DakTech Pty Ltd — Terms of Trade

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1. Definitions and interpretation

1.1 Definitions

Account means a credit account the Supplier approves in writing for the Customer under a New Customer Application: a **Starter Account**, a **Trade Account** or an **Institutional Account**, as those are described in the account terms of the New Customer Application.

ACL means the Australian Consumer Law in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

Additional Charge means: (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Approved Payment Terms means the period for paying invoices that the Supplier approves in writing for an Account.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Confidential Information means information of a party that is marked confidential or that a reasonable person would treat as confidential — including the Customer's data, systems, passwords and network details, and the Supplier's pricing and methods — but not information that is public other than through a breach of these terms.

Customer means the person identified on a Quote, Order or New Customer Application as the customer and includes the Customer's agents and permitted assigns.

Goods means any goods supplied by the Supplier, including those supplied in the course of providing Services.

Insolvency Event means the Customer (or, for a partnership, any partner) becoming bankrupt; having an application, order or resolution made for its winding up; having an administrator, receiver, or receiver and manager appointed; entering a deed of company arrangement or an arrangement with its creditors; or failing to comply with a statutory demand within the time allowed.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

New Customer Application means the Supplier's application form for new customers, including any account terms and guarantee in it.

Order means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

PPSA means the Personal Property Securities Act 2009 (Cth).

Privacy Policy and **Credit Reporting Policy** mean the Supplier's policies of those names published at daktech.au.

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Recurring Services means services supplied on a continuing basis for a periodic fee, such as managed support, monitoring, backup, hosting and software or cloud subscriptions.

Service Agreement means a written agreement or schedule between the parties for Recurring Services or a project, such as a managed services agreement or a software-as-a-service agreement.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote, a Service Agreement and these terms of trade.

Supplier means DakTech Pty Ltd (ABN 26 605 776 672) and includes the Supplier's agents and permitted assigns.

Third-Party Product means software, cloud services, licences, subscriptions, hardware, warranties and support provided by another vendor (for example Microsoft) that the Supplier resells or arranges for the Customer.

1.2 Interpretation

In these terms of trade, unless the context otherwise requires:

(a) a reference to writing includes email and other communication established through the Supplier's website;

(b) the singular includes the plural and vice versa;

(c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;

(d) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;

(e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and

(g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing must be done on the next Business Day.

2. General

(a) These terms of trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all quotations, contracts and variations. These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.

(b) **Which document applies.** If documents conflict, they apply in this order: (i) a Service Agreement, a Quote signed by both parties, or the Customer's own procurement terms where the Supplier has agreed in writing that they apply (as for an Institutional Account), but only where it expressly says it overrides these terms; (ii) the account terms in an approved New Customer Application, for the Account; (iii) these terms of trade.

(c) The variation or waiver of a provision of these terms, or a party's consent to a departure from a provision by another party, is ineffective unless agreed in writing by the parties.

(d) **Changes to these terms.** The Supplier may change these terms of trade where the change is reasonably needed to reflect a change in law, in a vendor's terms, or in the Supplier's services, costs or practices, by publishing a new version at daktech.au/terms-of-

trade and giving the Customer at least 30 days' written notice of it. If the Customer does not accept a change, it may, by written notice before the change takes effect, end these terms of trade and any Recurring Services without an early termination fee, subject to clause 11(d). A change does not alter the price or scope of a Quote accepted, an Order placed or a Service Agreement made before it takes effect.

3. Quotes

(a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for the period specified on the Quote, or otherwise for 30 days from the date of issue.

(b) Unless otherwise expressly agreed in writing, a Quote does not include delivery, installation, or configuration of the Goods, nor does it include any cables or accessories that may be required to interface the Goods with the Customer's premises or existing equipment.

(c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.

(d) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer indicating, in writing, acceptance of the Quote and including the Quote number.

(e) The Supplier reserves the right to amend any Quote before it is accepted to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the Quote for the purposes of these terms of trade.

(f) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the ACL, this estimate is not binding upon the Supplier.

4. Orders

(a) Every Order by the Customer for the provision of Goods or Services must be placed in writing, by the Customer indicating acceptance of a Quote and including the Quote number (unless otherwise agreed).

(b) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods or Services ordered, including quantities, and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.

(c) Orders must be made by an authorised representative of the Customer and must specify the required date of delivery if critical.

(d) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Supplier relating to that Order.

(e) The Supplier may refuse to provide Goods or Services where:

  (i) Goods are unavailable for any reason;

  (ii) credit limits cannot be agreed upon or have been exceeded; or

  (iii) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier when due.

(f) An Order cannot be cancelled without the prior written consent of the Supplier, which it will not unreasonably withhold. Where an Order is cancelled, the Customer must pay the Supplier for work already performed, for Goods and Third-Party Products ordered for the Customer that cannot be returned or cancelled, and the Supplier's reasonable costs of the cancellation.

5. Variations

(a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.

(b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.

(c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

6. Invoicing and payment

(a) The Supplier may issue an invoice to the Customer in any one or more of the following ways:

  (i) prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and Additional Charges where the Supplier has not previously carried out work for the Customer or where the Supplier chooses to do so;

  (ii) at the end of each week before the Order is completed, for a proportion or the whole of the amount of the Quote (the proportion to be calculated at the Supplier's discretion either for work done to that point, work in the future or both), and require that proportion of the Quote be paid in advance of any further Goods or Services being provided; or

  (iii) upon completion of the provision of the Goods or Services or any time thereafter, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.

(b) Recurring Services are invoiced as set out in the Service Agreement, or otherwise monthly in advance.

(c) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges or, where no Quote has been provided by the Supplier, the Supplier's usual charges for the Goods or Services (or both) as described in the Order.

(d) **Payment terms.** Unless the Customer has an Account, the Supplier may invoice before it orders Goods or starts work (clause 6(a)(i)) and is not obliged to do either until that invoice is paid. Otherwise the Customer must pay each invoice within 7 days of a valid tax invoice being issued to the Customer or, if the Customer has an Account, within its Approved Payment Terms.

(e) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.

(f) The Supplier may apply any payment received from the Customer to any amount owing by the Customer to the Supplier.

(g) The Customer is not entitled to withhold or set off any money owing to the Supplier because of a default or alleged default by the Supplier, including the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay. This paragraph does not apply to an amount disputed under clause 6(n), and nothing in it affects the Customer's rights under the ACL.

(h) **Interest.** The Customer must pay the Supplier interest at the rate of 10% per year on all overdue amounts, calculated daily from the due date until paid.

(i) **Recovery costs.** The Customer must pay the reasonable costs the Supplier actually incurs to recover overdue amounts, including mercantile agent fees and legal costs on a solicitor-and-client basis.

(j) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other applicable legislation governing GST. Unless stated otherwise, prices exclude GST.

(k) **No surcharge.** The Supplier does not add a surcharge for payment by card or direct debit.

(l) **Deposits.** Unless the Customer has a Trade Account or an Institutional Account, the Supplier may require a deposit of 50% of the quoted price before ordering Goods or Third-Party Products or starting work, for any Order over $2,000 (excluding GST). The deposit is credited against the final invoice.

(m) **Subscriptions with a minimum term.** Unless the Customer has a Trade Account or an Institutional Account, a Third-Party Product with a minimum term under clause 11(d) is invoiced for the whole term in advance or, where the Customer has a Starter Account and is not an individual or a partnership, monthly with payment taken under the payment authority in the Customer's account terms.

(n) **Disputed invoices.** The Customer may dispute an invoice, or part of it, by telling the Supplier in writing within 14 days of receiving it. A disputed amount is not overdue until the dispute is resolved; the rest of the invoice is payable as normal.

7. Additional Charges

(a) The Supplier may require the Customer to pay Additional Charges in respect of costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer, or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).

(b) The imposition of Additional Charges may also occur as a result of:

  (i) cancellation by the Customer of an Order, as set out in clause 4(f);

  (ii) storage costs for Goods not collected from the Supplier within 14 days of the date on which the Goods are ready for collection;

  (iii) courier, packing or handling charges not included in the Quote; or

  (iv) Government or council taxes or charges not included in the Quote.

8. Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 5 Business Days of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights under the ACL.

9. Title and risk

(a) Risk in Goods passes to the Customer immediately upon delivery.

(b) Property and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until the Goods, and any other amount then due and payable by the Customer to the Supplier, have been paid for in full.

(c) Where Goods are supplied by the Supplier to the Customer without payment in full, the Customer:

  (i) is a bailee of the Goods until property in them passes to the Customer;

  (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to Goods, including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;

  (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;

  (iv) must not allow any person to have or acquire any security interest in the Goods;

  (v) agrees that the Supplier may repossess the Goods after an event of default under clause 15; and

  (vi) grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises during business hours, after giving reasonable notice, in order to recover possession of Goods under this paragraph. The Supplier will make good any damage it causes in doing so.

(d) Despite paragraph 9(c), the Customer may transfer, sell or dispose of Goods to a third party in the ordinary course of business, provided that:

  (i) where the Customer is paid by a third party in respect of Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Supplier until all amounts owed by the Customer to the Supplier have been paid; or

  (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect, and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.

(e) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a security interest in the Goods and their proceeds and a right to register and perfect it under the PPSA.

(f) **PPSA.** To the extent the law allows:

  (i) the Customer consents to the Supplier registering a financing statement on the Personal Property Securities Register and will sign any document reasonably needed to perfect the Supplier's security interest;

(ii) where the Goods are commercial property, the Customer waives its right to receive a verification statement under section 157 of the PPSA;

(iii) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA do not apply to any security interest under these terms of trade; and

(iv) neither party will disclose information of the kind referred to in section 275(1) of the PPSA, except as section 275(7) permits.

10. Intellectual property and the Customer's data

(a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order.

(b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.

(c) On payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, irrevocable, royalty-free, non-exclusive licence to use, copy and adapt the works created or produced by the Supplier in connection with the provision of Goods or Services under these terms of trade, for the Customer's business, and to transfer that licence with its business.

(d) The Customer's data, documents and systems remain the Customer's property. The Supplier uses them only to provide the Goods and Services.

11. Third-Party Products and subscriptions

(a) Third-Party Products are supplied on the vendor's own terms, such as an end-user licence or the Microsoft Customer Agreement. The Customer must accept those terms itself, in the way the vendor requires — for Microsoft cloud services, in the Microsoft 365 admin centre or through the Supplier's ordering process — before the Supplier can order the product. The Supplier will give the Customer the vendor's terms before the Customer accepts them. The person who accepts, and the Customer, authorise the Supplier to give the vendor, and the Supplier's distributor, the name, email address, phone number (if given) and date of acceptance of the person who accepted.

(b) The Supplier passes on to the Customer the benefit of any warranty or support the vendor gives. Subject to clause 17(a), the Supplier gives no greater warranty for a Third-Party Product than the vendor does.

(c) If a vendor increases its price for a Third-Party Product the Customer subscribes to, the Supplier may pass the increase on from the date the vendor applies it to the Supplier, and will give the Customer written notice as soon as it reasonably can and in any case before the first invoice at the new price. The Customer may then cancel the affected subscription at the next point the vendor allows.

(d) Where a subscription has a minimum term or a cancellation window set by the vendor (for example, an annual commitment), the Supplier will tell the Customer before the Customer orders it, and the Customer is liable for the subscription fees for that term even if these terms of trade end earlier. Where the vendor allows it, the Supplier will on request help transfer the subscription to another provider, and the Customer is then liable only for fees up to the transfer.

(e) Subject to clause 17(a), the Supplier is not responsible for an outage or failure of a vendor's service, beyond passing on any remedy the vendor gives.

12. Services, access, data and security

(a) The scope, service levels, fees, term and renewal of Recurring Services are set out in the Service Agreement. These terms of trade apply to Recurring Services wherever the Service Agreement does not deal with a matter.

(b) The Customer authorises the Supplier's staff and agents to access the Customer's systems, remotely or on site, as needed to provide the Services, and will give the access, credentials and information the Supplier reasonably needs.

(c) Unless backup is part of the Services, the Customer is responsible for keeping current backups of its data, and should make one before the Supplier starts work on a system.

(d) The Customer must hold valid licences for software it asks the Supplier to install or support.

(e) The Supplier will provide the Services with due care and skill, will take reasonable care to protect the Customer's systems and data, and will tell the Customer promptly if it becomes aware, in the course of the Services, of a security incident affecting them.

13. Confidentiality and privacy

(a) Each party must keep the other party's Confidential Information confidential and use it only for the purposes of these terms of trade. A party may disclose it only to its staff, contractors and advisers who need it and are bound to keep it confidential, with the other party's consent, or as required by law.

(b) The Supplier handles personal information under its Privacy Policy, and credit information under its Credit Reporting Policy, both published at daktech.au.

(c) This clause survives the end of these terms of trade.

14. Agency and assignment

(a) The Customer agrees that the Supplier may at any time appoint or engage an agent or subcontractor to perform an obligation of the Supplier arising out of or under these terms of trade. The Supplier remains responsible for the performance of those obligations.

(b) The Supplier may assign and transfer to any person all or any of its rights and obligations under these terms of trade, by notice to the Customer, as part of a sale of the Supplier's business or of the part of it that serves the Customer, provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these terms of trade. The Customer may end these terms of trade and any Recurring Services by written notice within 30 days of that notice, without an early termination fee, subject to clause 11(d).

(c) The Customer must not assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of the Supplier, which it will not unreasonably withhold.

15. Default by Customer

(a) Each of the following is an event of default:

  (i) the Customer breaches these terms of trade (including by failing to make a payment when due) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;

  (ii) an Insolvency Event happens;

  (iii) the Customer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or

(iv) the Customer ceases, or threatens to cease, to conduct its business in the normal manner.

(b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:

(i) terminate these terms of trade;

(ii) terminate any or all Orders and credit arrangements (if any) with the Customer;

(iii) refuse to deliver Goods or provide further Services;

(iv) under clause 9(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or

(v) retain (where applicable) all money paid by the Customer on account of Goods or Services, to the extent of amounts the Customer owes.

(c) In addition to any action permitted to be taken by the Supplier under paragraph 15(b), on the occurrence of an event of default all invoices will become immediately due and payable.

16. Termination

(a) In addition to the express rights of termination provided in these terms of trade, a party may terminate these terms of trade by giving 7 days' written notice to the other party.

(b) Termination does not affect: an Order accepted before the notice was given, which the parties complete unless they agree otherwise; a Service Agreement, which ends only under its own terms; a commitment under clause 11(d); amounts already owing; or clauses 9, 13, 17, 18 and 20, which survive.

(c) If the Supplier ends these terms of trade under clause 16(a), it refunds any fees the Customer has paid in advance for Recurring Services for the period after they end, other than for a commitment under clause 11(d).

17. Consumer guarantees and liability

(a) **Rights that cannot be excluded.** Nothing in these terms of trade excludes, restricts or modifies any right or remedy, or any guarantee, under the ACL or any other law that cannot lawfully be excluded, restricted or modified.

(b) Where the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for a failure to comply with a consumer guarantee (other than those in sections 51 to 53 of the ACL) is limited, at the Supplier's option, to:

(i) for Goods: replacing or repairing them, supplying equivalent goods, or paying the cost of doing so; and

(ii) for Services: supplying them again, or paying the cost of having them supplied again.

(c) Subject to clause 17(a), neither party is liable to the other for any indirect or consequential Loss, or for loss of profit, revenue or opportunity, however caused. This paragraph does not limit the Customer's obligation to pay amounts due under clause 6.

(d) Subject to clauses 17(a), 17(b) and 17(g), each party's total liability to the other arising out of or in connection with an Order is limited to the amount paid or payable for that Order, and for Recurring Services to the fees paid in the 12 months before the claim arose. This paragraph does not limit the Customer's obligation to pay amounts due under clause 6 or clause 11(d).

(e) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only. Subject to clause 17(a), small deviations or

slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.

(f) Any advice, recommendation, information or assistance given by the Supplier is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. Subject to clause 17(a), the Supplier is not liable for Loss suffered as a result of the Customer's reliance on it, except where the Supplier failed to exercise due care and skill.

(g) Clauses 17(c) and 17(d) do not limit a party's liability for Loss caused by its fraud or wilful misconduct, or for personal injury or death caused by its negligence.

18. Indemnity

(a) The Customer indemnifies the Supplier, its servants and agents against any Loss arising from:

  (i) a claim by a third party that material the Customer supplied to the Supplier infringes another person's Intellectual Property Rights; or

  (ii) a negligent or unlawful act or omission of the Customer, its staff or agents, in connection with the Goods or Services.

(b) The Customer's liability under this clause is reduced to the extent the Supplier, its servants or agents caused or contributed to the Loss.

(c) Clause 17(c) applies to this clause.

(d) This clause survives the end of these terms of trade.

19. Force majeure

(a) If circumstances beyond a party's reasonable control prevent or hinder it from performing an obligation (other than an obligation to pay money), that party is free from that obligation while those circumstances continue. If they continue for more than 30 days, either party may end the affected Order or Service Agreement by written notice.

(b) Circumstances beyond a party's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, government decrees, proclamations or orders, transport difficulties, vendor outages and failures or malfunctions of computers or other information technology systems not caused by that party.

20. Dispute resolution

(a) If a dispute arises between the Customer and the Supplier, the following procedure applies:

  (i) a party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause;

  (ii) a party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this clause; and

  (iii) a party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this clause.

(b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 5 Business Days (or other period as agreed).

(c) Unless otherwise agreed by the parties, if a dispute cannot be settled by negotiation, the parties agree to endeavour to settle it by mediation administered by the Australian Disputes Centre (ADC) before having recourse to litigation. The mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC, and those Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.

(d) Despite a dispute (including its referral to mediation), each party must continue to perform its obligations under these terms of trade.

(e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution, and may use it only to attempt to settle the dispute.

(f) This clause does not apply to a claim for an amount the Customer has not disputed under clause 6(n), or to an application for interlocutory relief.

21. Notices and dealing electronically

(a) A notice under these terms of trade must be in writing and delivered personally, sent by prepaid post, or sent by email, to the address shown on the most recent Quote, invoice or New Customer Application, or to another address the party has notified in writing.

(b) A notice is taken to be received: if posted, on the second Business Day after posting; if emailed, when sent if before 5 pm on a Business Day in the place of receipt and otherwise on the next Business Day, unless the sender receives a message that it was not delivered.

(c) The parties agree to sign, give and receive documents electronically, including by electronic signature, under the Electronic Transactions Act 1999 (Cth) and the Electronic Transactions (Queensland) Act 2001.

22. Miscellaneous

(a) These terms of trade are governed by the laws of Queensland, and each party submits to the non-exclusive jurisdiction of the courts of Queensland.

(b) These terms of trade, together with any Quote, Order, New Customer Application and Service Agreement and any variation agreed in writing, are the whole agreement between the parties about their subject matter and supersede all earlier negotiations and communications.

(c) Subject to clause 17(a), in entering into these terms of trade the Customer has not relied on any representation or statement by the Supplier that is not set out in them.

(d) If any provision of these terms of trade is or becomes void, voidable or unenforceable, the remaining provisions continue to have full force and effect.

(e) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.