

# Terms and conditions

## RECITALS

- A The Customer has requested that the Seller provide the Goods and/or the Services.
- B The Seller agrees to deliver the Goods or carry out the Services and to be paid for the Goods or Services according to these terms and conditions.

## 1. DEFINITIONS

**Completion** means that stage when:

- the Services are complete except for minor defects or omissions;
- all tests required to be carried out have been carried out; and
- any documents and information required in relation to the services for completion have been provided by the Seller to the Customer.

**Customer** means the person set out in the Quotation

**Customer Specific Goods** means Goods that have been specifically requested and ordered for a particular customer, or are orders made for non-stock or custom-made or special goods at the request of the Customer

**Date of Completion** means the date on which the Services achieve Completion

**Delivery Location** means Ex-Works to the Seller's office you are dealing with, unless otherwise specified in the Quotation

**Delivery Time** means the delivery time set out in the Quotation

**Force Majeure Event** means any event beyond the reasonable control of a party which prevents that party from performing any of its obligations under this agreement in accordance with this agreement. Force Majeure Events include (without limitation):

- fire, flood, earthquake or act of God;
- riot, civil disorder, rebellion, nation or statewide strike, terrorism or revolution; and
- the direct and indirect effect of any disease, epidemic or pandemic,

but in each case only if and to the extent that the non-performing party is without fault in causing the event, and the event, or its effect, could not have been prevented by taking reasonable precautions.

**Goods** means the goods identified in the Quotation (if any).

**Seller** means TRILITY Solutions Pty Ltd (ABN 88 009 395 340), TRILITY Solutions Australia Pty Ltd (ABN 91 101 568 914), TRILITY Solutions (SA) Pty Ltd (ABN 20 073 532 028), TRILITY Services Pty Ltd (ABN 72 155 889 599) or TRILITY New Zealand Limited (NZBN 9429047943117) as set out in the Quotation or Proposal with these entities all wholly owned by TRILITY Group Pty Ltd (ABN 39 144 522 565).

**Seller's Personnel** means any employees, subcontractors or agents of the Seller

**Notice** means any notice, claim, consent or other communication made in relation to this contract

**Price** means the price set out in the Quotation

**Quotation** means the document provided to Customer by Seller setting out the estimated cost/price for the Goods or Services

**Services** means the services described in the Quotation

**Site** means the Customer's premises or such other site as may be notified to the Seller from time to time.

**Term** means the term, if any, set out in the Quotation

## 2. FORM OF CONTRACT

### 2.1 Form of Contract

The Customer will execute a Work Authorisation Form or Purchase Order for each order, and a new contract will be formed for each order. The Work Authorisation Form or Purchase Order and these Terms and Conditions and any other documents (e.g. drawings) form the Contract. Unless otherwise agreed in writing, the Customer will be bound by these terms and conditions if the Customer places an order with the Seller and it is accepted by the Seller. The Seller is not bound by any terms and conditions contained in any document issued by the Customer.

## 3. GOODS

### 3.1 Supply of the Goods

- The Seller will:
  - deliver the Goods in accordance with these terms & conditions.
  - ensure that the Goods are packed so as to avoid damage during transit or in storage.
  - use all reasonable endeavours to confirm the Customer's requirements for the Goods.
  - deliver Goods to the Customer that:
    - will be new, of good quality and free from defects;
    - comply with all relevant laws and standards; and
    - will be in accordance with any specifications set out in the Quotation.
  - deliver the Goods to the Delivery Location(s) on or by the Delivery Time. Where Goods are delivered to the Customer's site, the Seller will comply with the Customer's reasonable directions in relation to delivery and work health and safety.
- Subject to clause 3.1(d) the Customer may return Goods that:
  - are not Customer Specific Goods to the Seller;
  - are unused and undamaged; and
 have been stored in accordance with the manufactures recommendations and in accordance with industry standards, provided that the Customer requests to return such Goods within 90 days of the Delivery Time.
- The Seller and Customer agree that the Customer shall not be entitled in any circumstances to return Customer Specific Goods.
- The Customer must pay all costs of repackaging and returning the Goods. The Seller will inspect the goods and will refund or credit the customer for any returned Goods to the extent that the criteria specified in clause 3.1(b) are met. A 10% re-stocking fee will be applied. No refund will be provided in relation to returned Goods to the extent that the criteria specified in clause 3.1(b), in the Seller's reasonably held opinion, are not met.

