with the order for the supply of those Goods (including any unpaid portion of the Price of the Goods and any additional amount payable under clause 3); and
 - ii. reimburse the Customer for any amount that Digga receives in relation to the repossessed Goods that exceeds the debt owed by the Customer to Digga.

6.2 If a claim is made that all or part of a payment by the Customer in connection with an order for the supply of Goods or Services under the Agreement is void or voidable under law relating to insolvency or the protection of creditors or for any other reason and the claim is upheld, conceded or compromised:

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- (a) Digga is entitled immediately as against the Customer to all powers, rights or remedies under the Agreement or in respect of the payment to which it would have been entitled if all or that part of that payment had not taken place (including, without limitation, title to the Goods pursuant to clause 6.1); and
 - (b) the Customer agrees to immediately do any act and sign any document at Digga's request to restore to Digga any Security Interest held by it from the Customer immediately before that payment.
- 6.3 Where Digga supplies Goods or provides Services in respect of Customer-owned equipment in its possession, Digga holds a repairer's lien over that equipment and is entitled to retain possession of the equipment until all amounts due in respect of those Goods or Services are paid in full.
- 6.4 For the avoidance of doubt, the repairer's lien:
- (a) arises independently of any Security Interest under the PPSA; and
 - (b) is enforceable by Digga irrespective of whether the equipment are separately registered on the PPSR.
- 6.5 The Customer represents and warrants that there is no agreement, encumbrance, or Security Interest affecting the Customer-owned equipment which would prevent or restrict Digga from exercising a repairer's lien in accordance with clauses 6.3 and 6.4.
- 6.6 If the Customer fails to pay all amounts due to Digga under the Agreement in respect of Goods or Services provided in relation to any Customer-owned equipment, and does not collect that equipment within 10 Business Days after receiving written notice from Digga requiring payment and collection, then:
- (a) Digga may, in its sole discretion and without liability, sell or otherwise dispose of the uncollected equipment; and
 - (b) Digga may apply the net sale proceeds in full or partial discharge of all amounts then owing to Digga and will account to and pay the Customer the balance of the sale proceeds (if any) after deducting its reasonable costs.
- 7. PPSA**
- 7.1 In this clause 7, the terms **"accession"**, **"account"**, **"amendment demand"**, **"control"**, **"financing change statement"**, **"financing statement"**, **"perfected"**, **"proceeds"**, **"purchase money security interest"**, **"registration event"**, **"security agreement"**, and **"verification statement"** have the meanings given to them under the PPS Act.
- 7.2 To the extent a Security Interest arises under the Agreement, the Customer acknowledges and agrees that:
- (a) this clause 7 applies;
 - (b) the Agreement constitutes a Security Agreement for the purpose of the PPS Legislation;
 - (c) where clause 6.1 applies, the Security Interest is a Purchase Money Security Interest in respect of the Goods; and
 - (d) where clause 6.6 applies, the Security Interest is a general Security Interest over the Customer-owned equipment in Digga's possession.
- 7.3 The Customer acknowledges and agrees that Digga is entitled to effect a registration on the PPSR for any Security Interest which does or may arise under or in connection with the Agreement.
- 7.4 The Customer acknowledges and agrees that any Security Interest created under or in connection with the Agreement, or the transactions contemplated by it:
- (a) extends to, and acts as a Security Interest in respect of, any:
 - i. Goods supplied by Digga;
 - ii. Customer-owned equipment in Digga's possession;
 - iii. Proceeds (including an Account) derived from, or from a dealing with, the Goods or Customer-owned equipment in Digga's possession;
 - iv. Accession to the Goods or Customer-owned equipment in Digga's possession; and
 - (b) continues in the Goods or Customer-owned equipment in Digga's possession if such items become an Accession.
- 7.5 The Customer agrees to do anything which Digga may require from time to time to:
- (a) enable Digga to register fully valid and effective Financing Statements or Financing Change Statements with respect to any Security Interest over the Goods, any customer-owned equipment in Digga's possession created by the Agreement or the transactions contemplated by it; and
 - (b) ensure that any Security Interest which is purported to be reserved or created by the Agreement, or the transactions contemplated by it, is:
 - i. a first ranking Perfected Security Interest over all the Goods or customer-owned equipment in Digga's possession;
 - ii. Perfected by possession or Control for the purposes of, and to the extent possible under, the

