

TERMS AND CONDITIONS

Last updated: May 2024

It is agreed:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the contrary intention appears:

AAE means Australian Aerospace Engineering Pty Ltd;

AAE Website means www.aaestore.com.au;

Agreement means this document and includes any schedules, annexures, Order Confirmations, Invoices, Certificate of Conformances/Delivery Notes provided against the Customer's requirements;

Authorised Release Certificate has the same meaning as defined by the CASR.

Business Day means any day except a Saturday, Sunday or public holiday in New South Wales;

Business Hours means 9am to 5pm on a Business Day;

CASR means the "Civil Aviation Safety Regulations" of Australia;

Certificate of Conformance/Delivery Note means the controlled document Form: Certificate of Conformance/Delivery Note;

Costs mean the costs specified on the Invoice or Quotation;

Customer means the party purchasing the Products, which are the subject of a Quotation or Order Confirmation made by AAE;

Dispatch means to:

- (a) provide the Products to the designated freight forwarder for shipping; or
- (b) in the case of a Customer collection, provide the Products directly to the Customer or Customer's agent;

GST means goods and services tax or similar value added tax levied or imposed in Australia under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) or otherwise on a supply;

Intellectual Property means all industrial and intellectual property rights whether created now or in the future, whether recognised in Australia or overseas, whether or not they are registered or capable of being registered and includes (without limitation) the rights in patents, knowhow, copyright, designs, trademarks, trade secrets, business or company names or other proprietary rights;

Invoice means the AAE issued tax invoice;

Made-To-Order Product means a Product sold by AAE which is available in multiple specifications and is manufactured by AAE upon acceptance by AAE of an order for the Product, including hose assemblies;

Order Confirmation means the AAE controlled document, Form: Order Confirmation, or if the order is placed through the AAE Website the automatically generated 'new order' notification email;

Products mean all parts, materials or components supplied by AAE; and

Quotation means a price that shall not vary for the Products except in accordance with authorised variations.

1.2 Interpretation

In this Agreement unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation of this Agreement;
- (b) the singular includes the plural, and vice versa;
- (c) a gender includes all genders;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to a clause is a reference to a clause of this Agreement;
- (g) a reference to an Agreement or document (including a reference to this Agreement) is to the Agreement or document as amended, supplemented, notated or replaced from time to time;
- (h) a reference to a party to this Agreement or another Agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to anything (including any right) includes a part of that thing, but nothing in this paragraph implies that performance of part of an obligation constitutes performance of the obligation;
- (j) a reference to a statute, regulation, proclamation, ordinance or bylaw includes all statutes, regulations, proclamations, ordinances or bylaws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances or bylaws issued under that statute;
- (k) a reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately); and
- (l) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the provision of this Agreement or that provision.

2 PROVISION OF PRODUCTS

2.1 Agreement

2.1.1 AAE agrees to provide the Customer with the Products under the terms of this Agreement, where:

- (a) the Customer completes an order on the AAE Website;
- (b) the Customer accepts a Quotation that is confirmed by AAE via provision of an Order Confirmation; or
- (c) AAE issues an Order Confirmation in response to a Customer Purchaser Order or request for Products.

2.1.2 In supplying Products under the terms of this Agreement, AAE will be deemed to have completed an order if the quantity delivered is within a 3% variation of the quantity ordered.

2.2 Prices

2.2.1 Product prices are displayed in Australian dollars on the AAE Website, which is subject to change without notice. Unless agreed otherwise in writing by AAE, the price payable by the Customer is the price in effect at the time of order by the Customer.

- 2.2.2 Upon request, AAE may provide the Customer with a Quotation for Products. All prices in a Quotation will be provided in Australian dollars, unless clearly stated otherwise on the Quotation.
- 2.2.3 A Quotation will be valid until the date detailed on the Quotation, subject to prior sale.
- 2.2.4 A Quotation only includes delivery of the Products if delivery is expressly detailed as a separate line item on the Quotation.
- 2.2.5 Upon receipt of an order request, whether through the AAE Website, a Customer Purchase Order or otherwise, AAE will provide the Customer with an Order Confirmation.
- 2.2.6 If an Order Confirmation is sent to the Customer in response to a Purchase Order, the Customer is responsible for checking the details of the Order Confirmation carefully and must advise AAE of any errors within two (2) Business Hours of receipt of the Order Confirmation by the Customer. If the Customer does not advise AAE of any errors in an Order Confirmation, the Order Confirmation is deemed to be correct.
- 2.2.7 AAE will fulfil orders only in accordance with the details on an Order Confirmation and not any Customer provided document, including the Purchase Order. Any costs incurred by AAE in reliance on incorrect or inadequate information provided by the Customer may result in additional charges to the Customer for such costs.
- 2.2.8 After receipt of an Order Confirmation provided by AAE, the Customer may request in writing to AAE for any variation to its requirements. Such variation may be subject to a change to the originally quoted price and AAE therefore reserves the right to vary the price in an Order Confirmation to include any additional charges in respect of such variation.
- 2.2.9 AAE reserves the right to refuse any request for Quotations or orders at any time and for any reason. AAE reserves the right to cancel orders at any time and for any reason.
- 2.2.10 The Customer may not cancel the order once an Order Confirmation is sent unless AAE agrees in writing. Where an order is cancelled by the Customer, the Customer indemnifies AAE against any losses incurred by the Customer as a result of such cancellation.

2.3 Products

- 2.3.1 Products supplied directly to the Customer under this Agreement will be sourced and administered in accordance with AAE's quality management system manual and procedures.
- 2.3.2 Products supplied directly to the Customer will be supplied with a *Certificate of Conformance/Delivery Note*, and where applicable the Authorised Release Certificate. AAE has access to the manufacturer's traceable documentation for all Products supplied except for Products designated "NEW SURPLUS" or "COMMERCIAL".

2.4 Made-To-Order Products

- 2.4.1 Made-To-Order Products are not held in stock by AAE. AAE will notify the Customer of the applicable lead-time for manufacture of the Made-To-Order Product prior to acceptance of an order for a Made-To-Order Product.
- 2.4.2 The Customer is responsible for ensuring the Made-To-Order Product meets the Customer's requirements. AAE provides no warranty that the Made-To-Order Product will be fit for any purpose regardless of whether the Customer has notified AAE of any such purpose.
- 2.4.3 The Customer may request amendments to an order for a Made-To-Order Product and if AAE has not commenced the manufacture of the Made-To-Order Product then AAE will use reasonable efforts to incorporate the amendments. Such amendments may be subject to a variation in price.

- 2.4.4 The Customer may not cancel an order for a Made-To-Order Product once the Customer has accepted an Order Confirmation unless agreed by AAE in writing. Where an order is cancelled by the Customer, the Customer indemnifies AAE against any losses incurred by the Customer as a result of such cancellation.
- 2.4.5 AAE will manufacture the Made-To-Order Product in compliance with any applicable laws, regulations, standards and approved specifications. AAE takes no responsibility for any error or omission in the information provided by the Customer in ordering a Made-To-Order Product.
- 2.4.6 Made-To-Order Products are manufactured using components and materials supplied by authorised distributors. Such materials may be supplied with a manufacturer's warranty which AAE will, to the fullest extent possible, assign to the Customer. AAE will provide reasonable support to the Customer for any warranty claims under the manufacturer's warranty.
- 2.4.7 Made-To-Order Products will be supplied with a Certificate of Conformance/Delivery Note, and where applicable, the Authorised Release Certificate. AAE has access to traceable documentation for all Made-To-Order Product components and materials.
- 2.4.8 AAE warrants that Made-To-Order Products will be manufactured with due care, skill and, where applicable, in accordance with the appropriate approved technical data. Any claimed breaches of this warranty will be determined on a case-by-case basis.
- 2.4.9 Should a Made-To-Order Product fail, the Customer must notify AAE in writing within 5 Business Days of the Customer becoming aware of the failure. Warranty claims against Made-To-Order Product failure will not be honoured under the following circumstances:
- (a) The Customer has misused the Made-To-Order Product causing it to become defective;
 - (b) The Customer does not properly inspect the Made-To-Order Product prior to use; or
 - (c) The Customer alters or uses the Made-To-Order Product for a purpose other than it was originally intended (e.g., in contravention with approved data).

2.5 Costs, Payments and Penalties

- 2.5.1 Unless AAE has extended credit terms to the Customer, the Customer agrees to pay AAE upon placement of an order.
- 2.5.2 Where AAE has extended credit terms to a Customer, AAE will issue an Invoice upon Dispatch of the Products and payment is due in accordance with the payment terms agreed between AAE and the Customer in writing.
- 2.5.3 Without limiting any other rights AAE has under this Agreement, if the Invoice is not paid by the due date AAE also reserves the right to:
- (a) Charge a late-payment fee of AUD\$50 or 2% of the Invoice total, whichever is greater.
 - (b) Charge interest on overdue amounts. Interest will accrue on and from the date following the due date for payment of the outstanding amount up to and including the date of its payment. Interest shall be at the rate fixed in Rule 36.7 of the *Uniform Civil Procedure Rules 2005* and computed at a daily rate on the amount not paid from the time it fell due until payment without prejudice to AAE's other rights under this Agreement;
 - (c) Stop providing the Products until all outstanding payments are made;
 - (d) Stop providing credit to the Customer until all outstanding payments are made; and
 - (e) Recover from the Customer all Costs including legal costs that AAE may incur in order to recover the moneys owing.

- 2.5.4 Unless agreed otherwise, the Costs quoted by AAE exclude GST. GST will be added to the Costs and is payable by the Customer unless the Products are supplied to a Customer who is not based in Australia and the GST Law does not apply to that Customer.

2.6 Title and Insurance

- 2.6.1 All Products supplied by AAE will remain the property of AAE until full payment is made by the Customer for the Products supplied under this Agreement.
- 2.6.2 If Products are Dispatched to a customer under credit terms, AAE shall hold insurance for Products in transit that are owned by AAE and risk in the Products passes to the Customer immediately upon delivery to the Customer.
- 2.6.3 If full payment is made prior to Dispatch, the Customer is responsible for insurance of Products once they are Dispatched from AAE and risk in the Products passes to the Customer immediately upon Dispatch.

2.7 Personal Property Securities Register

- 2.7.1 Any defined terms used in this clause but not defined in this Agreement will have the meaning given to them in the *Personal Property Securities Act 2009 (Cth)* (“PPSA”).
- 2.7.2 Legal and beneficial ownership in the Products will not pass to Customer until Customer has paid in full the price for those Products. Customer acknowledges that this constitutes a Security Agreement for the purposes of the PPSA and that a Security Interest exists in all Products supplied to Customer (and their proceeds).
- 2.7.3 Until all outstanding monies have been paid to AAE for the Products delivered to Customer:
- (a) Customer must separately store those Products in such a way that makes it clear that they are the property of AAE;
 - (b) in the event the Customer defaults on its payment obligations under this Agreement, AAE or its representatives will be entitled, without the necessity of giving any notice, to exercise the rights contained in section 123 of the PPSA to enter premises occupied by Customer to search for and remove any of those Products without in any way being liable to Customer, and may dispose of or retain such Products as AAE sees fit. If the Products or any of them are wholly or partially attached to or incorporated in any other good, AAE may (when practical) disconnect them in any way necessary to remove the Products; and
 - (c) all costs and expenses incurred by AAE as a result of taking action in accordance with clause 2.7.3(b), together with transportation and storage charges, must be paid by Customer to AAE on demand.
- 2.7.4 Until title to the Products passes to Customer, Customer acknowledges and agrees:
- (a) that the Products supplied and not resold are held by it as bailee for AAE;
 - (b) that any resale of the Products must only be made on the condition the purchaser is expressly made aware of the existence of AAE rights under this clause 2.7;
 - (c) if the Products have been resold by Customer, that Customer will hold the proceeds of sale on trust for AAE immediately when they are receivable or received;
 - (d) when the proceeds held in trust for AAE under clause 2.7.4(c) are received they must either be paid immediately to AAE or held in a separate bank account as trustee for AAE and they must not be used by Customer in any other way.
- 2.7.5 This Agreement creates a purchase money Security Interest (“PMSI”) in the Products, any goods in which the Products are used as a component, and all proceeds from their respective resale by Customer. The Security Interest is granted to secure Customer’s proper performance of the Agreement.