### 3.2 Title and Risk

- Title to the Goods will pass to the Customer on payment in full for all Goods.
- Risk will remain with the Seller until the Goods are delivered to the Customer. If the Delivery Location is 'Ex-Works', risk passes when the Customer removes the Goods from the Seller's premises.

### 3.3 Security Interest PPSA (Australia)

- Clause 3.3 only applies to agreements entered into within Australia and for which the relevant Seller entity is an Australian Registered Company. Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the Personal Property Securities Act 2009 (Cth) (PPSA).
- The Customer grants the Seller a security interest or purchase money security interest (PMSI) in all Goods and/or Services to which the Seller retains title under these Conditions.
- The Customer grants the Seller an irrevocable power of attorney to execute such documents as may be required for the Seller to perfect a security interest under the PPSA legislation and must:
  - promptly sign any documents and provide all information reasonably required by the Seller to register a financing statement or financing change statement on the Personal Property Securities Register or that the Seller may require in connection with such registrations;
  - notify the Seller in writing of any proposed change to its name or address at least 14 days before the change takes effect;
  - 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, releasing any goods from a security interest perfected by such registration or any other action taken by the Seller to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA;
- Any time the Customer makes a payment to the Seller, irrespective of whether the payment is made under or in

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- connection with a particular supply of goods, the Seller may apply that payment in any manner and order it sees fit.
- (e) Sections 96 and 125 of the PPSA do not apply to the security agreement created by these Conditions.
  - (f) The Customer waives its rights to receive a verification statement in accordance with section 157 of the PPSA.
  - (g) The Customer:
    - (i) waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), and 135 of the PPSA and its rights as a grantor and a debtor under sections 142 and 143 of the PPSA; and
    - (ii) agrees that where the Seller has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.

## 3.4 Security Interest PPSA (New Zealand)

- (a) This clause only applies to agreements entered into in New Zealand and which the Supplier entity is a company registered in New Zealand. The Customer acknowledges and agrees that:
  - (i) these terms and conditions constitute a security agreement for the purposes of the Personal Property Securities Act 1999 NZ (PPSA); and
  - (ii) a security interest is taken in all Goods/Equipment previously supplied by the Supplier to the Customer (if any) and all Goods/Equipment that will be supplied in the future by the Supplier to the Customer, and
- (b) The Customer undertakes to:
  - (i) sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Supplier may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (ii) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods/Equipment charged thereby;
  - (iii) not register a financing change statement or a change demand without the prior written consent of the Supplier; and
  - (iv) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- (c) The Supplier and the Customer agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- (d) The Customer waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- (e) Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- (f) The Customer shall unconditionally ratify any actions taken by the Supplier under clauses 3.4(a) to (e).

## 4. THE SERVICES

### 4.1 Performance of the Services

- (a) In carrying out the Services, the Seller will use all reasonable endeavours to:
  - (i) carry out and complete the Services in a professional, careful and skilful manner; and
  - (ii) carry out and complete the Services during the Term and in accordance with these Terms and Conditions; and
  - (iii) ensure that the Services, when complete, meet all reasonable requirements of the Customer.
- (b) If the Services will be carried out in stages, the Seller will obtain the Customer's prior written consent before carrying out a new stage. Such consent must not be unreasonably withheld or delayed.
- (c) The Seller will use all reasonable endeavours to confirm the Customer's requirements for the Services and will carefully examine all documents and information provided to it in relation to the Services.
- (d) The Seller will carry out and complete the Services at the Site or any other locations that may be agreed in writing by the parties.

- (e) If the Services are Training services, then Annexure A - Special Conditions 1 to 6 shall apply to the Services to the exclusion of anything to the contrary in these Terms and conditions.

### 4.2 Access to the Site

- (a) Whenever possible, the Seller will advise the Customer of when it intends to visit the Customer's Site.
- (b) The Customer must provide the Seller with sufficient access to the Site to allow the Seller to carry out and complete the Services.
- (c) If the Seller is delayed in obtaining or maintaining access to the Site, then it is entitled to delay costs and an extension of time to the Term (if required) for the period it is delayed.

