

**PROUD SOLUTIONS
TERMS AND CONDITIONS**

1. **Interpretations and definitions**
- Unless qualified or inconsistent with the context:-
- 1.1 A reference to one gender includes the other genders; reference to a person includes an incorporated body or other association of persons or a governmental agency and vice versa; the singular includes the plural and vice versa.
- 1.2 Where a party comprises more than one person, this Agreement applies to all of them together and each of them separately.
- 1.3 Headings are for convenience of reference and will not affect the interpretation of this Agreement.
- 1.4 This Agreement is written in plain English as far as possible. Its terms are to be interpreted so as to give effect to the parties' agreement. No rule resolving a doubt as to interpretation against the party preparing this Agreement will apply. The specific provisions will not limit the interpretation of general provisions.
- 1.5 A reference to costs includes legal costs on a full indemnity basis.
- 1.6 In this Agreement where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings.
- 1.7 A reference to writing is to be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form.
- 1.8 This Agreement binds the parties' respective heirs, successors, legal personal representatives and assigns.
- 1.9 The amounts stated in this Agreement do not include GST. Any amount paid by a recipient to a supplier for a "taxable supply" as defined in the GST Law will, to the extent permitted by law, be increased so that the GST payable on the taxable supply is passed on to the recipient of that taxable supply.
- 1.10 **"the Customer"** means the entity described in Item 1 of the Schedule.
- 1.11 **"the Deferred Supply End Date"** means the date set out in Item 6 of the Schedule and clause 4.3.
- 1.12 **"the Firm Price Date"** means the date set out in Item 4 of the Schedule and clause 3.3.
- 1.13 **"GST"** means goods and services tax imposed by A New Tax System (Goods and Services Tax) Act 1999.
- 1.14 **"GST Law"** has the same meaning as the definition of "GST law" in A New Tax System (Goods and Services Tax) Act 1999.
- 1.15 **"intellectual property rights"** means all intellectual property rights including but not limited to all intellectual property rights in and to the Product, inventions associated with the Product, future upgrades, modifications and enhancements of the Product, patents, copyrights, registered designs, circuit layouts, software, trade marks, data collected by any person in relation to the performance of the Product and any right to have confidential information kept confidential.
- 1.16 **"Law"** means statute, subordinate legislation, any regulation, order or decree which has legislative effect, common law or equity.
- 1.17 **"the Main Supply End Date"** means the date set out in Item 5 of the Schedule and clause 4.1.
- 1.18 **"notice"** means written notice and **"notify"** means notification in writing.
- 1.19 **"the Payment Dates"** means the dates set out in Item 7 of the Schedule and clause 6.1.
- 1.20 **"Product"** means each of the products listed in Item 1 of the Schedule and any products which the parties may agree be added to that list during this Agreement and includes all software and hardware incorporated in those products.
- 1.21 **"PROUD SOLUTIONS"** means Proud Solutions Pty Ltd ACN 113714873, ABN 93113714873 of Lot A, Torrens Road, Highbury, South Australia 5089 trading as Proud Solutions Pty Ltd.
- 1.22 **"Proud Solutions approval"** or **"Proud Solutions consent"** means Proud Solutions prior written approval or consent, which may be given or withheld by Proud Solutions in its discretion without being bound to give any reason for the exercise of that discretion. Similar expressions have corresponding meanings.
2. **Purchase of the Products and Representations**
- 2.1 The Customer will purchase the Products from Proud Solutions in the quantities set out in Item 2 of the Schedule on the terms in this Agreement.
- 2.2 The description of the Products which appear in Item 2 of the Schedule is given solely for identifying the specific Products that are the subject of this sale and does not constitute this contract as a sale by description.
- 2.3 The Customer has, relying on its own judgment, satisfied itself and acknowledges that the Products are in all respects suitable for the Customer's requirements.
- 2.4 The Customer warrants and agrees that it has not relied on any representation made by Proud Solutions which has not been reproduced in this Agreement or any descriptions, illustrations or specifications contained in any document including any catalogues or publicity material produced by or on behalf of Proud Solutions and that the Customer has relied on its own skill and judgment in deciding to become a Customer of the equipment under this Agreement.
- 2.5 Prior to completion of production by Proud Solutions of the Product, the parties may agree to amend the design of any unit of the Product and the Customer acknowledges that any such amendment may be subject to changes to production or delivery schedules, unit price or otherwise as Proud Solutions may require.
3. **Product prices**
- 3.1 The initial prices per unit for the Product are as set out in Item 3 of the Schedule. Those prices may vary as permitted by this Agreement.
- 3.2 All dollar amounts in this Agreement are expressed in Australian dollars (AUD) unless otherwise specified and are ex- Proud Solutions's place of manufacture.
- 3.3 Prices listed in Item 3 of the Schedule will remain firm until the Firm Price Date namely the date set out in Item 4 of the Schedule. In addition to other price changes which may be authorised by this Agreement, Proud Solutions may vary prices as at the first days of January, April, July and October in each year in accordance with changes in the AUD/USD exchange rate but only with reference to Proud Solutions USD-dependant supply costs.
- 3.4 Proud Solutions may vary prices for the Product in consequence of a design change (clause 2.3), Proud Solutions costs of components in the Product rising by more than 5% for reasons beyond Proud Solutions control, a change in the GST rate, changes in other applicable taxes or duties or otherwise as specified by this Agreement.
- 3.5 Unless otherwise permitted by this Agreement, Proud Solutions will give the Customer 30 days' notice of any price changes.

