

**GENERAL TERMS AND CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS AND SERVICES BY  
HM TECHNOLOGIES PTY LTD**

**1. DEFINITIONS**

In the Agreement:

"**Agreement**" means these General Conditions and the Quotation.

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

"**\$A**", "**Dollar**" and "**\$**" mean Australian Dollars.

"**Conditions Precedent**" means the conditions precedent, if any, included in the Quotation.

"**Confidential Information**" means the information described in clause 17.1.

"**Contract Price**" means the price specified in the Quotation.

"**Customer**" means the person or entity specified in the Quotation.

"**Customer Furnished Equipment**" or "**CFE**" means any equipment, or material supplied by or on behalf of the Customer to the Supplier to assist in the performance of the Agreement or for incorporation in the Goods produced pursuant to the Agreement.

"**Customer Furnished Information**" or "**CFI**" means those items of Information supplied by or on behalf of the Customer to the Supplier to assist in the performance of this Agreement.

"**Day**" or "**day**" means a calendar day.

"**Delivery Point**" means the place specified in the Quotation for delivery of the Goods.

"**Effective Date**" means the date of acceptance of the Quotation by the Customer in accordance with clause 2.1.

"**General Conditions**" means these General Terms and Conditions of Contract for the Supply of Goods and Services.

"**Goods**" means the equipment, articles, products, materials, supplies, parts and items (or any part of them) specified in the Quotation.

"**Information**" means all information in documentary or visual form supplied or to be supplied by a party to another party including (but not by way of limitation) plans, specifications, blueprints, performance details and other intellectual property.

"**Intellectual Property**" means all copyright, and all rights in relation to inventions, registered and unregistered trademarks (including service marks) registered designs, confidential information and circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

"**PPSA**" means the Personal Property Securities Act (Cth) 2009.

"**Quotation**" means the document headed "Quotation" or "Quote" to which these General

Conditions are annexed or incorporated by reference.

"**Related Bodies Corporate**" has the meaning given in section 9 of the *Corporations Act 2000* (Cth);

"**Security**" means cash, a letter of credit, bank guarantee, or surety in a form acceptable to the Supplier.

"**Services**" means the services specified in the Quotation.

"**Special Conditions**" means the special conditions, if any, included in the Quotation.

"**Specification**" means the specification, if any, included in the Quotation.

"**Supplier**" means HM Technologies Pty Ltd ACN 122 812 471 and includes its successors or assigns.

**2. CONTRACT AND ACCEPTANCE**

2.1 The Customer shall be deemed to have accepted the Quotation and these General Conditions by directing the Supplier to proceed with the Supplier's activities under this Agreement. If the Customer directs the Supplier to commence its activities after the expiry of any Quotation validity or acceptance period stated therein, the Supplier may by written notice reject Customer's acceptance of the Quotation in which case the parties shall have no further obligations under the Agreement.

2.2 The Supplier shall supply the Goods and Services to the Customer for the Contract Price in accordance with the Agreement and in compliance with the CFI, if any.

2.3 Subject to the satisfaction of any applicable Conditions Precedent, the Contract shall enter into force on the Effective Date.

2.4 In the event of any inconsistency, the Special Conditions shall take precedence over these General Conditions to the extent of such inconsistency.

**3. SECURITY**

3.1 The Supplier may, before it commences any activities in connection with the Goods and Services, require the Customer to provide the Security specified in Quotation to secure the Customer's obligations under the Agreement.

3.2 Until such Security is provided the Supplier shall be under no obligation to commence activities under this Agreement.

3.3 The Supplier shall have recourse to the Security if it remains unpaid after the time for payment where at least 5 days have elapsed since it notified the Customer of an intention to have recourse.

3.4 Upon the Supplier's entitlement to Security ceasing, the Supplier shall release and return

the Security (less any deductions) to the Customer.

**4. CONTRACT PRICE**

4.1 The Customer shall be invoiced by the Supplier for the Contract Price at such times as stated in the Quotation.

4.2 The consideration for any supply under or in connection with this Agreement is exclusive of GST. If GST is payable, the Supplier will provide the Customer with a tax invoice or a document adequate to entitle the Customer to claim an input tax credit.