### 4.3 The Seller's Personnel

The Seller will ensure that all of the Seller's Personnel who provide the Services are competent and appropriately trained and experienced.

### 4.4 Other Contractors

- (a) The Seller will use reasonable endeavours to co-operate and co-ordinate the Services with the services or works of other contractors of the Customer.
- (b) If the Seller is delayed due to an act or omission of any other contractor, then it is entitled to delay costs and an extension to the Term (if required) for the period it is delayed.

### 4.5 Environment

- (a) The Seller and the Seller's Personnel will comply with all reasonable requirements, policies or directions of the Customer in relation to the environment while it is on the Site.
- (b) The Seller:
  - (i) has no liability for or in relation to any pre-existing or migrating contamination (other than contamination caused by its breach of contract or negligence) at the Site; and
  - (ii) will only be liable for damage to the environment if it directly causes the relevant damage.

### 4.6 Work Health and Safety

- (a) The Seller will carry out its Services in accordance with all statutory and common law requirements in relation to work health and safety, and will consult with the Customer as reasonably required to minimise any risks in relation to work health and safety.
- (b) The Seller and the Seller's Personnel will comply with all reasonable requirements, policies or directions of the Customer in relation to work health and safety while it is on the Site.
- (c) If reasonably required by the Seller, the Customer must, at its own cost, provide suitable personnel to provide work health and safety oversight while the Seller's Personnel are on the Site.

### 4.7 Documents and Information

- (a) The Customer must provide the Seller with all documents and information necessary to carry out the Services.
- (b) If the Seller identifies any deficiency, ambiguity or discrepancy in any information or documents, it will give Notice to the Customer. The Customer must rectify the deficiency, ambiguity or discrepancy and The Seller is entitled to its additional costs and an extension of time in relation to any such rectification.

### 4.8 Latent Conditions

- (a) If the Seller encounters any conditions that it could not reasonably have anticipated at the time that it entered into the Contract (**Latent Conditions**), then it will promptly give Notice to the Customer with details of the Latent Condition and the estimated time or cost required to deal with the Latent Condition.
- (b) The Seller and the Customer, acting reasonably and in good faith, will agree a reasonable extension of time and adjustment to the Price necessary to deal with the Latent Condition promptly after The Seller gives the Notice in clause 4.8(a).

## 5. WARRANTY

- 5.1 The Seller, at its discretion, will either repair any defects in, or replace, the Goods that are identified by the Customer for a period of 12 months from the date that the Goods are first delivered to the Customer (the Goods Warranty Period).
- 5.2 If the Seller provides any Goods to the Customer as part of the Services, then The Seller, at its discretion, will either repair any

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defects in, or replace, the Goods that are identified by the Customer for a period of 12 months from the date of commissioning, or 18 months from the date of delivery whichever is shorter. (Goods Warranty Period)

- 5.3 The Seller will repair or replace any defects in the Goods identified during the Goods Warranty Period at its own cost however the Customer is responsible for removing and transporting the defective Goods to and from The Seller's premises at its own cost and risk and reinstalling as required.
- 5.4 The Goods Warranty is subject to documented maintenance of the Goods in accordance with the manufacturers recommendations.
- 5.5 The Seller will accept no responsibility and offers no warranty on equipment which has been adjusted or modified by anyone other than trained The Seller employees.
- 5.6 The warranty does not cover any soft seals which are commonly considered to be perishable items (e.g. O-rings)

## 6. VARIATIONS

- 6.1 If the Customer wishes to vary the Goods or Services, then it must give written Notice to The Seller with details of the intended variation.  
If the Services are unable to proceed until such time as the cost of the variation is agreed, then the Customer agrees that The Seller is entitled to an extension of time to the extent that the Services are delayed as a result of the request for Variation.
- 6.2 Following receipt of the Customer's Notice under clause 5.1, The Seller will advise the Customer of the estimated cost of the variation and the time required to carry out the variation.
- 6.3 Following receipt of The Seller's estimate pursuant to clause 6.2, the Customer will give Notice to The Seller stating whether or not The Seller should proceed with the variation. If the Customer does not agree with The Seller's estimate of cost or additional time, then the parties will negotiate in good faith to agree the additional time and costs associated with the variation.
- 6.4 The Seller is not required to carry out any variation unless the parties have agreed any extension of time and the additional costs associated with the variation.
- 6.5 If the Seller considers that any direction of the Customer is a variation to the Services, it will give Notice with details of the direction and provide the information required under clause 6.2. Clauses 7.3 and 7.4 will then apply.
- 6.6 A variation may increase or reduce the Services but must not materially change the nature or scope of the Contract.

