**AGREEMENT**

## The parties to this agreement are described in the Quote or Online Purchase Order (as applicable).

## AAA agrees to provide to Client and Client agrees to accept the Goods and Services, as specified in the:

#### relevant Quote, which is summarised in the Schedule (if applicable); and

#### Ts&Cs.

The parties agree that every supply of the Goods and performance of the Services by AAA for Client is made on the basis of the Quote and the attached Terms and Conditions (**Ts&Cs**) (which together constitute the **Agreement**). Each party acknowledges and agrees that it has read and understood the Agreement. Client acknowledges that the provisions of the Agreement apply each time Client places an order for Goods and/or Services (including any variation of Goods and/or Services) from AAA under a Quote.

# ENGAGEMENT

## These Ts&Cs may be amended from time to time. If amended, they will apply to any service proposal, quote, Online Purchase Order or offer (**Quote**), agreed by the parties after written notice of the change has been provided to Client.

## Unless otherwise agreed in writing, only the Agreement governs the supply of Goods and/or the provision of Services by AAA and prevails over any other document, or other terms, including any of your terms and conditions.

## To the maximum extent permitted by law, these Ts&Cs supersede and exclude all prior and other discussions, dealings, representations (contractual or otherwise) and arrangements relating to the supply of Goods and/or the provision of Services by AAA including those relating to the supply of Goods, performance of the Services or the results that ought to be expected from using the Goods and/or Services.

## These Ts&Cs will govern the supply of all Goods and/or Services by AAA to Client (including all future Agreements or Goods and/or Services delivered under a Quote unless specified otherwise in that documentation) and will be incorporated into all dealings between the parties.

# SCOPE OF WORKS

## Client agrees that on:

#### signing this Agreement;

#### paying any money to AAA; or

#### their willing participation through oral, written or electronic communication,

#### (**Acceptance**), this Agreement will govern the supply of all Goods and/or the provision of all Services by AAA to Client (including all future Quotes placed on AAA) and will be incorporated into all dealings between the parties.

## AAA will not provide any Goods or Services unless they are included in the Quote. All Quotes expire 30 days after their date of delivery to Client. All prices quoted by AAA are based on the taxes and charges applicable at the time of the Quote. Should the taxes and charges vary from the date of the Quote to the date of the Invoice, Client will also be liable to AAA for the difference.

# RISK, TITLE AND INDEMNITY

## All risk in any Goods supplied to Client will, unless otherwise expressly agreed in writing or by law, pass to Client upon delivery, including loading the Goods onto any nominated carrier (if that is Client’s preferred delivery).

## Property and ownership in all Goods supplied by AAA will not pass to Client and will remain with AAA until payment of the Goods by Client.

# SUPPLY and timing

## AAA will provide Client with the Goods and/or Services as agreed between the parties or as specified in the Quote, and will exercise all reasonable care, skill and ability when performing its obligations under the Agreement, as modified from time to time.

## These Ts&Cs will continue to apply until the termination of the Agreement.

# Ordering

## All Quotes are deemed to be an offer by Client to purchase Goods or engage AAA’s Services pursuant to this Agreement.

## AAA has the sole discretion to accept or reject any Quote or any variation, modification or cancellation of this Agreement requested by Client.

## If a cancellation request is accepted by AAA (**Cancellation Date**), Client will be liable for any direct loss or expense reasonably incurred by AAA in respect of any costs expended in connection with the supply of Goods and/or the provision of Services in accordance with that Quote prior to and including the Cancellation Date and the Administration Fee. AAA has the right to retain all amounts paid by Client to AAA provided up to and including the Cancellation Date.

## Where the Goods and/or Services ordered by Client are not available for any reason, AAA will notify Client and give Client the option to either wait until the Goods and/or Services are available or cancel this Agreement and receive a full refund within 30 days.

# PRICES and DELIVERY

## AAA’s fees for providing the Goods and/or Services (**Fees**) are specified in the Quote. Fees for the Services are specified in the Quote.

## AAA will use reasonable endeavours to supply Goods and/or Services in accordance with the Quote.

## Client agrees to pay each Invoice on or before its due date. If AAA requests that Client pay the Fees by direct debit authority, Client will promptly set up a suitable authority.

## Client must pay Invoices in full without set off, deduction or counterclaim and Client acknowledge that this clause may be relied on in bar of any proceeding for recovery of the Fees.

## Where Client specifically requests AAA to take extra measures outside the usual requirements in this Agreement, AAA has the right to pass on and charge for any out-of-pocket costs incurred.

# PAYMENT

## Unless otherwise agreed in writing by AAA (including where otherwise identified on the Quote), all Invoices are payable by Client within 30 days from the date the Invoice was issued to Client. AAA reserves the right to invoice Client (in whole or in part) either:

#### before the supply of Goods and/or Services;

#### during the supply of Goods and/or Services; or

#### after the supply of Goods and/or Services,

#### in accordance with the Agreement.

## Payment must be made in full, unless otherwise agreed in writing.

## AAA reserves the right to charge interest on any overdue amount, compounded monthly, at the lesser of:

#### 10.5% per annum; or

#### the Statutory Rate,

#### from the due date until payment is received by AAA in full.

## Client agrees:

#### to bear all reasonable costs incurred by AAA in collecting any overdue amounts including but not limited to collector agency fees, commissions, legal fees and costs; and

#### AAA may suspend delivery of Goods or provision of Services if any Invoice is not paid when due.

## No amount owing whether present or future, actual, contingent or prospective and on any account whatsoever by Client to AAA may be offset against any amount owing whether present, future, actual, contingent or prospective of Client to AAA on any other account whatsoever.

# RETURN of GOODS

## Client is deemed to have accepted the:

#### Goods (including any claimed short delivery, damage or defect) unless within 5 Business Days (time being of the essence) of delivery of the Goods; and

#### Services (including any claimed short delivery, damage or defect) unless within 10 Business Days (time being of the essence) of performance of the Services,

#### Client provides to AAA notice, by email, of the deficiency, damage or defect, accompanied by relevant high-resolution photographs.

## AAA reserves the right to inspect the Goods and make its own assessment of any notice under clause 8.1. Despite clause 8.1, if Client does not procure access for AAA when reasonably required, Client will be deemed to have accepted the Goods.

## AAA may accept the return of any Goods supplied to Client. Because the Goods may be be-spoke with limited market value and subject to clause 8.4, AAA may raise a handling charge of the Administration Fee to cover its reasonable administration costs where Goods are returned where there is no fault by AAA.

## When Goods are returned under clause 8.1 and the notice is not disputed under clause 8.1(b), AAA will:

#### issue a credit note to Client for the full value of the relevant Goods; and

#### not raise a handing charge.

# BREACH AND TERMINATION

## If Client:

#### fails to pay any Invoice when due or Client reverses a payment made;

#### fails to follow AAA’s recommendations/advice provided in respect of the Goods or operation of the Services;

#### contravenes any other obligations of the Agreement and fails to promptly remedy that contravention to AAA’s satisfaction;

#### fails to respond to AAA’s communication in a timely manner (or in any event within 5 Business Days); or

#### disparages AAA (in AAA’s reasonable opinion) in any way, including on social media, forums, reviews or websites or otherwise fails to act in a professional manner,

## and fails to resolve that breach to AAA’s satisfaction in the period specified in the notice (which other than clause 9.1(c) will be no less than 14 days, AAA may:

#### terminate the Agreement by notice to Client (without prejudice to any accrued rights);

#### refuse to supply any and all Goods or suspend the operation of any and all Services until the Invoice is paid in full;

#### if payment is not made within 14 days of the due date, commence debt collection action without further notice; and

#### terminate supply of any and all Goods and any and all Services.

## Notwithstanding the suspension of the Services, Client must continue to pay the Fees for the Services during that suspension.

# WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY

## Each party warrants that:

#### it has properly authorised execution of, and has full power to execute, deliver and perform its obligations under, this Agreement; and

#### this Agreement constitutes a legal, valid and binding obligation of it enforceable in accordance with its provisions.

## Client warrants that it will use the Goods and/or Services in accordance with the relevant manufacturers literature or maintenance manual provided either with the Quote, upon delivery of the Goods or performance of the Services.

## Where the Agreement is subject to the ACL, the Goods and Services come with guarantees that cannot be excluded under the ACL. For major failures with the:

#### Services, Client is entitled to cancel any remaining Services and to a refund for the unused portion, or to compensation for its reduced value. Client is also entitled to be compensated for any other reasonably foreseeable Loss or damage. If the failure does not amount to a major failure Client is entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel the Agreement and obtain a refund for the remaining Services; and

#### Goods, Client entitled to a replacement or refund and for compensation for any other reasonably foreseeable Loss or damage. Client is also entitled to have the Goods repaired or replaced if they fail to be of acceptable quality and the failure does not amount to a major failure.

## To the maximum extent permitted by law:

#### this Agreement excludes all implied conditions and warranties and any liability to Client or any other person for any Loss (whether consequential (including any loss of profits arising out of or in connection with the provision of the Goods and/or Services) or otherwise);

#### AAA will not be liable for:

##### any special, incidental, indirect, punitive or consequential damages (including, lost profits, injury to goodwill); and

##### damage to persons or property,

##### resulting from the Services or the use of the Goods;

#### Client releases AAA from any other Loss not expressly stated in the Agreement;

#### neither party will be liable to the extent that the other party or its officers, employees, subcontractors or agents has caused or contributed to any Loss claimed;

#### AAA’s total liability to Client for any one Loss claim made by Client pursuant to this Agreement will be $1 million per event and in the aggregate $5 million; and

#### AAA’s liability is limited at AAA’s option to the re-supply of a replacement or equivalent Service, the rectification of the Service, payment of the costs of having the Service replaced or rectified and the value of the Services as stated in the Quote.

## Subject to clauses 10.2 and 10.4, Clientassumes all risks and liability in respect of the Services and any use of the Goods, whether used alone or in conjunction with other goods or services.

## To the maximum extent permitted by law, Client unconditionally and irrevocably indemnifies, holds indemnified and keeps AAA, its officers, employees and agents harmless against any and all Loss (including by a third party) that arises, or results from, or is in any way connected with the Goods and/or Services, other than for AAA’s fraud or wilful misuse and releases AAA from any claim or liability not fully indemnified.

## Client will be responsible for any costs and charges applied by Client’s financial institution for each unsuccessful debit attempt, any failed payment charge and with any collection charge, including any debt recovery agency or legal charges, incurred by AAA. Client authorises AAA to attempt to re-process any unsuccessful payments after 3 Business Days. If the payment remains unsuccessful after 5 Business Days, Client authorises AAA to suspend all Services, pending full payment. In the event of a failed payment, Client agrees to pay AAA the Administration Fee per failed transaction within 5 Business Days of an Invoice being provided.

## AAA is not responsible for any failure to perform any obligation due to fire, lightning, explosion, flood, earthquake, storm, hurricane, action of the elements, riots, civil commotion, malicious damage, armed conflicts, acts of terrorism, war (declared or undeclared), health intervention or pandemic, blockade, revolution, sabotage, radioactive contamination, toxic or dangerous chemical contamination, natural catastrophes or any other events beyond the reasonable control of AAA (each a **Force Majeure Event**).

## If by reason of a Force Majeure Event, the delay or non-performance of AAA’s obligations continues for more than 90 consecutive days, AAA may refund any monies paid for Goods and/or Services that have not been provided.

# GENERAL

## **Interpretation**

#### In this Agreement reference to:

##### one gender applies to all genders;

##### a party includes its personal representatives, successors, permitted assigns, executors and trustees;

##### a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation;

##### “include” and similar language will not be construed as a word of limitation; and

##### writing or written includes emails.

#### Any order provided by Client to AAA after receiving this Agreement will constitute acceptance of this Agreement.

## **Jurisdiction**

## The parties acknowledge and agree that this Agreement will be governed by and construed in accordance with the laws of Victoria, and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

## **Severability**

## Any provision of this Agreement which is prohibited or unenforceable will be ineffective to the extent of the prohibition or unenforceability and severed from the Agreement. The severance of the prohibited or unenforceable term, or part of a term, will not invalidate the remaining provisions or affect the validity or enforceability of the severed term, or part term.

## **Assignment**

## Without notice to Client, AAA may transfer any right (including all rights) in respect of the Agreement. Client must not assign a right or novate an obligation herein contained without first obtaining the written consent of AAA.

## **Agreement**

## Upon Acceptance, this Agreement is binding and can only be amended in writing by the parties.

## **Costs**

## Client will be liable for all costs of whatsoever nature associated with the exercise of AAA’s rights under this Agreement, including costs/commission of a law firm and/or debt collection agency on a solicitor and own client basis.

## **Waiver**

## Any rights under this Agreement may not be waived or varied except in writing signed by the party to be bound.

## **Credit Reports, notice and consent**

## Client acknowledge and agree that AAA and any related bodies corporate may:

#### give certain information about Client to AAA’s related bodies, any credit reporting agency, other credit providers, collecting agencies or legal firms (some being located in foreign countries) in order to obtain a credit report about them or to recover money which is due and payable from them. The information which may be given is covered by section 18E (1) of the *Privacy Act 1988* (Cth) (**Act**) and may include, as relevant, identity particulars and the fact that Client have applied for credit;

#### give a consumer credit report to collect overdue payment on commercial; and

#### in assessing whether to grant Client’s credit application, seek and obtain information about Client from a credit reporting agency or another credit provider and may give information about them to another credit provider. The information may include anything about credit worthiness, history, standing or capacity (including information about commercial credit) which credit providers are permitted by the Act to obtain or receive.

# Goods and Services Tax (GST)

## For the purposes of this clause, the terms words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), have the same meaning in this Agreement.

## Unless the contrary intention appears, any published or advertised price and/or Invoice is exclusive of GST.

## If GST has any application to any supply made under or in connection with this Agreement, the party making the supply (for the purposes of this clause only, **Supplier**) may in addition to any amount or consideration expressed as payable elsewhere in this Agreement, recover from the recipient of the supply (for the purposes of this clause only, **Recipient**) an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Recipient for the relevant supply by the prevailing GST rate.

## Any additional amount on account of GST recoverable from the Recipient under this clause shall be calculated without any deduction or set-off of any amount, and is payable by the Recipient at the same time and in the same manner as paying the amount or consideration for the relevant supply under this Agreement.

## The Supplier must issue to the Recipient a tax invoice, and must do anything else which may be reasonably required to enable or assist the Recipient to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Agreement or in respect of any supply under this Agreement.

## Where an adjustment event in relation to a supply under this Agreement has occurred, the Supplier must issue an adjustment note to the Recipient no later than 10 Business Days after that adjustment event.

# NOTICES

## All notices must be in writing and may only be given by personal delivery, post or email.

## A notice is deemed to be received if:

#### by personal delivery, on the Business Day after delivery;

#### sent by post, on 5 Business Days after the day of posting; or

#### sent by email, on the Business Day after sending (unless within 12 hours of sending, the sender receives an automated delivery failure notification).

# DEFINITIONS

## In this Agreement:

#### **Acceptance** is as specified in clause 2.1;

#### **ACL** means the *Competition and Consumer Act 2010* (Cth);

#### **Act** is as specified in clause 11.8(a);

#### **Administration Fee** means 20% of the sale price of the Goods;

#### **Business Day** means a day that the banks are open for business in the applicable jurisdiction that is not a weekend or public holiday;

#### **Cancellation Date** is as specified in clause 5.3;

#### **Client** includes any person, firm or corporation including successors, administrators and assignors of the party who has requested the supply of Services by AAA;

#### **Fees** are as specified in clause 6.1;

#### **Force Majeure Event** is as specified in clause 10.8;

#### **Goods** means the goods to be provided by AAA to Client as described in the Quote;

#### **Invoice** meansthe tax invoice supplied to Client by AAA for Goods and/or Services supplied;

#### **Loss** means any liability, claim, damages, costs and includes any loss (imposed by contract, tort (including negligence) and under statute), loss of profits, anticipated savings or consequential loss or cost (including legal costs on a solicitor and own client basis);

#### **Online Purchase Order** means an online purchase order completed by the Client in the form specified by AAA from time to time;

#### **party** means each of AAA and Client;

#### **Quote** is as specified in clause 1.1;

#### **Recipient** is as specified in clause 12.3;

#### **Services** means the services to be provided by AAA to Client as described in the Quote or any activity comprised in or forming part of those Services;

#### **Statutory Rate** means the penalty interest rate prescribed in the relevant Victorian legislation;

#### **Supplier** is as specified in clause 12.3; and

#### **Term** means the period of provision of the Services.