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- iii. PPS Act; and
if applicable, recorded as a
Purchase Money Security
Interest on the PPSR.
- 7.6 The Customer undertakes and agrees:
- (a) to not, without first giving Digga 10 Business Days' written notice, change its name, ABN, address, email address, facsimile number or any other details that have been, or are required to be, recorded on the PPSR in connection with any Security Interest created by the Agreement or any transaction contemplated by it, until such time as any Security Interest in favour of Digga ceases to exist or is released;
 - (b) to not grant any other person a Security Interest in the Goods supplied or to be supplied by Digga to the Customer under the Agreement, or customer-owned equipment in Digga's possession, until such time as any Security Interest in favour of Digga ceases to exist or is released;
 - (c) to do anything Digga considers necessary to enable Digga to apply for any registration or give any notification in connection with the Security Interest so that it has the priority required by Digga;
 - (d) to do anything Digga considers necessary to enable Digga to exercise rights in connection with any Security Interest which arises pursuant to the Agreement;
 - (e) to pay all costs in connection with the registration, discharge or amendment of any Financing Statement or Financing Change Statement;
 - (f) to not, without the prior written consent of Digga, lodge or serve a Financing Change Statement or an Amendment Demand in relation to any Security Interest created by the Agreement or any transaction contemplated by it, until such time as any Security Interest in favour of Digga ceases to exist or is released; and
 - (g) that the Goods supplied by Digga to the Customer under the Agreement are not intended, and shall not be used, for personal, household or domestic purposes.
- 7.7 The Customer irrevocably waives its right to receive from Digga any Verification Statement or notice in relation to a Registration Event in accordance with section 157(3)(b) of the PPS Act.
- 7.8 Digga and the Customer agree that:
- (a) for the purposes of sections 115(1) and 115(7) of the PPS Act, Digga need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4), and sections 142 and 143 are excluded; and
 - (b) for the purposes of section 115(7) of the PPS Act, Digga need not comply with sections 132 and 137(3).
- 7.9 The Customer waives its right to receive anything from Digga under section 275 of the PPS Act and agrees not to make a request of Digga under that section. The Customer and Digga agree for the purposes of section 275(6) of the PPS Act that neither the Customer nor Digga will disclose any information in the nature of that mentioned in section 275(1) of the PPS Act.
- 7.10 To the extent permitted by the PPS Act, Digga's rights, powers and remedies under the Agreement prevail to the extent they are inconsistent with the provisions of the PPS Act.
- 7.11 The Customer must promptly at its own cost do all acts and things (including executing and delivering all documents) necessary or desirable to:
- (a) give full effect to the Agreement and the transactions contemplated by it;
 - (b) better secure all Security Interests contemplated by, or purported to be reserved or created by, the Agreement; and
 - (c) assist in the exercise of any right or power of Digga under the Agreement.
- 7.12 Without limiting clause 7.11, the Customer agrees to make such amendments to these Conditions, and to do (or procure anyone else who has an interest in the Goods or customer-owned equipment in Digga's possession or who claims under or as trustee of the Customer to do) anything which Digga requires from time to time to:
- (a) ensure that any Security Interest which is purported to be reserved or created by the Agreement, or any transaction contemplated by it, is a Perfected Security Interest with the priority contemplated by clause 7.5; and
 - (b) obtain possession or control of any Goods or customer-owned equipment in Digga's possession to ensure that any Security Interest which is created by the Agreement, or any transaction contemplated by it, over the Goods is perfected by possession or control for the purposes of, and to the extent possible under, the PPS Legislation.
- 8. Intellectual Property**
- 8.1 No rights of ownership in the Intellectual Property Rights subsisting in the Goods or accompanying materials and documentation, are transferred to the Customer under these Conditions. The Customer agrees not to claim any right title or interest in the Intellectual Property Rights of Digga.
- 8.2 Except as otherwise agreed in writing

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between the parties, Digga grants the Customer a non-exclusive, non-transferable, non-sublicensable, revocable (in the case of cancellation or return pursuant to clause 14, or breach of a material term of these Conditions by the Customer) licence to use the Intellectual Property Rights subsisting in the Goods and any accompanying materials and documentation, but only to use the Intellectual Property Rights subsisting in the Goods for its own internal business purposes and solely as necessary for the proper use of the Goods and Services in accordance with these Conditions.

