

## TERMS AND CONDITIONS OF SUPPLY WHERE THE SUPPLY INCLUDES AUSTCO PRODUCTS – SEME SOLUTIONS

The following Terms and Conditions govern all Orders placed by the Buyer that include Austco Products and will be incorporated into each Contract entered between the Buyer and the Company.

### 1. Definitions.

In these Terms and Conditions:

- 1.1. **Amount Payable** means, at any time, all amounts payable by the Buyer to the Company at that time (whether or not those amounts have become due for payment) in connection with the Contract including any invoiced amount, interest, fees, costs or expenses.
- 1.2. **Approval** means any approval, authorisation, certificate, consent, determination, exemption or permit of any Government Authority.
- 1.3. **Austco** means Austco Communications Systems Pty Ltd (ACN 009 195 984).
- 1.4. **Austco IP** means all trademarks, patents, copyrights, designs, plant-breeders' rights, geographical indications, layout-designs (topographies) of integrated circuits and confidential information which is in existence at the Commencement Date or comes into existence after the Commencement Date relating to:
  - 1.4.1. Austco and its business,
  - 1.4.2. Austco Products; and
  - 1.4.3. any advertising and promotional material and any technical materials and user manuals associated with the supply of Austco Products.
- 1.5. **Austco Products** means any individual goods manufactured, developed, or supplied by Austco for use in any one of the following brands of Austco:
  - 1.5.1. MediCom,
  - 1.5.2. Sedco,
  - 1.5.3. Tacera; andall other goods sold, manufactured, developed or distributed by Austco.
- 1.6. **Austco Software** means all computer software programs, including firmware, and any related documentation, error corrections, updates, or upgrades thereto for or relating to Austco Products.
- 1.7. **Authorised Reseller** means a person or entity appointed by Austco under a form of reseller agreement for the sale, installation and servicing of Austco Products.
- 1.8. **Building Services Equipment** means those items of plant and equipment (including access equipment) either at the premises and agreed to be available for use by the Company, or provided by the Buyer for use by the Company, in the performance of Maintenance Services.
- 1.9. **Business Day** means:
  - 1.9.1. for receiving a notice under **clause 29**, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
  - 1.9.2. for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Victoria, Australia.
- 1.10. **Buyer** means the person to whom a Quotation issued by the Company is addressed. In the event that no Quotation is issued, **Buyer** means the person to whom Goods and/or Services are supplied or are to be supplied by the Company.
- 1.11. **Buyer IP** means any Intellectual Property Rights of the Buyer (or licensed to the Buyer by a third party) which is in existence at the Commencement Date or comes into existence after the Commencement Date independently of the Contract.

- 1.12. **Change in Law** means:
- 1.12.1. the adoption, enactment or application to the Company of any Relevant Law not existing, foreseeable or otherwise applicable to the Company on the Quotation date; or
  - 1.12.2. any change in a Relevant Law or the application or interpretation of a Relevant Law after the Quotation date,
- in either case that affects (including time or cost) the ability of the Company to perform its obligations under the Contract.
- 1.13. **Commencement Date** means the date the parties enter into a Contract in accordance with **clause 5.7**.
- 1.14. **Company** means either:
- 1.14.1. SEME Solutions Pty Ltd (ACN 131 507 152), or
  - 1.14.2. Group CCTV Pty Ltd (ACN 139 856 456),
- as set out in the Contract; or if not set out in the Contract as set out in the Order Confirmation; or if there is no Order Confirmation or the Order Confirmation does not set out the entity the entity set out in the most recent Quotation issued to the Buyer.
- 1.15. **Company IP** means any Intellectual Property Rights of the Company (or licensed to the Company by a third party) which is in existence at the Commencement Date or comes into existence after the Commencement Date other than in connection with the Contract, but excludes any Austco IP.
- 1.16. **Completion Date** has the meaning given in **clause 15.1**.
- 1.17. **Confidential Information** means:
- 1.17.1. any information provided by one party to the other party:
    - (a) which the party has identified as confidential; or
    - (b) the other party ought reasonably to know is confidential, but excludes any confidential information of a party that:
      - (1) is in or becomes part of the public domain other than through a breach of the Contract by a party; or
      - (2) was already in a party's possession at the time of receipt from the other party without any obligation of confidentiality to the party,
  - 1.17.2. the Reseller Agreement, and
  - 1.17.3. designs and manufacturing processes relating to any Austco Products.
- 1.18. **Contract** means:
- 1.18.1. any contract to which these Terms and Conditions are expressed to form part; or
  - 1.18.2. for the supply of Goods or Services pursuant to an Order, the contract (which includes these Terms and Conditions) formed for the supply of Goods or Services to the Buyer upon the issue of an Order Confirmation.
- 1.19. **Credit Account Application** means the document by which a Buyer applies to the Company for a credit account.
- 1.20. **Defects Liability Period** means a period of fifty-two (52) weeks from the date that the Company completes the performance of the Supply (excluding any Maintenance Services).
- 1.21. **day** means a calendar day.
- 1.22. **Delay Event** means any event which is beyond the reasonable control of the Company, including:
- 1.22.1. a breach of this agreement by the Buyer,

- 1.22.2. any act, default or omission of the Buyer or its consultants, agents, other contractors or subcontractors,
- 1.22.3. unless specified to the contrary in the Contract, an event described in **clause 16.2**,
- 1.22.4. suspension under the Security of Payment Act or **clause 28.1**,
- 1.22.5. a Force Majeure Event, and
- 1.22.6. any delay by Austco in the supply of Austco Products to the Company.
- 1.23. **Delivery Claim** has the meaning given in **clause 19.2**.
- 1.24. **Design Documents** means the drawings, specifications and other information prepared by the Company for the purpose of undertaking any Design Services.
- 1.25. **Design Services** means the undertaking of design services by the Company to the limit expressly required by the Contract.
- 1.26. **Developed IP** means all Intellectual Property Rights created, discovered, or otherwise brought into existence in the course of the performance of the Contract, but excludes Austco IP.
- 1.27. **Dispute** means that there must be both a claim and a rejection (in whole or part) of it.
- 1.28. **Ex-Works** means the collection by the Buyer (or third party) of the Goods from the Company's premises.
- 1.29. **Force Majeure Event** means any event or circumstance which is beyond the reasonable control of the Company and which results in or causes the failure of the Company to perform any of its obligations under the Contract.
- 1.30. **Free Issue Materials** means where for the purposes of the Contract the Buyer issues certain materials free of charge to the Company to be incorporated into the Supply.
- 1.31. **Goods** means any goods supplied or to be supplied by the Company to the Buyer pursuant to the Contract, including Austco Products, Products and goods supplied by way of hire.
- 1.32. **Government Authority** means any Federal, State or local government (including any local council), and any agency, department, directorate or instrumentality thereof, including any independent regulator deriving power from statute, within Australia or elsewhere.
- 1.33. **GST** means the tax payable on taxable supplies under the GST Law.
- 1.34. **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related law imposing such tax.
- 1.35. **Guarantor** means each person, if any:
  - 1.35.1. specified as a guarantor in the Buyer's Credit Account Application; or
  - 1.35.2. who agrees in writing to guarantee the Buyer's performance of the Contract, or any part of the Contract.
- 1.36. **Independent QS** means a quantity surveyor nominated by the Australian Institute of Quantity Surveyors.
- 1.37. **Insolvency Event** means any of the following events:
  - 1.37.1. a party ceases to carry on business or is deregistered;
  - 1.37.2. a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with the Contract;
  - 1.37.3. a party is unable to pay its debts when they fall due for payment, including bankruptcy, voluntary administration, liquidation and receivership;
  - 1.37.4. a party disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;

- 1.37.5. any step is taken by a mortgagee to take possession or dispose of the whole or part of a party's assets, operations or business;
- 1.37.6. any step is taken to enter into any arrangement between a party and its creditors;
- 1.37.7. any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, an administrator, or other like person to the whole or part of a party's assets, operations, or business
- 1.37.8. a party is an individual person or a partnership including an individual person, and if that person:
- (a) dies;
  - (b) commits an act of bankruptcy; has a bankruptcy petition presented against him or her or presents his or her own petition; or is made bankrupt;
  - (c) makes a proposal for a scheme of arrangement or a composition; or
  - (d) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration Order made, under Part X of the *Bankruptcy Act 1966* (Cth);
- 1.37.9. in relation to a party being a corporation:
- (a) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (b) the party enters a deed of company arrangement with creditors;
  - (c) a controller or administrator is appointed;
  - (d) an application is made to a court for the winding up of the party and not stayed within 14 days;
  - (e) a winding up order is made in respect of the party;
  - (f) it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or
  - (g) a mortgagee of any property of the party takes possession of that property, or
- 1.37.10. any other event or circumstance which has an analogous effect to any of the events listed above.
- 1.38. **Installation Location** means the location at which the Company will carry the Installation Services for the Buyer.
- 1.39. **Installation Services** means the installation of Goods at the Installation Location by the Company.
- 1.40. **Intellectual Property Rights** means any and all intellectual property rights granted by law or equity from time to time, including copyright and related rights, designs, patents, trademarks, trade names and service marks, obligations of confidentiality and rights to use and protect the confidentiality of confidential information, know-how, moral rights, business names, domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights to inventions, and all other rights in intangible property including rights of present and future intangible property and all similar rights in any part of the world including any rights to claim priority and, where those rights are obtained or enhanced by registration, any registration, renewal or extension of those rights and applications and rights to apply for and be granted those registrations, renewals or extensions.
- 1.41. **Ipsa Facto Laws** means *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth).