4. Supply Period

- 4.1 The Main Supply Period will commence on the date of this Agreement and will finish on the Main Supply End Date namely the date set out in Item 5 of the Schedule.
- 4.2 Subject to clauses 4.3 and 4.4, the Customer is to have taken delivery of all the units of the Product by the Main Supply End Date.
- 4.3 If for reasons beyond the Customer's reasonable control, it cannot take delivery of all units of the Product by the Main Supply End Date, subject to clause 4.4, on written request from the Customer, Proud Solutions may agree to extend the Main Supply Period. That extended period, referred to as the Deferred Supply Period, will commence from the Main Supply End Date and will terminate on the Deferred Supply End Date namely the date set out in Item 6 of the Schedule.
- 4.4 Despite clause 4.3, by not later than the Main Supply End Date, the Customer must have taken delivery of not less than 75% of the quantities of each line of the Product specified in Item 2 of the Schedule.
- 4.5 If the Customer has not taken delivery of all of the Product by not less than 14 days prior to the Deferred Supply End Date, Proud Solutions shall be entitled to deliver to the Customer all outstanding quantities of the Product by the Deferred Supply End Date and the Customer will be obliged to pay for same in accordance with this Agreement.

5. Orders for Product and Delivery

- 5.1 This clause 5 is to be read subject to clause 4.
- 5.2 To assist Proud Solutions with production scheduling, the Customer will give to Proud Solutions written estimates of its requirements for delivery of the Product during the Main Supply Period and if applicable, the Deferred Supply Period. The Customer will give estimates each month for a forward period of at least 6 months.
- 5.3 Orders for delivery of specific quantities of the Product must be placed in writing by the Customer with Proud Solutions ("Delivery Order"). Each Delivery Order must specify the quantity of each line of Product required and the delivery date requested by the Customer.
- 5.4 Any delivery times made known to the Customer are estimates only and Proud Solutions is not liable for late delivery or non-delivery.
- 5.5 Proud Solutions is not liable for any loss, damage or delay occasioned to the installation of the Product.
- 5.6 Proud Solutions may at its option deliver the Product to the Customer in any number of instalments unless there is an agreement to the effect that the Customer will not take delivery by instalments.
- 5.7 If Proud Solutions delivers any of the Product by instalments, and any one of those instalments is defective for any reason:
- 5.7.1 it is not a repudiation of the contract of sale formed by these conditions; and
- 5.7.2 the defective instalment is a severable obligation.
- 5.8 Proud Solutions is not responsible to the Customer or any person claiming through the Customer for any loss or damage to goods in transit caused by any event of any kind by any person (whether or not Proud Solutions is legally responsible for the person who caused or contributed to that loss or damage).
- 5.9 Proud Solutions must provide the Customer with such assistance as may be necessary to press claims on carriers so long as the Customer:
- 5.9.1 has notified Proud Solutions and the carriers in writing immediately after loss or damage is discovered on receipt of the Product; and

- 5.9.2 lodges a claim for compensation on the carrier within three (3) days of the date of receipt of the goods.