- 8.3 Except as expressly permitted under these Conditions, the Customer must not directly or indirectly infringe, configure, modify, reproduce, adapt, republish, reverse-engineer, de-compile, disassemble, commercialise, re-distribute, encumber, manufacture, or purchase from any person other than Digga or its authorised representatives, the Goods, the Intellectual Property Rights subsisting in the Goods, or the subject matter of same, nor authorise or direct any third party to do so.
- 8.4 Documents pertaining to the Goods or Services provided by Digga, including but not limited to illustrations, drawings and measurements, are only approximate and are not binding.
- 8.5 Cost estimates, drawings and other documents relating to any quote, tender, price schedule or letter will be treated as Confidential Information and are subject to clause 9.
- 8.6 Where and to the extent that the Goods or the Services ordered have been designed by the Customer or at the Customer's direction, the Customer is liable for and agrees to indemnify Digga against any and all costs, expenses, liabilities and losses suffered or incurred by Digga arising from Digga's reliance on, any such designs in supplying the Goods or Services (as applicable), including but not limited to any claims of infringement or alleged infringement of any third party's intellectual property rights.
- 8.7 The Customer indemnifies, and will keep indemnified, Digga against any and all costs, expenses, liabilities and losses suffered or incurred by Digga arising from the Customer's use of the Goods contrary to law, these Conditions, or any lawful direction or advice given by Digga.

9. Confidentiality

- 9.1 A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information. Each party must take all reasonable steps to ensure that its Personnel do not make public or disclose the other party's

Confidential Information.

- 9.2 A party is not in breach of clause 9.1 where it is legally compelled to disclose the other party's Confidential information.
- 9.3 Notwithstanding the provisions of this clause 9, the parties may disclose these Conditions (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- 9.4 Each party must, on demand, return to the other party any Confidential Information supplied by the other party in connection with these Conditions.
- 9.5 Each party must ensure that all Confidential Information of the other party (including documents and materials which contain such Confidential Information) in the custody of that party for purposes connected with these Conditions, are protected at all times from unauthorised access or use by a third party, and from misuse, damage or destruction by any person.

10. Risk and Insurance

- 10.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise in respect of the Goods passes to the Customer immediately on the Customer being given notice that the Goods have been dispatched from Digga's premises or supplier.

11. Performance of contract

- 11.1 Any period or date for delivery of Goods or provision of Services stated by Digga is intended as an estimate only and is not a contractual commitment. Digga will use reasonable endeavours to meet any estimated dates for delivery of the Goods or completion of the Services but shall not be liable for any claims, loss or liabilities resulting from a failure to deliver or a delay in the delivery of the Goods or provision of the Services (or both).
- 11.2 Digga may, in consultation with the Customer, make part delivery of the Goods or Services.

12. Limited Warranty

- 12.1 Digga's Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law (**Non-excludable Rights**).
- 12.2 Digga disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all of those rights and remedies are excluded other than any Non-excludable

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Rights.