- 2.7.6 For the avoidance of doubt, Customer acknowledges and agrees that it grants to AAE a Security Interest in all Products supplied by AAE to Customer whether now or in the future and in any proceeds from the sale of those Products.
- 2.7.7 The parties agree that pursuant to sections 115(1) and 115(7) of the PPSA the following sections of the PPSA will not apply to this Agreement (to the extent permitted by law): sections 95, 96, 117, 118, 121(4) 125, 127 129, 130, 132, 134(2) 135, 136(3), 136(4), 136(5), 137, 142 and 143.
- 2.7.8 For the purposes of section 14(6) of the PPSA the parties agree that any payments received by AAE from Customer pursuant to or in any way connected with this Agreement will be applied in such order as AAE deems fit in its absolute discretion.
- 2.7.9 Customer consents and agrees that:
- (a) it must sign all documents and take all steps as AAE may reasonably require in connection with the registration, perfection and enforcement of this PMSI; and
 - (b) all Products remain the property of AAE until paid in full. This Agreement and each Invoice issued under this Agreement constitute a Security Agreement for the purposes of the PPSA, and create a Security Interest in all previously supplied and future supply of Products by AAE to Customer; and
 - (c) the Security Interest(s) created by this Agreement or any other document relating to the subject of this Agreement may be registered with the relevant authority or public register; and
 - (d) AAE is not obliged to give any notice or documents under the PPSA unless the relevant obligation cannot be excluded. Customer waives its right to be provided with verification statements pursuant to section 157 of the PPSA.
- 2.7.10 It is not intended by AAE or Customer that by supplying or accepting Products and/or services under this clause 2.7, to create a charge or mortgage over any Products supplied.
- 2.7.11 Customer agrees to indemnify AAE against all expenses, losses, and damages incurred or sustained by AAE (including legal costs on a solicitor and own client basis) as a result of or in relation to the exercise by AAE of its rights under this Agreement.
- 2.7.12 Customer authorises AAE to search the Personal Property Securities Register at any time for any information about Customer.

2.8 Freight and transport

- 2.8.1 Upon Dispatch of Products to the Customer from AAE's facility, AAE will not be liable for any loss, damage or delay.
- 2.8.2 AAE will endeavour to Dispatch the Products in a timely and reasonable manner but is under no obligation to do so until the Customer has made full payment of all Costs or the Customer account is in good standing.
- 2.8.3 Unless otherwise specified, all freight costs associated with the transport of Products will be chargeable to the Customer in addition to the Costs of the Product.
- 2.8.4 Should the Customer request a freight courier other than that nominated by AAE, additional cost may be incurred if the Customer's courier does not service AAE's facility.
- 2.8.5 If AAE provides a time or date for delivery, such date is an estimate only. AAE shall take reasonable steps to deliver the Products on or about such time or date, however, AAE will not be liable for any loss or damage resulting directly or indirectly from a failure or delay in delivery of the Products irrespective of whether any such failure or delay is negligent or is within AAE'S control or otherwise.
- 2.8.6 The Customer may elect to collect the Products subject to clause 2.11.

2.9 Advanced and Partial Shipments

- 2.9.1 The Customer authorises AAE to advance the delivery date and complete the performance of any order prior to the expected delivery date. AAE will use best efforts to provide notice of an advanced delivery date.
- 2.9.2 AAE will make every effort to deliver the Customer order in one shipment, however on occasion AAE will need to deliver orders separately. On such occasions, the Customer authorises AAE to deliver Products in partial orders and Invoice the Customer for that portion of the order.

2.10 Applicability and Suitability

Specifications and images presented on AAE's websites are for reference purposes only and may not represent actual contents or specifications of Products. It is the Customer's responsibility to determine applicability and suitability of Products by reference to the approved data held by the original equipment manufacturer or the relevant industry body.

2.11 Storage

Should the Customer not collect the Products within the agreed time frame after notification has been sent by AAE that the Products are ready to be collected, AAE reserves the right to charge storage fees or cancel the order and return the Products to stock.

2.12 Acceptance

- 2.12.1 The Customer's acceptance of the Products is deemed to occur 7 days after delivery to the Customer or collection by the Customer or Customer's agent, unless the customer notifies AAE of its rejection of the Products within 7 days of receiving the Products.
- 2.12.2 Subject to clause 2.12.1, if the Customer rejects the Products as not in accordance with this Agreement or the Order Confirmation the Customer may provide written notice and substantial evidence in support of the Customer's rejection. Upon review of the Customer's notice and evidence, AAE will, in its sole discretion:
 - (a) assess the validity of the claim; and,
 - (b) determine a suitable and fair resolution, which may include one or more of the following:
 - i. a replacement Product;
 - ii. repair by AAE of the Product;
 - iii. refund or partial refund of the Product; or
 - iv. covering by AAE of the freight costs to replace or return the Product.
- 2.12.3 The Customer must at all times comply with AAE's instructions in respect of the Products during the resolution process.

2.13 Returns

- 2.13.1 AAE will have full discretion to determine whether a Product may be returned for a refund or credit.
- 2.13.2 Return of any Product will require a return material authorisation issued by AAE.
- 2.13.3 All returns must comply with the following conditions:
 - (a) The return must be requested within 14 days from the date of delivery;
 - (b) The Product must be in new and saleable condition, in its original packaging and with any original documentation.

- (c) The Product must be unused and free of damage.
- 2.13.4 AAE will not accept returns for Made-To-Order Products except in connection with a valid warranty claim in accordance clause 2.14.
- 2.13.5 The Customer shall be responsible for all transport costs and insurance and packaging of the returned Products to prevent transit damage, unless agreed otherwise.
- 2.13.6 AAE reserves the right to charge a restocking fee in an amount up to 50% of the cost of the Product for each Product returned.

2.14 Warranty

- 2.14.1 Unless the Customer notifies AAE otherwise, the Customer warrants that it is the end user of the Product and takes full responsibility for the acceptance and use of the Product.
- 2.14.2 AAE warrants that all Products are of acceptable quality. Determination that Products are acceptable is made by processing all Products in accordance with the AAE quality management system manual and procedures.
- 2.14.3 Should a Product fail, the Customer must notify AAE in writing within 5 days of the Customer becoming aware of the failure. Any claims against Product failure will not be honoured under the following circumstances:
 - (a) The Customer has misused the Product causing it to become defective;
 - (b) The Customer does not properly inspect the Product prior to use; or
 - (c) The Customer alters or uses the Product for a purpose other than it was originally intended (e.g., in contravention with Approved Data).

2.15 Indemnity

The Customer agrees to indemnify, defend and hold harmless AAE against any action, claim, proceeding, demand, damages, cost, expense liability or loss which AAE may suffer or incur in relation to this Agreement unless such loss occurred due to the negligence of AAE.

2.16 Limitation of Liability

- 2.16.1 AAE's total liability in respect of any act or omission of AAE in connection with its obligations under this Agreement will not exceed the amount paid by the Customer for the Products supplied.
- 2.16.2 AAE is not responsible to the Customer or any other party for any loss of revenue and profit, loss of anticipated revenue and profit, loss of business opportunity, loss of reputation, loss or goodwill, direct, indirect, consequential or inconsequential injury, loss or damage whatsoever by reason of any delay in delivery, deterioration, or other fault or harm in the Parts supplied by or on behalf of or in any arrangement with AAE unless it is due to the negligence of AAE.
- 2.16.3 The limitations of liability set out in this clause 2.16 do not apply in respect of:
 - (a) death or personal injury caused by AAE's negligence; or
 - (b) any other losses which cannot be excluded or limited by applicable law.