**5. PAYMENT**

5.1 All invoices shall be due and payable within 30 days from the date of the invoice unless a different period is specified in the Quotation or the invoice.

5.2 All payments to be made by the Customer shall be made without set off or counterclaim and shall be free and clear of and without deduction to the bank account specified in the Quotation or as otherwise notified by the Supplier.

5.3 If the Contract Price or any instalment of it is not paid by the due date for payment, the Supplier may suspend all further deliveries of the Goods or Services to the Customer until payment is made in full on all outstanding invoices.

**6. LATE PAYMENT FEE**

6.1 Without prejudice to any other right of the Supplier, the Supplier shall have the right to charge interest at its discretion computed on a daily basis at the rate of the then current Commonwealth Bank's Corporate Overdraft Reference Rate plus 5% on any overdue amount from the date on which payment was due or such later date as the Supplier determines to that on which it was made (whether before or after judgment). The Customer shall reimburse the Supplier for all costs and expenses (including legal costs on an indemnity basis) incurred in the collection of any overdue amount. The Customer acknowledges and agrees that such charges are a reasonable estimate of the likely damage to be suffered by the Supplier for late payment.

**7. DELIVERY AND RISK**

7.1 The delivery dates, if any, included in the Quotation are estimates only and are subject to the Supplier's written confirmation. Time shall not be of the essence in relation to delivery.

7.2 Subject to this clause 7, risk of loss or damage to the Goods and in each instalment thereof passes when delivery is affected at the Delivery Point. The Supplier may require the Customer or its nominee to sign a delivery docket in respect of the delivered Goods and such signed docket shall constitute evidence of receipt of the Goods. Failure of the Customer or

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its nominee to provide a signed delivery docket in respect of delivered Goods shall not, however, affect delivery in respect of those Goods.

7.3 If the Agreement provides for instalments, each instalment of the Goods or Services shall be deemed to be the subject of a separate Agreement and no default or failure by the Supplier in respect of any one or more instalments of the Goods or Services shall affect the Agreement in respect of the Goods or Services previously delivered or undelivered.

7.4 The Customer may reject any delivery or any Goods or Services or any instalment of the Goods or Services if it gives the Supplier a notice of rejection within 5 Business Days of delivery and none of the events in clause 9.5 apply. Otherwise, the Customer shall be deemed to have accepted those Goods or Services.

7.5 If the Customer fails to take delivery of the Goods or any instalment of the Goods in accordance with the Agreement, the Supplier, upon giving written notice to the Customer, may store or arrange for the storage of the Goods or any of them at the risk of the Customer, and delivery shall be deemed to have taken place. The Customer shall pay to the Supplier all costs and expenses including storage and insurance charges arising from such failure.

## **8. TITLE**

8.1 Words and phrases used in this clause 8 that have defined meanings in the PPSA have the same meaning as in the PPSA, unless the context indicates otherwise.

8.2 Title to any Goods delivered to the Customer will not pass to the Customer until the Customer has paid all amounts that it owes to the Supplier in full (including the purchase price for the Goods).

8.3 The Supplier only consents to the Customer selling or otherwise disposing of the Goods in the ordinary course of the Customer's ordinary business to bona fide customers and unrelated third parties on arm's length terms, while no default is subsisting.

8.4 Until full payment is received by the Supplier in respect of Goods and unless otherwise expressly agreed in writing by the Supplier, the Customer must not do any of the following in relation to any of the Goods except where expressly permitted by this Agreement:

- (1) create or allow any interest in, or dispose or part with possession of, the Goods;
- (2) allow the Goods to be taken outside Australia;
- (3) allow the Goods to become commingled with any other property; or

- (4) grant any security interest in respect of accounts owed to it in relation to the Goods.

8.5 If the Customer sells or disposes of any Goods before they have been paid in full, the Customer will hold the proceeds of sale or disposal on trust for the Supplier to secure payment of any amounts the Customer owes the Supplier for the Goods.