- 12.3 Digga warrants its products against defects in material and workmanship when used in accordance with Digga's published guidelines. Digga's published guidelines include, but are not limited to, information contained in technical specifications, user manual and brochures.
- 12.4 Digga's Warranty is current for 12 months from the date on which risk is transferred from Digga to the Customer, unless a longer warranty period is otherwise specified in the "Product Warranty" page of Digga's website.
- 12.5 The Customer is to immediately notify Digga in writing of any defects in supplied Goods. If any Goods are defective at the time of passing of risk in accordance with clause 6.1, Digga may elect to either remedy the defect or supply a replacement.
- 12.6 The Customer must not attempt to remedy any defect either themselves or via a third party unless:
- (a) the Customer has given notice to Digga of the defect and Digga has failed to remedy the defect within a reasonable time; or
 - (b) the Customer is forced to remedy the defect due to urgent operational requirements or to avert imminent danger and provides notice to Digga of this within two Business Days.
- 12.7 Any attempt to remedy any defect, except as permitted above, will invalidate the Warranty and Digga will be under no obligation to fulfil the Warranty.
- 12.8 To claim the Warranty, the Customer must contact Digga and obtain Digga's approval to send Goods back to Digga. Digga has the right to refuse any Warranty Claim at its complete discretion:
- (a) if the Goods have been disassembled, tempered with or attempts to repair have been made;
 - (b) the Goods are out of warranty period; or
 - (c) the Goods stopped performing due to incorrect application or use.
- 12.9 The Customer is responsible for the transport costs of returning Goods to Digga when making a Warranty Claim. In the event that the Warranty Claim is accepted by Digga, the transport cost may be credited by Digga to the Customer at Digga's discretion.
- 12.10 The Warranty set out in this clause 12 is provided in addition to other rights and remedies the Customers have under Australian Consumer Law. The Customer represents and warrants that:

- (a) if it is a corporation, it is validly subsisting under the Corporations Act and it has the power to conduct its business as it is now conducting it;
- (b) there is no actual, impending or threatened proceedings, suit or other action which affects, or may reasonably be expected to affect, the Customer;
- (c) it has full legal capacity and power to enter into these Conditions and comply with its obligations and Digga is entitled to rely on that representation;
- (d) the Conditions and the transactions contemplated by them do not contravene its constituent documents (if applicable) or any law or obligation by which it is bound or to which any its assets are subject, or cause a limitation on its powers (or the powers of its directors) to be exceeded;
- (e) unless expressly stated, it has not entered into these Conditions as a trustee of a trust or agent of a third party;
- (f) all information provided to Digga is true and correct and Digga is entitled to rely upon any statement or representation made by the Customer; and
- (g) it has complied with all applicable laws and has adequate funds available to satisfy any payment obligations under these Conditions.

13. Liability

- 13.1 Except as specifically set out in these Conditions, or contained in any Warranty provided with the Goods or Services, any term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services, whether implied by statute, common law, trade usage, custom or otherwise, is expressly excluded.
- 13.2 Other than as required by Australian Consumer Law, the replacement or repair of the Goods or resupply of the Services is the absolute maximum limit of Digga's liability howsoever arising under or in connection with the sale, provision of, use of, storage or any other dealings with the Goods or Service by the Customer or any third party under a Agreement.
- 13.3 Digga is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party (except to the extent required by law) and the Customer fully discharges and indemnifies Digga from all responsibility, liability, claims and demands or actions in respect thereof.

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13.4 Digga will not be liable for any loss or damage suffered by the Customer where Digga has failed to meet any delivery date or cancels or suspends the supply of Goods or Services.

13.5 Digga will not be liable for any loss or damage suffered by the Customer or any third party if delivery of the Goods or provision of the Services is prevented or delayed, where the circumstances of the non-provision are outside its control, for reasons such as flood, fire, Act of God, war or threat of war, physical unrest, riots, civil disturbances, government restraint, pandemics or epidemics, terrorist activities (threatened or actual), strikes or other activity outside of the reasonable control of Digga.

13.6 Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.

14. Cancellation & Return

14.1 If, through circumstances beyond its control, Digga is unable to effect delivery or provision of any Goods or Services, then Digga may cancel the Customer's order (even if it has already been accepted) by notice in writing to the Customer and will return to the Customer any amounts paid by the Customer on that order.

14.2 Orders for Goods that are stocked items and that have been accepted by Digga may not be cancelled by the Customer after the Goods have been dispatched by Digga.

14.3 Orders for Goods that are not stocked items may not be cancelled after an order for the Goods has been accepted by Digga and may be subject to a deposit as specified by Digga at its discretion at the time of order.