2.17 Implied Terms and Consumer Guarantees

- 2.17.1 Except as provided in this clause 2.17, and to the greatest extent permitted by applicable law, any condition or warranty which would otherwise be implied in this Agreement is excluded.
- 2.17.2 AAE supplies Products, and Customer agrees that it purchases Products, solely for the purposes of:

- (a) re-supply; or
- (b) using them up or transforming them, in trade or commerce:
 - i. in the course of a process of production or manufacture; or
 - ii. in the course of repairing or treating other goods.

AAE does not accept purchases of Products by “consumers” as defined within section 3 of Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* (“**Australian Consumer Law**”), unless accepted in writing by AAE prior to the Customer making the order.

- 2.17.3 Customer acknowledges that the Products are not of a kind ordinarily acquired for personal, domestic or household use or consumption. Customer acknowledges it has assessed the suitability of the Products and is satisfied they are suitable for its purposes and will use them at its own risk.
- 2.17.4 Where legislation implies in this Agreement any condition or warranty that cannot be excluded or modified, the liability of AAE for a breach of such is limited to replacement or repair of the Product(s), the cost of replacement or repair of the Product(s), or refund of the price paid by the Customer.
- 2.17.5 Where applicable legislation allows, AAE may at its discretion choose which option in clause 2.17.4 shall apply provided that:
 - (a) AAE is promptly notified of the defect;
 - (b) Customer assumes payment or transportation charges to AAE’s facility; and
 - (c) The defect was not caused by misuse, in which case all costs shall be borne by the Customer.

2.18 Trade Control Laws and Regulations

The Customer will comply with all applicable import, export and sanctions statutes, laws, regulations and guidelines of Australia and any jurisdiction in which the Customer operates, and with all applicable export and import license requirements. The Customer will not make any dispositions, re-exports, or diversion of the Products purchased from AAE except as Australian and applicable international laws expressly permit.

3 GENERAL

3.1 Notices

- 3.1.1 Any notice or other communication relating to this Agreement shall be given in writing and in the English language.
- 3.1.2 In addition to any other lawful means, a notice may be given by:
 - (a) Being served on the other party personally;
 - (b) Being left at the current address for service of the other party;
 - (c) Being sent to the last known email address of the other party; or
 - (d) Being sent to the current address for service of the other party by pre-paid registered post with confirmation of receipt requested or, if the address is outside Australia, by pre-paid airmail.
- 3.1.3 If given by mail, service occurs on the third day after posting.
- 3.1.4 If sent by email and the sender does not receive a message from its internet service provider or the recipient’s mail server indicating that it has not been successfully transmitted, service occurs on the day of sending if it is sent during Business Hours, otherwise on the next Business Day.

3.1.5 If two or more people comprise a party, notice to one shall be sufficient to constitute notice to all.

3.2 Privacy

3.2.1 Customer accepts AAEs privacy policy available on the AAE Website and consents to AAE collecting any personal information for the purposes set out in the privacy policy.

3.2.2 Customer consents to AAE or its associates contacting Customer electronically or otherwise to provide marketing or other information.

3.3 Counterparts

This Agreement may be executed in two or more consecutive counterparts (including by electronic means), each of which shall be an original, with the same effect as if the signatures were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by electronic means or otherwise) to the other party.

3.4 Governing Law and Jurisdiction

3.4.1 This Agreement shall be governed by the laws of New South Wales.

3.4.2 The parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

3.4.3 The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded from this Agreement.

3.5 Prohibition, enforceability and severance

3.5.1 Any provision of, or the application of any provision of, this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective, only to the extent of that prohibition.

3.5.2 Any provision of, or the application of any provision of, this Agreement which is void, illegal, or unenforceable in any jurisdiction, does not affect the validity, legality or enforceability of that provision in any other jurisdiction, or of the remaining provisions in that or any other jurisdiction.

3.5.3 If a clause is void, illegal or unenforceable, it may be severed, without affecting the enforceability of the other provisions in this Agreement.

