

Next Technologies (Australia) Pty Ltd - Terms of Trade

1 Terms of Trade

- 1.1 These terms of trade set out the contractual basis upon which the Seller will provide goods and/or services to the Buyer.
- 1.2 Our invoices, quotes, order confirmations, and any online requisitions and approvals, are incorporated into and form a part of these terms.

2 Definitions

- 2.1 "Seller" shall mean Next Technologies (Australia) Pty Ltd (ABN 63 003 209 603) its successors and assigns or any person acting on behalf of and with the authority of Next Technologies (Australia) Pty Ltd.
- 2.2 "Buyer" shall mean the buyer (or any person acting on behalf of and with the authority of the Buyer) as described on any invoices, quotes, order confirmations, and online requisitions and approvals, or other form as provided by the Seller to the Buyer.
- 2.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Buyer on a principal debtor basis.
- 2.4 "Goods" shall mean hardware (information technology equipment) or software (being developed, licensed or third party software) or any other Goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotes, order confirmations and online requisitions and approvals, or any other forms as provided by the Seller to the Buyer.
- 2.5 "Services" shall mean all Services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 2.6 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Buyer in accordance with clause 6 of this contract.

3 The Competition and Consumer Act 2010 ("ACL") and Fair Trading Acts ("FTA")

- 3.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the ACL or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

4 Application of these terms and conditions to consumers

- 4.1 Clause 10 (Defects) and clause 11 (Warranty) shall NOT apply to the Buyer where the Buyer is purchasing Goods or Services not for resale or hire where the Price of the Goods or Services does not exceed \$40,000, or where the Price of the Goods or Services does exceed \$40,000 and are of a kind ordinarily acquired for personal, domestic or household use or consumption, or where the Buyer is in any other way a consumer within the meaning of the ACL or the FTA of the relevant state or territories of Australia.

5 Acceptance & Responsibilities

- 5.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
- 5.2 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all responsibilities under these terms including payment of the Price.
- 5.3 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are binding and can only be amended with the written consent of the Seller.
- 5.4 The Buyer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer or any change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice). The Buyer shall be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.
- 5.5 It is the Buyer's responsibility to ensure that all information, (written & verbal) provided to the Seller is complete and accurate. The Buyer acknowledges and agrees that the Seller is relying upon the accuracy of the information provided to them by the Buyer in supplying the Goods and/or Services. The Seller may refuse to provide Goods and/or Services to the Buyer if the Buyer refuses to provide all information requested by the Seller or the Seller discovers that any information provided to them by the Buyer is inaccurate or incomplete.

6 Price And Payment

- 6.1 At the Seller's sole discretion the Price shall be either:
 - (a) the Seller's quoted Price (subject to clause 6.2) which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation in writing within fourteen (14) days; or
 - (b) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied.
- 6.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation or a change in supplier charges, foreign exchange rates or freight costs.
- 6.3 At the Seller's sole discretion a deposit may be required.
- 6.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 6.5 Payment will be made by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 6.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

7 Delivery Of Goods

- 7.1 At the Seller's sole discretion delivery of the Goods shall take place when:
 - (a) the Buyer takes possession of the Goods at the Seller's address; or
 - (b) the Buyer takes possession of the Goods at the Buyer's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
 - (c) the Buyer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Buyer's agent.
- 7.2 At the Seller's sole discretion the costs of delivery are:
 - (a) in addition to the Price; or
 - (b) for the Buyer's account.
- 7.3 The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 7.4 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 7.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.6 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 7.7 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all due to circumstances beyond the control of the Seller.

8 Repair Notice

- 8.1 The Seller may, in the course of providing the Services to the Buyer, repair goods which are capable of retaining user-generated data. The repair of such goods may result in loss of the data.
- 8.2 It is the Buyer's responsibility to ensure that any such data stored on goods to be repaired by the Seller (or via a service provider organised by the Seller) is adequately backed up in accordance with clause 8.1 above, before the Seller conducts any repairs.
- 8.3 Goods presented by the Buyer to the Seller for repair may be replaced by refurbished goods of the same type rather than being repaired. Refurbished parts may be used to repair the goods.

