

1 GOVERNANCE

These terms and conditions apply to and are deemed incorporated into all Orders placed by Customer for Goods and Services. These are the only terms and conditions which are binding upon Conflux with the exception of those otherwise agreed in writing by Conflux or which are imposed by law and cannot be excluded. Any Order placed will be deemed acceptance by Customer of these terms and conditions, despite any provisions to the contrary in documents or communications issued or used by the Customer.

2 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

Australian Consumer Law or ACL means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of State Fair Trading legislation.

Business Day means a day other than a weekend or public holiday in Melbourne, Australia.

Conflux means Conflux Technology Pty Ltd (ACN 600 743 324).

Consumer means a consumer for the purposes of the ACL.

Customer or You or Client means the Person named in the relevant Sales Invoice or SOW.

Excluded Loss means any special, incidental, indirect or consequential damages, losses, costs, expenses or other liabilities (including loss of revenue; loss of profit; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; loss arising from late delivery or failure to deliver Goods or

Services; loss arising from any business interruption or increased overhead costs).

Goods means those goods specified in the SOW, and any other goods supplied by Conflux to the Customer from time to time.

GST Law means the *A New Tax System (Goods and Services) Act 1999* (Cth) as amended from time to time and all regulations made under it.

Insolvency Event means, in relation to a party, any one or more of the following events or circumstances:

- (a) being in liquidation or provisional liquidation or under administration;
- (b) having a receiver, administrator or liquidator (whether provisional or otherwise) or analogous person appointed to it or any of its property;
- (c) the commencement by it of any voluntary petition in bankruptcy or suffering by it of the filing of an involuntary petition of its creditors;
- (d) the judicial seizure of any of its property; or
- (e) the admission by it in writing of its inability to pay its debts as they become due and payable,

in each case, unless such event or circumstance occurs as part of a solvent reconstruction, amalgamation, merger or consolidation.

Order means a verbal or written order for Goods and/or Services placed by a Customer.

Person includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority.

Purchase Price means the price for the Goods and/or Services as set out in the relevant SOW or Sales Invoice.

SOW means the statement of work submitted by Conflux to the Customer in which these terms and conditions are deemed to be incorporated.

Sales Invoice means the sales invoice issued by Conflux to the Customer pursuant to an Order in which these terms and conditions are or are deemed to be incorporated.

Services means those services specified in the SOW and any other services performed by Conflux for the Customer for time to time (including ancillary services provided by Conflux in relation to Goods such as arranging or procuring logistics and freight, delivery and installation of Goods.)

Site means the point of delivery for any Goods and/or Services, as specified on a SOW.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

1.2 Interpretation

- (a) Any special conditions specified on a SOW or Sales Invoice shall, to the extent they are inconsistent with these terms and conditions, take precedence over these terms and conditions.
- (b) Words importing the singular shall include the plural (and vice versa).
- (c) If any provision of these terms and conditions is invalid and does not go to the essence of this agreement, these terms and conditions should be read as if that provision has been severed.

3 ORDERS AND SOWS

- (a) The Customer may request Conflux to provide it with a SOW in respect of Goods and/or Services that Conflux is in the business of supplying.
- (b) Unless withdrawn earlier by Conflux, a SOW is valid for acceptance by the

Customer for 30 days or such other period as stated in it.

- (c) Neither the Customer's request for a SOW, nor a SOW provided by Conflux forms a contract or any agreement between the Customer and Conflux, and no contractual relationship shall arise from a SOW until an Order has been accepted by Conflux, whether in writing, verbally or by providing a Sales Invoice for the Goods and/or Services.

4 SERVICES

- (a) Unless otherwise agreed, all Services will be performed during Conflux's normal business hours.
- (b) If performance of the Services is delayed due to the Customer or a circumstance beyond Conflux's reasonable control, or there is a change in the nature or complexity of the Services, then Conflux shall be entitled to payment from the Customer of an additional charge on a time and materials basis in respect of any additional resources reasonably utilised in order for Conflux to provide the Services.

5 DELIVERY OF GOODS

- (a) Goods will be delivered on an Ex-Works (EXW) (Incoterms 2020) basis to the Site Risk will pass accordingly.
- (b) All freight, insurance, customs and import duties (if any), landing and delivery charges and any other charges in connection with shipment and delivery of the Goods shall be paid by the Customer.
- (c) The Customer acknowledges that any delivery or freight charge stated in any SOW is the best estimate possible based on conditions existing at the time of Conflux's SOW. The actual cost of freight payable by the Customer will

be based on the actual costs incurred by Conflux and may vary from the estimate specified in the SOW.

- (d) Conflux shall be entitled to make part-deliveries of an Order, and may issue a Sales Invoice for Goods delivered on each separate delivery.
- (e) Other than as expressly provided for in this Agreement, Conflux shall have no liability whatsoever for any loss arising from non-delivery or any delays in delivery of Goods.

