

Terms and Conditions for the Sale and Delivery of Goods and Services by Getzner Vibration Solutions Pty Ltd

§1 Dictionary

In these terms and conditions (**Terms**), the words below have the following meanings:

Account Application means the form approved by Getzner and completed by the Customer for an account with Getzner for the provision of Goods and/or Services.

Agreement means each Offer, which is accepted by Getzner under clause 3.2.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Victoria.

Confidential Information means all information and other content disclosed by Getzner to the Customer and includes these Terms and the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than Getzner (otherwise than as a result of a breach of confidentiality); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Customer means the entity or person named in the Account Application who requested that Goods and/or Services be supplied to it by Getzner.

Customer Background Materials means all material (including designs, specifications, drawings and information) provided by or on behalf of the Customer to Getzner for the purposes of an Agreement.

Customer Specifications has the meaning given to it in clause 14.1.

Delivery Fee means:

- (a) the delivery fee set out in a Quote or agreed in writing between the parties; or
- (b) if no delivery fee is set out in a Quote or agreed in writing between the parties, the costs of Getzner incurred in delivering the Goods to the Customer.

Due Date has the meaning given to it in clause 4.6.

Force Majeure Event means any:

- (a) event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party; and
- (b) boycott, strike, lockout or other industrial disturbance, non-performance by a third party supplier or subcontractor, unavailability of any raw materials, any breakage, failure or malfunction of, or accident involving, any plant, equipment, machinery or other facility.

Getzner means Getzner Vibration Solutions Pty Ltd (ACN 159 210 938).

Goods means the goods to be supplied by Getzner to the Customer under an Agreement.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world including but not limited to the

rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and right to protect trade secrets and know how, throughout the world for the full period of the rights and renewals and extensions.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Offer has the meaning provided to it in clause 3.1.

Order means any order or other request by or for the Customer to Getzner to supply to the Customer any Goods or provide it with any Services (or both), whether written, verbal or implied in the circumstances and which may have been given in response to a Quote.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Purchase Price has the meaning provided to it in clause 4.1, as may be varied under clause 4.2.

Quote means a quote or proposal, if any, provided by Getzner to the Customer in respect of the Goods and/or Services.

Services means the services to be supplied by Getzner to the Customer under an Agreement.

Specifications means any physical, qualitative, technical or descriptive specifications, dimensions, weights or other particulars of the Goods or Services or photographs or drawings of the Goods which are supplied by Getzner or which may be available on the internet, including as provided in any Quote, Order, price list, catalogue, brochure or other document which describes the Goods or Services.

Trading Limit means the value of any trading account facility granted by Getzner to the Customer pursuant to any account created under the Account Application.

§2 Application

These Terms apply to and govern the supply of Goods and provision of Services by Getzner to the Customer which are to be provided under an Offer accepted by Getzner.

§3 Formation of Agreement

(1) The Customer acknowledges and agrees that by submitting an Order to Getzner the Customer makes an irrevocable offer to Getzner for Getzner to supply it with the Goods and/or provide it with the Services on the terms of these Terms, the Order, and the Quote (if any) (**Offer**).

(2) A contract will be formed between Getzner and the Customer in respect of each Offer upon the earlier of Getzner:

- (a) notifying the Customer in writing that it accepts the Offer;
- (b) accepting, in full or part, payment from the Customer for any Goods or Services the subject of the Offer;
- (c) making delivery of the Goods the subject of the Offer to the Customer; or
- (d) performing the Services the subject of the Offer.

(3) An Agreement formed under clause 3.2 will comprise these Terms, any Account Application, the Order (only to the extent that any additional terms in the Order are accepted by Getzner in writing) and the Quote (if any).

(4) Getzner is not bound to accept any Offer and may decide not to accept any Offer for any reason and in its sole discretion.

(5) Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of Getzner.