## **9. WARRANTIES AND LIMIT OF LIABILITY**

9.1 The Supplier warrants that (i) goods supplied under the Agreement are free of defects due to faulty workmanship or materials, other than in respect of material supplied by the Customer, if any, and (ii) services supplied under the Agreement are performed with due care and skill and fit for purpose, if specified in the Agreement.

9.2 The duration of the Supplier's warranty in clause 9.1 is for the period 12 months from the date of delivery of the relevant Goods. If a manufacturer of any products has given an express warranty, the Customer shall have the benefit of such warranty.

9.3 To the maximum extent permitted by law all other express and implied terms, liabilities, representations, conditions and warranties are hereby expressly negated and excluded.

9.4 The Customer must notify the Supplier in writing as soon as it becomes aware of any defect in the Goods or if intends to engage a third party to remedy such defect (**Defect Claim**). All Defects Claims must be emailed to the address [warranty@hmtechno.com](mailto:warranty@hmtechno.com). The Customer must promptly provide all relevant information (including photographs) to support a Defect Claim including information requested by the Supplier. The Supplier will investigate the Defect Claim and provide a written response in relation to the Defect Claim. If the Supplier accepts the Defects Claim, the Supplier shall proceed in accordance with clause 9.6.

9.5 The following shall not constitute a defect in respect of goods:

- (1) damage caused by external causes including environmental conditions;
- (2) normal wear and tear and the need for regular maintenance;
- (3) damage caused by failure to install, operate, maintain or repair goods in accordance with reasonable or recommended operation, maintenance or repair procedures;
- (4) damage resulting from contaminated fluids, abuse, lightning, power surges, acts of God or the public enemy, sabotage, fire, terrorism, riot or vandalism;

- (5) damage resulting from the continued operation of the goods or any of their components after the detection of an alleged defect;

- (6) failure of common consumable articles with an expected limited lifetime;

- (7) failures or defects attributable to inadequacies or deficiencies in any Information supplied by the Customer;

- (8) damage resulting from misuse or abuse of the goods or use of the goods contrary to the Supplier's recommended conditions of use;

- (9) the Customer alters or modifies the Goods without the prior written consent of the Supplier;

- (10) liability arising from incorrect calibration of Goods by the Customer;

- (11) damage arising from an unauthorised modification to the Goods or use of any non-genuine manufacturer parts.

9.6 The Customer shall be liable for any transportation costs of any returned or replaced defective Goods or labour costs and associated expenses relating to removal or installation of repaired or replaced defective Goods.

9.7 If any Goods supplied under this Agreement are supplied to the Customer as a "consumer" of goods or services within the meaning of that term in ACL (as amended) or relevant state legislation, the consumer will have the benefit of certain non-excludable rights and remedies in respect of the goods or services. Nothing in these terms and conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the ACL or similar legislation is so conferred. If the product is a product not ordinarily acquired for personal, domestic or household use or consumption, under section 64A of the ACL and similar provisions of relevant state legislation the Supplier is limited to:

- (1) in the case of defective goods (excluding services), at the option of the Supplier, any one or more of the following:

- (a) replace the defective goods or supply equivalent goods;
- (b) repair the defective goods;
- (c) reimburse the Customer for the cost of replacing the defective goods or acquiring equivalent goods;
- (d) reimburse the Customer for the cost of repairing the defective goods;
- (e) if the Customer has not paid the Contract Price for defective goods, release the Customer from any obligation to pay the Contract Price; or

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- (f) if the Customer has paid the Contract Price for defective goods, refund the Contract Price for the defective goods, subject to the Customer first restoring unencumbered title to the defective goods; and
- (2) in the case of services, at the option of the Supplier, either:
- (a) the supplying of the defective services again; or
- (b) the payment of the cost of having the defective services supplied again.

9.8 Subject to all rights and remedies which are provided pursuant to legislation and which by law cannot be excluded by agreements between the Parties, the amount the Supplier may be obliged to pay to the Customer for breach (or series of breaches) of the Supplier's obligations under this Agreement shall not exceed an amount equal to the Contract Price.

9.9 Notwithstanding any other clause of this Agreement and subject to the ACL, the Supplier, its officers, directors or employees, shall not be liable to the Customer under the Agreement, in tort, in contract, in equity, by operation of statute or otherwise for any kind of indirect or consequential loss; loss of opportunity; loss of revenue; loss of profit or anticipated profit; loss of contracts; loss of goodwill; loss arising from business interruption; or liability arising out of or in connection with pollution or contamination, arising out of or in connection with this Agreement, or the work conducted under it, incurred or suffered by a party, or any other person.

9.10 The Parties agree that, to the extent permitted by law, the remedies of the Customer under this clause are the only remedies of the Customer and are to the exclusion of all other remedies under the Agreement, in tort, in contract, in equity, by operation of statute or otherwise.

9.11 The Supplier's obligations under this Agreement shall be reduced to the extent the Customer's acts or omissions have contributed to any losses, including provision of ambiguous, erroneous, defective or incomplete CFI or CFE.

#### **10. CUSTOMER OBLIGATIONS IN RELATION TO THE GOODS**

10.1 The Customer must not alter or interfere in any way with the Goods including removing any labelling or instructions provided with the Goods.

10.2 The Customer must not make any representation or give any warranty in relation to the Goods not expressly authorised by the Supplier in writing.

10.3 The Customer must not do anything which might affect the reputation of any of the Goods,

the Supplier or the Supplier's Related Bodies Corporate.

10.4 The Customer must:

- (1) promptly inform the Supplier of all material complaints or claims in relation to the Goods;
- (2) not admit liability on behalf of the Supplier in respect of any complaint or claim in relation to the Goods;
- (3) not resolve or settle any complaint or claim in relation to the Goods which may result in the Supplier or its Related Bodies Corporate incurring any liability to any party; and
- (4) deal promptly with all complaints or claims in relation to the Goods which will not result in the Supplier or its Related Bodies Corporate incurring any liability.

#### **11. FORCE MAJEURE**

11.1 Notwithstanding any other provision of the Agreement the Supplier shall not be liable for any:

- (1) delays;
- (2) damage generated by delays; or
- (3) inability to perform any of its duties or obligations under the Agreement;

directly or indirectly resulting from or due to or as a consequence of acts of God, strikes or other labour disturbances or disputes, factory shutdowns, prolonged failure of any energy or fuel supply, accidents, epidemic, pandemic or any cause of delay whatsoever, whether or not of a kind previously specified in this clause 11.1 or of a different kind reasonably beyond the control of the Supplier whether or not its occurrence could be foreseen at the Effective Date.

11.2 The Supplier shall notify the Customer in writing of any such occurrence as soon as possible after the occurrence comes to its notice. the Supplier shall also notify the Customer in writing after the occurrence has ceased or been overcome, and shall provide a statement of:

- (1) the reasons why these occurrences were beyond the reasonable control of the Supplier;
- (2) the effect of these occurrences on the Supplier's performance of its obligations under the Agreement; and
- (3) the period of delay and extension of time required as a result.

#### **12. INTELLECTUAL PROPERTY RIGHTS**

12.1 The Customer acknowledges that all Intellectual Property:

- (1) developed by the Supplier while performing the Agreement; or
- (2) transmitted by the Supplier to the Customer during the performance of the Agreement;

is and remains under the exclusive ownership of the Supplier and shall not be used by the Customer for any purpose other than that for which it was supplied.

12.2 Intellectual Property of the Customer contained in CFI shall remain under the ownership of the Customer. The Customer grants to the Supplier a royalty-free, non-exclusive and perpetual licence to use, copy, modify and reproduce the Customer's IP in order for the Supplier to perform its obligations under the Agreement.

#### **13. ACCESS TO AND CONDITION OF DELIVERY POINT**

13.1 If the Delivery Point is the Customer's premises or other premises, the Customer shall ensure that the Supplier's employees, agents or subcontractors are given reasonable access to the Delivery Point in connection with the performance of the Supplier's obligations under this Agreement. In the event access conditions on the date of actual Delivery are different to those which the Supplier could have reasonably anticipated as at the date of the Quotation or did anticipate at the time of any pre-quotation inspection (if carried out), the Supplier may delay performance of the Agreement until such time as reasonable access is available to the Supplier.

If access to and/ or the conditions at the Delivery Point is materially different to that which the Supplier could have reasonably anticipated as at the date of the Quotation or did anticipate at the time of any pre-quotation inspection (if carried out), the Supplier shall be entitled to adjust the Contract Price for any extra time and materials incurred, including reasonable profit margin.

#### **14. HEALTH AND SAFETY RISKS**

14.1 If the Delivery Point is the Customer's premises or other premises, the Customer warrants that it has advised, and shall at all times keep advised, the Supplier of any conditions or matters which are known or which ought reasonably be known to the Customer, to exist at the Delivery Point which may pose a risk to the health and safety of the Supplier's employees, agents or subcontractors.

#### **15. SUBCONTRACTING**

15.1 The Supplier may, without the consent of the Customer, subcontract any part of the work under this Agreement to a third party. Except where the Agreement otherwise provides, the Supplier shall be liable to the Customer for the acts, defaults and omissions of subcontractors as if they were those of the Supplier.

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**16. MEDIA ANNOUNCEMENTS**

16.1 A party may not make or send any public announcement, communication or circular relating to the subject matter of this Agreement unless the other party has consented to the announcement, communication or circular in writing (including the timing, form and content of that disclosure).

**17. CONFIDENTIALITY**

17.1 The parties shall treat and shall ensure that their officers, employees, agents, contractors, advisers and consultants treat all confidential and proprietary Information provided to each by the other pursuant to the Agreement as commercial-in-confidence or as otherwise classified by the disclosing party and shall not disclose any confidential or proprietary Information of the other party without its prior consent in writing except to such of the aforesaid persons as have a need to know and who shall in turn be required to take appropriate measures to safeguard that confidential and proprietary Information disclosed to them.

17.2 The obligations of this clause 17 shall exist for a period of 5 years from the Effective Date and shall survive the expiry or termination of this Agreement.

**18. TERMINATION**

18.1 Without prejudice to any accrued rights or liabilities, the Supplier may terminate the Agreement if the Customer:

- (1) becomes bankrupt or insolvent;
- (2) makes an assignment of its estate for the benefit of its creditors or an arrangement or composition with its creditors or suffers a receiver or manager to be appointed on behalf of its debenture holders or creditors;
- (3) being a company, goes into liquidation or passes a resolution to go into liquidation, otherwise than as a solvent company for the purpose of reconstruction, or is subject to any petition or proceedings in any court for its winding-up or is subject to the supervision of the Court either voluntarily or otherwise howsoever;
- (4) suffers any distress levied or execution against any of its assets;
- (5) assigns or otherwise deals with its rights or obligations under the Agreement contrary to the requirements of clause 20;
- (6) fails to lodge, open or keep in force any Security required by the Agreement; or
- (7) fails to pay an invoice within 60 days of the due date of the invoice.

18.2 No action taken under this clause 18 shall prejudice any of the rights, powers or remedies

of the Supplier whether under the Agreement or otherwise including (but not by way of limitation) the right of the Supplier:

- (1) to retain all payments made by the Customer on account under the Agreement unless the total of such payments exceeds the Contract Price; and
- (2) to exercise all or any of its rights in respect of any guarantee or surety.

**19. CONSEQUENCES OF TERMINATION**

19.1 On termination of this Agreement, each party must promptly:

- (1) if requested by the party, return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it in connection with the supply and purchase of the Goods under this Agreement;
- (2) return to the other party all documents and materials (and any copies) containing the other party's Confidential Information;
- (3) erase all the other party's Confidential Information from its computer systems (to the extent possible); and
- (4) on request, certify in writing to the other party that it has complied with the requirements of this clause 19.1; and
- (5) all amounts owed to the Supplier by the Customer under this Agreement become immediately due and payable.