- 1.42. **Loss** means damage, loss, cost, expense, suit, charge, action, right or action, or liability (whether actual or contingent).
- 1.43. **Maintenance Services** means the undertaking of maintenance or repair services by the Company.
- 1.44. **Off-site Overheads** means head office costs of the Company, including the directors, senior managers, estimators, and accounts personnel not directly involved in the performance of the Supply or the Contract, but, excluding the Preliminaries.
- 1.45. **Order** means an order placed by the Buyer with the Company for the performance of the Supply by the Company, whether made in writing, electronically (including by email) or verbally.
- 1.46. **Order Confirmation** means the confirmation of an Order issued by the Company to the Buyer.
- 1.47. **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- 1.48. **Preliminaries** means the on-site and off-site preliminaries of the Company, including the Company's tools, plant and equipment (including by way of hire), project manager, supervisory staff, and the staff of the Company performing any design or drafting work.
- 1.49. **Price** means the price payable for the Supply in accordance with **clause 16** at the Commencement Date, but excludes any additions or deductions which may be required to be made under the Contract.
- 1.50. **Privacy Laws** means the data protection and information privacy laws in Australia, including the *Privacy Act 1988* (Cth).
- 1.51. **Products** means products supplied by the Company to the Buyer pursuant to the Contract which are not Austco Products or Free Issue Materials.
- 1.52. **Quotation** means a written quotation (including a tender offer, or tender letter) by the Company setting out the proposed terms of a Supply.
- 1.53. **Related Bodies Corporate** has the same meaning as in the *Corporations Act 2001* (Cth).
- 1.54. **Relevant Law** means
- 1.54.1. acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the Supply or any part thereof is being carried out;
  - 1.54.2. certificates, licences, consents, permits, approvals and requirements of any Government Authority and other organisations having jurisdiction in connection with carrying out the Supply;
  - 1.54.3. the National Construction Code (including the Building Code of Australia);
  - 1.54.4. any Australian Standards or other standards relevant to the performance of the Supply; and
  - 1.54.5. fees and charges payable in connection with the foregoing.
- 1.55. **Reseller Agreement** means the 'Authorised Reseller Agreement' between the Company and Austco under which Austco has appointed the Company to be an Authorised Reseller for the sale, installation and servicing of Austco Products (subject to the terms of the agreement).
- 1.56. **Security of Payment Act** means the applicable security of payment legislation.
- 1.57. **Services** means any works or services supplied or to be supplied by the Company to the Buyer pursuant to the Contract and may include Installation Services, Design Services or Maintenance Services.
- 1.58. **Specification** means any written document (including drawings, specifications, schedules) which defines the scope of the Supply which has been incorporated in the Contract, and any

modification to such documents and any other document that may be provided for use for the purpose of the Contract.

- 1.59. **Supply** means the supply of the Goods, Services or Goods and Services by the Company under the Contract.
- 1.60. **Terms and Conditions** means these terms and conditions of supply.
- 1.61. **Variation** has the meaning given in **clause 26.1**.
- 1.62. **Variation Quotation** means a quotation by the Company for a Variation.
- 1.63. **Warranty Period** means either:
  - 1.63.1. for Austco Products supplied by the Buyer, or purchased by the Company from Austco, for Maintenance Services the period stated in **clause 12.6**; or
  - 1.63.2. the period stated in **Schedule 1** from either:
    - (a) the date of collection of the Goods, for Ex-Works,
    - (b) the date of delivery of the Goods, for Goods; or
    - (c) the date of performance of the Services, for Services.

## 2. Interpretation.

- 2.1. In the Contract, headings and bold text are for ease of reference only and do not affect the interpretation of this agreement and, unless the context otherwise requires:
  - 2.1.1. the singular includes the plural and vice versa;
  - 2.1.2. another grammatical form of a defined word or expression has a corresponding meaning;
  - 2.1.3. a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to the Contract and a reference to the Contract includes any schedule or annexure;
  - 2.1.4. a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - 2.1.5. subject to **clause 29**, a reference to time is to Victorian time;
  - 2.1.6. a reference to a party to the Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
  - 2.1.7. a reference to a person includes a natural body, partnership, body corporate, association, governmental or local authority or agency or other entity;
  - 2.1.8. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - 2.1.9. the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
  - 2.1.10. a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it.
- 2.2. If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed, or the event must occur on or by the next Business Day.

## 3. Reseller Agreement

- 3.1. The Company and Austco are parties to the Reseller Agreement. The relationship of the Company and Austco is that of buyer and seller only, and not that of employer and employee, partnership or joint venture, principal and agent, of franchisor and franchisee.



- 3.2. The Reseller Agreement does not grant the Company any license, title or right to any Austco IP.
- 3.3. The Buyer acknowledges that:
  - 3.3.1. this Contract creates no obligations whatsoever, expressed or implied, on Austco; and
  - 3.3.2. whilst the Company is an Authorised Reseller the Company is acting on its own behalf and not accepting Orders or making contracts on behalf of Austco.
- 3.4. All warranties, including those in **clause 20.1**, provided by the Company under this Contract are provided by the Company, and not Austco.
- 3.5. The Buyer acknowledges and agrees that it must not contact Austco directly regarding the Quotation, the Price, the Supply, or the Contract without first receiving the written consent of the Company to do so.

#### **4. Application of these Terms and Conditions.**

- 4.1. The Terms and Conditions apply to every Order, unless otherwise agreed in writing by the Company. Placement of an Order by the Buyer is conclusive evidence of the Buyer's acceptance that the Terms and Conditions apply and are binding on the Buyer.
- 4.2. Except to the extent that the Contract draws on the Quotation in **clauses 14, 15, 16 or 17** the Contract constitutes the entire agreement between the Buyer and the Company with respect to an Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of the Contract. Unless expressly stated otherwise in the Contract, no other agreement (including any form of head contract agreement) which the Buyer may have entered, will enter, or intends to enter shall form, or be deemed or implied to form, whether in full or in part, part of the Contract.
- 4.3. Any purported incorporation of other standard terms and conditions by the Buyer is void and of no effect, unless specifically identified in the Contract.
- 4.4. Where there is any discrepancy between the Terms and Conditions and those that may be included in or implied by any document forming part of any enquiry, order or contract, these Terms and Conditions will prevail, except in so far as they are expressly varied by the Company in writing or otherwise by law.
- 4.5. The Company provides no warranty or assurance, and the Buyer acknowledges and accepts that the Company is under no obligation to warrant or ensure that:
  - 4.5.1. the Supply will satisfy any obligation of the Buyer; or
  - 4.5.2. that the Company will not cause the Buyer to be in breach of any obligation of the Buyer;under any other agreement (including any form of head contract agreement) which the Buyer may have entered, will enter, or intends to enter.

#### **5. Quotations, Orders and Contract Formation.**

- 5.1. A Quotation issued by the Company to the Buyer is an offer to perform the Supply and will not create any contract except in accordance with **clause 5.7**.
- 5.2. Unless the Quotation states otherwise, the Quotation is provided on the basis that the Supply will be subject to these Terms and Conditions.
- 5.3. The Company may withdraw, revoke or vary a Quotation at any time prior to its acceptance.
- 5.4. Unless otherwise stated in writing by the Company, all Quotations will automatically lapse thirty (30) days after the date of the Quotation.
- 5.5. The Buyer may submit Orders to the Company from time to time, but the Company may accept or refuse any Order in its absolute discretion, even if the Order is placed in response to a Quotation.

- 5.6. There is no obligation on the Company to enquire as to the authority of any person placing an Order on behalf of the Buyer.
- 5.7. An Order is accepted by the Company and a Contract is made when the Buyer receives an Order Confirmation from the Company or the Company commences performance of the Supply identified in the Order, whichever occurs first.
- 5.8. Any purported cancellation by the Buyer, to which the Company has not consented, may be treated by the Company as a repudiation of the Contract by the Buyer.