§ 4 Price and payment

(1) Unless otherwise agreed, the price the Customer must pay for the Goods and/or Services under each Agreement will be:

- (a) the price for the Goods and/or Services specified in the Quote or, if there is no Quote, in the Order; plus
- (b) the cost of any packaging used to deliver the Goods; plus
- (c) the Delivery Fee, (Purchase Price).

(2) If, after formation of an Agreement, the requirements, acts or omissions of the Customer (including any delay by the Customer) result in the costs of providing the Goods or Services increasing, Getzner may prior to delivery of the relevant Goods and/or Services amend the Purchase Price by notice in writing to the Customer however if the Customer does not wish to accept the new Purchase Price it may, within five Business Days of receipt of the notice from Getzner, terminate the Agreement by notice in writing to Getzner and Getzner must refund any monies already paid by the Customer in respect of that Agreement less the amount of any costs incurred or committed by Getzner.

(3) Subject to clause 16, unless otherwise expressly specified by Getzner or in these Terms, all prices stated are stated exclusive of any tax, levy, duty, charge, impost, fee, deduction or withholding (including any interest, fine, penalty, fee or any other amount imposed on or in respect of any of those amounts) (Taxes) and the Customer is solely responsible for the payment of all Taxes, import duties and excise duty levied or payable in respect of the Goods and/or Services.

(4) Getzner may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement.

(5) Getzner may set off any amount owing by the Customer to Getzner, whether or not due for payment, against any money due for payment by Getzner to the Customer under any agreement, understanding or arrangement.

(6) Subject to clause 4.7, unless otherwise agreed in writing the due date for payment by the Customer to Getzner of the Purchase Price (**Due Date**) is:

- (a) the due date agreed by Getzner when accepting the Account Application but only if the value of the invoice, combined with any outstanding amounts owed by the Customer to Getzner, does not exceed any approved Trading Limit; or
- (b) if the conditions set out in paragraph (a) are not satisfied or no due date is agreed by Getzner when accepting the Account Application, prior to the scheduled date of delivery for the relevant Goods or provision of the Services.

(7) If:

- (a) the Customer has previously failed to make any payment to Getzner by the due date for that payment (whether under these Terms or otherwise); or
- (b) the creditworthiness of the Customer is, in Getzner's sole opinion, unsatisfactory,
- (c) Getzner may require payment of the Purchase Price in full prior to Getzner delivering the relevant Goods or providing the Services.

(8) If the Customer fails to make any payment by the Due Date, or is the subject of an insolvency event, then, without prejudice to any other right or remedy available to Getzner and to the extent permitted by law, Getzner may do any one or more of the following:

- (a) cancel or suspend any Agreement in respect of any Goods or Services not yet supplied or provided to the Customer;
- (b) exercise any right to terminate any Agreement in accordance with clause 18.1;
- (c) enter the property of the Customer in order to repossess the Goods;
- (d) dismantle any other goods into which the Goods have been installed or incorporated and remove the Goods from those goods;
- (e) charge the Customer interest (both before and after any judgement) on the unpaid amount at the interest rate which is fixed from time to time under section 2 of the Penalty Interest Rates Act 1983 (Vic), which interest will accrue and be chargeable from the first day on which an amount becomes overdue until Getzner receives payment of all amounts (including all interest) by way of cleared funds;
- (f) cancel any Trading Limit or account facilities previously granted to the Customer by Getzner (including under the Account Application); and
- (g) exercise any rights which Getzner may have under law, including the Personal Property Securities Act 2009 (Cth).

(9) The Customer may not set off or combine any amount owing by Getzner to the Customer, whether or not due for payment, against any money due for payment by the Customer to Getzner under an Agreement.

§ 5 Delivery of Goods and provision of Services

(1) Subject to clause 5.2, Getzner will deliver the Goods to the Customer to the delivery address specified in the Offer. The Customer is responsible for arranging any import licences or approvals required in respect of the delivery of the Goods.

