

DOCKPRO Standard Terms & Conditions

1. Definitions

ACL means the *Competition and Consumer Act 2010* (Cth) and any Regulations forming part of or passed under it (collectively "ACL");

Agreement means these Terms and Conditions, any quote provided by the Supplier, any Operations Manual, along with each Purchase Order delivered by the Purchaser to the Supplier for the supply of Goods;

DockPro Maintenance Program means the bi-annual service check provided by the Supplier to the Purchaser in accordance with the maintenance terms advised by the Supplier in writing to the Purchaser on or about the time of the purchase of the Goods.

Extended Warranty means a warranty provided by the Manufacturer to the Purchaser further or in addition to the warranties contained in clause 19 of these Terms and Conditions and on the terms notified to the Purchaser in writing by either the Supplier or the Manufacturer.

Goods means the goods or other items of personal property supplied or to be supplied by the Supplier to the Purchaser in accordance with a Purchase Order and this Agreement and, for the purposes of clause 8, includes commingled goods and any other item in which any Goods may be incorporated as parts, components or materials and the proceeds of sale of any of them. Where the Goods include any form of intellectual property, the Goods include only the right to use that intellectual property and do not include the intellectual property itself.

Manufacturer means Sea Pen (Qld) Pty Ltd ACN 118 536 753.

Operations Manual means any manual or set of written instructions provided by the Supplier to the Purchaser regarding the maintenance, operation and use of the Goods.

PPSA means the *Personal Property Securities Act 2009* (Cth) and any regulations forming part of or passed under it.

Purchaser means the buyer of Goods named in the Purchase Order and includes the executors, administrators, successors and permitted assignees of that person or company.

Purchase Order means the order or request made by the Purchaser for the supply by the Supplier of Goods or Services in any form and includes an invoice, proposal or quote provided by the Supplier. For the avoidance of doubt the payment by the Purchaser of an invoice of the Supplier will constitute a Purchase Order.

Services means the installation, servicing or maintenance Services supplied or to be supplied by the Supplier to the Purchaser in accordance with a Purchase Order and this Agreement.

Supplier means DockPro Pty Ltd ACN 133 893 697 and includes its successors and assignees.

2. Interpretation

The Supplier's invoice, these Terms and Conditions, any Purchase Order and Operations Manual will be read and interpreted as a single agreement, but if there is any conflict or inconsistency between them they will be interpreted and applied in the following order:

- (a) any special conditions contained in the Supplier's invoice;
- (b) these Terms and Conditions;
- (c) the Purchase Order; and
- (d) the Operations Manual (where applicable).

3. Formation of contract

- (a) The delivery by the Purchaser of a Purchase Order, either verbally or in writing, or payment of the Supplier's invoice by the Purchaser, after these terms have been provided constitutes acceptance of these Terms and Conditions and the terms of this Agreement.
- (b) These Terms and Conditions are subject to change at any time by the Supplier. The Purchaser is deemed to have accepted any changes to these Terms and Conditions upon the Purchaser delivering a Purchase Order to the Supplier, after the date on which the Supplier notifies the Purchaser of those changes, or

otherwise communicating acceptance of the amended Terms and Conditions to the Supplier.

- (c) Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation.

4. Payment terms

- (a) All prices are subject to reasonable change upon the Supplier providing notice to the Purchaser. If the Purchaser does not accept the reasonable change to price the Purchaser must advise the Supplier that it does not wish to be provided or supplied with the Goods.
- (b) Purchase Orders are accepted by the Supplier on the condition that they may be invoiced to the Purchaser at the applicable price as at the date of dispatch where a notice under paragraph (a) has been provided.
- (c) The Purchaser must pay the total cost of the Goods and Services supplied in accordance with the Purchase Order unless otherwise agreed to with the Supplier in writing.
- (d) All payments required to be made by the Purchaser under this Agreement will be made in cleared funds in accordance with the Supplier's invoice free of any set-off, or counterclaim and without deduction or withholding.
- (e) The Supplier may, at any time and without notice, set off and deduct from any amounts which may be payable to the Purchaser for any reason, any amount payable by the Purchaser to the Supplier under this Agreement.
- (f) If the Purchaser fails to make a payment when due the Purchaser will pay to the Supplier in addition to the amounts due, interest on all outstanding amounts calculated at the rate quoted by the Supplier's bank for overdrafts in the amount of the outstanding balance of the Purchaser's account plus 2%. Interest will be calculated from the date referred to in clause 7 (and not the day when the Supplier's invoice was payable) until payment by the Purchaser is received.
- (g) If any amount due to the Supplier is disputed under these Terms and Conditions by the Purchaser, the Purchaser must pay immediately to the Supplier any amount of the purchase price that is not in dispute.