## 7. DELAYS

- 7.1 The Seller will carry out and complete the Services during the Term.
- 7.2 The Seller will deliver the Goods on or by the Delivery Time set out in the Quotation
- 7.3 The Seller will advise the Customer promptly after it becomes aware that Completion of the Services or Delivery of Goods may be delayed. If the Seller intends to claim delay costs, it must give Notice containing details of the reasons for the delay, the expected time period of the delay and details of any expected delay costs.
- 7.4 The Seller is entitled to a reasonable extension to the Term or Delivery Time (if required) and to be paid its reasonable delay costs if the delay is due to:
- any delay relating to access to the Site or Delivery Location;
  - any delay caused by any other contractor or third party on or near the Site;
  - a variation (unless the delay costs are included in the agreed price for the variation);
  - any act or omission of the Customer or its employees, agents and subcontractors (excluding The Seller).

## 8. SUSPENSION

- 8.1 The Customer may suspend the provision of the Contract by giving Notice to the Seller.
- 8.2 The Seller will recommence the Contract within a reasonable time after it receives Notice from the Customer to do so.
- 8.3 The Seller is entitled to an extension of time or delay costs for the delay associated with the suspension unless the suspension was directly caused by an act or omission of The Seller.

- 8.4 If the suspension continues for more than 60 continuous days, then either party may terminate this Contract by Notice, and clauses 15.3 and 15.4 will apply.

## 9. COMPLETION

- 9.1 The Seller will give the Customer Notice on or before the date that it considers that the Services (or part thereof) achieve Completion.
- 9.2 Within 7 days of receipt of the Notice under clause 9.1, the Customer will give Notice stating whether or not it agrees that Completion has been achieved.
- 9.3 If the Customer, acting reasonably, does not agree that Completion has been achieved, then the Notice under clause 9.2 must give full details of the matters that are required for Completion to be achieved. The Seller will assess the Notice and if in agreement will carry out the further work identified.

## 10. PAYMENT

### 10.1 Payment for Goods

- The Seller may require upfront payment for the Goods. If upfront payment is required, the Customer must pay The Seller the amount set out in the Quotation within 7 days of the invoice date. The Seller will not deliver any Goods unless the upfront payment (if any) has been made
- For Term Arrangements, The Seller will invoice the Customer for the Goods delivered within 7 days of despatch
- The Customer must pay The Seller within 30 days of the end of the month in which the invoice was issued.
- If the Customer disputes all or part of an invoice, then it must pay the undisputed part in accordance with clause 10.1(c) and the resolution of the disputed part must be dealt with in accordance with clause 19.

### 10.2 Payment for Services

- If the Price is for a lump sum, the Customer will pay the Seller the lump sum amount.
- If the Quotation includes progress payments, then the Customer will pay the Seller for the Services in accordance with the progress payments set out in the Quotation.
- The Seller will invoice the Customer for the Services within 7 days of the Date of Completion.
- The Seller may require a deposit for the Services. If a deposit is required, the Customer must pay The Seller the amount within 7 days of the invoice date. The Seller will not carry out any work in relation to the Services unless the deposit (if any) has been paid.
- The Customer must pay the Seller within 30 days of the end of the month in which the invoice was received.
- If the Customer disputes all or part of an invoice, then it must pay the undisputed part in accordance with clause 10.2(e) and the resolution of the disputed part must be dealt with in accordance with clause 19.

