

# GCI TRAYTEC Terms and Conditions

## 1 Definitions

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ACL	the Australian Consumer Law (as set out in Schedule 2 to the <i>Competition and Consumer Act 2010</i> (Cth))
Claim	a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent
Client	the party or parties buying the Goods as specified in any quotation, invoice or order, and if there is more than one Client is a reference to each Client jointly and severally
Consequential Loss	<p>means, in respect of a breach of these terms and conditions or any event, fact, matter or circumstance giving rise to a Claim:</p> <ul style="list-style-type: none"><li>(a) any loss or liabilities suffered by a party that cannot reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance;</li><li>(b) any and all special, indirect, exemplary or punitive loss or liability arising from or incurred in connection with that breach or event, fact, matter or circumstance; and</li><li>(c) any and all loss of profit, loss of revenue, loss of goodwill, loss of opportunity and loss of savings, even if such loss could reasonably be considered to arise naturally from that breach or event, fact, matter or circumstance,</li></ul> <p>whether arising in contract, tort (including negligence), at common law, equity or under statute.</p>
Force Majeure Event	<p>means any event, circumstance or cause not in a party's reasonable control including, without limitation:</p> <ul style="list-style-type: none"><li>(a) acts of God, flood, drought, earthquake or other natural disaster</li><li>(b) epidemic or pandemic or public health crisis</li><li>(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations</li></ul>

- (d) nuclear, chemical or biological contamination, or sonic boom
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent
- (f) collapse of buildings, fire, explosion or accident
- (g) cybercrime, cyber incidents and data breaches
- (h) any labour or trade dispute, strikes, industrial action or lockouts
- (i) non-performance by suppliers or subcontractors
- (j) interruption or failure of a utility service

GCI TRAYTEC	GCI Traytec Pty Ltd ACN 134 402 467, its successors and assigns or any person acting on behalf of and with the authority of GCI Traytec Pty Ltd
Goods	all goods, services or other items (as described in any quotation, invoice, purchase order or any other document in relation to the purchase of those goods or services) supplied by GCI TRAYTEC to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other)
GST	the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)
Guarantor	the guarantor or guarantors identified in the guarantee and indemnity provided in relation to the Client's order/application for Goods (if any)
Insolvency Event	<p>if the Client is a natural person:</p> <ul style="list-style-type: none"> <li>(a) is bankrupt as defined by section 5 of the <i>Bankruptcy Act 1966</i> (Cth);</li> <li>(b) has committed an act of bankruptcy as defined by section 40 of the <i>Bankruptcy Act 1966</i> (Cth);</li> <li>(c) is insolvent under administration as defined in the <i>Corporations Act 2001</i> (Cth);</li> <li>(d) is the subject of a creditor's petition or debtor's petition under the <i>Bankruptcy Act 1966</i> (Cth) and that petition is not withdrawn, struck out or dismissed within 14 days of it being made; or</li> <li>(e) is, or states that it is, unable to pay all its debts as and when they become due and payable; or</li> </ul> <p>if the Client is a corporation:</p> <ul style="list-style-type: none"> <li>(f) is, or states that it is, unable to pay all its debts as and when they become due and payable;</li> </ul>

- (g) is presumed to be insolvent under an applicable law including under section 459C(2) or section 585 of the *Corporations Act 2001* (Cth);
- (h) ceases, or threatens to cease, to function as a going concern or conduct its operations in the normal course of business;
- (i) enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (j) an application is made to a court for an order, or an order is made, that the corporation may be wound up, or that a provisional liquidator, receiver or receiver and manager be appointed to that party, and that application is not withdrawn, struck out or dismissed within 14 days of it being made;
- (k) proposes winding-up, dissolution or reorganisation, moratorium, a deed of company arrangement or other administration involving one or more of its creditors;
- (l) fails to comply with a statutory demand under section 459F(1) of the *Corporations Act 2001* (Cth);
- (m) a notice is issued to under section 601AA or section 601AB of the *Corporations Act 2001* (Cth); or
- (n) fails to stop a creditor attaching or taking possession of all or a substantial part of its assets

Intellectual Property Rights all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trade marks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration

Personal Property the same meaning as in the PPSA

PPSA *Personal Property Securities Act 2009* (Cth)

Pre-existing IP Rights Intellectual Property Rights in all materials owned by the Client or GCI TRAYTEC independent of these terms and conditions

Price the Price payable for the Goods as agreed between GCI TRAYTEC and the Client in accordance with clause 4 of these terms and conditions

Privacy Act *Privacy Act 1988* (Cth)

Taxable Supply

the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

## 2 Acceptance

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- 2.1 The Client agrees to be immediately bound by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with GCI TRAYTEC's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and GCI TRAYTEC.

## 3 Change in Control or Insolvency Event

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- 3.1 The Client, or any Guarantor (if applicable), must not permit a change of ownership to occur to it without the prior written consent of GCI TRAYTEC.
- 3.2 The Client shall immediately notify GCI TRAYTEC if it, or any Guarantor (if applicable):
- (a) changes its details, including but not limited to changes in name, address, contact phone or fax number/s, or business practice; or
  - (b) becomes subject to an Insolvency Event.
- 3.3 The Client shall be liable for any loss incurred by GCI TRAYTEC as a result of the Client's failure to comply with this clause.

## 4 Price and Payment

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- 4.1 The Price will be GCI TRAYTEC's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 GCI TRAYTEC reserves the right to change the Price if a variation to GCI TRAYTEC's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to GCI TRAYTEC in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, availability of equipment, change of design, safety considerations, prerequisite work by any third party not being completed) will be disclosed to the Client in an updated quotation, based on GCI TRAYTEC'S then current rates, and will be shown as variations on the invoice.
- 4.3 A deposit for the supply of Goods may be required before an order is accepted.
- 4.4 The Price will be payable by the Client, without any offset or deduction, on the earliest of the following dates:
- (a) on delivery of the Goods;
  - (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice, quote or other form as being the date for payment; or

- (d) the date which is seven (7) days following the date of any invoice given to the Client by GCI TRAYTEC.

4.5 The Client acknowledges and agrees that:

- (a) the Client must pay the amount owed to GCI TRAYTEC on or before the due date for payment (without set-off, deduction or otherwise); and
- (b) time is of the essence in respect of payment by the Client of amounts owing to GCI TRAYTEC under or in connection with any order.

4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and GCI TRAYTEC.

4.7 GCI TRAYTEC will be entitled to set off against any money owing to the Client amounts owed to GCI TRAYTEC by the Client.

4.8 Unless otherwise stated the Price does not include GST. If GST is or becomes payable on a Taxable Supply made under or in connection with any order by the Client for Goods, then in addition to the Price, the Client must pay to GCI TRAYTEC an additional amount equal to the GST payable on the Taxable Supply. The Client must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

## 5 Delivery of Goods

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5.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:

- (a) the Client or the Client's agent takes possession of the Goods at GCI TRAYTEC's premises; or
- (b) GCI TRAYTEC (or GCI TRAYTEC's agent) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

5.2 The cost of delivery, including all costs, expenses and charges incurred by GCI TRAYTEC in connection with the delivery of Goods to the Client, including but not limited to freight costs and insurance charges, is in addition to the Price.

5.3 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then GCI TRAYTEC shall be entitled to charge a reasonable fee for redelivery or storage.

5.4 Any time or date given by GCI TRAYTEC to the Client is an estimate only. The Client must accept delivery of the Goods even if late and GCI TRAYTEC will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

## 6 Risk

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6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

- 6.2 If the Client does not insure the Goods or fails to supply details of its insurance policy, the Client will reimburse GCI TRAYTEC for the cost of any insurance which GCI TRAYTEC may reasonably arrange in respect of the Goods supplied to the Client.
- 6.3 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, GCI TRAYTEC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by GCI TRAYTEC is sufficient evidence of GCI TRAYTEC's rights to receive the insurance proceeds without the need for any person dealing with GCI TRAYTEC to make further enquiries.
- 6.4 If the Client requests GCI TRAYTEC to leave Goods outside GCI TRAYTEC's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.5 The Client acknowledges and agrees that it does not rely on the skill or judgment of GCI TRAYTEC in relation to any advice, recommendation, information, assistance or service provided by GCI TRAYTEC in relation to Goods or Services supplied. Any advice, recommendation, information or assistance provided by GCI TRAYTEC is provided without any liability on the part of GCI TRAYTEC whatsoever and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.

## 7 Accuracy of Client's Plans and Measurements

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- 7.1 GCI TRAYTEC shall be entitled to rely on the accuracy of any plans or specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, GCI TRAYTEC accepts no liability for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.2 In the event the Client gives information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or GCI TRAYTEC places an order based on these measurements and quantities. GCI TRAYTEC accepts no liability for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

## 8 Title

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- 8.1 GCI TRAYTEC and the Client agree that ownership of the Goods shall not pass to the Client until:
- (a) the Client has paid GCI TRAYTEC all amounts owing to GCI TRAYTEC; and
  - (b) the Client has met all of its other obligations to GCI TRAYTEC.
- 8.2 Receipt by GCI TRAYTEC of any form of payment other than cleared funds shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 8.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to GCI TRAYTEC on request;

- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for GCI TRAYTEC and must pay to GCI TRAYTEC the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for GCI TRAYTEC and must pay or deliver the proceeds to GCI TRAYTEC on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of GCI TRAYTEC and must sell, dispose of or return the resulting product to GCI TRAYTEC as it so directs;
- (e) the Client irrevocably authorises GCI TRAYTEC to enter any premises where GCI TRAYTEC believes the Goods are kept and recover possession of the Goods;
- (f) GCI TRAYTEC may recover possession of any Goods in transit whether or not delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of GCI TRAYTEC;
- (h) GCI TRAYTEC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client;
- (i) the Client must ensure that the Goods remain clearly identifiable as property of GCI TRAYTEC and must not remove any identifying marks placed on the Goods by GCI TRAYTEC;
- (j) the Client must ensure the Goods are kept in a good and merchantable condition; and
- (k) the Client must comply with all requirements of GCI TRAYTEC in relation to the storage, maintenance and preservation of those Goods.

8.4 For the purpose of securing payment of the Price and the performance of the Client's obligations under these terms and conditions, the Client agrees that all property of the Client bailed to or made available to GCI TRAYTEC is subject to a general lien for all charges now due or that may become due to GCI TRAYTEC by the Client on any account whatsoever.

## 9 PPSA

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- 9.1 In this clause, the terms 'financing statement', 'financing change statement', 'purchase money security interest', 'security agreement', and 'security interest' have the meaning given to them in the PPSA.
- 9.2 The Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and create:
  - (a) a security interest in all Goods that have previously been supplied and that will be supplied in the future by GCI TRAYTEC to the Client; and
  - (b) a security interest in all present and future Personal Property of the Client.
- 9.3 The Client and GCI TRAYTEC agree that a security interest given under these terms and conditions:
  - (a) may constitute a purchase money security interest; and

- (b) secures payment of the Price of the Goods and of all other amounts payable by the Client to GCI TRAYTEC.

9.4 The Client undertakes to:

- (a) promptly sign any further documents or provide any further information (such information to be complete, accurate and up-to-date in all respects) which GCI TRAYTEC may reasonably require to;
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 9.4(a)(i) or 9.4(a)(ii);
- (b) indemnify, and upon demand reimburse, GCI TRAYTEC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of GCI TRAYTEC;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of GCI TRAYTEC; and
- (e) immediately advise GCI TRAYTEC of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

9.5 To the extent permitted by law, the Client contracts out of and waives its rights under sections 95, 96, 115, 117, 118, 121(4), 125, 129, 130, 132(2), 132(3)(d), 132(4), 134(2), 135, 136(3)-(5), 137(2), 138, 142, and 143 of the PPSA and the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

9.6 The Client must unconditionally ratify any actions taken by GCI TRAYTEC under clauses 9.3 to 9.5.

9.7 The Client irrevocably grants to GCI TRAYTEC the right to enter upon the Client's property or premises, without notice, and without being in any way liable to the Client or to any third party, if GCI TRAYTEC has cause to exercise any of GCI TRAYTEC's rights under sections 123 or 128 of the PPSA, and the Client agrees to indemnify GCI TRAYTEC from any Claims made by any third party as a result of GCI TRAYTEC exercising such right.

9.8 Pursuant to section 275(6) of the PPSA, the Client agrees it will not disclose to an interested person any of the matters described in section 275(1) of the PPSA without prior approval of GCI TRAYTEC.

9.9 If the Client defaults in the performance of any obligation owed to GCI TRAYTEC, GCI TRAYTEC may enforce its security interest in any Goods by exercising any of its rights under these terms and conditions, or the PPSA.

9.10 The Client agrees that where GCI TRAYTEC has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

- 9.11 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## 10 Security and Charge

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- 10.1 In consideration of GCI TRAYTEC agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in all Personal Property and other assets capable of being charged, including but not limited to real estate, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client acknowledges and agrees that the charge contained in clause 10.1 entitles GCI TRAYTEC to lodge a caveat, require a mortgage to be registered, or require the sale of, any real estate owned by the Client.
- 10.3 The Client indemnifies GCI TRAYTEC from and against all GCI TRAYTEC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GCI TRAYTEC's rights under this clause.
- 10.4 The Client irrevocably appoints GCI TRAYTEC and each director of GCI TRAYTEC as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