6 TERMS OF PAYMENT

- (a) The price for the Goods and Services shall be the price current at the date of delivery of the Goods or performance of the Services (as relevant) and specified by Conflux in the relevant Sales Invoice, and may vary from the price specified in a SOW.
- (b) Unless otherwise agreed:
 - (i) the price payable by the Customer for Goods will be invoiced 50% deposit on Order and 50% payable on delivery; and
 - (ii) the price payable by the Customer for Services will be invoiced as a 50% deposit on Order and 50% payable on delivery.
- (c) Payment to Conflux for Goods delivered and accepted or Services performed is due within 15 calendar days of the date of the invoice for the relevant Goods or Services. unless otherwise specified by Conflux in writing. If the Customer fails to make payment in accordance with this clause, all amounts owing by the Customer to Conflux named in the Sales Invoice or any other Conflux account shall immediately become due and payable.

- (d) Each outstanding amount exceeding the credit terms will bear interest at the rate of 2.5% above the National Australia Bank's variable benchmark lending rate as from time to time applicable during the period that the amounts remain unpaid.
- (e) All amounts payable will be invoiced and payable in Australian Dollars.

7 GST

The parties agree that:

- (a) Terms used in this clause 7 have the meaning given to them in the GST Law.
- (b) unless expressly stated otherwise, all amounts payable under or in connection with a SOW or Sales Invoice, including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) including the provision of any non-monetary consideration (**Payments**) have been calculated without regard to GST;
- (c) if the whole or any part of any Payment is the consideration for a Taxable Supply (other than for payment of the Purchase Price) for which the payee is liable to GST, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing, subject to delivery by the payee to the payer of a Tax Invoice.

8 INSPECTION AND ACCEPTANCE

The Customer shall inspect all Goods upon delivery and shall within five (5) Business Days of delivery give notice to Conflux named in the relevant Sales Invoice or of any matter or thing by which the Customer alleges that the Goods are defective or do not conform with the Order. Failing such notice, subject to any non-excludable condition implied by law, the Goods shall

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be deemed to have been delivered to and accepted by the Customer.

9 RETURNS OF GOODS

Conflux will not accept the return of Goods specifically purchased, manufactured, or modified to the Customer's specification other than in situations where Goods are defective or do not conform with the Order.

10 PASSING OF TITLE IN GOODS

- (a) Title in the Goods supplied by Conflux to the Customer under these terms and conditions shall not pass to the Customer until those Goods and other Goods have been paid for in full.
- (b) Until the Goods have been paid for in full:
 - (i) the Customer must hold the Goods as fiduciary agent and bailee of Conflux, and shall store the Goods in a manner which shows clearly that they are the property of Conflux; and
 - (ii) the Customer may sell the Goods, in the ordinary course of its business, and shall account to Conflux for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.
- (a) The Customer irrevocably authorises Conflux at any time to enter onto any premises upon which:
 - (i) Goods are stored to enable Conflux to inspect the Goods, and if the Customer has breached these terms and conditions, reclaim the Goods;

- (ii) the Customer's records pertaining to the Goods are held to inspect and copy such records.

- (b) The Customer and Conflux agree that the provisions of this clause 10 apply notwithstanding any arrangement under which Conflux grants credit to the Customer.

11 SUPPLY

Conflux reserves the right to suspend or discontinue the supply of Goods or Services to the Customer on reasonable grounds without being obliged to give any reason for its action.

12 DESCRIPTIVE DETAILS

- (a) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a SOW, advertising literature or a catalogue approximate the Goods offered but may be subject to alteration by Conflux, a supplier or manufacturer without notice.
- (b) To the extent permitted by statute, any performance data provided by Conflux, a supplier or a manufacturer is an estimate only and should be construed accordingly.

13 MATERIALS AND IPR

- (a) In this clause 13, **IPR** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the 1967 convention establishing the World Intellectual Property Organisation.
- (b) Each party (or its licensors) will continue to own all IPR in any drawings, illustrations, specifications and other literature and materials (**Materials**) that it owned prior to the date of this agreement or which it

develops independently of the arrangements set out in this agreement or any SOW between the parties (**Party Materials**).