## 11. INTELLECTUAL PROPERTY

- 11.1 The Seller retains ownership of its intellectual property used for the purposes of providing the Services. The Seller grants the Customer an irrevocable, non-transferable licence to use The Seller's rights in intellectual property used by the Seller in performing the Services, but only to the extent that such a licence is necessary for the Customer to have the benefit of the Services.
- 11.2 The Customer warrants that it owns, or has a licence to use, all intellectual property rights relating to the documentation or information provided by it to The Seller that are required by The Seller to carry out the Services.
- 11.3 The Customer grants to the Seller an irrevocable, non-transferable licence to use those intellectual property rights to carry out and complete the Services and warrants that it has the right to grant such licences. The Customer shall indemnify the Seller for any loss, damage or cost incurred as a result of a breach of this warranty.

## 12. INSURANCE

- 12.1 The Seller will obtain and maintain the following types of insurance with reputable insurers for the duration of the Services: public and product liability, worker's compensation insurance, motor vehicle insurance;
- 12.2 If the Services include professional engineering design work, The Seller will obtain and maintain professional indemnity

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insurance in the amount of \$1m for a period of 6 years from the Date of Completion of the Services.

## 13. AUTHORISED REPRESENTATIVES

- (a) The Seller's Representative and the Customer's Representative each have the power to give instructions and make binding directions on behalf of their respective parties.
- (b) A party may replace its representative by giving prior Notice to the other party with full details of the new representative.

## 14. FORCE MAJEURE

- 14.1 If a party (Affected Party) is prevented, in whole or in part, from carrying out its obligations under this Contract other than an obligation to pay money (Affected Obligations) due to a Force Majeure Event:
  - (a) the Affected Party must as soon as reasonably practicable give Notice to the other party advising them of that fact and providing details of the nature of the event and its anticipated duration;
  - (b) the Affected Party must take all reasonable steps to mitigate the impact of the Force Majeure Event on the Affected Obligations. This clause does not require a party to settle an industrial dispute on terms not acceptable to it; and
  - (c) unless this Contract is terminated, the Affected Party must resume performance of the Affected Obligations as soon as possible after the Force Majeure Event abates sufficiently to permit a resumption of performance.
- 14.2 If a Force Majeure Event that prevents in whole or in part the performance of a party's obligations under this Contract continues for a period of 60 days, either party may by Notice to the other party terminate this Contract without liability for breach of contract but without prejudice to any rights accrued at the date of termination.

## 15. TERMINATION

- 15.1 Either party may immediately terminate the Contract by Notice if the other party:
  - (a) is in material breach of the Contract; or
  - (b) is insolvent or financially unable to carry out its obligations under the Contract; or
  - (c) if a natural person, becomes bankrupt or has a bankruptcy petition presented; or
  - (d) if a company, enters into a deed of company arrangement, has a controller or administrator appointed or any application is made for the winding up of the company.
- 15.2 Either party may terminate the Contract at any time and for any reason by giving 30 days' Notice to the other party.
- 15.3 Except where the Contract is terminated for the Seller's breach or insolvency under clause 15.1, the Seller must be paid for all of the Services carried out up to the date of termination, together with its reasonable termination costs. This will include, without limitation, the cost of any materials or Customer Specific Goods that cannot be used for other customers.
- 15.4 If the Contract is terminated the Seller will take all reasonable steps to minimise the costs of termination to the Customer.
- 15.5 The Seller retains title to all Goods provided by it in providing the Services until such time as it has been paid in full for all of the Goods.

## 16. LIMITATION OF LIABILITY

Subject to clauses 17 and 18, but notwithstanding any other provision of this Contract, and to the extent possible at law, the aggregate liability of The Seller under this Contract to the Customer or any other party, howsoever arising (whether by way of indemnity, by statute, in tort (for negligence or otherwise) or on any basis at law or in equity), is limited to:

- (a) for matters that are indemnified under the Seller's insurance policies required under this Contract, the amount or amounts recovered under the relevant insurance policy; or
- (b) for matters that are not indemnified under The Seller's insurance policies required to be effected and maintained under this Contract, an amount not exceeding 50% of the Price,

however the limitation of liability shall not apply to the liability of the Seller in respect to:

- (c) death or personal injury;
- (d) damage to real property;
- (e) fraud or criminal misconduct;
- (f) breach of third party intellectual property rights; or

- (g) liability which may not be limited by operation of law.