## 6. General Obligations.

- 6.1. The Company will:
  - 6.1.1. subject to the terms of the Contract, perform the Supply to the standard of reasonable care and skill to be expected of contractors who regularly act in the capacity in which the Company is engaged and who possess the knowledge, skill and experience of a contractor to act in that capacity; and
  - 6.1.2. carry out the Supply based on the information available to the Company at the time when the Supply is being carried out. The Company will not take any responsibility, nor accept any liability, for Loss arising out of matters relevant to the Supply that arise due to circumstances that become known to the Company after the time that the Supply was carried out.
- 6.2. The Buyer must:
  - 6.2.1. pay the Price as adjusted by any additions or deductions made pursuant to the Contract, and
  - 6.2.2. pay any other money or reimbursement that the Company becomes entitled to under the Contract,  
  
at the time and in the manner set out in the Contract.
- 6.3. The Buyer must:
  - 6.3.1. provide the Company with any technical information, approval of drawings or other information reasonably required by the Company in carrying out its obligations regarding the Supply;
  - 6.3.2. provide all reasonable support and co-operation reasonably requested by the Company in connection with the Supply;
  - 6.3.3. unless expressly stated otherwise in the Contract, obtain and maintain all Approvals necessary in connection with the Supply (including those required to own, possess, use or operate the Goods);
  - 6.3.4. where the Supply includes work at a site, Installation Services or Maintenance Services, provide all temporary services and facilities reasonably required by the Company to perform the Supply at no cost to the Company; and
  - 6.3.5. for any site where the Company is to perform any part of the Supply:
    - (a) secure any such site;
    - (b) provide the Company with clear and uninterrupted access;
    - (c) notify the Company of the location of all hidden services; and
    - (d) allow or procure that the Company may undertake the Supply continuously and without delay or disruption by the Buyer or any third party, failing which, the Company is entitled to claim the reasonable costs incurred by the Company resulting from delay or disruption and the Buyer must reimburse the costs.

## 7. Supply of Goods.

- 7.1. This **clause 7** applies to the extent the Supply includes Goods.



- 7.2. The Company warrants to the Buyer that the Company is the legal and beneficial owner of the Goods and has the right to sell the Goods to the Company free from all mortgages, charges, encumbrances, liens and other third party rights and claims.
- 7.3. The Company is entitled to store the Goods at a location of its choosing.
- 7.4. The Company reserves the right to deliver the Austco Products in instalments.
- 7.5. The Buyer will not be relieved of any obligation to accept or pay for Goods by reason of any delay in the Goods being ready for collection or delay in delivery.
- 7.6. No defect or claim in respect of Goods collected or delivered will entitle the Buyer to not collect other Goods or to reject delivery of other Goods, which are not subject to any defect or claim.
- 7.7. If the Buyer fails to:
- 7.7.1. collect the Goods when being supplied Ex-Works, or
  - 7.7.2. to accept delivery of the Goods or give proper instructions to the Company for their delivery,
- within fourteen (14) days after receiving notification from the Company that the Goods are ready for collection or delivery, the Company is entitled to claim all reasonable costs for the storage, protection and insurance of the Goods until the Buyer collects or accepts delivery, and the Buyer must reimburse the Company the costs claimed.
- 7.8. For all Goods that are being supplied Ex-Works:
- 7.8.1. the Company shall be responsible for the care of the Goods until:
    - (a) loaded, when the Company undertakes loading, or
    - (b) the commencement of loading, when the Buyer (or a third party) undertakes loading,at which time responsibility for the care of the Goods shall pass to the Buyer, and
  - 7.8.2. the Buyer indemnities the Company for any death or bodily injury (including disease or illness) to any person, and any loss of, or damage to, property of the Company or a third party arising from or in connection with the performance of the Buyer (or a third party) collecting the Goods.
- 7.9. Unless stated otherwise in the Contract, or agreed in writing by the Company, for all Goods that are being supplied on a supply only or a supply and deliver only basis the Company shall be responsible for the care of the Goods until delivered to the Buyer at which time responsibility for the care of the Goods shall pass to the Buyer. Delivery of the Goods to the Buyer occurs when the Goods are either :
- 7.9.1. collected by the Buyer (or a third party),
  - 7.9.2. delivered to the Buyer's carrier when the Buyer is responsible for arranging freight from the Company's premises, or
  - 7.9.3. delivered to the Buyer, or a third party at the Buyer's request, when the Company is responsible for arranging freight.
- 7.10. Unless stated otherwise in the Contract, or agreed in writing by the Company, for all Goods that are being supplied Ex-Works, on a supply only, or a supply and deliver only basis:
- 7.10.1. the Buyer will be responsible at its own cost for unloading the Goods, or for arranging for a suitable means of unloading the Goods,
  - 7.10.2. except to the extent that such damage was caused by the negligent act or omission of the Company, the Company will not be liable for:
    - (a) any damage to the Goods, or the packaging of the Goods, due to unloading; or

- (b) any damage to property caused upon entering premises to deliver the Goods, and

the Buyer indemnifies the Company against any Loss incurred by the Company arising out of or in connection with the unloading of the Goods.

- 7.11. Legal and equitable title in the Goods sold by the Company to the Buyer remains with the Company until delivery. The passing of title is conditional on the Buyer fulfilling all its obligations pursuant to the Contract, including payment in full of the Price as adjusted by any additions or deductions made pursuant to the Contract and any other money or reimbursement that the Company becomes entitled to under the Contract.
- 7.12. The Company and the Buyer agree that, until property and ownership (including legal and equitable title) of the Goods has passed to the Buyer:
  - 7.12.1. the Buyer will not supply any of the Goods to any person outside its ordinary or usual course of business;
  - 7.12.2. the Buyer will not allow any person to have or acquire any security interest in the Goods;
  - 7.12.3. the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company;
  - 7.12.4. the Buyer must not remove, deface or obliterate any identifying mark, number or other indicia on any of the Goods;
  - 7.12.5. where the Buyer is in actual or constructive possession of the Goods:
    - (a) the Buyer holds the Goods as fiduciary bailee and agent for the Company;
    - (b) after giving reasonable notice to the Buyer, the Company will be entitled to enter upon the Buyer's premises at any reasonable time to inspect the Goods;
    - (c) the Buyer will not deliver the Goods, or any document of title to the Goods, to any person except as directed or approved by the Company in writing;
    - (d) the Buyer must store the Goods separately and in a manner that enables the Goods to be identified and cross-referenced to particular invoices issued to the Buyer by the Company; and
    - (e) the proceeds of any Goods sold must be kept in a separate account by the Buyer and must not be mixed with any other moneys, including funds of the Buyer;
  - 7.12.6. the Buyer acknowledges that if it should mix the Goods with other products or items such that the Goods are no longer separately identifiable, then the Buyer and the Company will be owners in common of the new product; and
  - 7.12.7. the Buyer has no right to claim any interest in the Goods to secure any amount or obligation the Company owes to the Buyer.

## 8. Free Issue Materials

- 8.1. The parties acknowledge that the Supply may incorporate Free Issue Materials.
- 8.2. Where Free Issue Materials are to be incorporated into the Goods, the Buyer shall:
  - 8.2.1. supply Free Issue Materials in a complete condition, without damage or defects, and suitable for incorporation into the Goods,
  - 8.2.2. delivery Free Issue Materials at the time required by the Company so that there is no delay to the Company's performance of the Supply,
  - 8.2.3. co-ordinate all deliveries with Supplier; and

- 8.2.4. at least one (1) week prior to when the Buyer intends to deliver the Free Issue Materials:
- (a) agree with the Company the date for the delivery; and
  - (b) provide the Company a list of the Free Issue Materials to be delivered and an estimate of their value.
- 8.3. Delivery of Free Issued Materials shall not be deemed to be acceptance of such Free Issue Materials by the Company. The Company shall have reasonable time to inspect or test the Free Issued Materials and to report any damage, defects or non-conformances to the Buyer. If damage, defect or non-conformance in the Free Issue Materials was not reasonably detectable during the inspection, the Company shall have reasonable time to provide notice of such damage, defect or non-conformance after it has become apparent and/or to reject the Free Issue Materials.
- 8.4. The Buyer must replace any Free Issue Materials found to be damaged (other than when damaged by the Company), defective or not in compliance with **clause 8.2.1** at Buyer's cost (including delivery costs).
- 8.5. The Buyer shall reimburse the Company any reasonable costs incurred by the Company in removing, handling and reinstalling Free Issue Materials found to be defective or not in compliance with **clause 8.2.1** where such defects or non-compliance was not identifiable prior to the Free Issue Materials being incorporated into the Supply.
- 8.6. The risk of the care of Free Issue Materials transfers to the Buyer in accordance with **clauses 7.8** and **7.9**.
- 8.7. Provided the Buyer complies with **clause 8.2**, cost of storage of the Free Issue Materials shall be borne by the Company. The Company shall be entitled to be paid its reasonable storage costs if the Buyer does not comply with **clause 8.2**.
- 8.8. Notwithstanding any other clause in this Contract, the Company does not provide any warranty for Free Issue Materials used by the Company in the Supply and the Buyer acknowledges and accepts that there is no Warranty Period for those Free Issue Materials.