5. Deposit

- (a) The Supplier may require the Purchaser to pay a non-refundable deposit and make non-refundable stage payments prior to the manufacture, delivery and installation of the Goods.
- (b) The amount of any deposit or number of any stage payments will be determined at the discretion of the Supplier and will be notified to the Purchaser at the time of the Purchase Order.
- (c) The Purchaser acknowledges that the amount of any deposit or stage payment held by, or made to, the Supplier is consideration for work undertaken on behalf of and at the instruction of the Purchaser and that should the Purchaser elect to cancel the Purchase Order, or to not fulfil or proceed with the Purchase Order at any time and for any reason, the Supplier is entitled to retain all deposits or stage payments received from the Purchaser as fair consideration and payment for the work already undertaken by the Supplier.
- (d) No deposit or stage payment made by the Purchaser to the Supplier will result in any ownership rights, whether legal or equitable, vesting in the Purchaser.

6. Assignment

- (a) The Purchaser's obligations under this Agreement cannot be transferred or assigned and any attempt to do so will be void.
- (b) The Supplier may assign, transfer, novate or otherwise deal with its rights and obligations pursuant to this Agreement in any way, without notice to the Purchaser, and the Purchaser

hereby consents to any such assignment, transfer, novation or dealing.

7. Risk

- (a) Subject to clause (b) risk in any Goods to be supplied to the Purchaser passes to the Purchaser immediately upon delivery to the delivery address advised by the Purchaser whether or not the Purchaser collects the Goods or refuses delivery.
- (b) Where the Supplier has been engaged to install the Goods risk in any Goods to be supplied passes to the Purchaser upon installation and handover by a technician of the Supplier.

8. Retention of title

- (a) Legal and equitable title and property in the Goods is vested in the Supplier until full payment, in cleared funds, is made to and received by the Supplier for all amounts owing by the Purchaser, inclusive of the purchase price for the Goods and all other money owing to the Supplier for other goods or Services or on any other account. Title will not pass to the Purchaser nor to any person to whom any Goods are purported to be sold by the Purchaser until full payment has been received by the Supplier in accordance with paragraph 8(c).
- (b) The Purchaser may, on its own account as principal, sell the original Goods supplied in the ordinary course of its business subject always to the title of the Supplier in respect of the Goods under clause 8(a).
- (c) Until payment in full has been made and is received in cleared funds by the Supplier, the Purchaser will:
 - (i) hold the Goods as agent of the Supplier;
 - (ii) store the Goods separately so that they can be identified as the property of the Supplier, and must not mix the Goods with other goods;
 - (iii) insure the Goods (to the extent that they are insurable) for their full replacement value and have the name of the Supplier noted on the policy as payee if requested;
 - (iv) to the extent that the Goods are the proceeds of sale, hold such proceeds (up to the total amount owing to the Supplier) as trustee for the Supplier.
- (d) Until payment in full has been made and is received in cleared funds by the Supplier, the Purchaser must not:
 - (i) claim any interest in the Goods to secure any liquidated or unliquidated debt or obligation due by the Supplier to the Purchaser;
 - (ii) claim a lien over the Goods or any part of them;
 - (iii) create or purport to create any interest in the Goods in favour of any other person without the consent of the Supplier.
- (e) The Supplier may, with or without prior notice to the Purchaser, enter upon any premises at which the Goods or any part of them are stored, or at which the Supplier reasonably believes they are stored, to inspect the Goods and to take possession of the Goods, whether the Goods may be in the Purchaser's possession, custody or control. The Purchaser agrees to provide the Supplier with access to any such premises for that purpose. The Supplier may direct the Purchaser to deliver the Goods to the Supplier and the Purchaser must comply with that direction. The Purchaser waives the right to receive any statutory notice or any notice under the PPSA.
- (f) The Purchaser must pay the Supplier's costs and expenses in exercising any of its rights under this Clause 8 and indemnifies the Supplier against any claim, action or damages arising directly or indirectly out of the exercise by the Supplier of any power or right under this Clause 8. Where the Supplier exercises any power to enter premises, that entry will not give rise to any action of trespass or similar action on the part of the Purchaser against the Supplier, its employees, servants or agents.