(2) If no delivery address is specified in the Offer then the Customer must collect the Goods from Getzner.

(3) Getzner will endeavour, but is not obliged, to deliver Goods or make the Goods available for collection and provide the Services between 9.00 am and 5.00 pm Monday to Friday at the place of delivery or service provision (excluding on any public holiday at the place of delivery or service provision).

(4) If the Customer is required to collect the Goods or the parties have agreed that the Customer will collect the Goods, then the Customer must collect those Goods within five Business Days of being notified by Getzner that the Goods are ready to be collected.

(5) The Customer will be responsible, at its own cost, for the unloading of any Goods at the delivery location and there must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and, if no representative is present, a redelivery fee equal to the Delivery Fee may be charged by Getzner.

(6) The Customer must, within 10 Business Days of taking possession of the Goods, inspect the Goods and immediately notify Getzner in writing if the Goods are not fit for any purpose for which the Customer intends to use the Goods, are less than the number meant to be delivered under the Agreement, have any defect or otherwise do not meet any Specifications.

(7) In the event of the Customer returning or failing to accept any delivery of the Goods (including failure to collect the Goods), Getzner will be entitled to payment for those Goods and at the risk and cost of the Customer, to store any Goods which the Customer refuses to take delivery of or fails to collect.

(8) Getzner will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by Getzner or set out in a Quote or Order, however the Customer acknowledges that these dates are estimates only.

(9) Without limiting clause 5.8, Getzner may deliver or provide a portion of the Goods or Services and may invoice or otherwise charge the Customer for that portion.

(10) If there are multiple Agreements in place at any one time, then Getzner may, in its absolute discretion, determine in which order it satisfies the delivery of the Goods and provision of Services under the Agreements.

(11) The Customer acknowledges and agrees that:

- (a) Getzner may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
- (b) it will not request proof of delivery or other similar documentation from Getzner; and
- (c) it will not dispute any invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by Getzner.

§ 6 Return of Goods

(1) The terms of this clause 6 are subject to clause 9 and, if a Good is not of acceptable quality, faulty, defective or damaged, the Customer may have rights under the Australian Consumer Law which are not affected by this clause 6.

(2) Subject always to any applicable provisions of the Australian Consumer Law, the Customer may only return the Goods to Getzner with the prior written consent of Getzner and Getzner will be under no obligation to accept Goods returned to it or provide any refund or other remedy in respect of any Goods returned.

(3) Any claims that a Good is defective which are made by the Customer to Getzner must be made by written notice to Getzner within five Business Days of the earlier of the date the defect or issue with the Goods was identified by the Customer or should have been identified by the Customer.

(4) If the Customer gives Getzner a written notice under clause 6.3, the Customer must at Getzner's option, allow Getzner or its authorised representative to inspect the Goods or return some or all of the Goods to Getzner (at the Customer's expense).

(5) The provision to the Customer of any refund or other remedy in respect of any Goods which are returned to Getzner and determined by Getzner to be damaged or not meet the Specifications will be at Getzner's sole discretion and, without limiting this discretion, Getzner may refuse to provide a refund or other remedy if:

- (a) the Customer has not complied with its obligations under clause 5.6;
- (b) the Customer has used the Goods other than for the purpose for which they were supplied;
- (c) the Goods have not been stored, transported, used, operated or maintained in accordance with any manufacturer requirements or requirements notified by Getzner to the Customer;
- (d) the Goods have been used with, or exposed to, unsuitable ground conditions, materials or chemicals; or
- (e) the Goods have been incorrectly assembled or commissioned by the Customer or a third party.

(6) If any Goods which are returned to Getzner are not damaged and meet the Specifications, then Getzner may, at the Customer's cost, return those Goods to the Customer.

§ 7 Title and risk of Goods

(1) Title to, and property in any Goods supplied under an Agreement remain with Getzner and will only pass to the Customer once all moneys owing by the Customer to Getzner in respect of the Agreement or any other agreement or arrangement between the Customer and Getzner have been paid in full.

(2) Risk in the Goods passes to the Customer upon the earlier of:

- (a) the Goods being removed from Getzner's premises (or that of Getzner's supplier or agent) for delivery to the Customer or collection by the Customer from those premises; and
- (b) if the Goods are to be collected by the Customer, on the date which is five Business Days after the date on which Getzner notified the Customer that the Goods are ready to be collected.

(3) The Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause and Getzner is not obliged to give the Customer a notice referred to in section 35(3) of the Sale of Goods Act 1923 (NSW) (or any equivalent legislation).

(4) The Customer indemnifies Getzner against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left Getzner's premises (or the premises of Getzner's supplier or agent).

(4) In the event that the Customer is required to return any Goods to Getzner, risk in the Goods passes to Getzner on confirmation of receipt of the Goods by Getzner.

(5) Until full title, property and ownership of the Goods passes to the Customer in accordance with clause 7.1:

- (a) subject to clause 7.8, the Customer must hold the Goods as Getzner's fiduciary agent and bailee and must not sell, lease, dispose of or otherwise deal with the Goods in any way without Getzner's prior written consent;
- (b) the Customer must keep and maintain the Goods in good and substantial repair;
- (c) the Customer must insure the Goods for their full replacement value (which must not be less than the Purchase Price) and must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as Getzner's and referable to a particular invoice;
- (d) Getzner may enter the premises of the Customer or any third party where the Goods are stored during the hours of 9.00 am to 5.00 pm to inspect the Goods.
- (e) Getzner may at any time after payment is overdue require the Customer to deliver up the Goods to Getzner and, if the Customer fails to deliver up the Goods immediately, Getzner may enter the premises of the Customer or any third party where the Goods are stored and repossess them;

(f) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods; and

(g) the Customer must not remove, deface, alter, obliterate or cover up any names, marks, designs, numbers, code or writing on the Goods.

(7) For the purposes of Getzner delivering the Goods, providing the Services and exercising its rights under clauses 4.8(c), 4.8(d), 7.6(d), 7.6(e) and 18.2(c), the Customer:

- (a) expressly authorises and grants Getzner and its agents an express, irrevocable licence to enter the premises of the Customer or relevant third party; and
- (b) the Customer indemnifies Getzner against any Loss that may be incurred or sustained by Getzner, its employees or agents, as a result of the entry of those premises.

(8) Notwithstanding that title to the Goods has not passed to the Customer under clause 7.1, the Customer may, subject to obtaining Getzner's prior written approval, resell the Goods or any part of them in the name of the Customer but only as agent for Getzner and may deliver any Goods so sold to the buyer of those Goods but only in the ordinary course of its business and on terms which will not prejudice Getzner's ability to obtain any amount paid or due to be paid by the buyer of Goods (**Sale Proceeds**) and:

- (a) any Sale Proceeds must be held by the Customer on trust for Getzner and any amounts received by the Customer must be banked in a separate bank account relating only to the sale proceeds of any Goods and must be forwarded as soon as possible to Getzner in satisfaction of any amount owed by the Customer in respect of the Goods;
- (b) the Customer must keep and maintain separate records in relation to the Sale Proceeds received and held by the Customer and must provide those records to Getzner immediately upon request by Getzner; and
- (c) if and when the full amount due to Getzner in respect of the Goods has been received by Getzner, any further Sale Proceeds may be retained by the Customer.

(9) The Customer must immediately cease the resale of any Goods under clause 7.8 if:

- (a) Getzner revokes any consent it has given to the Customer to resell the Goods under clause 7.8; or
- (b) the Customer fails to make any payment under an Agreement by the relevant Due Date.

(10) In the event that the Customer processes, incorporates, transforms or installs the Goods (or any portion of them) into any other goods, buildings or land then the Customer must:

- (a) keep and maintain records in relation to the Goods which have been processed, incorporated, transformed or installed and the goods, buildings or land in which the Goods have been processed, incorporated, transformed or installed; and
- (b) hold a proportion of any payment (**Relevant Proportion**) received by the Customer for those goods, buildings or land on trust for Getzner and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the portion of the Goods processed, incorporated, transformed or installed.

(11) If an insolvency event occurs in respect of the Customer then, without the need for notice or demand by Getzner, the Customer acknowledges that any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in those circumstances will, to the extent of any money owing by the Customer to Getzner, be held on trust for Getzner by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.

§ 8 PPSA

(1) Words and expressions used in this clause 8 which are not defined in these Terms but are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the meaning given to them in the PPSA.

(2) Unless a Customer has paid for Goods in respect of an Agreement before they are delivered to the Customer, each Customer acknowledges that:

- (a) the Agreement for the supply of Goods created under these Terms is a security agreement for the purposes of the PPSA, under which the

Customer grants Getzner a security interest in the Goods and over any amount owed to the Customer in respect of the Goods (Account) to secure all monies owing by the Customer to Getzner from time to time;

- (b) value has been given for the creation of the security interest;
- (c) where Getzner has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
- (d) Getzner is not obliged to act in any way to dispose of or to retain any Goods which have been seized by Getzner or any person nominated by Getzner under its rights under the PPSA.

(3) Without limiting anything else in these Terms, the Customer consents to Getzner effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by an Agreement or these Terms, including in relation to the Goods and any Account. The Customer agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, Getzner's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.

(4) The Customer must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by Getzner for that purpose in relation to the Goods or the Account). Without limiting the foregoing, the Customer must:

- (a) register a security interest in relation to the Goods where the Customer on sells the Goods to a third party or incorporates the Goods into another good or product;
- (b) where appropriate, take reasonable steps to identify security interests in relation to the Goods in the Customer's favour and to perfect and protect them, with the highest priority reasonably available;
- (c) not register a financing change statement in relation to any registration made under paragraphs (a) or (b) without Getzner's prior written consent;
- (d) keep full and complete records of the Goods; and
- (e) immediately return the Goods if requested to do so by Getzner following non-payment of any amount owing by the Customer to Getzner or following breach of any other obligation of the Customer to Getzner.

(5) The Customer authorises Getzner to apply any money Getzner receives from the Customer towards debts, charges and expenses (including legal costs incurred by Getzner) in any priority Getzner determines in its sole discretion for whatever reason, including in order to maintain the Security Interest in the Goods created by this agreement.

(6) The Customer must indemnify, and on demand reimburse, Getzner for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of Getzner's security interests.

(7) The Customer must not change its name, address or contact details without providing prior written notice to Getzner.

(8) To the extent that the PPSA permits, the Customer waives its rights:

- (a) to receive a copy of any verification statement or financing change statement;
- (b) to receive any notice required under the PPSA, including notice of a verification statement;
- (c) to object to a proposal by Getzner to retain the Goods in satisfaction of any obligation owed by the Customer to the Customer;
- (d) to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and
- (e) under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.

(9) The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if Getzner has given prior written consent.

§ 9 Liability

(1) If the Customer is a Consumer and Getzner supplies PDH Goods or Services to the Customer, Getzner acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the guarantees provided under Division 1 of Part 3-2 of the Australian Consumer Law (**Consumer Guarantees**) as they apply to the PDH Goods or Services

supplied by Getzner and nothing in these Terms should be interpreted as attempting to exclude, restrict or modify the application of those rights.

(2) If the Customer is a Consumer and any Goods or Services supplied by Getzner to the Customer are non PDH Goods or Services, Getzner's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at Getzner's discretion) to:

- (a) in the case of Goods:
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
- (b) in the case of Services:
 - (i) the supplying the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.

(3) Subject to clauses 9.4 and 11.2, if the Customer makes a claim against Getzner which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, Getzner's aggregate liability to the Customer in respect of the Goods or Services shall not exceed the Purchase Price paid in respect of the Agreement under which the Goods or Services were supplied.

(4) Getzner is not liable to the Customer for any Consequential Loss.

(5) Any claim the Customer has against Getzner which includes a cause of action other than for a breach of a Consumer Guarantee must be brought within 12 months of the date that the Customer first became aware of the claim.

(6) In relation to the supply of Goods which are non PDH Goods or Services, if Getzner is liable to indemnify the Customer under section 274 of the Australian Consumer Law, Getzner's liability to the Customer is limited to an amount equal to the lower of:

- (a) the cost of replacing the Goods;
- (b) the cost of obtaining equivalent Goods; or
- (c) the cost of having the Goods repaired.

§ 10 Notification of claims

(1) The Customer must notify Getzner immediately if it becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness, in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer must take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

(2) If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of:

- (a) any claim; or
- (b) any death, serious injury or serious illness, in respect of the Goods or other goods of which the Goods are a component or mixed with and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.

(3) The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:

- (a) take all steps and do all things necessary to promptly pass on to Getzner any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist Getzner to comply with its obligations under the Australian Consumer Law;
- (b) not, other than in respect of any warranties or guarantees which cannot be excluded by law, make on behalf of Getzner any undertaking, assertion, statement, warranty, admission or other representation in respect of the Goods which is inconsistent with the Agreement under which the Goods are supplied; and
- (c) not agree to settle any claim made by a person in connection with the Goods without the prior written consent of Getzner.

§11 Special Applications

(1) The Customer agrees that the Goods must not be used in passenger vehicles and / or in connection with any aviation application except with the prior written consent of Getzner (**Special Applications**).

(2) Subject to clauses 9.4, if the Customer makes a claim against Getzner in respect of any Goods for which the Customer has approval from Getzner to use for Special Applications under clause 11.1 and the cause of action includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee and to the extent permitted by law, Getzner's aggregate liability to the Customer in respect of the Goods shall not exceed the lesser of:

- (a) the Purchase Price paid in respect of the Agreement under which the Goods were supplied; and
- (b) 800.000 AUD

§12 Intellectual Property

(1) The parties acknowledge and agree that, unless otherwise agreed in writing, the Customer has no right or interest in any Intellectual Property Rights in the Goods and material created as part of the Services and that any such Intellectual Property Rights either vest in and exclusively belongs to and are irrevocably assigned to Getzner or are licensed to Getzner by a third party. The Customer agrees that it must not infringe or use the Intellectual Property Rights of Getzner or which are licensed to Getzner and which exist in the Goods or materials created as part of the Services without the prior written consent of Getzner.

(2) The Customer grants to Getzner a non-exclusive, royalty free licence to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Customer Background Materials which are required to enable Getzner to supply the Goods or perform the Services.

(3) The Customer must not modify, adapt, vary, reverse engineer, disassemble or copy all or any part of any Good without the prior written consent of Getzner.

(4) The Customer must not remove, deface, change, distort, delete or cover up:

- (c) any name plate or mark on the Goods which indicates that Getzner is the owner, manufacturer or distributor of the Goods; or
- (d) any patent, copyright or other proprietary notices which appear in writing on or in any part of the Goods.

(5) The Customer must only sell or promote the Goods using any trade mark, name or brand which is approved in writing by Getzner.

(6) The Customer must not make available for purchase, sell or promote any Good which has been modified or varied.

§13 Indemnity

The Customer indemnifies Getzner and holds Getzner harmless from and against all Losses (including all legal costs, and any other associated fees and costs) for which Getzner incurs as a direct or indirect result of:

- (a) recovering any amounts the Customer owes to Getzner (including any fees or commission paid to a debt collector, mercantile agent or similar);
 - (b) any breach of an Agreement by the Customer;
 - (c) the use of, or reliance on, any Customer Specifications;
 - (d) any infringement or alleged infringement of Intellectual Property Rights owned by a third party in respect of any of the Customer Background Materials; and
 - (e) any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible,
- except to the extent the relevant Loss is caused by Getzner.

§14 Specifications

(1) If an Offer has been accepted by Getzner, the Customer acknowledges that the Offer was accepted by Getzner, and the Goods and Services provided, on the basis of, and in reliance upon, any information, drawings, specifications, data, representations, statements and documents provided by the Customer, set out in an Order or otherwise approved by the Customer (**Customer Specifications**).

(2) Where any instructions, materials or information in whatever form (in-

cluding any Customer Specifications) are required to be provided by the Customer to Getzner before Getzner can proceed with or complete the provision of the Goods or Services, those instructions, materials or information must be supplied by the Customer to Getzner within a reasonable time so as to enable Getzner to deliver the Goods or Services within any agreed time frame.

(3) The Specifications are approximate only and Getzner makes no representation or warranty as to the completeness or accuracy of the Specifications and the Customer is responsible for making its own enquiries in relation to the completeness and accuracy of the Specifications provided.

§15 Confidentiality

(1) The Customer:

- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
- (b) must keep confidential all Confidential Information;
- (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by Getzner; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of Getzner; and
- (d) must not display the Goods in public (whether by means of a demonstration or other public display) without the prior written consent of Getzner.

(2) The Customer must notify Getzner immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

§16 GST

In this clause, words and expressions which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended, varied or replaced from time to time) have the same meaning given to them by that Act. Unless otherwise expressly stated in writing in an Agreement, all amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by Getzner under these Terms, the Customer must pay to Getzner, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify Getzner for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that Getzner will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by Getzner in respect of the reimbursement or payment.

§17 Force Majeure

(1) Getzner will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.

(2) If a Force Majeure Event under clause 17.1 exceeds 20 Business Days, Getzner may immediately terminate the Agreement by written notice to the Customer.

§18 Termination

(1) Without limiting Getzner's other rights under these Terms, and to the extent permitted by law, Getzner may terminate any and all Agreements and any account facility under an Account Application with immediate effect by written notice to the Customer if:

- (a) the Customer fails to make any payment under the Agreement to Getzner by the due date for that payment;
- (b) the Customer is the subject of an insolvency event;
- (c) the Customer has breached any term of the relevant Agreement (including these Terms) and, if the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied; or
- (d) in accordance with clause 17.2.

(2) On termination of an Agreement:

- (a) the Customer must not sell or part with possession (other than as required under clause 18.2(b)) any Goods the subject of the Agreement (other than any Goods which have been paid for);
- (b) the Customer must, at its cost, immediately return to Getzner all Goods the subject of the Agreement (other than any Goods which have been paid for);
- (c) Getzner may enter the premises of the Customer or any third party to repossess any Goods not returned under clause 18.2(b); and
- (d) all money owed by the Customer to Getzner will become immediately due and payable.

§ 19 Inconsistency

(1) Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence will apply to the extent of the inconsistency (1) the prices and quantity of Goods and/or Services set out in a Quote (if any); (2) these Terms; (3) the Account Application; (4) any other terms of the Quote (if applicable); and (5) without limiting clause 19.2, any terms in the Order which are accepted by Getzner in writing.

(2) These Terms will prevail over any Customer terms and conditions, except to the extent specifically agreed by Getzner in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on Getzner if expressly agreed by Getzner in writing.

§ 20 Arbitration

(1) This clause 20 applies if the Customer is a company which was incorporated or formed in a country other than Australia or New Zealand or if the Customer is a resident of, or primarily based in, a country other than Australia or New Zealand.

(2) Except where interim or urgent interlocutory relief is sought, the Customer must, prior to commencing any legal proceedings in respect of any dispute under an Agreement (**Dispute**), give written notice to Getzner of the Dispute including identifying any event, matter or omission that the Customer relies on as giving rise to the Dispute and must comply with this clause 20.

(3) Getzner may, but is not obliged to, refer a Dispute for determination by arbitration:

- (a) no later than 20 Business Days after receipt of a notice from the Customer under clause 20.1; or
- (b) if Getzner is seeking resolution to a Dispute, by providing written notice to the Customer.

(4) Any Dispute referred for arbitration under clause 20.3 must be conducted in Australia in accordance with the Institute of Resolution Institute Arbitration Rules and:

- (a) be conducted by an arbitrator agreed on by the disputing parties; or
- (b) if the disputing parties are unable to agree on an arbitrator within ten Business Days of the date of the submission to arbitration under clause 20.3, be conducted by an arbitrator appointed by the then current chair or acting chair of the Resolution Institute following a request from any of the disputing parties.

(5) The parties agree that an award made by the arbitrator under this clause 20 will, in the absence of manifest error, be binding on the parties.

(6) The Customer may only commence legal proceedings in respect of a Dispute if Getzner does not refer the Dispute to arbitration under clause 20.3 within 20 Business Days after receipt of a notice from the Customer under clause 20.1.

§ 21 Miscellaneous

(1) In these Terms:

- (a) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;

(b) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example' or 'such as' or similar expressions;

(c) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;

(d) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms;

(e) unless otherwise provided, all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars; and

(f) other than in clauses 12.4, 12.5, 19.1 and 19.2, if something is required or can be done under these Terms in writing that thing can be done by email.

(2) The Customer must maintain and keep current and complete records of the Goods which Getzner has supplied to the Customer (in sufficient detail so as to be readily identified as goods supplied by Getzner), including any Goods which are sold by the Customer to a third party and must, immediately upon written request from Getzner, provide Getzner with access to, or copies of, those records.

(3) The Customer must not assign or deal with any of its rights or obligations under these Terms without Getzner's prior written consent. Getzner may, to the extent permitted by law, assign, subcontract or deal with any of its rights or obligations under these where the assignment will not adversely affect the rights of the Customer.

(4) Any price list, goods lists or other similar documents or catalogues issued by or on behalf of Getzner do not constitute an offer by Getzner to supply Goods appearing in those lists or catalogues or an offer by Getzner to supply Goods at the prices set out in those lists or catalogues. Getzner's price lists and catalogues may be changed by Getzner at any time without notice.

(5) Getzner may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as Getzner provides the Customer notice of the variation (**Variation Date**). Unless otherwise agreed in writing by the parties, any variation to these Terms will only apply to any Offer made after the Variation Date and the parties acknowledge that nothing in these Terms requires the Customer to make any further Offers after the Variation Date.

(6) A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any rights under these Terms must be in writing and is only effective to the extent set out in that written waiver.

(7) If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

(8) The termination or expiry of these Terms or any Agreement does not operate to terminate any rights or obligations that by their nature are intended to survive termination or expiration, and those rights or obligations remain in full force and binding on the party concerned including without limitation the rights and obligations under clauses 1, 6, 7, 8, 9, 10, 12, 13, 15, 16, 18, 19, 20 and 21.

(9) The relationship between the parties is and will remain that of independent contractors, and nothing in these Terms or an Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or (except as expressly provided for) gives rise to any other form of fiduciary relationship between the parties.

(10) Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Account Application or, if none are specified, in any other part of the Agreement. Notices will be deemed to have been received: by hand upon delivery; by post within six Business Days of sending; and by email one hour after the email is sent (unless the sender knows that email has failed to send).

(11) These Terms are governed by the laws in force in Victoria, and the Customer and Getzner submit to the non-exclusive jurisdiction of the courts of Victoria.

(12) The United Nations Convention on Contracts for the International Sale of Goods (1980) (**The Vienna Convention**) and any acts or regulations enacting The Vienna Convention will not apply to these Terms or any Agreement and are excluded.

Status: September 2020