## 9. Installation of Goods.

- 9.1. This **clause 8** applies if the Contract specifies that the Supply includes Installation Services or if the Company otherwise agrees in writing to perform Installation Services.
- 9.2. The Company agrees to:
- 9.2.1. perform the Installation Services at the Installation Location; and
  - 9.2.2. except as otherwise provided in the Contract, supply all tools, equipment and materials to complete the Installation Services.
- 9.3. The Buyer must:
- 9.3.1. without diminishing the Buyer's obligations under **clause 6.3.5**, notify the Company in writing of any restrictions on access to the Installation Location or hazards at or adjacent to the Installation Location that might reasonably be expected to affect the performance of the Installation Services,
  - 9.3.2. provide in a timely manner all information reasonably requested by the Company in relation to the Installation Location; and
  - 9.3.3. provide in a timely manner any deliverables, plant, equipment or materials identified in the Contract as being required to be supplied by the Buyer.
- 9.4. Unless otherwise agreed in writing by the Company, the structural soundness of the services and buildings at the Installation Location, and the suitability of any structural alterations or additions to any such equipment, services or buildings necessary for the installation of the Goods, is the Buyer's responsibility.

## 10. Supply of Services.

- 10.1. This **clause 10** applies to the extent the Supply includes Services.

- 10.2. The Company must do and provide all things reasonably necessary for the provision of the Services to the Buyer in accordance with:
  - 10.2.1. the description of the Services in the Contract; and
  - 10.2.2. all Relevant Laws and Approvals.

## 11. Design Services.

- 11.1. Unless, and except to the extent that, the Contract expressly requires the Company to undertake the design of any part of the Supply, the Company gives no warranty, and accepts no liability for, design.
- 11.2. The remainder of this **clause 11** applies if, and to the extent, the Contract expressly requires the Company to undertake the design of any part of the Supply.
- 11.3. The Company must:
  - 11.3.1. provide the Design Services in accordance with the Contract;
  - 11.3.2. use reasonable endeavours to ensure the Design Documents meet the requirements of the Contract, including any applicable Specifications, and contain sufficient detail to enable the undertaking of the Supply; and
  - 11.3.3. allow the Buyer to access partially completed Design Documents when reasonably requested and upon reasonable prior notice.
- 11.4. The Buyer must:
  - 11.4.1. provide in a timely manner all information reasonably requested by the Company in relation to the Design Services;
  - 11.4.2. promptly, and in accordance with any agreed timeframes and programs, either:
    - (a) when required by the Company approve for manufacture; or
    - (b) review and provide feedback to the Company,in respect of any Design Documents provided to the Buyer;
  - 11.4.3. provide written reasons for any rejection of any submitted Design Documents; and
  - 11.4.4. otherwise co-operate with the Company in good faith during the development of any designs to ensure the timely completion of all Design Services.

## 12. Maintenance Services.

- 12.1. This **clause 12** applies if the Contract specifies that the Supply includes Maintenance Services or if the Company otherwise agrees in writing to perform the Maintenance Services.
- 12.2. The Company must provide the Maintenance Services.
- 12.3. Except as otherwise provided in the Contract, the Buyer must:
  - 12.3.1. notify the Company in writing before the commencement of the Maintenance Services of any known defects in the plant, equipment or goods being serviced or any hazards at, or adjacent to, the site at which the Maintenance Services are to be performed;
  - 12.3.2. provide in a timely manner all information reasonably requested by the Company in relation to the location at which the Maintenance Services are to be performed;
  - 12.3.3. provide in a timely manner any deliverables, replacement parts, plant, equipment or materials identified in the Contract as being required to be supplied by the Buyer;
  - 12.3.4. ensure that any Building Services Equipment is in a safe and workable condition; and
  - 12.3.5. within seven (7) days after the discovery of any alleged defect or deficiency in the performance of the Maintenance Services notify the Company in writing.

- 12.4. The Buyer acknowledges and accepts that if the Company discovers a fault or defect in the Buyer's system during the performance of the Maintenance Services, the Company is authorised to immediately repair the fault or defect provided that the Company's estimate of the repair cost (including materials and equipment) does not exceed \$1,000.00, and the Buyer must pay the Company's costs for the repair. If the Company's estimate is greater than \$1,000.00 it will notify the Buyer of the fault or defect discovered and await the Buyer's direction. The Buyer releases the Company of any claim, and indemnifies the Company of any Loss that may occur after the Company notifies the Buyer until such time as the Buyer directs the Company to repair the fault or defect, and the Company has had reasonable time to carry out the repair.
- 12.5. Except as otherwise provided in the Contract, the Buyer acknowledges that the Price of the Maintenance Service does not include the cost of any replacement parts, materials and equipment.
- 12.6. Notwithstanding any other clause in this Contract, the Company does not provide any warranty for Austco Products used by the Company in the carrying out of Maintenance Services (including any supplied by the Buyer or purchased by the Company from Austco) and the Buyer acknowledges and accepts that there is no Warranty Period for those Austco Products.

### 13. Reliance

- 13.1. The Buyer:
  - 13.1.1. warrants that all parts of the Specification provided by the Buyer accurately describe the purpose and requirements of the Supply;
  - 13.1.2. warrants that the Buyer has not omitted any information as to what the Buyer requires the Company to Supply; and
  - 13.1.3. acknowledges that it is aware that the Company has entered this Contract relying upon these warranties.

### 14. Discrepancies

- 14.1. Unless stated otherwise in the Contract, in the event of any ambiguity, inconsistency or discrepancy in any document which defines the scope or technical requirements of the Supply the following order of precedence shall apply:
  - 14.1.1. the Order Confirmation,
  - 14.1.2. the most recent Quotation,
  - 14.1.3. the Specification.
- 14.2. If the order of precedence in **clause 14.1** does not resolve the ambiguity, inconsistency or discrepancy and the resolution required by the Buyer causes the Company to incur more cost than the Company could reasonably have anticipated at the time of preparing the Quotation, the Company is entitled to claim the costs incurred and the Buyer must reimburse the Company the costs claimed.

### 15. Time and delay

- 15.1. The Completion Date means either:
  - 15.1.1. the date specified in the Contract; or
  - 15.1.2. if no date is specified in the Contract the date specified in the Order Confirmation; or
  - 15.1.3. if no date is specified in the Contract or the Order Confirmation, or there is no Order Confirmation, the date specified in the most recent Quotation issued by the Company (if any); or
  - 15.1.4. if neither **clauses 15.1.1**, **15.1.2** or **15.1.3** applies, the date otherwise agreed in writing by the parties;subject to any adjustment in accordance with the Contract.

- 15.2. The Company shall make all reasonable efforts to perform the Supply by the Completion Date, and if no Completion Date is specified or agreed in writing, the Company must use reasonable endeavours to perform the Supply in a timely manner.
- 15.3. The Company will be entitled to an extension of the Completion Date by a period of not less than the duration of a Delay Event if it has or is likely to be delayed in achieving the Completion Date by a Delay Event. Within a reasonable time after the Company becomes aware of a Delay Event, the Company will notify the Buyer of the Delay Event and the new Completion Date.
- 15.4. If a Delay Event of the type described in **clauses 1.22.1 to 1.22.4** occurs and the Company incurs additional costs (including any delay or disruption costs) in relation to such event, the Company is entitled to claim the additional costs incurred and the Buyer must reimburse the Company the costs claimed.
- 15.5. Unless expressly stated otherwise in the Contract, the Buyer is not entitled to any damages (including liquidated damages) in respect of any delay or disruption of the Company, including delay in the supply, delivery or installation of Austco Products or the Company failing to complete the performance of the Supply by the Completion Date.
- 15.6. Where either **clause 15.5** is found to be void or unenforceable for any reason, or the Contract does expressly state that the Buyer is entitled, or the Company has otherwise agreed in writing that the Buyer is entitled to any damages (including liquidated damages) due to any delay or disruption of the Company, or the Company failing to complete the performance of the Supply by the Completion Date, then:
  - 15.6.1. unless expressly stated in the Contract or otherwise agreed in writing, those damages shall be liquidated damages at the rate of 0.25% per day of the price payable for the incomplete or undelivered Goods or unperformed Services from the Completion Date until the Goods are complete or delivered or the Services performed and will be the sole remedy to the Buyer for any delay by the Company,
  - 15.6.2. in the event that liquidated damages or **clause 15.6.1** is found to be void or unenforceable for any reason, the Company's liability for damages shall not be greater than the liability which the Contractor would have had if liquidated damages or **clause 15.6.1** had not been found to be void or unenforceable; and
  - 15.6.3. notwithstanding any other clause in this Contract, the Company's aggregate liability arising out of any delay or disruption of the Company, or the Company failing to complete the performance of the Supply by the Completion Date, is limited to 10% of the Price.

*Example:* If the Contract was for delivery of five (5) items worth \$100,000 each and four of the items are delivered by the Completion Date, the calculation of liquidated damages shall be 0.25% per day of \$100,000 up to \$50,000 until the fifth item is delivered.