- (g) The Supplier may sell or otherwise deal with any Goods repossessed by the Supplier.

9. Personal Property Securities Act

- (a) The parties agree that terms used in this clause 9 have the same meaning and are subject to the provisions of the PPSA.
- (b) The Purchaser acknowledges and agrees that:
 - (i) the purchase price for Goods is the total invoiced cost evidenced by the invoice which relates to those Goods inclusive of all parts or components of that total but without prejudice to the Supplier's right to amend the invoice in the case of error; and
 - (ii) Clause 8 constitutes a security agreement for the purposes of the PPSA and creates a security interest in favour of the Supplier in all Goods supplied previously (if any) and all Goods that will be supplied in the future by the Supplier to the Purchaser to secure payment.
- (c) It is the intention of the Supplier and the Purchaser that the Supplier's security interest is a purchase money security interest as defined in the PPSA.
- (d) The Purchaser grants to the Supplier a security interest in all the Purchaser's present and after-acquired property in which Goods have been attached or incorporated, including where goods have been commingled or installed in real property.
- (e) The Purchaser agrees that the Supplier may attend to registration of its security interest on the Personal Property Securities Register ("PPSR") without notice to the Purchaser.
- (f) The Purchaser undertakes to:
 - (i) promptly sign any further documents and provide any further information which the Supplier may reasonably require to:
 - A. register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - B. register any other document required to be registered pursuant to the PPSA;
 - C. correct a defect in a statement or document referred to in clauses 9(f)(i)A & 9(f)(i)B;
 - (ii) pay the Supplier for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged pursuant to the PPSA;
 - (iii) 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 prior written consent of the Supplier;
 - (iv) give the Supplier not less than 14 days written notice of any proposed changes in the Purchaser's details, including but not limited to changes in name, address, facsimile number, email address, trading name or business practices;
 - (v) pay the Supplier for any costs incurred by the Supplier, including legal fees and disbursements on a solicitor-client basis, in obtaining an order pursuant to s182 of the PPSA and/or enforcing or attempting to enforce any security interest created in favour of the Supplier under this Agreement or otherwise.
- (g) The Purchaser and the Supplier agree that sections 96, 115 and 125 of the PPSA do not apply to the security interest created by this Agreement.
- (h) Pursuant to section 144, the Purchaser waives its rights to receive notices under sections 95, 118, 121, 130, 132 and 135 of the PPSA.
- (i) The Purchaser waives its rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.

- (j) The Purchaser waives its rights to receive a verification statement in accordance with section 157 of the PPSA, unless otherwise agreed to in writing by the Supplier.
- (k) Any payments by the Purchaser under this Agreement will be applied in the order specified in section 14(6)(c) of the PPSA regardless of any direction or request by the Purchaser, any agreement between the parties (express or implied) or the application of any such payment by the Supplier. The Supplier does not waive any rights under this clause by applying any payment in a different order.

10. Nature of goods

- (a) The Supplier declares and the Purchaser hereby acknowledges and accepts:
 - (i) The primary purpose of the Goods is to prevent marine growth and reduce maintenance of the Purchaser's vessel's surfaces that would otherwise normally be under water.
 - (ii) Specifications for the Goods are based upon the location of the Purchaser. Local environmental factors such as water depth, current and wave action (height and period) affect the design and operation of the Goods. All Goods delivered by the Supplier to the Purchaser are designed specifically for the environmental characteristics of the particular location of the Purchaser as notified to the Supplier prior to manufacturing.
 - (iii) Certain hull construction materials and water contents permit staining of hulls. The Supplier's Goods will not prevent staining from occurring.
 - (iv) The Goods will not prevent internal or external corrosion from occurring to the Purchaser's vessel. All covers, surfaces, hull shells, fittings, equipment and propulsion plants such as outboard, stern drives and in general all systems, must be flushed, rinsed and maintained as though the Purchaser's vessel was berthed without the benefit of the Goods.
 - (v) Fibreglass is not necessarily waterproof and osmotic blistering due to water and moisture penetration into hull materials can occur. The Goods do not prevent osmosis or osmotic blistering.
 - (vi) The Goods are intended to dry-dock the Purchaser's vessel. The Goods are not to be used as a working platform and are not designed to alter the on water trim of the Purchaser's vessel. However, the frame, skin and rope mesh of the Goods are designed to support the weight of an average person.
 - (vii) The Goods should be periodically rinsed with fresh water.
 - (viii) The Goods contain an anode attached to the bilge system that requires periodic checking and may require replacement from time to time.
- (b) The Purchaser releases and holds harmless the Supplier from and against all loss, damage, cost or expense incurred or suffered by the Purchaser arising from or in relation to any of the matters referred to in clauses 10(a)(iii), 10(a)(iv), 10(a)(v) and 10(a)(viii), and from or in relation to the Purchaser failing to use or maintain the Goods appropriately in accordance with clauses 10(a)(vi), 10(a)(vii) and 10(a)(viii).

11. Delivery

- (a) Delivery of any Goods and Services ordered will be effected by the Supplier at the delivery address specified by the Purchaser and at the Purchaser's cost.
- (b) Delivery charges will be calculated and charged at the reasonable discretion of the Supplier.
- (c) Any time or date stated as the estimated time of delivery of the Goods or Services by the Supplier is a bona fide estimate only

and the Supplier will not be responsible in any way for any damage or consequential loss suffered by the Purchaser as a consequence of late or non-delivery.

- (d) The Purchaser acknowledges that the Supplier does not store any Goods and is unable to stall or delay delivery once the Purchaser's Goods order has been received and processed.
- (e) The Purchaser acknowledges that delivery and installation of the Goods is subject to an appraisal of site conditions at which the Goods are to be delivered and installed.

12. Installation

- (a) The Purchaser acknowledges and agrees that the Supplier is the sole authorised provider of all mechanical, electrical and other installation services that may be required relating to the Goods.
- (b) Unless previously agreed to by the Supplier in writing or detailed in the Purchase Order, additional charges to those in the Purchase Order (as reasonably determined by the Supplier in its sole discretion) will arise where:
 - (i) the Services are required:
 - A. outside business hours (8:30 am – 5:00pm time at the site);
 - B. on a public holiday or weekend (at the site); or
 - C. to be delivered by way of multiple non-consecutive site visits;
 - (ii) a power supply is not available for use during installation;
 - (iii) access to the site where the Services are to be provided is prevented due to any matter caused by the Purchaser, or of which the Purchaser was aware or ought reasonably have been aware, and which was not notified to the Supplier within a reasonable period of time prior to the Supplier attempting to access the site;
 - (iv) specifications provided by the Purchaser to the Supplier relating to the Goods are incorrect and require the Supplier to modify, exchange or otherwise deal with the Goods in a manner that would otherwise not have been necessary had the correct specifications been provided by the Purchaser;
 - (v) site conditions do not, in the sole discretion of the Supplier, permit the Goods to be installed, or to be installed safely, or without damage likely being sustained to the Goods;
 - (vi) removal of materials from the site is required.

13. Servicing and maintenance

- (a) Unless otherwise agreed by the parties, the Supplier will deliver maintenance services to the Purchaser in accordance with the DockPro Maintenance Program.
- (b) The Purchaser will pay to the Supplier the fees for the provision of the DockPro Maintenance Program, on the terms specified by the Supplier to the Purchaser, on or about the date of the purchase of the Goods and as updated by the Supplier from time to time.
- (c) The Supplier may update the DockPro Maintenance Program from time to time and will provide reasonable notice to the Purchaser of such updates.
- (d) Where updates to the DockPro Maintenance Program involve further costs to the Purchaser, the Supplier will ensure the Purchaser has been provided with notification of such further costs prior to incurring any costs.
- (e) The Purchaser may request at any time the Supplier undertake additional maintenance services for the Goods. The Purchaser acknowledges the additional maintenance services will incur costs which will be notified by the Supplier to the Purchaser prior to undertaking the additional maintenance services.

- (f) The Supplier may require the Purchaser to pay in advance all or part of the costs associated with the additional maintenance services prior to the Supplier undertaking such maintenance services.
- (g) The Purchaser may elect not to engage the Supplier to deliver the DockPro Maintenance Program however in doing so the Purchaser acknowledges:
 - (i) the Supplier does not make any representations that the goods will remain fit for purpose or in good working condition and order;
 - (ii) not engaging the Supplier to undertake the services in accordance with this clause 13 voids all warranties provided by the Supplier or Manufacturer (as the case may be) to the Purchaser in relation to the Goods under these Terms and Conditions;
 - (iii) once voided a warranty cannot be re-effected by subsequently engaging the Supplier to undertake a maintenance service, unless agreed in writing by the Supplier and Manufacturer prior to the Supplier providing the maintenance service;
 - (iv) in view of the particular nature of the Goods, the servicing of the Goods by a third party (unless first approved in writing by the Supplier) will not be sufficient for the purposes of ensuring the Goods remain fit for the purpose for which they were supplied, or avoiding making void any warranty provided by the Supplier and Manufacturer to the Purchaser under these Terms and Conditions.

14. Alterations

Any alteration to an order may result in additional charges which will be calculated at the reasonable discretion of the Supplier based on the loss the Supplier has suffered.

15. Cancellation of orders

The Purchaser cannot cancel any order if production of the relevant Goods has commenced or Goods have been dispatched by the Supplier.

16. Limitation of liability

- (a) Unless otherwise required by law, the liability of the Supplier for any breach of this Agreement or any related order or contract and in tort (including negligence) is limited at the Supplier's option to:
 - (i) the replacement or repair of Goods supplied; or
 - (ii) the supply of equivalent Goods or Services; or
 - (iii) the cost of replacing or repairing the Goods supplied or of acquiring equivalent Goods or supplying equivalent Services; or
 - (iv) the amount paid by the Purchaser to the Supplier pursuant to the Agreement.
- (b) Any claim for short or wrongful delivery pursuant to a Purchase Order must be notified to the Supplier within 14 days after the date of delivery.
- (c) To the maximum extent permitted by law, the Supplier will not be liable for any loss of profit, loss of goodwill, loss of opportunity or any special, punitive, indirect or consequential loss or damage incurred by the Purchaser or any other person whether directly or indirectly related to this Agreement.
- (d) The Supplier is not liable for any loss or damage caused to the Purchaser by reason of any delay, lack of supply, industrial action, fire, riot, war, embargo, civil commotion, act of God or any other event which is beyond the Supplier's control.

17. Australian Consumer Law

Regardless of any provision in this Agreement (in particular clauses 8, 12 and 16), where the Australian Consumer Law as contained in the ACL applies to Goods or Services supplied under this Agreement or to the Purchaser:

- (a) all non-excludable warranties and guarantees implied by statute or other law apply to the Goods or Services supplied under this Agreement and, to the extent that any provision in this Agreement conflicts with any such warranty or guarantee or the ACL, the provisions of the ACL apply to the exclusion of that provision; and
- (b) all Goods come with guarantees that cannot be excluded under the ACL and the Purchaser is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage and 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.

18. Indemnity

- (a) The Purchaser will indemnify the Supplier and keep the Supplier indemnified against any claim, loss, damage, liability, cost or expense that may be incurred by the Supplier arising from or in connection with any breach or default by the Purchaser of this Agreement, any related Purchase Order or contract or the ACL.
- (b) The Purchaser acknowledges that the Supplier takes no responsibility for any local permissions or approvals that may be required for the delivery and installation of the Goods or provision of the Services. The Purchaser indemnifies the Supplier and will keep the Supplier indemnified against any claim, loss, damage, liability, cost or expense that may be incurred or suffered by the Supplier as a result of a breach or infringement of any local permission or approval required for the delivery and installation of the Goods or provision of the Services.

19. Warranties

- (a) The Supplier supplies the Goods to the Purchaser. The Manufacturer provides a warranty in respect of the Goods and the Supplier is authorised by the Manufacturer to provide the warranty to the Purchaser in accordance with these Terms and Conditions (**Warranty**).
- (b) The Purchaser acknowledges that the provision of the Warranty is on the terms prescribed by the Manufacturer and not the Supplier. The Supplier will not be liable or accountable to the Purchaser for the performance of any obligation under the Warranty, or any expense, loss or damage suffered or incurred by the Purchaser in relation to or arising as a consequence of the Warranty provided by the Manufacturer to the Purchaser.
- (c) The Purchaser holds the Supplier harmless with respect to all actions, claims, proceedings or otherwise that arise from or in relation to the provision of the Warranty by the Manufacturer to the Purchaser.
- (d) The Warranty provided to the Purchaser extends only to the Purchaser for the duration of the Warranty Period and is not transferrable or assignable to any third party. The Warranty extends to parts only, ex-factory.
- (e) The Warranty Period commences on the earlier of the date the Purchaser makes payment to the Supplier in accordance with the Purchase Order or the date of delivery of the Goods by the Supplier, and continues for the benefit of the Purchaser for:
 - (i) in the case of non-electronic or mechanical components (being the frame, skin and rope mat only) – a period of three (3) years; and
 - (ii) in the case of all pumps and electronics – a period of one (1) year.

(Warranty Period)

- (f) If within the Warranty Period a defect appears in any part of the Goods and any such part should be found in the reasonable judgment of the Manufacturer to be defective material or workmanship, then such part will be repaired or at the Manufacturer's option, replaced by an authorised dealer of the

Manufacturer without charge to the Purchaser for the costs of the parts only.

- (g) The Warranty provided to the Purchaser only covers the costs of replacement parts. Any other costs such as shipping, delivery, technician's travel and time, cranes and any other associated costs will be paid by the Purchaser either directly to the relevant provider or to the Manufacturer, at the election of the Manufacturer.
- (h) The Purchaser must return the Goods including any defective part of the Goods to the Manufacturer or, at the election of the the Manufacturer, an authorised representative of the Manufacturer, within the Warranty Period and all replacements and repairs which qualify under the Warranty must be performed by the Manufacturer or an authorised representative thereof, following delivery of the parts.
- (i) The expense of returning the Goods to the Manufacturer, or an authorised representative thereof, for work falling within the scope of the Warranty, and the cost and expense of returning the Goods back to the owner after repair or replacement will be paid by the Purchaser.
- (j) The Manufacturer may at its sole discretion require proof of the purchase of the Goods by the Purchaser to substantiate any Warranty claim.

20. Warranty Limitation

- (a) The Warranty provided by the Manufacturer to the Purchaser in accordance with clause 19 does not extend to:
 - (i) Goods that have been subject to misuse, neglect, negligence or accident;
 - (ii) Goods operated in any way contrary to the operating or maintenance instructions as specified in any Operations Manual or this Agreement;
 - (iii) damage to the Goods that is the result of improper installation or maintenance, except to the extent such damage is caused by the Supplier;
 - (iv) Goods that have been moved or relocated from their original installation location;
 - (v) Goods that have been altered or modified so as to adversely affect, as determined at the sole discretion of the Manufacturer, the operation, performance or durability of the Goods;
 - (vi) Goods that have been altered or modified so as to change, as determined in the sole discretion of the Manufacturer, the intended use of the Goods;
 - (vii) repairs made necessary by normal wear and tear; or
 - (viii) repairs made necessary by the use of parts or accessories which, in the reasonable judgment of the Manufacturer, are either incompatible with the Goods or adversely affect the operation, performance or durability of the Goods.
- (b) To the full extent permitted or allowed by law the Manufacturer excludes or limits its liability (as the case may permit) under the Warranty and accepts no responsibility for the loss of the Goods, loss of time and inconvenience suffered by the Purchaser, other damage whether consequential or otherwise, including but not limited to:
 - (i) the expense of returning the Goods to the Manufacturer or to an authorised representative of the Manufacturer;
 - (ii) the expense of the Manufacturer or an authorised representative of the Manufacturer returning the Goods to the Purchaser;
 - (iii) the removal and/or reinstallation of the Goods from a boat;

- (iv) the travel time of the Manufacturer's technicians or technicians of an authorised representative of the Manufacturer;
- (v) in and out of water charges;
- (vi) telephone charges;
- (vii) trailing or towing charges;
- (viii) rental of further Goods during the time Warranty repairs are being performed; and
- (ix) travel, lodging, loss or damage to personal property or loss of revenue.