6. Payment

- 6.1 The Customer will pay to Proud Solutions without any deduction the price for the Product plus GST or other amounts payable pursuant to the Purchase Invoice upon Payment schedule as per the Sales Quotation. Note: The deposit and subsequent payments are non refundable.
- 6.2 Without prejudice to any other rights powers or remedies of Proud Solutions the Customer will pay to Proud Solutions interest at the rate of twelve per centum (12%) per annum on any moneys due and payable on any account whatsoever such interest to be computed daily from the due date for payment of those monies until payment in full, such interest to be recoverable on demand.
- 6.3 The Customer must satisfy Proud Solutions reasonable credit requirements as they exist at the date of this Agreement or as may be changed from time to time by Proud Solutions. The Customer must immediately notify Proud Solutions of conditions which may affect the Customer's credit worthiness or which may change Proud Solutions known or anticipated credit requirements. If the Customer requests an increase in its credit limit, Proud Solutions will respond to that request within 10 business days of receipt.
- 6.4 If any cheque issued by the Customer or by any third party in payment for the Product is dishonoured:
- 6.4.1 Proud Solutions may refuse to supply any further Products (whether or not Proud Solutions is to make any further deliveries of the Products), until satisfactory payment is received in full; and
- 6.4.2 Proud Solutions is entitled to treat the dishonour of the cheque as a repudiation of this agreement and to elect between terminating this agreement or affirming this agreement, and in each case, claiming and recovering compensation for loss or damage suffered from the Customer.
- 6.4.3 The Customer must pay any goods and services tax (GST).

7. Risk and property

- 7.1 The Product will be at the Customer's risk immediately upon loading onto the Customer's carrier at Proud Solutions place of business.
- 7.2 In connection with the Product while they remain the property of Proud Solutions, the Customer agrees with Proud Solutions that:
- 7.2.1 the Customer has no right or claim to any interest in the goods to secure any liquidated or unliquidated debt or obligation Proud Solutions owes to the Customer;
- 7.2.2 the Customer cannot claim any lien over the Product;
- 7.2.3 the Customer will not create any absolute or defeasible interest in the Product in relation to any third party except as may be authorized by Proud Solutions;
- 7.2.4 where the Customer is in actual or constructive possession of the Product:
- 7.2.4.1 the Customer will not deliver them or any document of title for the Product to any person except as directed by Proud Solutions; and
- 7.2.4.2 it is in possession of the Product as a bailee of the Product and owes Proud Solutions the duties and liabilities of a bailee.

- 7.3 In connection with the Product, Proud Solutions states to the Customer that:
- 7.3.1 Proud Solutions has the right to supply the Product to the Customer;
- 7.3.2 the activities of the Customer in supplying the Product do not infringe the rights of the owner of the Product (where Solutions is not the owner of the Product);
- 7.3.3 if the Product is not owned by Proud Solutions, that Proud Solutions is authorised to supply the Product to the Customer.
- 7.4 Proud Solutions and the Customer agree that:
- 7.4.1 The property of Proud Solutions in the Product remains with Proud Solutions until Proud Solutions has been paid in full for the Product under all individual contracts for the supply of the Product between Proud Solutions and the Customer;
- 7.4.2 The Customer is a bailee of the Product until such time as property in them passes to the Customer and that this bailment continues in relation to each of the Products until the price of the Product has been paid in full;
- 7.4.3 Pending payment in full for the Product, the Customer:
- 7.4.3.1 must not supply any of the Products to any person outside of its ordinary or usual course of business;
- 7.4.3.2 must not allow any person to have or acquire any security interest in the Product;
- 7.4.3.3 must insure the Product for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carried on business;
- 7.4.3.4 must not remove, deface or obliterate any identifying plate, mark or number on any of the Products;
- 7.4.3.5 must store or otherwise deal with the Product in a manner which clearly demonstrates ownership by Proud Solutions and not by the Customer.
- 7.5 Despite clause 7.4, if the Customer supplies any of the Products to any person before all moneys payable by the Customer have been paid to Proud Solutions (and have not been claimed or clawed-back by any person standing in the place of or representing the Customer), the Customer agrees that:
- 7.5.1 it holds the proceeds of re-supply of the Products on trust for and as agent for Proud Solutions immediately when they are receivable or are received;
- 7.5.2 it must either pay the amount of the proceeds of re-supply to Proud Solutions immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for Proud Solutions;
- 7.5.3 any accessory or item which accedes to any of the Products by an act of the Customer or of any person at the direction or request of the Customer becomes and remains the property of Proud Solutions until Proud Solutions is paid in accordance with clause 7.4.1 when the property in the Product (including the accessory) passes to the Customer;
- 7.5.4 if the Customer fails to pay for the Product within the period of credit (if any) extended by Proud Solutions to the Customer, Proud Solutions may recover possession of the Product at any site owned, possessed or controlled by the Customer and the Customer agrees that Proud Solutions has an irrevocable licence to do so.
- 7.6 Any property of the Customer under Proud Solutions possession, custody or control is completely at the Customer's risk as regards loss or damage caused to the property or by it.
- 7.7 Proud Solutions reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within fourteen days of a request by Proud Solutions for such instructions. The parties agree that Proud Solutions may charge for storage from the first day after Proud Solutions requests the Customer to provide delivery instructions.
- 7.8 (a) Proud Solutions is not under any duty to accept Products returned by the Customer and will do so only on terms to be agreed in writing in each individual case;
- (b) If Proud Solutions agrees to accept returned Products from the Customer under paragraph (a) of this clause, the Customer must return the Products to Proud Solutions at Proud Solutions place of business referred to at the head of these conditions.
- 7.9 All Products to be supplied by Proud Solutions to the Customer are as described on the purchase order agreed by Proud Solutions and the description on such purchase order modified as so agreed prevails over all other descriptions including any specification or enquiry of the Customer.
- 7.10 No order may be cancelled except with consent in writing and on terms which will indemnify Proud Solutions against all losses.
- 7.11 The Customer irrevocably grants to or will procure for Proud Solutions, its agents and servants an unrestricted right and licence without notice, to enter premises to identify and remove any of the equipment which is the property of Proud Solutions without in any way being liable to the Customer or any person claiming through the Customer or any other person.
- 8. Warranty**
- 8.1 Proud Solutions warrants that the Product will be free from defect due to faulty materials or Proud Solutions workmanship for a period of 365 days from the date of despatch by Proud Solutions and calculated on an 8 hour use per day. Products supplied by Proud Solutions from other manufacturers will be warranted for the term of the manufacturers warranty.
- 8.2 Proud Solutions liability is limited to either repair or replacement (at Proud Solutions option) of the faulty Product or crediting the Customer's account in an amount equal to the then current unit price.
- 8.3 During that period of warranty, Proud Solutions will replace or repair any defective Products without charge so long as the claim does not arise from:
- 8.3.1 improper adjustment, calibration or operation by the Customer; Note: Belt damage caused by incorrect tracking is not covered under this warranty
- 8.3.2 the use of accessories including consumables, hardware, or software which were not manufactured by or approved in writing by Proud Solutions;
- 8.3.3 any contamination or leakages caused or induced by the Customer;
- 8.3.4 any modifications of the Product which was not authorised in writing by Proud Solutions;

- 8.3.5 any misuse of the Product by the Customer or anyone for whom the Customer has legal responsibility (including a minor);
- 8.3.6 any use or operation of the Product outside of the physical, electrical or environmental specifications of the Product.
- 8.4 This warranty does not extend to cover any damage to Sensitive Components set out in Item 8 of the Schedule, nor to corrosion due to any cause nor to any damage to painted or anodized surfaces. The Sensitive Component, if any, included in the Product carries a limited warranty from the manufacturer set out in Item 8 of the schedule and that warranty is the only warranty given to the Customer in respect of that part of the Product.
- 8.5 Any Product the subject of a warranty claim must be returned to Proud Solutions at the Customer's cost, accompanied by a written warranty claim identifying the Product unit, whether it is a line return (returned from the Customer's manufacturing facility) or a field return (removed and returned from an end user installation) and providing information as to the fault or defect in the Product plus such additional information as Proud Solutions may require.
- 8.6 The Customer will pay freight costs on the return of repaired or replaced Product to the Customer.
- 8.7 The Customer must promptly inspect each Product upon its receipt. Claims must be made within 30 days of the Customer's receipt of the Product. Failure by the Customer to give notice of any return claim within 30 days after receipt shall be conclusively deemed an unqualified acceptance of the Product and a waiver by the Customer of all claims with respect to it.
- 8.8 Proud Solutions will give to the Customer written notification of its acceptance or otherwise of a warranty claim. That notification will normally be given within 10 working days of Proud Solutions receipt of warranty claim. The Customer will be liable for Proud Solutions costs associated with a warranty claim which on reasonable grounds is not accepted by Proud Solutions.
- 8.9 To the maximum extent permitted by law, other than as expressly stated in this Agreement, Proud Solutions gives no warranty in relation to the Product. Without limiting that exclusion, Proud Solutions will have no liability whatever to any person as to the suitability, fitness for any purpose, quality, performance or otherwise of the Product in any application;
9. **Intellectual Property Rights**
- 9.1 Proud Solutions owns all of the Intellectual Property Rights. The Customer agrees:-
- 9.1.1 not to cause or permit or assist or allow others to cause or permit copying, third party use, or anything which may damage or endanger the Intellectual Property Rights;
- 9.1.2 to notify Proud Solutions of any suspected infringement of the Intellectual Property Rights or other property or Proud Solutions Confidential Information (refer clause 10) of the Supplier;
- 9.1.3 to take such reasonable action as Proud Solutions may direct at the expense of Proud Solutions in relation to such infringement;
- 9.1.4 except with Proud Solutions consent, not to alter or tamper with the Product or any markings, codings or labelling on or attached to the Product as supplied by Proud Solutions;
- 9.1.5 to compensate Proud Solutions for any use by the Customer of the Intellectual Property Rights or other property or Proud Solutions Confidential Information otherwise than in accordance with this Agreement;
- 9.1.6 not to register or use any name or mark similar to or capable of being confused with any of Proud Solutions trade or business names or trade marks, logos, devices, marks or descriptions of the Product;
- 9.1.7 that it has no right or interest in the Intellectual Property Rights, the Product, Proud Solutions business or Proud Solutions Confidential Information other than as expressly granted by this Agreement.
- 9.2 The Customer acknowledges that Proud Solutions has the unrestricted right to commercialise the Intellectual Property Rights as it sees fit.
- 9.3 If this provision is infringed the Customer shall be liable for a penalty of \$50,000. This penalty may be claimed in addition to any compensation available to Proud Solutions by law.
10. **Confidentiality**
- 10.1 During and at all times after this Agreement, either party must not, except in its performance of its obligations under this Agreement or otherwise with the other party's consent, use or disclose to any third party, in any form or by any means, and must keep in the strictest confidence, all and any Confidential Information of which that party becomes aware whether through the performance of its obligations under this Agreement or otherwise.
- 10.2 "**Confidential Information**" includes all information of a confidential nature regarding the business interests, finances, methodology or affairs of a party including but not limited to matters of a technical nature, trade secrets, know-how, technical data, marketing procedures and information, customer information and any other information which may be notified by a party to the other as being confidential or which, if disclosed would or would be likely to be detrimental to that party.
- 10.3 A party will be entitled to an injunction restraining the other party from any action or threatened action which would be a breach of this clause 10. Each party agrees to fully compensate the other for all direct or indirect losses, costs or damages which the other party may suffer if the first party breaches this clause 10.
11. **No modification of Product**
- The Customer will not access source codes incorporated in the Product nor modify or reverse engineer any component part of any of the Product nor permit anyone else to do so without Proud Solutions consent.
12. **Compliance**
- 12.1 The Customer must supply Proud Solutions in writing any details and specifications that the Customer requires in the design and manufacture of the Products otherwise the Products may be built as the supplier decides correct.
- 12.2 The Customer must ensure that appliances into which the Products are installed in every respect satisfy all applicable laws, rules and regulations in any place where those appliances may be transported, stored, sold or used.
- 12.3 The Customer will be liable for all costs associated with its compliance pursuant to this clause.
- 12.4 In agreeing to proceed with the Sales Agreement the Customer confirms that they have not relied upon any verbal or written representation or assurance, other than those contained within the Proud Solutions signed and accepted Quotation.
13. **Liability and Indemnity**
- 13.1 Proud Solutions nor any subcontractor or any worker or agent of Proud Solutions will be liable for any liability, loss or damage whether direct or indirect, consequential or inconsequential past present or future, in tort, contract or in any other way;

13.1.1 for any direct or indirect loss, damage, contamination or deterioration to the Product or mis-delivery or failure to deliver or delay in delivery of the Product;

possession (whether itself or by an agent) of any asset of the other party;

13.1.2 for any injury, loss or damage, direct or indirect, to any person or real or personal property arising in any way in connection with the carriage of the Product or the nature or character of the Product.

15.2.4 If the other party commits a serious criminal offence.

13.1.3 for any infringement of any third party rights or claim based upon the use for any purpose or any application of the Product.

15.3 Any termination shall not effect the rights and obligations pursuant to this Agreement which existed or accrued prior to termination.

15.4 Upon termination of this Agreement the Customer shall deliver up any equipment delivered to the Customer by Proud Solutions in good order and condition and should the Customer fail to do so then Proud Solutions shall have the right to retake possession of the said equipment and shall be entitled to recover from the Customer damages for breach of the Agreement, a reasonable amount for the rental or storage of the equipment, any loss of profits as a result of the breaches by the Customer, any costs incurred by Proud Solutions in retaking possession of the equipment and any costs including solicitor and own client legal costs incurred by Proud Solutions of and incidental to obtaining or attempting to obtain possession of the equipment or enforcing or attempting to enforce any of Proud Solutions rights under this Agreement.

whether due to any action or inaction by Proud Solutions or any other person or otherwise.

13.2 Without limiting clause 13.1, Proud Solutions will not be liable in tort contract or in any other way for any direct or indirect loss, damage, contamination or deterioration to the Product due to any event of force majeure.

13.3 Without limiting clause 13.1 Proud Solutions will not be liable in tort, contract or otherwise to any party as a result of a breach of this Agreement by the Customer.

16. Dispute Resolution

13.4 All protections, limitations or exclusions of liability and/or indemnities for the benefit of Proud Solutions in this Agreement will continue to have full force despite any tort or breach of contract by Proud Solutions, even if such tort or breach of contract was outside the contemplation or expectation of the parties or any other person entitled to the benefit of this Agreement when the Agreement was made.

16.1 A party seeking to resolve a dispute under this Agreement ("the Dispute") must notify the other party in writing of the existence and nature of the Dispute. Upon the other party receiving the notice, the parties must exercise good faith in resolving the dispute by negotiation between themselves through their nominated representatives.

13.5 In the event that the Customer defaults under the terms of this Agreement then the Customer shall pay to Proud Solutions any loss and damage including direct and indirect and consequential and inconsequential loss and damage and including solicitor and own client legal costs and outlays incurred by Proud Solutions arising out of or by reason of or in respect of such default.

16.2 If the Dispute cannot be resolved by negotiation under clause 16.1 within 14 days of the notice, the parties must jointly request the appointment of a mediator. If the parties fail to agree on the appointment of a mediator within 7 days of a notice of appointment of mediator, either party may apply to the President of the Law Society of South Australia or the nominee of the President to appoint a mediator. Once the mediator has accepted the appointment, the parties must comply with the instructions of the mediator.

13.6 The Customer will hold harmless, indemnify and keep indemnified Proud Solutions from and against all claims, demands, penalties, actions, losses, costs, expenses or other liabilities direct or indirect, consequential or inconsequential past present or future imposed, brought against, incurred or suffered by Proud Solutions arising out of or as a result of any breach by the Customer of its obligations under this Agreement or any of the other matters referred to in this clause.

16.3 In the event that the Dispute is not resolved within 14 days of the appointment of a mediator, or any other period agreed by the parties in writing, the mediation ceases.

14. Status of Customer

The Customer is not an employee, partner, agent or joint venturer of Proud Solutions and cannot directly or indirectly bind Proud Solutions in any arrangement with a third party.

16.4 In the event that the mediation ceases pursuant to clause 16.3 hereof, either party may submit the dispute to arbitration in accordance with the Rules of the Conduct of commercial Arbitration for the time being of The Institute of Arbitrators & Mediators Australia (ACN 008 520 045) (SA Division). The parties may be legally represented during such arbitration. The decision of the arbitrator appointed pursuant to this clause 16.4 will be final and binding on both parties.

15. Termination

15.1 If either party breaches any term of this Agreement ("the defaulting party") the other party ("the non-defaulting party") may give the defaulting party not less than 30 days' notice to remedy that breach. If the breach is not remedied within the period stipulated, the non-defaulting party may give the defaulting party a further notice immediately terminating this Agreement.

16.5 The parties agree and acknowledge that the costs of the mediator and of the arbitrator appointed pursuant to this clause are to be paid equally by the parties.

15.2 Either party may terminate this Agreement by notice to the other party immediately upon any of the following events:-

17. Amendments

Any amendment to a term of this Agreement must be made in writing and executed by the parties or duly authorised officers on behalf of the parties.

15.2.1 If the other party ceases to do business as a going concern;

18. Force majeure

Except for an obligation to pay money, neither party will be liable for any failure or delay in performance of its obligations resulting from circumstances beyond the reasonable control of such party. If a force majeure event occurs, the party suffering it will notify the other party of the occurrence and expected duration of that event. The party suffering the force majeure event must use all reasonable endeavours to obviate that force majeure event.

15.2.2 If a summons, petition or other action is issued or brought or a resolution passed by the other party seeking any form of insolvency related administration or arrangement with respect to the other party except for the bona fide purpose of reconstruction;

19. Notice

Any notice given or invoice provided pursuant to this Agreement must be in writing and be hand delivered or sent by prepaid post or by facsimile to the address or facsimile number (as the case may be) shown at the commencement of this Agreement (or any other address or facsimile number that a party may notify to the other) and will be deemed sufficiently given:-

15.2.3 If an administrator or a receiver and/or manager is appointed over any of the assets of the other party or a mortgagee or encumbrancee enters into

- 19.1 in the case of hand delivery, on the date of delivery; or
- 19.2 in the case of prepaid post, 2 business days after being sent by prepaid post; or
- 19.3 in the case of facsimile, on receipt by the sender of a successful transmission answer-back.
20. **Severability**
- Every provision of this Agreement will be deemed severable as far as possible from the other provisions of this Agreement. If any provision is found to be void, illegal or unenforceable for any reason, it will be deemed to be severed from this Agreement. This Agreement with the offending provision severed and with any consequential amendment if necessary, will otherwise remain in full force.
21. **Governing law**
- This Agreement is to be by construed according to South Australian laws and the parties submit themselves to the jurisdiction of the Courts of South Australia and any competent appellate courts.
22. **Further assurances**
- The parties will promptly do everything necessary or desirable even if not expressly stated in this Agreement, to ensure that the terms of this Agreement are fully carried into effect.
23. **Waiver**
- The failure by Proud Solutions to insist upon strict performance by the Customer of any of the terms of this Agreement will not be deemed a waiver of any term or of a breach by the Customer. A waiver of any

term of this Agreement by Proud Solutions must be in writing executed by Proud Solutions or one of its duly authorised officers or lawyers.

24. **Entire agreement**

This Agreement contains the entire agreement between the parties in respect of the subject matter of this Agreement. This Agreement supersedes any prior agreement or understanding (if any) between the parties and there is no collateral or other form of agreement between the parties in relation to the subject matter of this Agreement.

25. **Costs**

The parties will pay their own costs of the negotiation, preparation and execution of this Agreement. The Customer shall pay all stamp duty or other charges levied in respect of this Agreement or any transaction completed by this Agreement. The Customer will pay all costs and losses incurred by Proud Solutions in consequence of any breach by the Customer of any term of this Agreement (but without limit to any other rights or remedies which Proud Solutions may have as a result of that breach).

26. **Assignment**

The Customer will not assign this Agreement without the consent of Proud Solutions. A change in the persons in effective management or control of the Customer is deemed an assignment.

27. **Survival of clauses**

Despite the termination of this Agreement, clauses 8, 9, 10, 11, 12, 13 and 14 will remain in full force.