19.2 The following clauses survive termination or expiry of this Agreement together with any other term which by its nature is intended to do so:

- (1) clause 9 (Warranties and limit of liability);
- (2) clause 17 (Confidentiality);
- (3) clause 19 (Consequences of termination);
- (4) clause 30 (Governing law).

19.3 Termination of this Agreement does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of the Agreement that existed at or before the date of termination.

**20. ASSIGNMENT**

The Supplier may assign or novate all or any of its rights, obligations or interests under the Agreement without the prior written consent of the Customer and if requested the Customer shall provide an executed deed of assignment or novation in a form acceptable to the Supplier within 7 days of receipt.

**21. SET OFF**

21.1 The Supplier may deduct any amount due and payable by the Customer from amounts

otherwise due and payable to the Customer under or in connection with this Agreement or any other agreement between the Supplier and the Customer.

21.2 Any exercise by the Supplier of its rights under clause 21.1 does not limit or affect any other rights or remedies available to the Supplier under this Agreement or otherwise.

**22. VARIATION**

22.1 An amendment or variation of any term of this agreement must be in writing and signed by each party.

**23. PERSONAL PROPERTY AND SECURITIES ACT**

Defined terms in this clause have the same meaning as given to them in the PPSA.

23.1 This agreement is a security agreement for the purposes of the PPSA. The Customer acknowledges that it has granted the Supplier a security interest in the Goods and their proceeds which is a purchase money security interest to the extent that it secures payment of all or part of the purchase price for particular goods.

23.2 The Customer consents to the Supplier perfecting any security interest arising in connection with this Agreement by registering a financing statement on the PPSR and any other applicable security registers in any manner it considers appropriate. The Customer agrees to do anything the Supplier reasonably asks to ensure that the security interest:

- (1) is enforceable, perfected and otherwise effective; and
- (2) has priority over all other security interests.

23.3 The Customer agrees to pay or reimburse the Supplier for any fees or charges for the PPSR or other registrations contemplated by this clause.

23.4 The Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA unless the notice is required by the PPSA and cannot be excluded.

23.5 The Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA. This does not limit the Customer's rights to request information other than under section 275 of the PPSA. Neither the Customer nor the Supplier will disclose any information of the kind mentioned in section 275(1) of the PPSA unless section 275(7) of the PPSA applies.

23.6 To the extent permitted by law, the parties contract out of and the Customer waives its rights under the following provisions of Chapter 4 of the PPSA:

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- (1) section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Customer;
- (2) section 96 (when a person with an interest in the whole may retain an accession);
- (3) section 121(4) (enforcement of liquid assets - notice to grantor);
- (4) section 125 (obligation to dispose of or retain collateral);
- (5) section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Customer;
- (6) section 132(3)(d) (contents of statement of account after disposal);
- (7) section 132(4) (statement of account if no disposal);
- (8) section 142 (redemption of collateral); and
- (9) section 143 (reinstatement of security agreement).

understandings, negotiations and discussions in respect of its subject matter.

**29. NO RELIANCE**

29.1 No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this Agreement.

**30. GOVERNING LAW**

30.1 This Agreement is governed by the laws of the state of New South Wales.

**24. SEVERABILITY**

24.1 If the whole or any part of a provision of this Agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

24.2 Clause 24.1 does not apply if the severance of a provision of this Agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this Agreement.

**25. NO MERGER**

25.1 On completion or termination of this Agreement, the rights and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

**26. RELATIONSHIP OF PARTIES**

26.1 Nothing in this Agreement gives a party authority to bind any other party in any way.

26.2 Nothing in this Agreement imposes any fiduciary duties on a party in relation to any other party.

**27. REMEDIES CUMULATIVE**

27.1 Except as provided in this Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this Agreement.

**28. ENTIRE AGREEMENT**

28.1 This Agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements,