

TRADING TERMS

The following terms and conditions, as amended from time to time (“Trading Terms” or alternatively “Terms”), will apply to all goods and services supplied by QCS Group to the Customer.

1. Definitions and interpretation

In these conditions:

- (a) “ACL” means the Australian Consumer Law. Information about the Australian Consumer Law, when it applies and what it means can be found at <http://www.consumerlaw.gov.au>.
- (b) “Agreement” means the agreement between QCS Group and the Customer pursuant to the Terms and the Application and / or the Quote (as the case may be), and including any Product Terms where relevant.
- (c) “Application” means any Trading / Credit Application form completed by the Customer and provided to QCS Group.
- (d) “QCS Group” means the entity described in that way in the Quote or the Application and includes its officers, servants, agents and subcontractors and successors (QCS Group is also referred to as “we” and “us” in these Terms).
- (e) “Claim” includes any claim, demand, proceeding, action or similar event.
- (f) “Customer” means the person noted in the Application and / or the Quote as the Customer and includes its employees or agents and successors and includes any other person who receives the benefit of the goods or services from QCS Group and any other person who relies on QCS Group in relation to the goods or services (the Customer is also referred to as “you” in these Terms).
- (g) “Delivery Address” means the address described in that way in the Quote or the Application (whichever is relevant).
- (h) “Goods” means the goods to be supplied (whether gratuitously or not) by QCS Group as specified in the Quote or as otherwise agreed between QCS Group and the Customer.
- (i) “GST Law” means *A New Tax System (Goods and services Tax) Act 1999* (Cth) as amended and other associated Acts as amended.

- (j) “Loss” means any loss, damage, cost, expense or other adverse financial or other consequence.
- (k) “Product Terms” means any specific terms and conditions which may also apply to particular goods and services supplied by QCS Group to the Customer (which, if they apply, also form part of the Agreement).
- (l) “Quote” means any quotation, form or other document provided by QCS Group to the Customer detailing the goods and services to be provided.
- (m) “Rates” means the hourly rates set out in the Schedule of Hourly Rates for QCS Group which can be found on QCS Group’s website, currently at the location www.QCS-Group.com.au/hourly-rates – or hourly rates stated in the relevant Quote if they are different to those stated in the Schedule of Hourly Rates.
- (n) “Reimbursable Expenses” has the meaning set out in clause 4.4.
- (o) “Services” means the services to be performed (whether gratuitously or not) by QCS Group as specified in the Quote or as otherwise agreed between QCS Group and the Customer.

No provision in the Agreement is to be construed to the disadvantage of QCS Group merely because QCS Group has prepared and proposed this Agreement.

In the Agreement the word “person” includes a natural person, any association or body, a company, and any similar or analogous entities.

QCS Group may assign, subcontract or licence its rights and obligations under this Agreement without the prior consent of the Customer. However, the Customer may not assign, subcontract or licence their rights and obligations under this Agreement without the prior consent of QCS Group.

2. Application and variation

- 2.1. This Agreement sets out the entire agreement between the parties and will prevail over all communications between QCS Group and the Customer to the extent of any inconsistency. Where there are specific Product Terms communicated by QCS Group to the Customer in

relation to some or all of the goods and services to be supplied to the Customer, then those specific Product Terms form part of this Agreement. Where the Product Terms provide for an issue more specifically than these Terms, then the conditions in the Product Terms will prevail over these Terms.

- 2.2. No alteration or variation of the Agreement will be binding upon QCS Group unless such alteration or variation is specifically acknowledged and approved by QCS Group.
- 2.3. QCS Group reserves the right at all times to act reasonably to vary the terms and conditions of this Agreement. QCS Group declares and the Customer acknowledges that the most up to date version of the Terms which form part of the Agreement can be found on QCS Group's website, currently at the location www.QCSGroup.com.au/trading-terms ("Updated Terms").
- 2.4. QCS Group must take reasonable steps to inform the Customer of the Updated Terms and to provide reasonable notice to the Customer before Updated Terms will apply to govern the relationship between QCS Group and the Customer. The Customer confirms that notification of the Updated Terms on QCS Group's website or reference to the Updated Terms in any material provided to the Customer will be reasonable steps by QCS Group to inform the Customer.
- 2.5. In the event that there is any inconsistency between this Agreement and the Updated Terms, the terms and conditions of the Updated Terms will prevail and the Customer acknowledges that it will always be bound by the terms and conditions of the Updated Terms.

3. Responsibilities

3.1. QCS Group

- 3.1.1. Goods supplied by QCS Group must be in accordance with the specifications disclosed by QCS Group prior to the supply of the goods, as modified by any particular terms set out in the Quote.
- 3.1.2. Services provided by QCS Group must be performed with due care and skill (applying an acceptable level of skill and technical knowledge), in a way which is fit for any purpose specified by the Customer to which QCS Group has agreed.
- 3.1.3. If QCS Group considers that the information, documents and other particulars provided by the Customer are not sufficient to enable QCS Group to provide the goods or services in accordance with this Agreement, then QCS Group may request

further information or other particulars as necessary from the Customer.

- 3.1.4. QCS Group will use all reasonable efforts to inform itself of the Customer's requirements and for that purpose it will consult the Customer throughout the relevant period for supply of the goods and for performance of the services. Any additional information provided by the Customer about its requirements (where accepted by QCS Group) will modify QCS Group's obligations in relation to the supply of the goods and services accordingly.
- 3.1.5. QCS Group will act in accordance with the Customer's reasonable instructions, where practical. QCS Group will provide the goods and perform the services within a reasonable time (to the extent that it is within its control to do so), and will give notice to the Customer if it becomes aware of any matter which may change the timing or scope of the provision of the goods or the performance of the services. A reasonable time for the supply of goods will typically be (commencing from when goods are ordered by the Customer):
 - 3.1.5.1. between 2 and 5 business days when goods are in stock or when they can be ordered by QCS Group from within Australia;
 - 3.1.5.2. between 10 and 21 business days when goods are not in stock and when they must be ordered by QCS Group from outside Australia (including, for example, Dell and Apple goods); and
 - 3.1.5.3. between 20 and 30 business days when QCS Group must perform services on the goods (such as, for example, configuration of a computer or server) before delivering the goods to the Customer.

While QCS Group takes care in preparing quotations, availability and pricing of goods may vary without notice to QCS Group and so QCS Group is entitled to vary any Quote at any time, (even after the Customer has accepted it, if there has been a relevant change in availability and pricing of goods). QCS Group may also vary any Quote at any time to correct any errors and omissions in the Quote. The Customer is not bound by any varied Quote until they have had an opportunity to consider

it and have accepted or adopted it (which the Customer may do expressly, or by their conduct).

- 3.1.6. Delivery of goods is covered by clause 3.2.5. QCS Group will perform services either at QCS Group's office, the Delivery Address or another location as appropriate.
- 3.1.7. QCS Group strongly recommends that all data & software be backed up regularly and strongly recommends that the Customer implement a robust and comprehensive disaster recovery system which is appropriate for the needs of the Customer's activities (QCS Group can be engaged to advise on and implement a disaster recovery system, but is not engaged to do so unless that is clearly agreed to be part of the services); data stored may be destroyed in the course of services by QCS Group and QCS Group is not responsible for any loss of data, software or subsequent downtime.
- 3.1.8. Where the customer has requested the installation of patches or upgrades, QCS Group is not responsible for any problems or loss of data occurring to a customer's systems, programs or data. The customer acknowledges that such installations are performed by QCS Group at the client's risk.
- 3.1.9. QCS Group is not responsible for any Loss or Claim suffered by the customer as a result of the failure of any virus protection/firewall software supplied or recommended by QCS Group nor for the actions of intruders or hackers.

3.2. *The Customer*

- 3.2.1. The Customer must determine whether the goods and services requested by the Customer and supplied by QCS Group are adequate for the purpose intended by the Customer. QCS Group is not capable of determining all of the Customer's objectives in relation to the goods and services and relies on the Customer as to whether the goods and services are adequate to achieve the Customer's purpose and objectives. For clarity – the purchase of goods from QCS Group does not include the service of installing and configuring those goods (unless the Quote provides for installation and configuration) and installation and configuration will be additional services required by the Customer which will be charged to the

Customer calculated on the basis of the Rates.

- 3.2.2. As soon as practicable after a request by QCS Group, the Customer must make available all information, documents and other particulars which QCS Group has requested, to enable QCS Group to provide the goods and to perform the services.
- 3.2.3. The Customer grants QCS Group right of access to any relevant site as required to deliver the goods and to perform the services. Where the consent of any third party is required for QCS Group to access any relevant site, the Customer is responsible for arranging such consent.
- 3.2.4. The Customer must advise QCS Group in writing within a reasonable time after the Customer becomes aware of any matter which may change the scope or timing of the goods or services required by the Customer.
- 3.2.5. The Customer must pay for the cost of freight of the goods to the Delivery Address (including any handling costs and the costs of packing the goods for transit) – unless otherwise agreed in the Quote. The Customer is responsible for the risk of goods which are in transit from QCS Group (or from a supplier of QCS Group) to the Delivery Address until they are delivered to the Customer.
- 3.2.6. The Customer acknowledges that any software which is provided by QCS Group will be subject to typical software licensing arrangements which will apply to the Customer's use of the software. The Customer agrees that it must comply with the terms of such software licensing arrangements and that QCS Group is not responsible for monitoring the Customer's compliance with software licensing arrangements (unless such monitoring is a specific service offered by QCS Group to the Customer, in which case relevant Product Terms may vary this).
- 3.2.7. If you wish to return goods, then we reserve the right to assess their condition at the time when you propose the return of goods to us, or at a later time. Goods which are damaged (including damage to packaging) or otherwise unsaleable (or only saleable at a reduced price) - either as a result of any act, omission or negligence by you, or as a result of any event occurring during the time between delivery of goods and when the goods are appropriately returned to us

- will not be accepted for return. Before returning any goods, the Customer must:

- 3.2.7.1. pack the goods properly in order to prevent any damage to them;
 - 3.2.7.2. ensure that supporting documentation including proof of purchase is provided to QCS Group;
 - 3.2.7.3. if the goods are being returned as defective, ensure that the goods really are defective before returning them; and
 - 3.2.7.4. bear transit risk in relation to the goods until they are actually received by QCS Group.
- 3.2.8. The Customer acknowledges that QCS Group's employees, officers, servants, agents and subcontractors are a key resource of QCS Group and that QCS Group has invested substantial time, energy and money in training their employees, officers, servants, agents and subcontractors. The Customer agrees that they must not directly or indirectly (including by counselling, procuring or assisting another person to do so) approach, persuade, canvass, solicit, employ or engage any person who is a current or former (within the most recent 6 month period, measured from time to time) employee, officer, servant, agent or subcontractor of QCS Group, in any way or in any role which has the intended or likely consequence of:
- reducing the Customer's need or desire to (temporarily or permanently) obtain goods or services from QCS Group; or
 - causing or contributing to the employee, officer, servant, agent or subcontractor of QCS Group terminating or reducing their employment, office or engagement with QCS Group; or
 - interfering in the relationship between QCS Group and the employee, officer, servant, agent or subcontractor.
- In the event QCS Group does agree for the Customer to offer an employee a job, the Customer agrees to a placement fee to the amount of 20% of the employee's full time salary. The Customer agrees that this is a reasonable fee in recognition of the time spent recruiting and training employees and the costs associated to QCS Group to recruit and replace the employee.
- 3.2.9. The Customer acknowledges that QCS Group may deploy 'agent' software which will operate on the Customer's hardware

(including computers and servers) for the purposes of monitoring and reporting on that hardware to QCS Group, patching other software installed on that hardware, and remote management by, and access in relation to that hardware for QCS Group. (Unless there is specific agreement to the contrary) the Customer consents to QCS Group deploying and operating such software. In deploying and operating that software, QCS Group will exercise the same standard of due care and skill (applying an acceptable level of skill and technical knowledge) as applies to other services provided by QCS Group to the Customer.

3.2.10. The Customer must comply with all other provisions of these Terms.

4. Payment

- 4.1. The Customer must pay all QCS Group invoices for goods and services and reimbursable expenses under this Agreement in full, without deduction or set off, at the times and in the manner set out in this Agreement. This is a fundamental obligation of the Customer. QCS Group retains ownership of all goods until it has been paid in full for the relevant goods. Each time that the Customer is required to pay QCS Group, it is required to do so in cleared funds.
- 4.2. The Customer must pay QCS Group for the goods and services in accordance with the timing set out in the Quote. If there is no timing set out in the Quote then:
 - 4.2.1. The Customer must pay to QCS Group 80% of the total value of any invoice which includes goods (including paying 80% of any component of that invoice which relates to services) before delivery of the goods (noting that QCS Group may elect to waive this requirement where the price of the goods is less than \$1,500). QCS Group will normally issue an invoice for the required amount (representing this 80% payment referred to in the previous sentence) to the Customer upon receipt of the Customer's purchase order, and before the goods are ordered from QCS Group's supplier and the Customer acknowledges that they must pay that invoice before the goods will be ordered by QCS Group and before the timeframes set out in clause 3.1.5 begin;
 - 4.2.2. The Customer must pay the balance of the total value of any such invoice as mentioned

in clause 4.2.1 to QCS Group immediately on delivery of the goods;

4.2.3. The Customer must pay the price of any services (other than services which are included in any such invoice as mentioned in clause 4.2.1) to QCS Group immediately on receipt of an invoice from QCS Group in respect of the services.

If there is specific timing for payment set out in the Quote then that will take precedence over the timing for payment set out here.

If there is specific timing for payment set out in the Application then that will take precedence over the timing for payment set out here.

4.3. The Customer must pay GST to QCS Group on any taxable supply within the meaning of the GST Law made to the Customer pursuant to these conditions. Payment of GST must be made at the same time as amounts are due pursuant to Clause 4.2

4.4. In addition to any amount stated in the Quote, QCS Group is entitled to recover from the Customer any costs and expenses payable to third parties which QCS Group incurs in the course of supplying goods and services to the Customer ('Reimbursable Expenses'). (However, nothing will entitle QCS Group to recover a cost or expense twice

– for example in the Quote and again under this clause). Where those costs exceed \$250 and it is practical to do so, QCS Group will inform the Customer before incurring such costs and expenses.

4.5. If there is a change in the scope, timing or ordering of the goods and services then QCS Group will be entitled to payment of an additional amount which is reasonable in the circumstances. In particular, if goods are returned as defective but are not in fact defective after testing, then QCS Group is entitled to charge the Customer for all relevant additional freight and handling costs and for the costs of QCS Group's labour in investigating the alleged defects in the goods.

4.6. Any additional goods required by the Customer will be charged to the Customer on the basis of a further quotation from QCS Group. Any additional services required by the Customer will be charged to the Customer calculated on the basis of the Rates.

4.7. QCS Group may, at its discretion, increase the fee payable for goods and services because of any delay in the supply of information, documents, other particulars and access to any relevant site.

4.8. If any payment issued by the Customer in payment for the goods and services is dishonoured, rejected or otherwise fails to achieve the actual and

permanent transfer of actual funds to QCS Group, then QCS Group may refuse to supply any further goods and services until satisfactory payment is received in full. Any dishonour or rejection or similar fee(s) charged to QCS Group will be recoverable in full from the Customer.

4.9. If the Customer does not pay any payment or amount due on the due date in accordance with the terms of this Agreement, then without prejudice to any other right or remedy:

4.9.1. QCS Group may, at its discretion, withhold the provision and release of goods and the provision of services until receipt of actual payment of all unpaid amounts by the Customer;

4.9.2. all outstanding money carries a late payment fee of 10% per annum calculated daily on the unpaid amounts from the date for payment to the date of actual payment ("Interest");

4.9.3. any costs incurred by QCS Group in collecting monies due and payable (including, without limitation, the fee of any mercantile agencies or solicitors appointed by QCS Group on a full indemnity basis) will be recoverable in full from the Customer ("Costs"); and

4.9.4. QCS Group may recover any payment or amount due under the Agreement together with any Costs incurred and Interest from the Customer as a liquidated debt in a court or tribunal of a competent jurisdiction irrespective of any Claim that the Customer may have against QCS Group for any thing or matter related to the goods and services delivered under this Agreement.

4.10. QCS Group is not responsible for any delays in funds being received to the account nominated by QCS Group, nor is QCS Group responsible for banking errors or accounting, administrative or similar errors by the Customer. The Customer must take care to ensure that all transfers or remittances of funds to QCS Group are processed promptly and accurately. The Customer must not object if QCS Group charges Interest or Costs or refuses to supply further goods or services due to funds not being received by QCS Group when they are required (by this Agreement) to be received.

4.11. If the Customer disputes the whole or any part of the amount claimed in an invoice issued by QCS Group, then the Customer must pay that part of the account that is not in dispute and must provide QCS Group with the Customer's written reasons for disputing the unpaid amount of the invoice.

- 4.12. If after the date of acceptance of the Quote there is any change to relevant laws, by-laws, regulations or ordinances of any Australian Government or statutory authority, and that change directly or indirectly affects the costs or reimbursable expenses incurred by QCS Group in performing the goods and services, then QCS Group may elect to vary the prices, amounts and/or reimbursable expenses payable to QCS Group accordingly.
- 4.13. If QCS Group, at its discretion, allows a Customer to cancel an order for goods after the Customer has made the order, then for Goods which are not defective but which are appropriately returned to us, QCS Group may charge the Customer a restocking fee equal to 15% of the price of the order. The Customer acknowledges that QCS Group may exercise discretion about whether to allow cancellation of an order for goods, and also acknowledges that some goods (for example – anti-virus software subscriptions), once ordered, are not able to be returned to the supplier and that QCS Group will not allow such orders to be cancelled.
- 4.14. Goods which are defective (other than as a result of any act, omission or negligence by you, or as a result of any event occurring during the time between delivery of goods and when the goods are appropriately returned to us) will not incur any restocking fee, and we will pay the reasonable costs of their return.
- 4.15. The Customer authorises QCS Group to conduct all credit checks and searches of the Customer and its financial and business affairs deemed necessary by QCS Group (including any stated in the Agreement). The Customer must provide all necessary written authorisations for credit checks and searches as requested from time to time by QCS Group. The Customer authorises QCS Group to use that information for credit assessment, debt collection, and/or any other purpose deemed necessary by QCS Group and disclose that information (and any other relevant information collected by QCS Group in the course of its business relationship with the Customer) to professional advisers, credit reporting agencies and other credit providers.
- 4.16. Any finance arrangements including for rental of goods are arrangements between the Customer and a third party financier and are not arrangements between QCS Group and the Customer. Any information provided by a financier to the Customer (for example, calculations of rental costs) is a matter between the Customer and that financier and is not a matter in relation to which the Customer may rely on QCS Group.
- 4.17. If there are any credit arrangements in place between QCS Group and the Customer, then each new order which the Customer seeks to place with QCS Group will (if accepted) be considered a new advance of money or credit within the meaning of the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* which introduces *s.415D(9), s.434J(8) and s.451E(8)* into the *Corporations Act*.
- 5. Warranties in relation to goods and services**
- 5.1. The benefits under any voluntary warranty against defects which QCS Group may provide are in addition to consumer guarantees and other rights and remedies available under the law, and any such QCS Group warranty does not limit or replace the consumer guarantees or those other rights and remedies. QCS Group does not currently provide any voluntary warranty.
- 5.2. If the ACL applies to the relevant relationship between QCS Group and the Customer, and if QCS Group is supplying only goods, then the following clause 5.3 is relevant – otherwise, the following clause is not relevant.
- 5.3. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 5.4. If the ACL applies to the relevant relationship between QCS Group and the Customer, and if QCS Group is supplying only services, then the following clause 5.5 is relevant – otherwise, the following clause is not relevant.
- 5.5. Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- to cancel your service contract with us; and
 - to a refund for the unused portion, or to compensation for its reduced value
- You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- 5.6. If the ACL applies to the relevant relationship between QCS Group and the Customer, and if QCS Group is supplying goods and services, then the following clause 5.7 is relevant – otherwise, the following clause is not relevant.

- 5.7. Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:
- to cancel your service contract with us; and
 - to a refund for the unused portion, or to compensation for its reduced value.
- You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.
- 5.8. So that the expectations between QCS Group and the Customer are clear:
- Problems occurring as a result of configuration or software are not typically warranty issues. If QCS Group is asked to spend time in relation to configuration or software issues, typically that time will be additional services required by the Customer which will be charged to the Customer calculated on the basis of the Rates.
 - The Customer may detract from its ability to claim under any warranty which may apply, if seals on the hardware &/or devices are broken.
 - Problems occurring as a result of physical damage or due to electrical faults are not typically warranty issues.
 - After any hardware failure, reinstallation of software beyond a basic operating system installation (for example, of additional applications / configurations / customisations will typically be additional services required by the Customer which will be charged to the Customer calculated on the basis of the Rates.
- 6. Intellectual Property and Use of Information**
- 6.1. The Customer warrants to QCS Group that the use of or reliance upon any data, design, plan or other information provided to QCS Group by the Customer will not infringe any patent, trademark, design, copyright or confidentiality agreement in Australia or elsewhere. The Customer indemnifies QCS Group against any Loss or Claim arising from a breach of this warranty.
- 6.2. Any data, design, plan, report or other information developed as a result of the goods and services is provided to the Customer for the Customer's purposes only and QCS Group will bear no responsibility to any other person in respect of those things.
- 6.3. QCS Group retains ownership in all intellectual property created by QCS Group in providing the goods and in performing the services. Provided that the Customer pays all amounts due to QCS Group under the Agreement, QCS Group grants the Customer an irrevocable and royalty-free non-exclusive license to use such relevant intellectual property for the purpose of obtaining the benefit of the goods and services from QCS Group only (but not to further exploit the intellectual property). Where QCS Group has recorded and stored information about the Customer such as computer setup information, network diagrams, product information, supplier information and software to assist QCS Group with efficiently attending to services to the Customer, QCS Group may charge a reasonable fee for providing such information to the Customer.
- 6.4. The Customer acknowledges that the intellectual property created by QCS Group as mentioned in clause 6.3 is owned by QCS Group and is not owned by the employees, officers, servants, agents or subcontractors of QCS Group, and that QCS Group may elect to exercise control over such intellectual property, if the Customer elects to employ any person who is a former employee, officer, servant, agent or subcontractor of QCS Group, including by refusing access to that intellectual property.
- 6.5. The Customer agrees and acknowledges that:
- all the rights of QCS Group contained in this clause 6 and in these Terms are reasonable in the circumstances and necessary for the protection of QCS Group;
 - QCS Group is not obliged to terminate the Agreement or to issue any notice of breach to the Customer before taking any steps under this clause 6 or under these Terms or before exercising any other rights available to QCS Group;
 - damages will not be an adequate remedy if the Customer breaches this clause 6, nor if the Customer breaches some other elements of these Terms, including for example the right to enter premises as set out in clause 11.8, the obligation not to directly or indirectly approach, persuade, canvass, solicit, employ or engage staff and relevant others under clause 3.2.8; and
 - QCS Group may apply for injunctive relief if the Customer breaches or threatens to breach this clause 6 or these Terms; or if QCS Group believes that the Customer is likely to breach this clause 6 or these Terms.
- 7. Limitation or exclusion of liability**
- 7.1. If the ACL applies to the relevant relationship

between QCS Group and the Customer, then QCS Group is not permitted to exclude its liability for consequential loss or damage and does not attempt to do so. However, to the extent permitted by the ACL and by law generally, QCS Group will be under no liability whatsoever to the Customer and/or any third party for any indirect, special, consequential or exemplary Loss or Claim or personal injury suffered by the Customer and/or any third party directly or indirectly in connection with the goods and services or directly or indirectly arising out of the Agreement or otherwise from the relationship between QCS Group and the Customer and any third party, and whether actionable in contract, tort (including negligence), equity or otherwise.

- 7.2. If QCS Group causes any Loss to the Customer as a result of any deficiencies in the goods or in the performance of the services, or due to any negligence of QCS Group or due to any other cause then (where permissible under the ACL, if it applies) the extent of QCS Group's liability will be limited to a maximum of the fee actually paid to QCS Group by the Customer for the goods and services. QCS Group's liability will also be reduced to the extent that the Customer or any other person contributed to the Loss.
- 7.3. In addition to each other limitation which applies to the relationship between QCS Group and the Customer, QCS Group is only required to (and its liability is limited to):
 - 7.3.1. either replacing or repairing goods or reimbursing the Customer for the repair or replacement of the goods (at the election of QCS Group);
 - 7.3.2. either re-supplying services or reimbursing the Customer for paying someone else to supply the services (at the election of QCS Group).

If the ACL applies to the relevant relationship between QCS Group and the Customer, then this clause only applies in relation to goods and services which are not used for personal, domestic or household purposes.

8. Indemnity

- 8.1. To the extent permitted by law, the Customer indemnifies QCS Group against any Loss or Claim arising, directly or indirectly, in connection with the goods and services or directly or indirectly out of the Agreement or otherwise from the relationship between QCS Group and the Customer and any third party. This includes indemnifying QCS Group for any Loss or Claim, including Interest and Costs, associated directly or indirectly with the breach of the Agreement by the Customer. If the ACL applies to the relevant relationship between

QCS Group and the Customer, then this indemnity is intended to be read down or severed if necessary, to the extent to ensure that there is no breach of the ACL.

9. Governing law and severability

- 9.1. The Agreement will be governed by and construed in accordance with the laws of Queensland. The parties submit to the non-exclusive jurisdiction of the Courts of that jurisdiction.
- 9.2. If any part or provision of the Agreement is held unenforceable or in conflict with the applicable laws or regulations of any jurisdiction, the invalid or unenforceable part or provision will be replaced with a provision which accomplishes, to the extent possible, the original purpose of the part or provision in a valid and enforceable manner, and the remainder of the Agreement will remain binding on the parties.

10. Force majeure

- 10.1. If by reason of any fact, circumstance, matter or thing beyond the reasonable control of a party, that party is unable to perform, in whole or in part, any obligation under the Agreement, then that party is relieved of that obligation under the Agreement (to the extent and for the period that it is so unable to perform) and is not liable to the other party in respect of such inability. This provision does not apply in relation to obligations to make payment to the other party.

11. Default and termination

- 11.1. Without prejudice to any of QCS Group's other rights and entitlements under this Agreement, QCS Group may terminate this Agreement at any time and for any reason, by not less than 5 business days' written notice to the Customer.
- 11.2. Without prejudice to any of the Customer's rights and entitlements under this Agreement, the Customer may terminate this Agreement at any time and for any reason, by not less than 5 business days' written notice to QCS Group.
- 11.3. If either party terminates the Agreement, then QCS Group will be entitled to payment of the unpaid value of all goods supplied and services performed by QCS Group up to the date of termination as well as reimbursable expenses. QCS Group's entitlement to payment includes entitlement to payment for any materials ordered by QCS Group for the Quote and for which QCS Group is legally bound to pay, provided that the title in materials will vest in the Customer upon payment of the relevant price set out in the Quote. QCS Group may also charge the Customer a restocking fee as contemplated by the Agreement (including clause 4.13).
- 11.4. If the Customer fails to keep, perform or observe any express or implied term of the Agreement

- and/or any other agreement with QCS Group, including making any payment in accordance with this Agreement, then QCS Group may immediately or at any time without giving any prior notice to the Customer, suspend the performance of QCS Group's obligations under the Agreement and may (after giving reasonable notice to the Customer) terminate this Agreement.
- 11.5. If the Customer commits any of the following acts then QCS Group may immediately or at any time without giving any notice to the Customer, suspend or terminate the Agreement:
- 11.5.1. commits any act of bankruptcy;
- 11.5.2. commits any act of dishonesty or fraud in relation to the Agreement;
- 11.5.3. being a company does any act which would render it liable to be wound up or has a receiver or administrator appointed over itself or its property (subject to the *Treasury Laws Amendment (2017 Enterprise Incentives No. 2) Act 2017* to the extent it may impact on this clause);
- 11.5.4. ceases to carry on business, or has a change in ownership.
- 11.6. In this clause, QCS Group's exercise of any rights of termination or suspension, will not release the Customer from any liability for their default in keeping, performing or observing any of the express or implied terms of the Agreement and will be without prejudice to QCS Group's right to retain all money paid to QCS Group pursuant to the Agreement and QCS Group's right to claim for Loss.
- 11.7. Without prejudice to its other rights at law or in equity, QCS Group may repossess any materials and goods which it owns (see clause 4.1), and at any time demand immediate payment of all or any of the following:
- 11.7.1. (after this Agreement is terminated or after the Customer defaults in relation to an obligation under this Agreement) the balance of any payments due under the Agreement for the goods and services (even if not all of them were otherwise due at that time), unless that would be inconsistent with the proper construction of the relevant Agreement;
- 11.7.2. the costs of repossession of any materials of QCS Group and goods owned by QCS Group situated at any relevant site owned, possessed or controlled by the Customer and all expenses incurred by QCS Group in retrieving such materials and goods, including legal costs on a full indemnity basis;
- 11.7.3. QCS Group's legal costs on a full indemnity basis for the enforcement of all or any of QCS Group's rights or entitlements pursuant to the Agreement;
- 11.7.4. Interest on all money payable under this provision from the date of termination to the date of payment;
- 11.7.5. all arrears of payments and other money then due and payable by the Customer including without limitation, any Costs and Interest; and
- 11.7.6. the costs of any attempt(s) by QCS Group in respect of all or any of the matters referred to above.
- 11.8. If QCS Group is entitled to repossess materials and goods under clause 11.7 or as a result of exercising any other contractual, statutory or other right, then the Customer acknowledges QCS Group may enter and recover possession at any relevant site owned, possessed or controlled by the Customer and the Customer agrees that QCS Group has an irrevocable licence to do so without incurring liability to the Customer or any person claiming through the Customer.
- 12. Communication and Notices**
- 12.1. QCS Group and the Customer agree that they may communicate with each other for all purposes by email and that email will be regarded as 'writing' and 'written notice'. Notices under this Agreement must be in writing and addressed to the usual or last known place of business of the party that the Notice is given to (including to any email address notified to the other party which is actually used by that party). This is express authority for QCS Group to communicate with the Customer under the *Spam Act 2003*.
- 13. PPS**
- 13.1 Definitions and Interpretation:
- (a) "PPS Act" means the *Personal Property Securities Act 2009 (Cth)*;
- (b) "Collateral" has the meaning contemplated by s.10 of the PPS Act and specifically includes all goods (or the proceeds of any sale by you of such goods) in respect of which we have a security interest, as contemplated by clause 13.2.2 and, where relevant, as contemplated by clause 13.3.3 below;
- (c) Where terms are used in this clause 13 of these Terms and they are terms defined by the PPS Act, then those terms are intended to have the meaning defined in the PPS Act. This is the case whether or not the terms are indicated as being defined in the PPS Act in the text of this clause 13.
- 13.2 You acknowledge that:

- 13.2.1 all goods supplied by us to you are acquired in the course or furtherance of an enterprise by you, and are commercial property (as defined in s.10 of the PPS Act);
- 13.2.2 we will have a security interest (as defined in s.12 of the PPS Act) in goods purchased by you, and in the proceeds of any sale by you of such goods, until title to the goods passes to you after full payment for them;
- 13.2.3 the security interest secures the purchase price for all goods supplied by us to you;
- 13.2.4 the security interest attaches to goods purchased by you from us as soon as you have rights in the goods as contemplated by s.19(5) of the PPS Act; and
- 13.2.5 the security interest comprises a purchase money security interest (as defined in s.14 of the PPS Act) to the extent it secures purchase money obligations (as defined in s.14(7) of the PPS Act).
- 13.3 In addition, you acknowledge that:
- 13.3.1 all of your present and after-acquired property is used in the course or furtherance of an enterprise by you, and is commercial property (as defined in s.10 of the PPS Act);
- 13.3.2 you charge all of your present and after-acquired property (and proceeds thereof) with the performance of all of your obligations to us under these Terms;
- 13.3.3 in doing so you grant us a security interest in (and we take a security interest in) all of your present and after-acquired property (and proceeds thereof);
- 13.3.4 that security interest described in clause 13.3.3 secures the payment of all money owed to us by you under these Terms and the performance of all of your obligations to us under these Terms; and
- 13.3.5 except to the extent that the security interest described in clause 13.2.2 may apply to certain elements of your present and after-acquired property, the security interest described in clause 13.3.3 does not comprise a purchase money security interest.
- 13.4 We are entitled to register our security interests pursuant to the PPS Act, and you must do everything (such as obtaining consents, completing, signing and supplying signed copies of documents, and supplying information), which we require to be done for the purpose of ensuring that each security interest of ours is enforceable, perfected, has the required and intended priority, is otherwise effective, and can be practically and lawfully enforced by us against you (and against third parties as relevant).
- 13.5 You hereby waive, as permitted by s.157(3) of the PPS Act, any right to receive a verification statement or any other notice in relation to a registration event (for example, any right under s.157(1) of the PPS Act).
- 13.6 We and you hereby enter into a confidentiality agreement (as contemplated by s.275(6)(a) of the PPS Act) and agree that (subject to section 275(7) of the PPS Act) neither you nor we will disclose information of the kind mentioned in section 275(1) of the PPS Act.
- 13.7 If:
- 13.7.1 you dispose of the goods before title to the goods passes to you (whether or not that disposal is with our permission; this clause does not condone or permit any such disposal); and
- 13.7.2 you will, in those circumstances, hold a security interest granted by a third party in respect of the goods (a "secondary security interest");
- then you must:
- 13.7.3 establish and implement procedures to perfect that secondary security interest and to maintain it as continuously perfected;
- 13.7.4 take all necessary steps under the PPS Act to obtain the highest possible ranking priority for that secondary security interest;
- 13.7.5 establish and implement procedures and take all necessary steps to reduce (so far as possible) the risk that a third party might acquire an interest in the goods which is free of our security interest or which is free of the secondary security interest; and
- 13.7.6 do everything which we reasonably require to be done to comply with the obligations stated in this clause 13.7.
- 13.8 Payments made by you to us will be applied in the order contemplated by s.14(6)(c) of the PPS Act.
- 13.9 Reasonable periods under the PPS Act and other agreements relevant to PPS Act:
A reasonable period under s.125(2) of the PPS Act before disposing of or taking action to retain collateral is considered to be a minimum of two calendar months. QCS Group may also elect to delay disposing of, or taking action to retain, the whole or part of that collateral beyond the reasonable period mentioned, for a further period of up to three calendar months.
The security interests described in these Terms are taken to secure absolutely all expenses, Interest and Costs in relation to or directly or indirectly connected with the enforcement of any security interest on a full indemnity basis. This is an agreement as contemplated by s.18(5) of the PPS Act.
- 13.10 Contracting out of certain enforcement provisions:
As permitted by s.115(1) of the PPS Act, we and you hereby agree that:
- 13.10.1 s.95 and s.130 of the PPS Act, to the extent that each of those sections require

us to give notice to you, do not apply to our security interests;

13.10.2 s.121(4) and s.132(4) of the PPS Act do not apply to our security interests;

13.10.3 We may elect to give notice to you as contemplated by s.135(1)(a) of the PPS Act, but we are not obliged to do so; and

13.10.4 If:

13.10.4.1 title to collateral has not passed to you; and

13.10.4.2 where we have seized such collateral as contemplated by Division 2 of Part 4.3 of the PPS Act (or have seized such collateral in another manner);

then:

(noting that the collateral is in fact still our property because title to the collateral has not passed to you) to the extent permissible under the PPS Act, nothing in s.125 or in s.134(1) or in other sections of the PPS Act is to be taken to prevent us from retaining such collateral, without any obligation to take any further step in relation to disposal of the collateral or any obligation to give notice to you in connection with such collateral. It is intended that if this clause 13.10.4 is unenforceable or illegal, then it is intended to be severed from this document without affecting the validity of other sections of this document.