9 Risk

- 9.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 9.3 The Seller shall not be held liable for any loss or corruption of files (including, but not limited to, software programmes) resulting from servicing or repairs being undertaken on the Goods. It is the sole responsibility of the Buyer to back-up any data which they believe to be important, valuable or irreplaceable prior to bringing in any Goods for servicing or repairs.

10 Defects

- 10.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods.
- 10.2 Goods will not be accepted for return other than in accordance with 10.1 above.

11 Warranty

- 11.1 The Seller warrants that all goods sold are free from defects in materials and workmanship as at the date of dispatch by the Seller. To the extent permissible by law, the Seller excludes all representations or warranties not expressly set out in these terms.
- 11.2 To the extent permissible by law, the Seller's liability for breach of any warranty set out in these terms or any warranty which the Seller is not entitled to exclude is limited to, at the option of The Seller the:
 - (a) replacement of the goods, or
 - (b) refund of the cost of the relevant goods.
- 11.3 You may exercise your rights under this clause by notifying the Seller in writing at G03, 25 Solent Cct, Baulkham Hills NSW 2153 AUSTRALIA.
- 11.4 The benefits provided to you by the warranties contained in this clause are in addition to other rights and remedies available to you under the law.
- 11.5 The Seller's goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure or for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

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- 11.6 You acknowledge and agree that the Seller has made no warranty or representation that the goods are suitable for any purpose or application.
- 11.7 Subject to the conditions of warranty set out in this clause the Seller warrants that if any defect in any workmanship of the Seller becomes apparent and is reported to the Seller within thirty (30) days of the date of delivery (time being of the essence) then the Seller will either (at the Seller's sole discretion) replace or remedy the workmanship.
- 11.8 The conditions applicable to the warranty given by clause 11.7 are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Buyer to properly maintain any Goods; or
 - (ii) failure on the part of the Buyer to follow any instructions or guidelines provided by the Seller; or
 - (iii) any use of any Goods otherwise than for any application specified on a quote or order form; or
 - (iv) the continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.
 - (b) the warranty shall cease and the Seller shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Seller's consent.
 - (c) in respect of all claims the Seller shall not be liable to compensate the Buyer for any delay in either replacing or remedying the workmanship or in properly assessing the Buyer's claim.
- 11.9 For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- ## 12 Intellectual Property
- 12.1 Where the Seller has designed, drawn or written Goods for the Buyer, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 12.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 12.3 Where the Seller has provided computer software and documentation, the Seller retains ownership of the computer software and documentation (including source codes), but grants a licence to the Buyer for use of the computer software and documentation. The Buyer will use any third-party software supplied by the Seller, and identified as such, strictly in terms of the licence under which it is supplied.
- ## 13 Default & Consequences of Default
- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 13.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 13.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
- 13.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 13.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- ## 14 Cancellation & Termination
- 14.1 The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
- 14.2 For Goods held in our warehouse, in the event that the Buyer wishes to cancel an order they have placed the Buyer shall be liable for a cancellation fee of twenty five (25%) of the price quoted to the Buyer for the Goods so cancelled.
- 14.3 For goods that have shipped directly from a third party supplier the Buyer cannot cancel the order once it has been placed. However, once the Goods are received by the Buyer the Seller will use their best endeavours to assist the Buyer to facilitate a return of unopened, unused or un-configured goods. The Seller provides no guarantee that a return or refund will be possible. Any request for assistance in returning such Goods must be notified to the Seller within 7 days of receipt of the Goods.
- 14.4 No returns are possible for customised Goods or Goods configured to the Buyers specifications.
- 14.5 In the event that the Seller's invoice, quote or order confirmation requires a deposit on the quoted amount for the provision of the Goods to be paid prior to filling the order, if the delivery of the Good is subsequently cancelled by the Buyer after the deposit has been paid they forfeit the deposit paid to the Seller. The deposit retained by the Buyer under this clause will include and incorporate the cancellation fee set out at clause 14.2 above.
- 14.6 Either party may terminate the contract upon the provision of fourteen (14) days written notice.
- ## 15 Privacy Act 1988
- 15.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.
- 15.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about the Buyer and the Guarantor/s with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by Buyer; and/or
 - (b) to notify other credit providers of a default by the Buyer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Buyer and/or Guarantor/s.
- 15.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and/or
 - (e) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods.
- 15.5 The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Buyer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- ## 16 Unpaid Seller's Rights
- 16.1 Where the Buyer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other Service in relation to the item and the Seller has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Seller shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Seller is in possession of the item;
 - (c) a right to sell the item.
- 16.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
- ## 17 Title
- 17.1 The Seller and Buyer agree that ownership of the Goods shall not pass until:
- (a) the Buyer has paid the Seller all amounts owing for the particular Goods; and
 - (b) the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.
- 17.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
- 17.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Buyer are met; and
 - (b) until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods

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are situated and take possession of the Goods; and
(e) the Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
(f) the Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
(g) the Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
(h) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer; and
(i) until such time that ownership in the Goods passes to the Buyer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

18 Security And Charge

- 18.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- (a) where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Buyer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

19 Personal Property Securities Act 2009 (PPSA)

- 19.1 The Buyer agrees and acknowledge that these Conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
(b) create a security interest in all goods previously supplied to the Buyer by the Seller (if any) and all goods that will be supplied to the Buyer in the future by the Seller.
- 19.2 The Buyer undertakes to:
- (a) promptly sign any further documents and/or provide any further information which the Seller may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in the statement referred to in this clause. (iv) indemnify and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any goods charged thereby;
- (v) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
- (vi) not register, or permit to be registered, a financing statement or a financing change statement in relation to the goods in favour of a third party without the prior written consent of the Seller;
- (vii) immediately advise the Seller of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales; and
(viii) immediately advise the Seller of any proposed change in the Buyer's name and/or any other changes in the Buyer's details.
- 19.3 The Buyer agrees that sections 96, 115 & 125 of the PPSA do not apply to the security agreement created by these Conditions.
- 19.4 The Buyer hereby waives the Buyer's rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) & 132(4) of the PPSA.
- 19.5 The Buyer waives your rights as a grantor and/or a debt or under sections 142 & 143 of the PPSA.
- 19.6 Unless otherwise agreed to in writing by the Seller, the Buyer waives the Buyer's right to receive a verification statement in accordance with section 157 of the PPSA.
- 19.7 The Buyer must unconditionally ratify any actions taken by the Seller under this clause.

20 Limitation of liability

- 20.1 Except as expressly provided in these Conditions, to the maximum extent permitted by law the Seller shall not be liable to the Buyer by way of indemnity or by reason of any breach of these Conditions or any statutory duty or any common law duty for any direct, punitive, exemplary, special, indirect or consequential loss or damages suffered by the Buyer.
- 20.2 The Buyer indemnifies the Seller against all claims, losses, costs, suits or expenses for damage to property or injury to or death of any person arising from the goods or their use or application.

- 20.3 This clause does not exclude or modify any condition or warranty implied into the contract or these terms of sale by any law (including the Competition and Consumer Act, 2010 (Cth)) where to do so would contravene that law or cause any part of this clause to be void.
- 20.4 To the maximum extent permitted by law, the Seller excludes all conditions and warranties implied into these terms of sale and limit its liability for breach of any non-excludable condition and warranty, at the Seller's option, to:
- (a) in respect of Goods:
- (i) repairing the relevant Goods;
(ii) paying the cost of having the relevant Goods repaired;
(iii) request the return of the Goods and tender to the Buyer the purchase price paid by the Buyer; or
(iv) resupplying the relevant Goods or equivalent Goods;
- (b) in respect of Services, resupplying the relevant Services.
- 20.5 The Seller's total liability under any contract and these terms of sale shall not exceed the total dollar amount of the Goods and/or Services purchased by the Buyer under the contract.
- 20.6 The Parties agree that if any limitation or exclusion of liability under these terms of sale is held to be invalid under any applicable statute or rule of law, it will to that extent be omitted.

21 General

- 21.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 21.3 The Buyer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Buyer by the Seller.
- 21.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 21.5 The Buyer agrees that the Seller may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Buyer of such change.
- 21.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 21.7 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

22 Buyer's Acceptance

Authorised Officer's Name:

Position:

Business Name:

ABN:

The Buyer accepts the terms of trade

(signature)

Date: