

Trading terms and conditions

1. Formation

1.1. Parties

The parties to the agreement are:

- i. Mascot Engineering Co Pty Ltd (ABN 40 000 215 734) of 37 Tarlington Place, Smithfield, NSW, Australia 2164 (**Mascot**); and
- ii. the buyer of a product or products (**Buyer**), each a “party”.

1.2. Agreement

The agreement between the parties for the supply of products by Mascot to the Buyer is comprised of:

- i. these trading terms and conditions (**Terms and Conditions**); and
- ii. if in respect of a specific supply (**Job**), Mascot has issued to the Buyer a “quotation” or “order confirmation” (**Confirmation**) for the Job prior to the formation of the agreement for the Job in clause 1.3 then, in respect of that Job, the Confirmation issued by Mascot including any diagrams or drawings specifically referred to in, or attached to, the Confirmation, collectively referred to as the “Agreement”.

1.3. Formation of Agreement

The Agreement for a Job is made on the earlier of the Buyer accepting products, paying a deposit for products or the Buyer confirming that it accepts the “Confirmation”.

1.4. Exclusion of representations

This Agreement supersedes and replaces all prior and other discussions, representations, arrangements and agreements relating to the Job and any part thereof and is the entire agreement for the Job.

1.5. No alternative terms

Mascot does not accept alternative terms and conditions of supply in any circumstances unless a written agreement is executed by Mascot and the Buyer.

1.6. Amendment

This Agreement may be varied only by execution of a written agreement signed by the parties with the exception that the parties may agree to an amended Confirmation by an authorised representative of each party accepting in writing the amended Confirmation.

1.7. Inconsistency

Except where stated otherwise in these Terms and Conditions in relation to specific matters, the terms in the Confirmation (including any diagrams or designs specifically referred to in, or attached to, the Confirmation) prevail for a Job to the extent there is any inconsistency between these Terms and Conditions and the Confirmation where both comprise the Agreement.

1.8. Annexure A

The additional terms and conditions in Annexure A only apply to products that are made to order or that are made to the Buyer’s specifications or are otherwise identified as a “special order” in the Confirmation for the Job (“**Special Order**”).

2. Supply

2.1. Supply commitment

- (a) Mascot agrees to supply the products set out in the Confirmation.
- (b) Mascot warrants that the product when collected or delivered, as applicable, complies in all material respects with any specifications for the product contained in the relevant Confirmation, or if the product is a standard product, with Mascot’s standard specifications for the product.
- (c) Due to the nature of the materials Mascot uses, to the maximum extent permitted by law, Mascot expressly excludes any warranty or representation as to the colour, texture or cosmetics of finished items except where such a matter is stated as a specific requirement in the Confirmation.

2.2. Timing

- (a) Mascot uses its reasonable endeavours to meet any timeframes set out in the Confirmation, however these represent Mascot’s best estimates only.
- (b) To the maximum extent permitted by law, Mascot is not liable for any claims for loss, damage, cost, expense or penalty of any kind (including any third party claims and liquidated damages) that the Buyer or any other entity suffers or incurs, directly or indirectly, by reason of delays in completion of the supplies for any reason even where dates for supply are specified in the Confirmation.

2.3. Scope – sign-off by Buyer

To ensure Mascot supplies exactly what the Buyer requires, it is the Buyer’s responsibility to check that the details stated in the Confirmation (including any diagrams or designs specifically referred to in, or attached to, the Confirmation) are clear, accurate and complete and match the Buyer’s requirements, specifications and expectations. The Buyer bears all responsibility for any associated ambiguity, error or omission.

2.4. Fitness for purpose

- (a) Mascot has relied on information provided by the Buyer or its agents in relation to the Job and site in preparing Mascot’s Confirmation and/or supplying the Job. It is the Buyer’s responsibility to ensure information provided to Mascot is clear, accurate and complete in respect of the Job and site and the Buyer bears all responsibility for any ambiguity, error or omission.
- (b) Whilst Mascot may make suggestions as to products that may be relevant to the Buyer’s circumstances, Mascot is not familiar with all the particular circumstances of any person, business, project or site or all matters relevant to a particular situation. Accordingly, to the maximum extent permitted by law, it remains the Buyer’s responsibility to ensure the products included in the Confirmation and/or supplied are suitable for the Buyer’s proposed or intended use requirements, installation location, expectations and specifications.
- (c) The Buyer acknowledges it has used its professional judgement, or those of its own professional advisers, in selecting a product with attributes the Buyer considers suitable for the relevant Job, project, site or installation.
- (d) To the maximum extent permitted by law, Mascot is not liable to any extent for any claims for loss, damage, cost, expense or penalty of any kind (including any third party claims) arising directly or indirectly from products not being fit for the Buyer’s particular purpose or site including in connection with ambiguous, inaccurate or incomplete information provided by the Buyer.

2.5. No services unless specified

- (a) Mascot does *not* supply installation, waterproofing, maintenance, asset lifecycle or other services of any kind (other than those specifically stated in the Confirmation) whether directly or via agents to the Buyer or its customers in respect of the Job.
- (b) Mascot may provide certain services for “special order” products but only where a Confirmation for a “special order” specifically states in writing that Mascot is providing the services for a product. These services only extend to the scope of services described in the Confirmation and if these include engineering, engineering is procured by Mascot from third party engineers engaged for this purpose. To the extent the Buyer requires or relies on other site specific engineering or engineering matters not outlined in the Confirmation, these are out of scope and the Buyer should, where it considers appropriate, obtain its own independent engineering sign-off from an appropriately qualified engineer in the context of the particular circumstances of each project.

2.6. No advice or installation

- (a) Mascot’s website www.mascoteng.com.au contains general installation instructions, guidelines, maintenance requirements and general information in respect of a product which takes into account the nature, dimensions, material and other features of the

Trading terms and conditions

product in many standard situations. It does not take into account the particular circumstances of every Job, project, site or installation. General information provided by Mascot should not be used or relied on as plumbing, electrical, building, engineering or other professional advice for the Buyer's particular circumstances, Job, project, site or installation.

- (b) Mascot products should always be installed by appropriately licensed professionals who apply their own training and expertise in the context of the particular circumstances of each Job, project, site or installation.
- (c) Mascot is not responsible for any modifications made by the Buyer or its agents to the product including in connection with installation.

2.7. Industry standards

Mascot complies with relevant Australian technical standards and/or codes (including Australian standards) current at the date of the supply of a product where they are mandatorily applicable under law or are otherwise specified as applicable in the Confirmation or on our website www.mascoteng.com.au.

3. Pricing

3.1. Price

- (a) The Price for the supply is set out in the Confirmation for the Job (**Price**).
- (b) Mascot reserves the right to alter the Price where the Confirmation is not accepted by the Buyer within 7 days of the date of the Confirmation or the Buyer requests changes to the Confirmation including to any diagrams, drawings and/or specifications.

3.2. Additional charges

The Price does not include the following charges which are additional:

- iii. delivery charges (clause 3.3); payment method and default charges (clauses 8 and 11),
- iv. restocking charges (clause 14(a))
- v. demurrage and detention charges (clause 18.5);
- vi. charges associated with suspension, delay or cancellation (as set out in this Agreement); and
- vii. any other charges or fees set out in this Agreement; if applicable (**Additional Charges**).

3.3. Delivery charges

Unless specifically included in the scope of the Confirmation, delivery is not included in the Price and Mascot will charge the Buyer for any delivery by Mascot or its carrier.

3.4. GST

Any amount payable under this Agreement is expressed exclusive of GST. A party will, on receipt of a valid tax invoice, pay the other an amount equal to the GST liability of the party on the supply at the same time as the payment for the supply is due and payable. GST means a tax, duty, levy, charge or deduction imposed by or under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

4. Cancellation: standard in-stock products

- (a) The Buyer may at any time cancel an order of a standard in-stock product.
- (b) Mascot may charge the Buyer as follows in respect of a cancellation of an order of a standard in-stock product:
 - i. where cancellation occurs more than 48 hours prior to the scheduled collection or delivery date; without cost to the Buyer other than applicable Additional Charges accruing prior to cancellation; or
 - ii. where cancellation occurs within 48 hours prior to, or after, the scheduled collection or delivery date; any Additional Charges accruing prior to cancellation and the amount of non-cancellable transportation and equipment hire costs Mascot has incurred or will incur in respect of the Job, plus a further charge of 10% of such costs for Mascot's time to organise, supervise and implement the cancellation arrangements.

5. Delivery and collection

5.1. Delivery

- (a) Where the Buyer and Mascot make arrangements for delivery by Mascot (or its carrier) of the products to the Buyer's premises or a site directed by the Buyer (**Delivery Site**), the Buyer must:
 - i. provide appropriate and timely access to the Delivery Site at the times agreed with Mascot or otherwise between 7.30am and 4.00pm on business days that are notified to the Buyer by Mascot;
 - ii. facilitate site conditions which enable prompt and efficient unloading of the relevant items;
 - iii. make available any relevant site-specific equipment required to facilitate delivery and bear costs of such equipment;
 - iv. ensure it has available at all times during delivery a qualified representative who is able to properly supervise delivery and unloading of the items, accept delivery of the items, confirm the items match the description and quantity of the items against the Confirmation or "delivery docket"; and
 - v. ensure that all deliveries within a work site are properly authorised by law and carried out in accordance with all applicable laws including work health and safety both as to the place and method of work.
- (b) Mascot is taken to have satisfied its delivery obligations and the Buyer will be charged for the delivery where Mascot or its carrier arrives at the Delivery Site and any of the following apply:
 - i. Mascot or the carrier reasonably considers that the proposed methods and means of access, turning, egress and unloading of the items do not constitute a safe place and method of work;
 - ii. access is not available, as prearranged with the Buyer, or delivery cannot be executed in full because of the site conditions or available equipment; or
 - iii. an appropriately qualified representative of the Buyer is not available to supervise delivery (as required above).

5.2. Partial delivery

Unless otherwise stated in the Confirmation, Mascot may make partial deliveries or deliveries by instalment of any product or combination of products it may determine, acting reasonably, and may invoice the Buyer for any product delivered and associated delivery charges on each occasion.

5.3. Delivery indemnity

The Buyer indemnifies and keeps Mascot indemnified against any claim arising from any loss, damage, cost, expense or penalty suffered by Mascot, the Buyer, and in each case their employees, officers or agents or any third parties in connection with delivery of the items within the delivery site except to the extent directly caused by the wilfully unlawful act or omission of Mascot or Mascot's appointed carrier.

5.4. Collection

If collection arrangements have been agreed between the parties, the Buyer must arrange collection of a products from Mascot's premises within 5 business days of being advised by Mascot that a product is ready for collection.

6. Risk & title

6.1. Risk

In respect of a product supplied by Mascot to the Buyer, risk in the product passes to the Buyer on the earlier of:

- i. collection of the product by the Buyer (or Buyer's carrier or agent) from Mascot's premises;
- ii. where Mascot is responsible for unloading; completion of delivery at the Delivery Site; and
- iii. where the Buyer is responsible for unloading; immediately prior to commencement of unloading at the Delivery Site.

6.2. Title

Title to a product is retained by Mascot and only passes to the Buyer on completion of both:

Trading terms and conditions

- i. collection or delivery the product; and
- ii. payment to Mascot in full for the product, that is Price and related Additional Charges.

6.3. The Buyer's insurance

- (a) Where the Buyer has received Mascot's product, but title has not yet passed to the Buyer pursuant to clause 6.2, the Buyer must insure the product against loss or damage until Mascot has been paid in full. If any such product is damaged or destroyed, the Buyer must make full payment to Mascot for the product and related Additional Charges and direct the insurer to make payment of insurance proceeds to Mascot in respect of remaining any unpaid amount owing to Mascot by the Buyer.
- (b) The Buyer must produce a certificate of currency of such insurance in clause 6.3(a) within 3 business days of a written request from Mascot. Further, if requested by Mascot in writing, the Buyer must, on the policy, name Mascot as an interested and benefiting party or list Mascot's interest in the asset.
- (c) For the avoidance of doubt, this clause 6.3 in no way diminishes the Buyer's liability to Mascot with respect to amounts due and payable to Mascot or limits how Mascot may recover amounts due and payable to it.

7. Personal Property Securities Act (PPSA)

- (a) Where the Buyer has received but not paid Mascot in full for a product(s) supplied by Mascot, Mascot has a retention of title security interest under the *Personal Properties Securities Act 2009* (Cth) in respect of the product(s) and Mascot may choose to register the agreement between the parties under that legislation.
- (b) The Buyer agrees to promptly do all things necessary to facilitate such registration under this clause 7 including to sign documents and do all things necessary to the perfect security interest under the *Personal Properties Securities Act 2009* (Cth).
- (c) Within 24 hours of receiving a written request from Mascot, the Buyer must provide Mascot with full details of the location of a product for which Mascot has a registration under this clause 7.

8. Payment and issue of invoices

- (a) Payment may only be made by cash, bank cheque, direct deposit or credit card. Mascot charges a handling fee of \$30 for bank cheques received and a credit card surcharge of 1% for Mastercard/Visa and 2.5% for AMEX for credit card payments.
- (b) Invoices for a Job may be issued by Mascot to the Buyer on or immediately prior to collection or delivery, as applicable unless stated otherwise in the Confirmation.
- (c) For Buyers without an approved trading account with Mascot, the Price and any Additional Charges must be paid in full prior to collection of the products or, where arrangements have been made between the parties for delivery, prior to the products leaving Mascot's premises.

8.1. Application of deposit

- (a) Any deposit paid by the Buyer to Mascot in respect of a Job may be applied by Mascot immediately after collection or delivery of a product in payment of the Price of the product and Additional Charges.
- (b) Where the Buyer has paid a deposit for a Job that is suspended or cancelled, the deposit may be immediately applied by Mascot towards payment of any amounts arising as applicable under clauses 4, 11, Annexure A clause 18.1, Annexure A clause 18.2 in respect of the Job or, secondly, in satisfaction of any other amount due and payable by the Buyer to Mascot. Within 7 business days of cancellation of the Job, Mascot will refund to the Buyer any remaining unapplied part of the deposit.

9. Approved trading accounts

- (a) Where the Buyer has an approved trading account with Mascot:
 - i. where the account payments are not in arrears and the Price, Additional Charges and GST will not result in the maximum

account limit being exceeded, Mascot shall invoice Buyer at the times set out in clause 8;

- ii. invoices are due and payable on the date 30 days after the end of the month in which the invoice was issued by Mascot;
- iii. Mascot may, at its absolute discretion, require an immediate payment from the Buyer where the Buyer has exceeded its account limit to bring the Buyer's account credit under the account limit;
- iv. Mascot may alter the Buyer's maximum account limit or suspend the Buyer's account at any time without notice to the Buyer at Mascot's absolute discretion for any reason;
- v. it is the Buyer's responsibility to monitor the total amount owing to Mascot on the Buyer's account at any one time; and
- vi. the existence of the Buyer's account has no bearing on the Buyer's liability to Mascot with respect to amounts due and payable, except with respect to timing of the payment.

10. Guarantors

- (a) To obtain and maintain an approved trading account with Mascot, Mascot generally requires a guarantor(s) of the Buyer's obligations, generally from the Buyer's directors.
- (b) Where the Buyer's directors change, Mascot requires the Buyer to notify Mascot immediately and Mascot may require the Buyer to provide a replacement guarantor who is suitable to Mascot, at Mascot's absolute discretion, prior to release of any guarantor.

11. Default

- (a) The Buyer is in default if the Buyer does not pay Mascot on or before the day amounts are due for payment or fails to comply with any other obligation under this Agreement.
- (b) Mascot charges interest to the Buyer at the rate of 5% per annum calculated on the balance of amounts not received in full by the due date without further notice to the Buyer. The interest starts to accrue on the day immediately following the due date.
- (c) Where the Buyer's trading account is in default, Mascot may immediately suspend manufacture or delivery of any products ordered by the Buyer. The Buyer is liable for any third-party lifting, lift engineering, transport and storage charges Mascot incurs in association with the suspension of delivery or manufacture including to move and store a product on Mascot's site or elsewhere whilst awaiting delivery or completion of manufacture. Mascot may alternatively, at its absolute discretion, cancel in whole or part any order for a product where it has not yet been collected or delivered and charge the Buyer as set out in clause 4 or Appendix A clause 18.1 as applicable.
- (d) If the Buyer is in default under this Agreement, Mascot may send the Buyer a default notice. The notice will identify the default and what is required to rectify the default. The Buyer will have 10 business days to rectify the default before Mascot takes further action against the Buyer except where Mascot has agreed on a longer notice period or in the event Mascot has reasonable grounds to believe that the Buyer is in, or will shortly have an application or summons presented for, any form of administration, receivership, management, insolvency, bankruptcy or liquidation, in which case the Buyer hereby permits Mascot to take recovery action immediately with or without notice to the Buyer.
- (e) Whilst not limiting the further action Mascot may take in respect of the Buyer's default or restricting in any way Mascot's general law rights, where title has not passed to the Buyer pursuant to clause 6.2 of this Agreement:
 - i. Mascot may repossess and sell a product and apply the proceeds of the sale towards repayment of amounts owed to Mascot under this Agreement or any other agreement between the parties; and
 - ii. on default, the Buyer irrevocably permits Mascot and any person authorised by Mascot, upon written notice from Mascot if required under clause 11 of this Agreement, to enter the Buyer's premises or the premises to which the Buyer has

Trading terms and conditions

access, where a product is reasonably believed by Mascot to be held on the Buyer's behalf, for the purpose of recovery of the product pursuant to a term of this Agreement.

- (f) The Buyer also agrees to pay all costs and expenses Mascot incurs in exercising Mascot's rights of recovery against the Buyer and any guarantor and indemnifies Mascot for any loss, expense or cost resulting from the default, including: Mascot's costs and disbursements on a solicitor and own client basis, all reasonable costs of collection, expenses of recovery of a product and losses, if any, on the resale of the product.
- (g) The Buyer agrees to sign documents and do all things necessary to perfect Mascot's rights under this Agreement on default and appoints Mascot as the Buyer's attorney to sign any document or do anything that may reasonably be required to enforce Mascot's rights on default.

12. Credit checks

- (a) The Buyer authorises Mascot to exchange information about the creditworthiness of the Buyer with any credit reporting agency at any time.
- (b) Unless otherwise agreed, Mascot reserves the right to report the Buyer to a credit reporting agency when payments are in arrears without further notice.

13. Intellectual property

13.1. Mascot

- (a) Unless otherwise stated in this Agreement, any intellectual property, innovative design or method of manufacture, products and systems relevant to a Job are and remain the property of Mascot and must not be interfered with or used without Mascot's prior written consent.
- (b) Mascot asserts its intellectual property and copyright in its work. No part may be reproduced by any process or communicated to any third party without Mascot's prior written consent.
- (c) Mascot's brand, logos, trademarks and other intellectual property may not be used or reproduced in whole or part in any form without Mascot's prior written consent.

13.2. Buyer's materials

The Buyer is responsible for ensuring that any information, specifications and drawings provided to Mascot by the Buyer or its agents do not infringe intellectual property rights (including copyright) of any person, nor infringe laws in any jurisdiction. The Buyer indemnifies Mascot against, and holds it harmless from, any claim by it and any third party, or loss, damage, cost, expense or penalty suffered or incurred by Mascot, whether direct or indirect, consequential or inconsequential, arising out of, or in any way in connection with, a breach or infringement (alleged or actual) of intellectual property or law, in any jurisdiction, relating to all or part of the material supplied by the Buyer or its agents.

14. Refund and exchange

- (a) Subject to clause 14(c), the Buyer may return to Mascot's premises a standard in-stock product supplied by Mascot to the Buyer within 90 days of collection or delivery and Mascot will provide an exchange or refund (excluding delivery charges) provided the product remains in the same condition it was supplied in and has not been installed or used, less a restocking fee of 25% of the Price of the product.
- (b) Before providing an exchange or refund, Mascot reserves the right to test the relevant product to confirm it remains in the same condition it was supplied in.
- (c) To the maximum extent permitted by law, a "Special Order" item is not returnable under this clause 14.

15. Limitation of liability and warranties

15.1. Faults warranty and limits

- (a) To the extent permitted by law, where a product is defective due to faulty components or Mascot's faulty workmanship in the 12 months immediately after collection by the Buyer or delivery by

Mascot, as applicable, Mascot will promptly (at Mascot's election) repair or replace the product (or part of it) with an equivalent product in complete discharge of Mascot's liability in respect of the fault.

- (b) A warranty is void for a product where:
 - i. it is not used, serviced and maintained in accordance with instructions provided to the Buyer;
 - ii. it is not installed in accordance with Mascot's website instructions;
 - iii. the product is tampered with or modified in any way, unless by a licensed professional acting with skill and diligence in accordance with, if applicable, Mascot's website instructions.
- (c) Mascot reserves the right to investigate, including to fully examine and test a product and to engage relevant experts, to identify the cause and extent of an alleged defect, prior to satisfying its warranty obligations. To the maximum extent permitted by law, where the defect is not the fault of Mascot, the Buyer shall reimburse Mascot for Mascot's reasonable investigation costs.
- (d) If the Buyer wishes to enquire or make a warranty claim, please contact Mascot at 37 Tarlington Place, Smithfield, NSW, Australia 2164 or info@mascoteng.com.au or on telephone number 1300 885 295 with details of the issue and Mascot will within 5 business days make arrangements with the Buyer to investigate the matter. We aim to resolve such investigations within 15 business days of commencing them.
- (e) The warranties Mascot provides pursuant to this Agreement are in addition to any consumer warranties and guarantees which cannot be excluded at law.

15.2. Limitation of liability

- (a) Any condition, guarantee or warranty which would otherwise be implied in this Agreement is excluded unless prohibited by legislation from being excluded or modified. Where any condition, guarantee or warranty is prohibited by legislation from being excluded or modified, the condition, guarantee or warranty shall be deemed to be included in this Agreement, however, Mascot's liability shall be limited, to the extent permitted by law, to one or more of the following at Mascot's election:
 - i. the replacement of the product or the supply of equivalent product;
 - ii. the repair of such product;
 - iii. the payment of the cost of replacing the product or of acquiring equivalent product;
 - iv. the payment of the cost of having the product repaired; or
 - v. a refund of the relevant price paid by the Buyer for the product.
- (b) To the maximum extent permitted by law, all liability of Mascot is excluded for:
 - i. consequential, incidental, special or indirect losses or damages of any kind;
 - ii. losses or damages for loss of profits or savings (actual or anticipated), loss of goodwill, loss of market or loss of use suffered by the Buyer including due to claims by third parties; and/or
 - iii. liquidated damages the Buyer or another party incurs; arising directly or indirectly in respect of the product, its operation or Mascot's act or omission including in respect of this Agreement, whether Mascot knew of the possibility of such loss or damage or such loss or damage was otherwise foreseeable.
- (c) To the maximum extent permitted by law, the liability of Mascot arising out of or in connection with this Agreement is limited to the Price of the products supplied.

16. Other

16.1. Relationship between parties

The parties are independent parties. Nothing in this agreement creates the relationship of principal and agent, joint venturers or a partnership.

Trading terms and conditions

16.2. Mascot's insurance

Mascot maintains relevant public and product liability insurance at all relevant times in the amount of at least \$20 million. A certificate of currency can be provided upon request.

16.3. Survival

This clause and indemnity and insurance clauses are continuing and survive the completion of the Agreement and any termination of the Agreement. Nothing in this clause prevents any other provision of the Agreement, as a matter of interpretation, also surviving completion of the Agreement and any termination of the Agreement.

16.4. Invalidity

If any provision of this Agreement is invalid, prohibited or unenforceable, the remaining provisions continue to apply.

16.5. Waiver

Any waiver by a party to this Agreement, is only effective in the specific instance and for the purpose for which it is given.

16.6. Privacy

Mascot complies with Australian Privacy Principles and our privacy policy is available at:

<https://www.mascoteng.com.au/privacy-policy/>

16.7. Capacity

(a) Each party represents and warrants to the other that:

- i. it has full corporate power and lawful authority to enter into this Agreement;
- ii. it is not subject to any form of insolvency procedure; and
- iii. there are no actions, claims, proceedings or investigations pending or threatened against it or to its knowledge by, against or before any person which may have a material effect on its ability to meet its obligations under this Agreement.

(b) A party may terminate this Agreement immediately where the warranties given in clause 16.7 by the other party are untrue or inaccurate in any material respect.

16.8. Governing law

This Agreement is governed by and construed in accordance with the laws of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

17. Interpretation

In the interpretation of this Agreement, unless the contrary intention appears:

- (a) references to legislation or provisions of legislation include changes or re-enactments of legislation and statutory instruments and regulations issued under the legislation;
- (b) reference to an amount of money is a reference to the amount in Australian dollars unless otherwise specified;
- (c) words denoting the singular include the plural and vice versa;
- (d) words denoting individuals or persons include bodies corporate and vice versa;
- (e) references to documents or agreements also mean those documents or agreements as changed, novated or replaced;
- (f) words denoting one gender include all genders;
- (g) specifying anything in this Agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary;
- (h) if the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day with the exception that the parties may agree that a "Special Order" requires delivery on a particular date which may be a Saturday, Sunday or a public holiday;
- (i) headings are for ease of reference only and do not affect the meaning of this Agreement;
- (j) any release or indemnity given by the Buyer to Mascot under this Agreement is also given by the Buyer to Mascot's officers, employees, contractors or agents;

- (k) references to a party are intended to bind their executors, administrators and permitted transferees; and
- (l) obligations under this Agreement affecting more than one party bind them jointly and each of them severally.

Trading terms and conditions

Annexure A

18. Application of Annexure A – Special Orders only

These additional terms and conditions apply to “Special Orders” because “Special Orders” require substantial additional resourcing by Mascot to manufacture and/or supply and Mascot is generally unable to re-purpose or resell “Special Order” products to other customers in a reasonable time frame.

18.1. Cancellation

- (a) The Buyer may cancel its order of a product at any time and Mascot will immediately cease work on the product.
- (b) Where manufacture of a product is complete at cancellation, the following amounts are immediately due and payable by the Buyer to Mascot on cancellation or, if arising later, become due and payable by the Buyer to Mascot as incurred:
 - i. the Price and Additional Charges in respect of the product; and
 - ii. if the Buyer does not agree to collect or accept delivery of the product, Mascot’s costs to safely lift, dismantle, transport and dispose of the relevant product, or part thereof, including engineering costs and equipment hire costs, cancellation or associated charges incurred with its suppliers in respect of delivery arrangements; and
 - iii. a further charge of 10% of the costs in clause 18.1(b)ii for Mascot’s time to organise, supervise and implement the cancellation arrangements.
- (c) Where manufacture of a product is incomplete at cancellation, the following amounts are immediately due and payable by the Buyer to Mascot on cancellation or, if arising later, become due and payable by the Buyer to Mascot as incurred:
 - i. work performed in connection with the manufacture of the product as reasonably estimated by Mascot having regard to the percentage of work undertaken out of the total work required to complete the product;
 - ii. Mascot’s external costs for the Job incurred with third parties including, but not limited to, components Mascot has applied in respect of the Job and engineering or design services if applicable;
 - iii. non-cancellable services, products or components ordered by Mascot from its suppliers for the Job;
 - iv. cancellation or associated charges incurred with its suppliers in respect of the Job;
 - v. Mascot’s costs to safely lift, dismantle, transport and dispose of the relevant product, or part thereof, including engineering costs and equipment hire costs where Mascot requires them plus a further charge of 10% of such costs for Mascot’s time to organise, supervise and implement the cancellation arrangements.

18.2. Suspension of manufacture or delivery

- (a) In addition to any applicable Additional Charges, Mascot may charge the Buyer as follows where manufacture of a product is suspended or delayed by the Buyer or collection/delivery is suspended or delayed by the Buyer beyond the scheduled date:
 - i. any third-party lifting, lift engineering, transport, hire, storage and associated charges Mascot incurs to move the product or its components from manufacturing equipment or location to a storage location whilst awaiting ongoing manufacture or collection/delivery and to maintain the product in the storage location;
 - ii. any costs Mascot incurs in suspending or altering transport, equipment hiring, storage, consultant, service or third party arrangements; anda further charge of 10% of such costs for Mascot’s time to organise, supervise and implement the suspension or delay arrangements.
- (b) Such charges in clause 18.2(a) may be invoiced as incurred by Mascot and are due and payable within 7 days of invoice.

- (c) Further, where manufacture or supply has commenced and the Buyer suspends manufacture or collection/delivery of a product by more than one month beyond the scheduled time, Mascot may issue an invoice (a progress claim) in respect of the entire product if complete or, if incomplete, for works performed in connection with the supply or manufacture of the product as reasonably estimated by Mascot having regard to the percentage of work undertaken out of the total work required to complete the product, plus Additional Charges.

18.3. Returns

To the extent permitted by law, “Special Orders” are not returnable.

18.4. Custom design

- (a) Where Mascot or its agent design and/or undertake engineering of a “Special Order” product then:
 - i. the work remains the property of Mascot who is the rightful intellectual property owner;
 - ii. Mascot only provides the supplier/manufacturer’s warranties outlined in this Agreement in respect of the Mascot completed product (not the separate design and/or drawings);
 - iii. Mascot only provides the warranties in ii. and provides no separate warranties in relation to engineering specifications or design;
 - iv. any design and/or drawings produced with Mascot may not be used, or relied upon, in connection with a supply by any other party of the relevant modification or product; and
 - v. any professional indemnity insurance in respect of engineering services in respect of the Job is taken out by the relevant third party engineer,

unless the Confirmation specifies a further Mascot charge to the Buyer, which has been paid, for the right to use and/or own the design, drawings and/or work produced. Such a right only extends to engineering if engineering services are also specifically stated in the Confirmation and either are included in the stated charge or a separate engineering charge is stated in the Confirmation.

- (b) Where Mascot or its agents manufacture a “Special Order” product to the Buyer’s design and engineering specifications, the following terms apply:
 - i. drawings or other marked specifications must be clear, accurate and complete with respect to all dimensions, cut outs, insertions and other requirements. The Buyer bears sole responsibility for, and cost arising from, any associated ambiguity, error or omission;
 - ii. Mascot does not provide engineering services and assumes no responsibility in respect of engineering matters or omissions. To the extent the Buyer is relying on engineering matters, the Buyer should obtain its own independent engineering approvals from an appropriately qualified engineer;
 - iii. Mascot provides no warranties in relation to any drawings and/or engineering specifications or design; and
 - iv. Mascot warrants that it has made the product to the final specifications and drawings approved by the Buyer but, to the extent permitted by law, provides no warranty in relation to whether the product is fit for purpose for the Job or in respect of the product’s effective life or life-cycle.

18.5. Demurrage and detention charges

- (a) A demurrage and detention charge applies where access, site conditions or either delays with appropriate unloading equipment and/or Buyer personnel required under clause 4, result in Mascot’s delivery vehicle (including that of Mascot’s agent) waiting at or near the delivery site for in excess of 30 minutes in total.
- (b) The amount due and payable by the Buyer to Mascot in respect of clause 18.5(a) is the charge Mascot’s carrier charges to Mascot plus a further amount of 10% for Mascot’s time to administer and organise matters connected with the delay.