3.6 Assignment

No party to this Agreement may assign any of its rights and obligations under this Agreement without the prior written consent of the other party.

3.7 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the matters covered by this Agreement and thereby, supersedes all previous written, oral or implied understandings among them with respect to such matters.

3.8 Waiver

Waiver of any right, power, authority, discretion or remedy arising on a breach of or default under this Agreement must be in writing and signed by the party granting the waiver. A failure or delay in exercise, or partial exercise of a right, power, authority, discretion or remedy arising from a breach of or default under this Agreement does not result in a waiver of that right, power, authority, discretion or remedy.

3.9 Variation and Termination

- 3.9.1 AAE may modify or terminate this Agreement at any time by posting a revised version on the AAE Website.
- 3.9.2 This Agreement may otherwise only be varied, terminated without cause, or wholly or partly released, by agreement in writing signed by each of the parties.
- 3.9.3 A party may terminate this Agreement immediately if the other party:
- (a) Breaches its obligations under this Agreement and fails to remedy the breach within 14 days of written notice to do so;
 - (b) Becomes an externally administered body corporate for the purposes of the *Corporations Act 2001 (Cth)*; or
 - (c) Is unable to pay its debts as and when they fall due.

3.10 Cumulative Rights

The rights, powers, authorities, discretions and remedies of a party under this Agreement do not exclude any other right, power, authority, discretion or remedy.

3.11 Further Assurances

Each party must do all things necessary to give full effect to this Agreement and the transactions it contemplates.

3.12 Joint and Several Liability

Two or more parties to this Agreement who represent the same interest, assume the liability to comply with their obligations under this Agreement jointly, and in addition each of them assumes those obligations severally.

3.13 Compliance with Notices on Business Day

If under the provisions of this Agreement or under any notice or demand anything is required to be done on a day which is not a Business Day, the day or the last day for compliance is deemed to be the immediately following Business Day.

3.14 Waiver of Breach

No failure by AAE or the Customer to insist on strict performance on any of the terms in this Agreement is a waiver of any right of such party thereafter to enforce any such provisions.

3.15 Force Majeure

- 3.15.1 AAE will not be liable for any breach of this Agreement due to any matter or thing beyond AAE's control, including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lockouts, work stoppages, wars, riots or civil commotion, intervention or public authority, explosion or accident ("**Force Majeure Event**").
- 3.15.2 During the occurrence of a Force Majeure Event, AAE and the Customer will use their best efforts to continue performance of the Agreement.

3.16 Intellectual Property and Confidentiality

- 3.16.1 Other than expressly provided for, nothing in this Agreement transfers or grants any right, title or interest in the Intellectual Property of either party.
- 3.16.2 The parties agree that the Intellectual Property in the Products belong to AAE.
- 3.16.3 Confidential Information means information that is by nature confidential but does not include:

- (a) Information already known to the receiving party at the time of disclosure by the other party; or
 - (b) Information in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this Agreement.
- 3.16.4 A party will not, without prior written approval of the other party, disclose the other party's Confidential Information. This excludes circumstances where a party is legally compelled to disclose the other party's Confidential Information.
- 3.16.5 The parties will take all reasonable steps to ensure its employees, agents and any sub-contractors do not disclose the other party's Confidential Information.
- 3.16.6 The terms of this Agreement and the details of the Services provided shall be kept confidential and not be disclosed to any third party (unless it is to its related companies, solicitors, auditors, insurers and accountants) without agreement of the parties.
- 3.16.7 This clause 3.16 will survive termination of this Agreement.

3.17 Guarantee

- 3.17.1 AAE may require the Customer to provide a guarantee in a form acceptable to AAE prior to accepting an order.
- 3.17.2 Where AAE has required a guarantee under clause 3.17.1, the guarantors agree that they will (to the full extent of the Customer's liability to AAE under this Agreement) pay and make contribution in respect of any sum payable by the Customer to AAE in the event the Customer fails to make such payment and each of the Guarantors irrevocably and unconditionally guarantees to AAE the payment of the amounts due and payable under this Agreement.