- (c) Nothing in this agreement assigns any IPR in a party's Party Materials to the other party.
- (d) Unless otherwise agreed in writing, each party will own any and all IPR in any modifications, enhancements or developments to its Party Materials;
- (e) Conflux will own all IPR and Materials developed in the course of providing or otherwise relating to the Goods and/or Services provided under this agreement, irrespective of which party created or developed those IPR and Materials, which shall remain the exclusive property of Conflux and shall not be transferred to any other party without the prior written consent of Conflux.
- (f) Each party grants to the other party a non-exclusive, non-transferable, royalty-free licence to use the other party's Party Materials and associated IPR, solely to the extent necessary to perform its obligations and exercise its rights under this agreement, and not for any other purpose.
- (g) The Customer shall not use, reproduce or impart any Party Materials or IPR of Conflux therein to any third party without the previous written consent of Conflux except in the case of standard descriptive illustrations, drawings or specifications.
- (h) Where Goods and/or Services have been provided in accordance with design, drawing, specification, sample or instruction furnished or given by the Customer, the Customer shall indemnify Conflux against all damages, penalties, costs and expenses to which it may become liable through any work required to be done in accordance with those

instructions involving an infringement of any IPR or any common law right.

14 CONFIDENTIAL INFORMATION

- (a) Each party agrees to keep confidential the other party's technological (including illustrations, designs, drawings, specifications, technical handbooks or materials), strategic, financial, commercial and business information, disclosed in the course of, or arising from the Agreement (**Confidential Information**).
- (b) All Confidential Information owned by or which may be generated by Conflux in the course of performing the Agreement remains or shall become the property of Conflux and may only be used by the Customer where agreed to by Conflux in writing for the purpose of performing the Customer's rights and obligations under the Agreement. No Confidential Information of Conflux may otherwise be disclosed to any third party without Conflux's prior written consent.
- (c) The obligations in clause 14 (a) and 14(b) shall not apply to Confidential Information:
 - (i) which is at the time of disclosure by the disclosing party (**Disclosing Party**) or becomes after the time of such disclosure, known to the public or part of the public domain through no breach of this Agreement by the party receiving such Confidential Information (**Receiving Party**), or breach of corresponding confidentiality obligations by any recipient to whom the Receiving Party disclosed such information);
 - (ii) is disclosed to the Receiving Party on a non-confidential basis by a third party who is not, to the actual knowledge of the

Receiving Party, prohibited from disclosing it;

- (iii) was known to, or was otherwise in the possession of, the Receiving Party prior to the time of disclosure by the Disclosing Party; or
 - (iv) was independently developed by or on behalf of the Receiving Party, as evidenced by its written records, without use of or access to the Confidential Information.
- (d) Each party agrees to effect and maintain adequate security measures to safeguard the other party's Confidential Information from access or use by any unauthorised person and not to disclose any terms of the Agreement or Confidential Information except where disclosure is necessary to comply with this Agreement or if the disclosure is required by law, a governmental or regulatory authority or rules of any stock exchange.
- (e) Either party must, on becoming aware of any breach of confidentiality, immediately inform the other party, investigate the breach and report to the other party as to the outcome of the investigation.

15 MANUALS

Conflux will provide those reports or manuals specified in the SOW (if any) in respect of the Goods. Customer must comply with all such documents in using the Goods.

16 MANUFACTURERS' CHANGES

Where Conflux is acting as agent for a manufacturer or supplier, to the extent permitted by statute, Conflux shall not be liable for any alteration or variation in the Goods made by this manufacturer or the supplier.

17 CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of SOW or Sales Invoice but which is subsequently levied upon Conflux in relation to a SOW or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Customer's account.

18 FORCE MAJEURE

If the performance or observance of any obligations Conflux is prevented, restricted or affected by reason of a force majeure event including pandemic or epidemic, strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of Conflux (**Force Majeure Event**), Conflux may, in its absolute discretion give prompt notice of that cause to the Customer. On delivery of that notice Conflux is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.

19 DEFAULT BY CUSTOMER

If these terms and conditions are not strictly observed by the Customer, Conflux may in its absolute discretion, refuse to supply to the Customer and Conflux shall not be liable to the Customer for any loss or damage the Customer may sustain as a result of such refusal. The costs of collection of any moneys are due and payable by the Customer, including the fees of any agent or lawyer engaged by Conflux.

20 CUSTOMER'S CANCELLATION

Unless otherwise agreed in writing, the Customer shall have no right to cancel an Order which has been accepted by Conflux. If a right of cancellation is expressly reserved to the Customer, such right of cancellation must be exercised by notice in writing from the Customer to Conflux with which the Order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or Conflux as the case may be. Unless otherwise agreed between the Customer and Conflux, upon cancellation prior to shipment any deposit paid by the Customer shall be forfeited to the manufacturer or Conflux (as the case may be). Despite the cancellation of any Order for any reason, the Customer must still purchase from Conflux any Goods ordered by the Customer which were procured or ordered by Conflux from a third party manufacturer or supplier before such cancellation, unless otherwise agreed in writing by Conflux.

25 WARRANTY, LIABILITY AND INDEMNITY

- (a) Conflux makes no express warranties, including as to suitability of the Goods and/or Services for any purpose, under this Agreement. To the maximum extent permitted by law, all conditions and warranties that may be implied by law into this Agreement are expressly excluded.
- (b) To the extent permitted by law, Conflux shall not be liable to the Customer under or in connection with this Agreement or any Goods or Services supplied under this Agreement. Conflux shall not be liable to the Customer for or in respect of any Excluded Loss.
- (c) The Customer shall immediately notify Conflux in writing of any

defect in the Goods. The Customer shall not carry out any remedial work to allegedly defective Goods without first obtaining the written consent of Conflux to do so.

- (d) All warranties, conditions and guarantees (whether given by Conflux, a manufacturer or third party) and any obligation of Conflux to repair or replace Goods is void in any respect of any Goods which the Customer tampers with or alters.
- (e) To the extent permitted by law, the Customer indemnifies Conflux against any actions, claims, expenses, demands, costs, damages, proceedings or any other liability whatsoever (**Liabilities**) suffered by Conflux in connection with the Customer's use of the Goods or Services, and the Customer agrees that its indemnity shall survive the termination of this Agreement.
- (f) To the extent permitted by law, the Customer will defend, indemnify and hold harmless Conflux, its affiliates and any officers, employees, agents or representatives of Conflux or its affiliates (**Indemnified Persons**), against any Liabilities suffered by them in connection with any third party claims arising out of or in connection with the Customer's use of the Goods or Services or any deliverables provided by Conflux as part of the Goods or Services (including any willful acts, omissions or any negligence of the Indemnified Persons) and the Customer agrees that its indemnity shall survive the termination of this Agreement.
- (g) Without limiting any other provision under this Agreement and to the extent permitted by law, Conflux's maximum liability under this Agreement will be capped at the

amount of the Purchase Price paid to Conflux under this Agreement.

- (i) the supply of the Services again; or
- (ii) the payment of the cost of having the Services supplied again.

26 AUSTRALIAN CONSUMER LAW

- (a) If the Customer is a Consumer, nothing in this Agreement is intended to remove the Consumer's rights under the ACL, including to statutory guarantees that may apply to Goods and Services supplied by Conflux. If Conflux is entitled to limit the remedies available to the Customer for breach of such guarantees, it expressly limits its liability as set out in this clause 26 to the maximum extent permitted by law.
- (b) If the Customer is a Consumer and any of the Goods supplied by Conflux are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer agrees that Conflux's liability for a failure to comply with a guarantee under the ACL in relation to those Goods is limited to, at the option of Conflux, one or more of the following:
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired.
- (c) If the Customer is a Consumer and any of the Services supplied by Conflux are not services of a kind ordinarily acquired for personal, domestic or household use or consumption, Conflux's liability for a failure to comply with a guarantee under the ACL in relation to those Services is limited to, at the option of Conflux:

27 TERMINATION

This Agreement may be terminated immediately in its entirety by either party on written notice to the other party if:

- (a) the other party materially breaches any provision of the Agreement and cannot or does not remedy that breach to the first Party's reasonable satisfaction within sixty (60) days after receipt of written notice from the first party;
- (b) the other party is subject to an Insolvency Event; or
- (c) Conflux is subject to a Force Majeure Event for a continuous period of six (6) months or more which materially prevents performance of its obligations under this Agreement.

28 DISPUTE RESOLUTION

- (a) If a dispute, controversy, or claim arising out of, related to, or in connection with this Agreement (**Dispute**) cannot be satisfactorily resolved between the parties through mutual consultation, the party claiming a Dispute has arisen shall deliver to the other party a notice containing particulars of the Dispute (**Dispute Notice**). An executive officer from each party authorised to resolve such Dispute shall use its reasonable endeavours and act in good faith to resolve the Dispute by negotiation for a period of ten (10) Business Days after the Dispute Notice is issued, or such longer time as agreed between the parties.

- (b) A party may not commence any action under this clause in respect of any Dispute unless it has complied with this clause 27 in full, except where:
- (i) the party seeks injunctive relief in relation to a Dispute from an appropriate court where failure to obtain such relief would cause irreparable damage to the party concerned; or
 - (ii) following those procedures would mean that a limitation period for a cause of action relevant to the Dispute would expire.

29 ALTERATION TO CONDITIONS

Conflux may, at any time and from time to time, alter these terms and conditions. Any variation to these standard terms and conditions will not apply to any contract for a specified term that incorporates a version of these standard terms and conditions released prior to the variation.

30 ASSIGNMENT

The Customer may not assign its rights under the Agreement, SOW, Order or these Terms and Conditions without the prior written consent of Conflux.

31 GOVERNING LAW

These terms and conditions and any contract including them shall be governed by and construed in accordance with the laws of the State of Victoria and the parties hereby submit to the exclusive jurisdiction of the Courts of Victoria