## 17. INDEMNITY AND RELEASE

To the maximum extent permitted by law, each party to this Contract indemnifies, releases and holds harmless the other party from and against any and all claims for:

- (a) personal injury; or
- (b) by third parties for loss or damage to property.

## 18. EXCLUSION OF CONSEQUENTIAL LOSS

- 18.1 Neither party will be liable to the other party for any Consequential Loss.
- 18.2 For the purposes of this clause, "Consequential Loss" means loss of revenue, loss of profit, loss or denial of opportunity, loss of access to markets, loss of goodwill, increased overhead costs, increased financing costs, delay damages (except for those damages provided for under Clause 7), and all loss which is indirect, remote or unforeseeable loss or loss resulting from some supervening event or special circumstance, whether or not in the reasonable contemplation of the parties at the time of execution of this Agreement as being a probable result of the relevant breach.

## 19. DISPUTE RESOLUTION

- 19.1 If a dispute arises, the parties must, prior to the initiation of any legal proceedings, use their best efforts in good faith to reach a reasonable and equitable resolution of the dispute in accordance with clause 19.
- 19.2 If a dispute arises, the party raising the dispute must give Notice to the other party. The Notice must:
  - (a) specify that it is a Notice given under this clause 18; and
  - (b) give full particulars of the nature and extent of the dispute.
- 19.3 The Seller's Representative and the Customer's Representative must meet at least once in order to attempt to resolve the dispute in good faith.
- 19.4 If the dispute is not resolved within 10 days of a referral in accordance with clause 19.2, the dispute must be referred to a panel, consisting of the senior representatives of each party ('Panel'), for resolution. Each party must nominate at least one senior representative for the Panel within 3 days of the referral to the Panel in accordance with this clause.
- 19.5 The Panel will determine its own procedures for the resolution of a dispute. Unless otherwise agreed by the parties, all discussions involving the Panel will be conducted on a without prejudice basis.
- 19.6 Decisions of the Panel may only be made by unanimous agreement of the members of the Panel.
- 19.7 Any decision of the Panel which is recorded in writing and signed by each member of the Panel is binding on the parties.
- 19.8 If the dispute is not resolved by the Panel within 15 days of the referral, either party may commence legal proceedings.
- 19.9 Neither party may commence legal proceedings unless the parties have undertaken the processes set out in clauses 19.1 to 19.8 and those processes have failed to resolve the dispute or one of the parties has attempted to follow these processes and the other party has failed to participate.

## 20. GENERAL

### 20.1 GST and Taxes

Unless otherwise stated, the Price is exclusive of GST but is inclusive of all other duties, charges and taxes.

### 20.2 Entire Contract

- (a) These Terms and Conditions form the basis of the entire contract between the parties with respect to its subject matter as at the date of the Contract.
- (b) These Terms and Conditions supersede and have priority over all other terms or conditions, conduct, prior agreement or understanding between the parties.

### 20.3 Amendment

This contract may only be amended by agreement in writing signed by both parties.

### 20.4 Subcontracting

The Seller will not subcontract all or any part of this contract unless it receives the prior written consent of the Customer. Such consent must not be unreasonably withheld or delayed.

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## 20.5 Assignment and Novation

Neither party may assign, novate or otherwise transfer this contract without the prior written consent of the other party. Such consent must not be unreasonably withheld or delayed.

## 20.6 Severability

If any part of this Agreement is found to be illegal, void or unenforceable, then the illegal, void or unenforceable part is severed from this contract. The remaining provisions of this contract will remain in full force and effect.

## 20.7 Waiver

- (a) Any failure or delay of a party in exercising any power or right under this contract will not operate to waive that power or right.
- (b) A power or right may only be waived in writing by the party that is to be bound by the waiver.

## 20.8 Confidentiality

- (a) Subject to clause 20.8(a), each party to this contract will keep all documents and information relating to this contract confidential, and will not release any statement or information relating to this contract without the prior written consent of the other party, such consent must not be unreasonably withheld.
- (b) Clause 20.8(a) does not apply:
  - (i) if the disclosure is required to carry out the Services; or
  - (ii) if the disclosure is required due to the operation of any law or stock exchange requirements.

## 20.9 Survival

Clauses 16, 17, 18, 19 and 20.8 survive the termination of this contract.