- (c) The Warranty provided by the Manufacturer is given to the Purchaser only and no other subsequent owner of the Goods. To the extent which the law allows or permits the Warranty is so given expressly to the Purchaser by the Manufacturer in lieu of all other warranties or conditions whatsoever, whether express or implied, and all other warranties and conditions to the extent that the law permits or allows are excluded or negated, so far as the Manufacturer is concerned.
- (d) The benefits conferred on the Purchaser under the Warranty are separate from and additional to all other rights or remedies which any consumer of the Goods may have in respect of the Goods pursuant to consumer protection laws in force and effect throughout Australia. Except as provided for in these Terms and Conditions, no other person or persons are authorised by the Manufacturer to offer or give on the Manufacturer's behalf any other or greater warranty than that given by the Manufacturer to the Purchaser under this Warranty.
- (e) The Purchaser acknowledges that except for those warranties contained in the ACL and referred to in clause 17, unless otherwise agreed to in writing by the Manufacturer:
 - (i) not engaging the Supplier to undertake maintenance services in accordance with clause 13 voids any Warranty provided by the Manufacturer to the Purchaser;
 - (ii) engaging any third party to undertake services in relation to the Goods voids any Warranty provided by the Manufacturer to the Purchaser;
 - (iii) any material breach of these Terms and Conditions by the Purchaser will void any Warranty provided by the Manufacturer to the Purchaser in accordance with these Terms and Conditions.

21. Extended Warranty

- (a) Notwithstanding clause 19, of these Terms and Conditions, the Manufacturer may offer to the Purchaser the Extended Warranty.
- (b) Where the Manufacturer has provided the Purchaser the Extended Warranty, to the extent of any inconsistency with the Warranty provided under clause 19 of this Agreement, the terms and conditions of the Extended Warranty, as notified in writing to the Purchaser, will amend or modify the conflicting provisions of the Warranty provided under these Terms and Conditions.
- (c) Except to the extent of inconsistencies with the Warranty provided under clause 19 of this Agreement, the Extended Warranty will otherwise be on the same terms as the Warranty.
- (d) For the avoidance of doubt, the Warranty Limitations provided under clause 20 of the Terms and Conditions will apply to the Extended Warranty.
- (e) The terms and conditions of the Extended Warranty may be updated by the Manufacturer from time to time. Where the Extended Warranty is updated, the Manufacturer or the Supplier will notify the Purchaser of such changes.

22. Insolvency

If the Purchaser becomes insolvent, the Purchaser remains liable under this Agreement for payment of all amounts becoming payable under it. The Purchaser remains liable under this Agreement even if the Supplier receives a dividend or payment as a result of the insolvency of the Purchaser.

23. Waiver

No waiver of or departure by the Supplier from a provision of this Agreement, will be effective unless it is in writing, signed by the Supplier.

24. Costs

The Purchaser must pay:

- (a) any legal costs (on a solicitor/client indemnity basis) stamp duty, and other expenses payable in relation to this Agreement or any credit application, guarantee or other security documents;
- (b) all costs incurred by the Supplier relating to any default by the Purchaser; and
- (c) the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Purchaser, including debt recovery fees paid to a collection agent or otherwise and legal costs on an indemnity basis and whether or not the recovery action, claim or remedy is successful.

25. Taxes & Duties

- (a) Where prices are expressed to be exclusive of sales tax, GST or other Government imposts, the Purchaser must pay all sales tax, GST or other Government, imposts fees and charges which become payable on the supply to the Purchaser in addition to the price provided by the Supplier.
- (b) If as a result of:
 - (i) any legislation becoming applicable to the subject matter of this Agreement or any supply under it; or
 - (ii) any changes in legislation or its interpretation,the cost to the Supplier of performing its obligations or making any supply to the Purchaser increases (whether by way of any tax, duty, excise or levy or otherwise), the Purchaser must pay the Supplier such additional amounts on demand.

26. Severance

This Agreement will, to the extent possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect. If a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision will be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in the circumstances to give it a valid operation unless this would materially change the intended effect of this Agreement; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part will be deemed to be void and severable and the remaining provisions of this Agreement will not in any way be affected or impaired and will continue regardless of that illegality, invalidity or unenforceability.

27. Jurisdiction

- (a) The Purchaser acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and each party submits to the non-exclusive jurisdiction of the Courts of Queensland.
- (b) The Purchaser submits and consents to the jurisdiction of Queensland in respect of any proceeding relating to this Agreement or to the supply of goods to the Purchaser.

28. Entire agreement

This Agreement contains the entire agreement between the parties and any previous understanding, agreement, representation or warranty is replaced by this Agreement and has no further effect. Any right that a

party may have under this Agreement is in addition to, and does not replace or limit, any other right that the party may have.

Last modified: 26 October 2017