## 16. Price.

- 16.1. The Price charged will be:
  - 16.1.1. the Price set out in the Contract; or
  - 16.1.2. if the Price is not set out in the Contract, the price set out in the Order Confirmation; or
  - 16.1.3. if there is no Order Confirmation or the Order Confirmation does not set out a price, the price set out in the most recent Quotation issued by the Company (if any); or
  - 16.1.4. if neither **clause 16.1.1, 16.1.2** or **16.1.3** applies, the price agreed in writing by the Company and the Buyer; or
  - 16.1.5. if none of the above applies, the Company's current list price for the Supply.
- 16.2. Unless specified to the contrary in the Contract, the Supply does not include for, and no allowance has been made by the Company in the Price for:
  - 16.2.1. the Company obtaining access to any property not controlled by the Company, including any adjoining property to the Buyer's site,



- 16.2.2. any physical conditions on site which differ from the physical conditions which could reasonably have been anticipated by the Company at the time of preparation of the Quotation, including contamination, hidden services or ground conditions, if the Company had inspected all written information made available by the Buyer to the Company before the Quotation date,
  - 16.2.3. the resolution of buildability problems in any parts of the Specification provided by the Buyer,
  - 16.2.4. subject to **clause 14.1**, the highest standard, highest quality or standard, or the more onerous obligation in the parts of the Specification provided by the Buyer,
  - 16.2.5. Change in Law; or
  - 16.2.6. obtaining Approvals by the Company.
- 16.3. Unless specified to the contrary in the Contract, if any of the circumstances identified in **clause 16.2** occur and result in an increase in the cost to the Company of performing the Supply, the Company is entitled to claim the additional costs and the Buyer must pay the costs.
- 16.4. Unless expressly stated otherwise:
- 16.4.1. the Price excludes GST,
  - 16.4.2. the Price for the Goods is on an Ex-Works basis,
  - 16.4.3. the Price is based on the steel and copper prices as at the Quotation date and should these prices increase by more than 2% at the date that the Company places its order the Company is entitled to claim the full cost of the increase in prices and the Buyer must reimburse the Company the costs claimed,
  - 16.4.4. the Price is based on the full scope of Supply being performed. The Buyer acknowledges and accepts that unless expressly stated otherwise in the Contract, any break-up of the Price included in a Quotation or Order Confirmation was preliminary only and intended to reflect a board break-up of the costs of items into recognisable groups and that should the Buyer delete or separate such items the Company is entitled to a reasonable adjustment to the Price for the balance of the Supply,
  - 16.4.5. the Price of the Maintenance Services does not include the cost of any replacement parts, materials, and equipment;
  - 16.4.6. for Goods to be imported into Australia, the Price excludes any freight, duties, taxes, customs and import charges and all imposts of any Government Authority ('governmental imposts'), which the Company is entitled to claim at cost plus 5% and the Buyer must reimburse the Company the costs claimed; and
  - 16.4.7. for Austco Products the Price excludes any additional costs charged by Austco to the Company for the impact of exchange rates or customs duties variances between the time that Austco accepts the Company's order and the time the Austco Goods are delivered to the Company.

## 17. Invoicing and Payment.

- 17.1. Unless expressly stated otherwise in the Contract, the Customer will invoice the Buyer for the Supply performed and any other money or reimbursement that the Company becomes entitled to under the Contract:
- 17.1.1. at the time stated in the Contract; or
  - 17.1.2. if no time is stated in the Contract, at the time stated on an Order Confirmation; or
  - 17.1.3. if no time is stated in the Contract or the Order Confirmation, or there is no Order Confirmation, the time stated in the most recent Quotation issued by the Company (if any); or
  - 17.1.4. if neither **clauses 17.1.1, 17.1.2 or 17.1.3** applies:

- (a) for Maintenance Services, at the completion of each item of maintenance work;
  - (b) where the Supply is performed on a Milestone basis, on the completion of each Milestone on an item by item basis;
  - (c) where the Supply is for the supply only of Goods, upon delivery of each good to the Buyer; or
  - (d) by monthly progress claims.
- 17.2. The Company will invoice the Buyer for Variations performed either with the invoice under **clause 17.1**, or by monthly progress claims.
- 17.3. Unless expressly stated otherwise in the Contract, if the Company is entitled to a deposit or advance payment the Company shall be entitled to invoice the Buyer from the Commencement Date.
- 17.4. Subject to **clause 17.16 and 17.17**, unless the Contract states otherwise, the Buyer must pay:
- 17.4.1. any deposit or advance payment not later than ten (10) days; and
  - 17.4.2. the Price as adjusted by any additions or deductions made pursuant to the Contract, and any other money or reimbursement that the Company becomes entitled to under the Contract not later than thirty (30) days,
- following the date of the invoice.
- 17.5. Unless expressly stated otherwise in the Contract, and subject to **clause 33**, the Buyer has no entitlement to request, and the Company has no obligation to provide any form of security against the Price or any deposit or advance payment.
- 17.6. The Buyer must pay in the currency in which it is invoiced.
- 17.7. Time for payment is of the essence.
- 17.8. Where the Buyer has defaulted in its payment obligations under the Contract, any amounts owing by the Buyer to the Company for any Supply performed pursuant to the Contract may be offset by the Company against any amount payable by the Company to the Buyer under any other contract.
- 17.9. **Clause 17.8** does not preclude or otherwise limit the rights of the Company to pursue legal remedies in the event of default by the Buyer.
- 17.10. Where the Contract is for, or includes, the supply of Austco Product on an Ex-Works, supply only or supply and deliver only basis, each collection, supply or delivery creates an obligation on the Buyer to pay the Company for such collection, supply or delivery whether such wholly or partially fulfils an Order or the Contract.
- 17.11. The Company may charge a surcharge on payments made by credit card to reimburse the cost of any bank or processing charges incurred by the Company in respect of the payment.
- 17.12. To the maximum extent permitted by law, the Buyer will be liable for all costs incurred with the recovery of any unpaid invoiced amounts, including without limitation legal and collection agents' fees, court costs, interest and the Company's fees for time incurred with the recovery process.
- 17.13. The Buyer is not entitled to set off against or deduct from the Price or any other money or reimbursement that the Company becomes entitled to under the Contract, any sums owed or claimed to be owed to the Buyer by the Company, nor is the Buyer entitled to withhold payment of any invoice because part of that invoice is in dispute.
- 17.14. If the Buyer does not pay any amount owing to the Company by the due date for payment, the Company may charge default interest on the unpaid amount at three percent above the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*, calculated on a daily basis from the due date until payment is received in full (after as well as before judgment).

- 17.15. Any agreement by the Company to grant the Buyer credit has been or will be made based on a Credit Account Application and any additional information (including references) required by the Company.
- 17.16. If the Company approves the Buyer's Credit Account Application and grants the Buyer credit, the Buyer must pay the Price and any other money or reimbursement that the Company becomes entitled to under the Contract within the period of credit and in accordance with any agreed credit terms.
- 17.17. Until the Company grants the Buyer credit by notice in writing, or if the Company withdraws, suspends or limits credit (which it may do at any time and for any reason, in its absolute discretion), the Company will only supply the Goods or Services to the Buyer on the basis of payment by cash in advance.
- 17.18. By completing a Credit Account Application and applying for credit with the Company, the Buyer agrees to be bound by the Terms and Conditions for each Supply made by the Company to the Buyer unless and until the Company and the Buyer agree in writing to the contrary.
- 17.19. If the Buyer holds a credit account with the Company, the Buyer must immediately notify the Company in writing of any change in the shareholding or ownership of the Buyer or any material change in the Buyer's financial position or any other information provided by the Buyer in the Credit Account Application.

## 18. GST.

- 18.1. In this **clause 18**, a word or expression defined in the GST Law has the meaning given to it in that law.
- 18.2. All amounts payable under a Contract are exclusive of GST.
- 18.3. If a party makes a supply under or in connection with a Contract in respect of which GST is payable, the consideration for the supply but for the application of this **clause 18.3 (GST exclusive consideration)** is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made unless that consideration is stated to already include GST.
- 18.4. If a party must pay, reimburse or indemnify another party for a Loss, the amount to be paid, reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss, and then increased in accordance with **clause 18.3**.
- 18.5. Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with a Contract.
- 18.6. A party need not make a payment for a taxable supply made under or in connection with a Contract until it receives a tax invoice for the supply to which the payment relates.

## 19. Delivery Claims.

- 19.1. The Buyer must inspect all Goods received as soon as practicable following delivery.
- 19.2. The Buyer must, within five (5) days of delivery (time being of the essence), notify the Company of any error, omission or shortage in quantity, or of any damage to the Goods delivered (**Delivery Claim**).
- 19.3. The Buyer must provide such substantiation of any claim as reasonably requested by the Company and must assist the Company to investigate the Delivery Claim.
- 19.4. The Buyer must allow the Company or its nominee to inspect the alleged error, omission or shortage in quantity, or damage to the Goods delivered within a reasonable time of receiving the Delivery Claim.
- 19.5. The Company will endeavour to rectify any error, omission or shortage in quantity, or damage to the Goods delivered properly notified and verified in accordance with this **clause 19**, as soon as reasonably practicable after receiving the Delivery Claim but will not be liable for any delay or disruption in respect of such rectification.

- 19.6. If the Buyer fails to give notice in accordance with **clause 19.2**, the Company will be deemed to have delivered the correct quantity of Goods, undamaged, and no Delivery Claim by the Buyer need be recognised by the Company.
- 19.7. To the extent permitted by law, the Company will not accept any Delivery Claim made for any Austco Products that were ordered, manufactured or developed by Austco for a special project as determined by Austco or the Company.

## 20. Warranties and Defects.

- 20.1. Subject to **clauses 8.8, 12.6, 20.2, 20.3, 20.8, 20.9** and **20.10**, the Company warrants to the Buyer that for the Warranty Period the Supply:
- 20.1.1. conforms with the Contract; and
  - 20.1.2. will be free from defects in material and workmanship under normal use and maintenance.
- 20.2. Products purchased by the Company from a third-party supplier for incorporation into the Supply by the Company or for sale to the Buyer are subject to warranty as applicable from the applicable third-party supplier to the Company. To the maximum extent permitted by law, the Company does not give any warranty regarding such, but will provide reasonable assistance to the Buyer, at the Buyer's cost, to enforce the Buyer's rights against the third-party supplier.
- 20.3. The Buyer must operate the Goods supplied by the Company in accordance with the applicable manufacturer's recommendations (including recommendations of any supplier to the Company), and properly and regularly maintain the Goods.
- 20.4. The Buyer must notify the Company of any Goods or Services that it believes do not meet the warranties in **clause 20.1** stating the reasons or providing the evidence to support the Buyer's belief, and must allow the Company or its nominee to inspect the Goods or results of the Services within a reasonable time after such notification.
- 20.5. If, within the Warranty Period, the Company agrees that the Goods or Services do not meet the warranties in **clause 20.1**, and provided the Buyer will return any Goods to the Company, the Company must, at its option:
- 20.5.1. repair or replace the Goods (or applicable part of the Goods) or pay the cost of the repair or replacement of those Goods (or applicable part of the Goods);
  - 20.5.2. re-perform the Services or pay the cost of their reperformance; or
  - 20.5.3. reimburse the Buyer the Price paid by the Buyer for the Goods (or applicable part of the Goods) or Services (or applicable part of the Services).
- 20.6. Any repair, replacement, payment for the repair or replacement, re-performance, or any reimbursement by the Company will not extend the Warranty Period.
- 20.7. The Buyer acknowledges and accepts that it must firstly give the Company reasonable opportunity to rectify any part of the Supply that is not in accordance with the Contract before the Buyer can commence rectification either by the Buyer or its subcontractors, or the Buyer makes any claim for a reduction in the Price or for any Loss.
- 20.8. The Company does not warrant that the Austco Software will not become obsolete or will remain compatible with any other product or technology with which the Supply may be used.
- 20.9. The warranties given by the Company are void if:
- 20.9.1. when the Goods are supplied by the Company on a supply only basis, they have not been installed or removed by qualified personnel,
  - 20.9.2. the Austco Products have been installed or removed by persons other than the Company or persons that have been suitably trained by an Authorised Reseller or an Austco employed technician,
  - 20.9.3. the Austco Products have not been serviced and maintained annually since being supplied by the Company by either the Company or an Authorised Reseller or an Austco employed technician, or

- 20.9.4. the Austco Products have not been serviced or repaired by either the Company or an Authorised Reseller or an Austco employed technician.
- 20.10. The warranties given by the Company do not cover any damage, deterioration or malfunction resulting from:
  - 20.10.1. improper or unreasonable use, servicing or maintenance,
  - 20.10.2. damage by accident, mishandling, modification, misuse, abuse, or neglect,
  - 20.10.3. exposure to excess moisture, fire, lightning, power surges, or other acts of nature, or
  - 20.10.4. any other cause which does not relate directly to a defect in the workmanship of the Company or the Goods.
- 20.11. The Company makes no other warranty to any person (including the Buyer) in relation to the Goods or Services except those expressly set out in the Contract and those warranties which cannot be specifically excluded under law and the Company expressly excludes all other terms, conditions, warranties, undertakings, inducements or representations, whether expressly or implied or implied by statute.

## 21. Insurance.

- 21.1. The Company must maintain with a reputable insurance company throughout the term of the Contract:
  - 21.1.1. public liability insurance written on an occurrence basis providing cover for an amount not less than \$20,000,000;
  - 21.1.2. product liability insurance written on an occurrence basis and in aggregate for the amount of \$20,000,000;
  - 21.1.3. workers' compensation insurance appropriate to its activities in the form and amount required by law; and
  - 21.1.4. if the Supply includes Design Services, professional indemnity insurance for an amount of \$5,000,000 per claim and in the annual aggregate.
- 21.2. The Company shall provide copies of certificates of currency as evidence that it holds the insurance required under **clause 21.1** whenever reasonably requested by the Buyer.
- 21.3. Unless the Contract provides otherwise, the Buyer must ensure that there is in force a policy of insurance with a reputable insurance company in relation to loss or damage to the Supply and all Free Issue Materials and equipment with a liability limit of not less than twice the aggregate of the Price and the value of the Free Issue Materials and equipment covering at least the Goods (including the Free Issue Materials and equipment) and Services, including Goods in manufacture, or manufactured and awaiting delivery or in storage, or in transit to the Buyer, and provide a copy of the certificate of currency whenever reasonably requested by the Company.
- 21.4. The Company's liability for any deductible under any policy of insurance not required to be maintained by the Company under the Contract is limited in the aggregate to \$20,000.

## 22. Personal Property Securities Act.

- 22.1. In this **clause 22**, terms defined in the PPSA have the meaning given in the PPSA, unless the context requires otherwise.
- 22.2. The Buyer acknowledges and agrees that, with respect of the Goods identified in the Contract or otherwise supplied to the Buyer, the Contract constitutes a security agreement and that the Company may register a financing statement in respect of the security interest provided by the Contract.
- 22.3. The Buyer grants to the Company a security interest in the Goods supplied to the Buyer by the Company to secure payment of the Amount Payable. The security interest:
  - 22.3.1. extends to and continues in all proceeds; and

- 22.3.2. is a purchase money security interest to the extent to which it secures payment of the unpaid Price.
- 22.4. The Buyer must:
- 22.4.1. promptly do anything required by the Company to ensure the Company's security interest is a perfected security interest and has priority over all other security interests in the Goods;
- 22.4.2. not do or permit anything to be done that may result in the purchase money security interest granted to the Company ranking in priority behind any other security interest;
- 22.4.3. not cause or knowingly permit any person to take a security interest over, or to register a financing statement in relation to, the Goods without the prior written consent of the Company; and
- 22.4.4. immediately notify the Company if it becomes aware of any person taking steps to register a financing statement in relation to the Goods.
- 22.5. The Buyer:
- 22.5.1. waives the right under the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing charge statement relating to a security interest created under the Contract;
- 22.5.2. waives any right it may have under section 115 of PPSA upon enforcement;
- 22.5.3. to the fullest extent permitted by the PPSA, contracts out of its rights to receive any other notice or statement under any other provision of the PPSA;
- 22.5.4. agrees to pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR or enforcing or attempting to enforce the security interest created by the Contract including executing subordination agreements; and
- 22.5.5. is responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA.
- 22.6. If the Buyer defaults in the performance of any obligation to the Company under the Contract or any other agreement for the Company to provide Goods to the Buyer, the Company may enforce its security interest in any Goods by exercising all or any of its rights under the Contract or the PPSA.

## 23. Liability and Indemnities.

- 23.1. Notwithstanding any other clause in this Contract, to the extent permitted by law:
- 23.1.1. the Company has no liability to the Buyer under or in connection with this Contract for any indirect or consequential loss, economic, incidental or special loss or for any loss of production or production stoppage, loss of profit or anticipated profit, loss of revenue or other form of consideration, loss of savings or anticipated savings, loss of use, loss of data, loss of contract or repudiation of contract, loss of goodwill or reputation or loss of business opportunity, business interruption, holding over or overhead loss, loss of future business or for any punitive or exemplary damages; and
- 23.1.2. the Company's total liability to the Buyer under any principle of law arising out of, or in relation to this Contract, is limited to the maximum extent permitted by law to either:
- (i) that stated in **clause 20.5** for any claim by the Buyer that any Goods or Services do not meet the warranties in **clause 20.1**, or
- (ii) 10% of the Price for any other claim or Loss.
- 23.2. **Clause 23.1.2** above does not exclude or limit the Company's liability in respect of:



- 23.2.1. wilful misconduct, criminal act or fraud committed by the Company or any of the Company's employees or agents;
  - 23.2.2. death or personal injury; or
  - 23.2.3. liability, which by law the Company cannot contract out of.
- 23.3. The Company's liability shall be reduced proportionally to the extent that an act or omission of the Buyer or a breach of the Contract by the Buyer may have contributed to the claim, loss, expense or damage.
- 23.4. Each indemnity of the Buyer is a continuing obligation, separate and independent from the other obligations of the Buyer and survives the termination or expiration of this Contract. It is not necessary for the Company to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract. The Buyer shall pay on demand any amount it is obliged to pay to the Company under any indemnity in this Contract.

## 24. Intellectual Property.

- 24.1. Subject to this **clause 24**, the Company IP remains vested in the Company and the Austco IP remains vested in Austco.
- 24.2. The Buyer grants to the Company a non-exclusive, royalty-free, sub-licensable (to the Company's Personnel), revocable, non-transferable licence to use the Buyer IP for any purposes related to the supply or to perform the Company's obligations under the Contract.
- 24.3. The Buyer indemnifies the Company from and against all claims and any Loss incurred by the Company as a direct or indirect result of any breach of, or infringement of, a third party's Intellectual Property Rights as a result of the Company using or relying on any Specifications, drawing, design, production requirements or other materials or instructions furnished by the Customer in relation to the Supply or otherwise using the Buyer's IP in the manner set out in, or reasonably inferable from, the Contract.
- 24.4. All Company IP and Austco IP provided by the Company or Austco to the Buyer as part of the Supply remains the property of the Company or Austco (as applicable) and the Buyer warrants that it will not infringe those rights. Subject to the Buyer's payment of the Price in accordance with the Contract, the Company grants the Buyer a non-exclusive, royalty-free, revocable, non-transferable licence to use the Company IP for any purpose related to the use of the Goods or Services under, or as reasonably inferable from, the Contract and otherwise to receive the benefit of the Supply.
- 24.5. Except as stated otherwise in the Contract, all Developed IP will be the sole and exclusive property of the Company, and the Buyer hereby irrevocably assigns to the Company all right, title and interest in and to the Developed IP upon the creation of such Developed IP.
- 24.6. Subject to the Buyer's payment of the Price in accordance with the Contract and unless stated otherwise in the Contract, the Company grants to the Buyer a non-exclusive, royalty-free, sub-licensable (to the Buyer's Personnel), revocable, non-transferable licence to use the Developed IP for any purposes related to the use of the Goods or Services under or as reasonably inferable from, the Contract and otherwise to receive the benefit of the Supply.

## 25. Confidential Information.

- 25.1. Each party must:
  - 25.1.1. take all reasonable steps to safeguard the confidentiality of the Confidential Information; and
  - 25.1.2. not disclose, make public or use for purposes other than for the purposes of the Contract any Confidential Information without the prior written consent of the other party.
- 25.2. Any obligation of a party under this **clause 25** will not be taken to have been breached if the Confidential Information was required to be disclosed by law or court order, provided that the party, to the extent reasonably practicable, gives the other party prompt notice of the existence of such an obligation and makes a reasonable effort to otherwise protect the confidentiality of such information.

**26. Variations to the Supply.**

- 26.1. The Buyer may, by written notice, request the Company to do any one or more of the following:
- 26.1.1. increase, decrease or omit any part of the Supply;
  - 26.1.2. change the character or quality of any material or work (including a change in specified performance requirements or functional requirements);
  - 26.1.3. alter the program for the performance of the Supply;
  - 26.1.4. perform additional work; or
  - 26.1.5. to the extent that work relating to an event in **clause 16.2** is not included in the Price, carry out such work.
- (Variation).
- 26.2. If the Buyer requests a Variation, the Company must consider the request in good faith and notify the Buyer in writing whether or not the Company is willing to perform the Variation, and if so, provide a Variation Quotation with the following:
- 26.2.1. the cost (including any Preliminaries and time related costs); and
  - 26.2.2. the effect on any other obligation of the Company under the Contract, including program and warranties.
- 26.3. The Company is entitled to claim the Company's reasonable costs of complying with **clause 26.2** and the Buyer must reimburse the Company the costs claimed.
- 26.4. The Buyer and the Company must first use their best endeavours to agree upon the cost and the effect on any other obligation of the Company under the Contract of the Variation prior to the Company commencing to perform the Variation.
- 26.5. Other than Austco Products ordered, manufactured or developed for a special project as determined by the Company or Austco which cannot be cancelled or returned, where the Variation involves cancelling, modifying or altering Austco Products after Austco has accepted the Company's order, and Austco consents to such, the cost of the Variation will include any reimbursement costs that the Company is required to pay Austco, however, any such reimbursement costs shall not exceed 20% of the individual purchase price of the Austco Product.
- 26.6. Where the Variation is for an increase, the Company will be entitled to a mark-up of not less than 10% on the cost of the Variation for Off-site Overheads and profit.
- 26.7. Where the Variation is a deduction there shall be no reduction of the Off-site Overheads or profit.
- 26.8. A Variation will not be binding on the parties unless and until:
- 26.8.1. the parties have agreed in writing on the cost and the effect on any other obligation of the Company under the Contract of the Variation; or
  - 26.8.2. the Buyer has accepted the Variation Quotation; or
  - 26.8.3. the parties have agreed upon the scope of the Variation, the effect on any other obligation of the Company under the Contract, and to send the cost component of the Variation to an Independent QS for the Independent QS to determine the cost.
- 26.9. Unless and until the requirements of **clause 26.8** are satisfied, the parties remain bound by the Contract, without the Variation.

**27. Subcontracting and Assignment.**

- 27.1. The Company reserves the right to subcontract any part of the Supply without the Buyer's consent.
- 27.2. The Company may assign its rights or novate its rights or obligations under the Contract (in whole or in part) to any person without the consent of the Buyer.

- 27.3. The Buyer must not assign this Contract or any payment or otherwise transfer its rights under the Contract without prior notice to and consent from the Company, which consent must not be unreasonably withheld.

## 28. Suspension and Termination.

- 28.1. If the Buyer has not complied with the terms of payment pursuant to **clause 17**, or the Company has reasonable evidence that the Buyer is subject to an Insolvency Event, the Company may suspend the performance of its obligations under the Contract until the Buyer has complied with **clause 17**, or the Buyer has provided evidence acceptable to the Company that the Buyer is not subject to an Insolvency Event, by giving written notice to the Buyer that the Company has suspended its obligations pursuant to this clause.
- 28.2. The Company shall recommence its obligations under the Contract within 2 Business Days of Buyer complying with **clause 17** or providing evidence acceptable to the Company. The Company is entitled to claim any reasonable costs of the Company due to the suspension (including escalation costs) and the Buyer must reimburse the Company the costs claimed.
- 28.3. If after 10 Business Days of the Company giving a notice pursuant to **clause 28.1**, the Buyer has not complied with **clause 17** or provided evidence acceptable to the Company, the Company may (provided that the Company is not prohibited from doing so under the Ipso Facto Laws) terminate the Contract by written notice to the Buyer.
- 28.4. The Company may (provided that the Company is not prohibited from doing so under the Ipso Facto Laws) terminate the Contract by written notice to the Buyer if:
- 28.4.1. the Buyer is subject to an Insolvency Event,
  - 28.4.2. the Buyer is otherwise in breach of any of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from the Company requesting the breach be remedied, or by its nature cannot be remedied;
  - 28.4.3. Austco does not accept the Company's order for the Austco Products; or
  - 28.4.4. Austco terminates the Reseller Agreement.
- 28.5. Subject to **clause 28.7**, the Buyer may (provided that the Buyer is not prohibited from doing so under the Ipso Facto Laws) terminate the Contract by written notice to the Company if:
- 28.5.1. the Company is subject to an Insolvency Event; or
  - 28.5.2. the Company commits a material breach of the Contract and fails to remedy the breach within 20 Business Days (or a period otherwise agreed between the parties) after receipt of written notice from the Buyer requesting the breach be remedied.
- 28.6. Without limiting any other remedy available to the Company, to the maximum extent permitted by law:
- 28.6.1. the Buyer must pay for all parts of the Supply performed prior to the termination of the Contract; and
  - 28.6.2. if the Contract is terminated by the Company under **clause 28.3**, **28.4.1** or **28.4.2**, the Buyer must indemnify the Company from and against all claims, and any Loss incurred by the Company arising out of or in connection with the termination.
- 28.7. Notwithstanding **clause 28.5**, the Buyer has no entitlement to terminate the Contract if the breach by the Company is due to Austco being delayed or prevented in delivering Austco Product to the Company.

## 29. Services and Notices.

- 29.1. A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
- 29.1.1. in writing, in English and signed by a person duly authorised by the sender; and

- 29.1.2. marked for the attention of the representative of the other party for the Contract, and hand delivered or sent by prepaid post or email to the representative's address applicable at the Commencement Date, as varied by any Notice given by the representative to the sender.
- 29.2. Communications by email need not be marked for the attention in the way required by **clause 29.1.2**. However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.
- 29.3. A Notice given in accordance with **clause 29.1** takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- 29.3.1. if hand delivered, on delivery;
- 29.3.2. if sent by prepaid post, six Business Days after the date of posting (or fourteen Business Days after the date of posting if posted to or from a place outside the country of delivery); or
- 29.3.3. if sent by email, at the time the email was sent unless the sender receives an automated message that the email has not been delivered,
- but if receipt is not on a Business Day or is after 5.00pm on a Business Day (in the time zone of the addressee), the Notice is taken to be received at 9.00am on the next Business Day.

### 30. Disputes.

- 30.1. Nothing in this **clause 30** prevents either party seeking urgent injunctive or other interim relief from a court, or from continuing existing court proceedings.
- 30.2. It is a condition precedent to the commencement of any proceedings in any court in any jurisdiction (other than for urgent interlocutory relief) that the parties first follow the procedure referred to in **clauses 30.3, 30.4 and 30.5**,
- 30.3. If a Dispute arises, a party may give the other party a written notice of dispute which must adequately identify and provide details of the Dispute.
- 30.4. Within 15 Business Days of receipt of the notice the parties must meet and use genuine efforts to resolve the dispute or agree on an alternate dispute resolution method.
- 30.5. If, within 30 Business Days of receipt of the notice the parties are unable to resolve the Dispute, or agree on an alternate dispute resolution method, the Dispute must be referred as follows:
- 30.5.1. where the Dispute is purely in respect of the value, or the method of valuing, an Independent QS in accordance with **clause 30.6** with the valuation certificate being final and binding and not subject to appeal; and
- 30.5.2. for all others, expert determination in accordance with **clause 30.7** with the determination being final and binding and not subject to appeal.
- 30.6. The Independent QS shall use methods it deems appropriate to value the Dispute and issue a written valuation certificate.
- 30.7. If the parties cannot agree on an expert within 20 Business Days of the Dispute being referred, Resolution Institute shall nominate the expert. The Resolution Institute's Expert Determination Rules shall apply.
- 30.8. Each party must bear its own costs of complying with this **clause 30** and split the costs of any Independent QS or expert.
- 30.9. (**Victoria only**) The parties agree that **clause 30.5** is a method for resolving disputes for the purposes of section 10A(3)(d) of the Security of Payment Act.

### 31. Drawings and Information.

- 31.1. Unless the Contract provides otherwise, all drawings and information issued by the Company remain the property of the Company and may not be distributed or copied without the Company's permission.

- 31.2. All drawings, descriptive and shipping specifications, performance claims and capability claims given by the Company in the Quotation or contained in any catalogue, website or other publication are approximations only, do not form part of the Contract and the Company does not warrant the accuracy or completeness of any such information, unless expressly guaranteed in the Contract.

## 32. Force Majeure

- 32.1. The Company will not be liable for failure to perform any, or all, of its obligations under the Contract to the extent, and for so long as, its performance of the obligations is prevented or delayed by a Force Majeure Event provided that the Company:
- 32.1.1. gives notice to the Buyer of the Force Majeure Event and the obligations of the Company being prevented or delayed; and
  - 32.1.2. recommences the obligations that were prevented or delayed as soon as practical after the obligations cease to be prevented or delayed.
- 32.2. If the Force Majeure event continues:
- 32.2.1. for a continuous period of 60 or more days; or
  - 32.2.2. for successive periods totalling 60 or more days within any period of 90 days,
- the Company may terminate the Contract by giving five (5) Business Days written notice to the Buyer.

## 33. Provision of Security

- 33.1. In the event that the Buyer requires the Company to provide to it security for its obligations pursuant to the Contract, the Company, if it agrees in its discretion to do so, will do so on the following terms:
- 33.1.1. unless expressly stated otherwise in the Contract, security will be provided to a maximum of 5% of the Price by way of two (2) x bank guarantees or surety bonds with expiry dates being one (1) month after the Completion Date, and one (1) month after the original Defects Liability Period, with the first being returned upon completion of the Supply (excluding any Maintenance Services), and second upon the end of the original Defects Liability Period; and
  - 33.1.2. the Buyer not being entitled to recourse to the security until a period of five (5) Business Days has elapsed from the day the Buyer gives written notice to the Company of the Buyer's intention to have recourse.
- 33.2. Unless stated otherwise in the Contract, the Company is entitled to claim all costs associated with and because of the security and the Buyer must reimburse the Company the costs claimed.

## 34. Deed of Guarantee, undertaking and substitution

- 34.1. The Buyer shall have no entitlement to request, and the Company has no liability to execute any deed of guarantee, undertaking and substitution.

## 35. Guarantee.

- 35.1. This **clause 35** applies to the extent a Guarantor has been nominated under a Credit Account Application or a third party has agreed to guarantee the Buyer's obligations under the Contract.
- 35.2. In consideration for the Company entering into the Contract, the Guarantor unconditionally and irrevocably guarantees to the Company on the terms set out in this **clause 35**, the performance of the Buyer's obligations under the Contract, including payment of all money due under the Contract, whether or not on credit terms (**Guaranteed Money**). Without limitation:
- 35.2.1. if any Guaranteed Money is not paid when due, the Guarantor must immediately on demand from the Company, pay to the Company the money due in the same manner as that money is required to be paid by the Buyer under the Contract;

- 35.2.2. if the Buyer fails to perform any obligations under the Contract when they are due, the Guarantor must immediately on demand from the Company, cause the Buyer to perform its obligations under the Contract.
  - 35.3. The Guarantor indemnifies the Company against any claim, any Loss, outgoing or payment suffered, paid or incurred by the Company in relation to:
    - 35.3.1. the failure of the Buyer to perform its obligations under the Contract; or
    - 35.3.2. the failure of the Guarantor to cause the Buyer to perform its obligations under the Contract.
  - 35.4. This **clause 35** applies:
    - 35.4.1. to the present and future amount of Guaranteed Money and the present and future obligations of the Customer under the Contract;
    - 35.4.2. to the Contract, as amended, supplemented, renewed or replaced;
    - 35.4.3. regardless of whether the Guarantor is aware of has consented to or is given notice of any amendment, supplement, renewal or replacement of any Contract to which the Buyer and the Company are a party or the occurrence of any other thing; and
    - 35.4.4. irrespective of any rule of law or equity to the contrary.
  - 35.5. This **clause 35** is:
    - 35.5.1. a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation; and
    - 35.5.2. independent of and not in substitution for or affected by any other collateral security which the Company may hold in respect of the Guaranteed Money or the obligations of the Buyer under Contract.
  - 35.6. This **clause 35** is enforceable against the Guarantor:
    - 35.6.1. without first having recourse to any collateral security; and
    - 35.6.2. whether or not the Company has made demand on the Buyer, given notice to the Buyer or any other person in respect of anything or taken any other steps against the Buyer or any other person.
- 36. Prior Works**
  - 36.1. The Contract and the Terms and Conditions shall apply to any work performed by the Company in connection with the Supply even if it was performed prior to the Commencement Date.
- 37. Governing law and jurisdiction**
  - 37.1. The Contract will be governed by and construed in accordance with the laws in force in the state in which the Order Confirmation is issued, or if no Order Confirmation is issued, Victoria.
- 38. Privacy.**
  - 38.1. Each party must comply with its obligations under the Privacy Laws.
  - 38.2. The Company will deal with personal information in accordance with its published privacy policy.
- 39. Amendment**
  - 39.1. This Contract may not be amended or varied unless the amendment or variation is in writing signed by all parties.



**40. Waiver**

- 40.1. Waiver of any power or right under this Contract by the Company must be in writing signed by the parties and is effective only to the extent set out in that written waiver.
- 40.2. The failure of the Company at any time to require full or partial performance of any provision of the Contract will not affect in any way the full right of the Company to require that performance of that provision subsequently.
- 40.3. The waiver by any party of a breach of a provision of the Contract will not be deemed a waiver of all or part of that provision or of any provision or of the right of that party to avail itself of its rights subsequently.

**41. Third Parties**

- 41.1. Nothing in the Contract confers or purports to confer on any third party (including Austco) any benefit or rights to enforce any term of the Contract.

**42. Survival**

- 42.1. Provisions of the Contract which by their nature, are intended to survive, survive termination or expiry of the Contract.

**43. Severance**

- 43.1. The parties agree that a construction of this Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result.
- 43.2. If, despite the application of this clause, a provision of this Contract is illegal or unenforceable:
- 43.2.1. if the provision would not be illegal or unenforceable if a word or words were omitted, that word or words are severed; and
- 43.2.2. in any other case, the whole provision is severed, and the remainder of this Contract continues in force.

**44. Rights, remedies additional**

- 44.1. Any rights and remedies that a person may have under this agreement are in addition to and do not replace or limit any other rights or remedies that the person may have.

**Schedule 1**

The period of the <b>Warranty Period</b> for the <b>workmanship</b> of the Company is:	Twelve (12) months.
The period of the <b>Warranty Period</b> for all <b>Products</b> manufactured by the Company is:	Twelve (12) months.
The period of the <b>Warranty Period</b> for all <b>Products</b> purchased by the Company from a third-party supplier is:	Refer to clause 20.2.
The period of the <b>Warranty Period</b> for the <b>Austco Products</b> is as follows:	
(a) Austco IP-ARK-1 Nurse Call Appliance is:	(a) Thirty (30) months.
(b) Austco branded OEM products ( including Duty Stations (IP-DUTY), Application Station (IP-APP1) and Nurse Stations (IP-TSNS/M-xx, IP-TSNS/Austco) is:	(b) Twelve (12) months.
(c) Austco consumables (including pillow speakers, call cords, pull cord string, pull	(c) Six (6) months.

cord break apart, insert button call point and insert button PST) is:  (d) All other Austco manufactured products is:	(d) Thirty (30) months.
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