## 20.10 Governing Law and Jurisdiction

This contract is governed by the laws of the jurisdiction of the place in which the Seller entity has its registered address (the Jurisdiction). If the Seller is an Australian registered company then the Jurisdiction will be the State of the registered office. If the Supplier is a New Zealand registered company then the Jurisdiction will be New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of the Jurisdiction.

## 20.11 Laws

- (a) The Seller will carry out the Services in accordance with all laws relevant to the Services.
- (b) If there is any change in a law after the date of this contract that affects the Services, then the Seller will give Notice to the

Customer with details of the change in law, and The Seller is entitled to a variation for its reasonable costs in complying with the change in law.

- (c) To the maximum extent permitted by law, any legislation relating to proportionate liability does not apply to the Services or this contract.

## 20.12 Customer Warranties

The Customer warrants that it has the power to enter into this contract, and that it has or will obtain all authorities, authorisations and clearances necessary for the Services to be carried out by the Seller.

## 20.13 Interpretation

In this contract:

- (a) headings are for convenience only and do not affect interpretation;
- (b) a reference to \$, dollars or currency is a reference to Australian dollars unless expressly indicated otherwise; and
- (c) the singular includes the plural and the plural includes the singular.

## 21. NOTICES

- 21.1 Any Notice must be in writing addressed to the relevant party, and either:
  - (a) left at the address of the relevant representative set out in the Quotation;
  - (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out in the Quotation; or
  - (c) scanned and sent under cover of an email addressed to the relevant representative set out in the Quotation.
  - (d) However, if the addressee has notified a change of postal or email address, then the communication must be to that address.
- 21.2 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.
- 21.3 A letter, facsimile or email is deemed to be received:
  - (a) in the case of a posted letter, on the fifth day after posting (seventh in the case of a letter sent by airmail);
  - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
  - (c) in the case of an email at the time and date it is received by the recipient.

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## Annexure A – Special Conditions – Training Services

### 1. DEFINITIONS

In these Special Conditions:

**Proposal** means TRILITY's proposal issued to the customer in relation to provide the Training

**Trainees** means those people identified by the customer and nominated for participation in the Training and which may be identified in the Proposal;

**Training** means the training described in the Proposal.

**Training Fee** means the amount set out in the Proposal.

### 2. TERM

If no term is identified in the Proposal, the Service Period expires 1 year from the Date of Commencement. However, either party may cancel this Agreement by notice in writing to the other before the Commencement Date. Payment of Training Fees at the time of cancellation will be in accordance with Special Condition 5.4.

### 3. GOVERNMENT

In performing the Training, TRILITY will comply with the requirements of any government programme contributing to the payment of fees. If there is any conflict between the terms of this Agreement and applicable government programme, the government requirements will prevail.

### 4. CUSTOMER'S OBLIGATIONS

- (a) The customer warrants that each Trainee will comply with all TRILITY policies, including those which have been developed to satisfy statutory requirements and requirements of government training programmes.
- (b) The customer warrants that the Customer and each Trainee will comply with the requirements of any government programme contributing to the payment of the Training Fee.

### 5. PAYMENT

- (a) Where a government entity is paying the whole or part of the Training Fee, TRILITY will accept payment according to the government funding programme under which the payments are to be made. Otherwise, the provisions of this clause 5 will apply.
- (b) The customer must pay the Training Fee, or the balance of the Training Fee after any government contribution is deducted, at least 14 days before the Training commence unless the Customer and TRILITY agree otherwise.
- (c) If a government entity is paying or contributing to the payment of the training fee, TRILITY will comply with the applicable government regulations relating to the payment of fees and the refunding of fees.
- (d) TRILITY will permit the Customer to substitute trainees before the training is due to begin if the Customer wishes to do so. Substitutions are not permitted after the Training begins.

### 6. TRILITY'S STATUTORY OBLIGATIONS

TRILITY will comply with the standards required under the following statutory schemes:

- (a) Standards for registered training organisations (RTOs)

### 7. TRILITY'S LIABILITY

TRILITY's maximum aggregate liability to the Customer arising out of or in connection with this agreement shall be limited, at TRILITY's discretion to either:

- (a) a refund of the Training Fee; or
- (b) provision of a replacement compliant Training service.