14.4 Orders for the provision of Services cannot be cancelled once Digga has commenced providing the Services.

14.5 Subject to clause 14.3, Goods returned for credit by the Customer will only be accepted with the prior written consent of Digga and (where applicable) may only be returned by transport approved by Digga. Return of Goods can only be accepted (at the sole discretion of Digga) within 14 days from the delivery of the Goods. A restocking fee may, at the discretion of Digga, be charged to the Customer. If charged, the fee will be 15% of the Price or such other amount as reasonably determined and advised by Digga.

14.6 Where a contract for the supply of Goods or

Services (or both) requires Digga to purchase goods or material and any order cancellation or credit may result in out of pocket expense by Digga, Digga reserves the right to claim compensation from the Customer in respect of such purchase of goods or materials.

15. Privacy

15.1 The Customer warrants that:

- (a) all Personal Information provided to Digga by the Customer or its Personnel in connection with these Conditions has been collected and disclosed to Digga in accordance with the Privacy Law; and
- (b) disclosure to Digga and its Personnel, and use by Digga and its Personnel, of Personal Information for the activities anticipated under these Conditions is permitted under the Privacy Law.

15.2 The Customer acknowledges and agrees that:

- (a) any Personal Information disclosed to Digga may be disclosed to, and or stored, on infrastructure used by Digga outside Australia;
- (b) countries outside Australia do not always have the same privacy protection obligations as Australia in relation to Personal Information; and
- (c) by procuring Goods and/or Services from Digga, the Customer expressly consents to, and will procure, from any individual to whom the Personal information relates, consent to, the disclosure or use of any Personal Information outside of Australia in the manner permitted by this clause 16.2, having acknowledged that by providing consent, Australian Privacy Principle 8.1 in the Privacy Law (to the extent applicable) does not apply to such disclosures.

16. GST

16.1 Unless expressly stated to the contrary all amounts expressed in an order and these Conditions are exclusive of GST.

16.2 If a party (**Supplier**) is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Supplier to another party (**Recipient**) under these Conditions the Recipient must pay the Supplier an amount equal to the GST payable on the supply by the Supplier.

16.3 The Recipient must pay the amount referred to in clause 16.2 and any interest, penalty, fine or expense relating to the GST, in addition to and at the same time as the consideration otherwise payable by the

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Recipient for the supply.

16.4 If requested by the Recipient, the Supplier must provide the Recipient with a tax invoice on or before payment of the amounts required by this clause 16.

16.5 If an adjustment event arises for a taxable supply under clause 16.2, the amounts required to be paid must be recalculated (**Recalculated Amount**) and the Recipient must pay the Supplier the Recalculated Amount.

16.6 Where a party is required to pay for or reimburse an expense or outgoing of another party, the amount required to be paid or reimbursed is the amount of the expense or outgoing less any input tax credits to which the other party, or the representative member of a GST group to which they belong, is entitled.

17. Miscellaneous

17.1 These Conditions are governed by and construed in accordance with the laws of Queensland.

17.2 Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to these Conditions; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.2(a).

17.3 Subject to any other provision of these Conditions, the indemnities in these Conditions are continuing obligations, independent from the other obligations of the parties under these Conditions and survive termination of these Conditions. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under these Conditions.

17.4 A single or partial exercise or waiver by a party of any right under or relating to these Conditions will not prevent any other exercise of that right or the exercise of any other right.

17.5 Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under these Conditions is excluded to the extent permitted by law.

17.6 Digga may assign, transfer or novate all or any part of its rights or obligations under or relating to these Conditions or grant, declare, create or dispose of any right or interest in it, without the prior written consent of the Customer.

17.7 The Customer must not assign, transfer or novate all or any part of its rights or obligations under or relating to these Conditions or grant, declare, create or dispose of any right or interest in it, without the prior written consent of Digga.

17.8 Should one or more of the above clauses be unenforceable, illegal or void in a jurisdiction then it is severed for that jurisdiction and the rest of these Conditions remain in full force and effect in all other jurisdictions.

17.9 Headings are for convenience only and do not affect the interpretation of these Conditions.

17.10 These Conditions, together with the terms of an order in the form accepted by Digga under clause 2.3:

(a) are the entire agreement and understanding between the parties relating to the subject matter of these Conditions; and

(b) supersede any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.