## 11 Defects, Warranties and Returns

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- 11.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify GCI TRAYTEC in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow GCI TRAYTEC to inspect the Goods.
- 11.2 Any parts, accessories, products or additional items not manufactured by GCI TRAYTEC used in relation to providing the Goods ("**Third Party Goods**") have been supplied or fixed to the Goods or the Client's existing property ("**Existing Property**") at the Client's request. The Client acknowledges and agrees that some or all of the Third Party Goods may not be or are not approved by GCI TRAYTEC or the manufacturer of the Existing Property for use on the Goods or the Existing Property, respectively. As a result, the Client may not be covered by relevant warranties relating to the Goods and the Existing Property. Further, any warranties relating to the Goods or Existing Property may be affected to the extent that the manufacturer considers that any non-approved products or their installation may affect the specifications or quality of the Goods or the Existing Property, respectively. To the extent permitted by law, GCI TRAYTEC will have no liability to the Client in respect of Third Party Goods.
- 11.3 Any services not performed by GCI TRAYTEC and provided in relation to the Goods or the Existing Property ("**Third Party Services**") are provided at the Client's request. The Client acknowledges and agrees that some or all of the Third Party Services may not be or are not approved by GCI TRAYTEC or the manufacturer of the Existing Property in relation to the Goods or the Existing Property, respectively. As a result, the Client may not be covered by the relevant warranties relating to the Goods and the Existing Property. Further, any warranties relating to the Goods or Existing Property may be affected to the extent that the manufacturer considers that any Third Party Services may affect the specifications or quality

of the Goods or the Existing Property, respectively. To the extent permitted by law, GCI TRAYTEC will have no liability to the Client in respect of the Third Party Services.

- 11.4 Under applicable State, Territory and Commonwealth Laws (including, without limitation the ACL), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the ACL) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.5 Nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.6 Subject to the other terms of this clause, GCI TRAYTEC excludes all rights, representations, guarantees, conditions, undertakings, remedies, warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods to the maximum extent permitted by law.
- 11.7 If the Client is a consumer within the meaning of the ACL, GCI TRAYTEC's liability is limited to the extent permitted by the ACL.
- 11.8 If GCI TRAYTEC is required to replace the Goods under this clause or the ACL, but is unable to do so, GCI TRAYTEC may refund any money the Client has paid for the Goods.
- 11.9 To the maximum extent permitted by law, GCI TRAYTEC's liability (under any conditions, guarantee or warranty which cannot legally be excluded) in respect of Goods supplied to the Client is limited to one of the following (at GCI TRAYTEC's discretion):
- (a) the replacement of the Goods or the supply of equivalent goods;
  - (b) the repair of the Goods; or
  - (c) limited to any warranty to which GCI TRAYTEC is entitled, if GCI TRAYTEC did not manufacture the Goods.
- 11.10 To the maximum extent permitted by law, GCI TRAYTEC's liability (under any conditions, guarantee or warranty which cannot legally be excluded) in respect of Services supplied to the Client is limited to one of the following (at GCI TRAYTEC's discretion):
- (a) supplying the Services again; or
  - (b) the payment of the cost of having the services supplied again.
- 11.11 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1;
  - (b) GCI TRAYTEC has agreed that the Goods are defective;
  - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.12 To the maximum extent permitted by law, GCI TRAYTEC shall not be liable in any circumstances for:
- (a) the Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;

- (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Client failing to follow any instructions or guidelines provided by GCI TRAYTEC;
  - (e) any Consequential Loss; or
  - (f) fair wear and tear, any accident, or act of God.
- 11.13 Notwithstanding anything contained in this clause if GCI TRAYTEC is required by a law to accept a return then GCI TRAYTEC will only accept a return on the conditions imposed by that law.
- 11.14 Without limiting any other provisions of this clause 11, the maximum aggregate liability of GCI TRAYTEC to the Client for any Claim (or series or connected Claims) under or in connection with these terms and conditions howsoever arising shall be limited to the Price received by GCI TRAYTEC from the Client in the 12 month period immediately preceding the date of the relevant Claim (or series of connected Claims).

## 12 Intellectual Property

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- 12.1 The sale to and purchase by the Client of any Goods does not confer on the Client any license to the Intellectual Property Rights of GCI TRAYTEC.
- 12.2 All Pre-existing IP Rights remain the sole property of the owner.
- 12.3 For the avoidance of doubt, where GCI TRAYTEC has created a plan, design, drawing or other document in relation to provision of Goods for the Client, then any Intellectual Property Rights in any such plans, designs, drawings and other documents shall remain the sole property of GCI TRAYTEC.

## 13 Default and Consequences of Default

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- 13.1 If the Client does not make a payment to GCI TRAYTEC by the due date for that payment, interest shall accrue daily from the date when payment becomes due, until the date of payment, at a compounding rate of two and a half percent (2.5%) per calendar month after as well as before any judgment.
- 13.2 The Client shall indemnify GCI TRAYTEC from and against all costs and disbursements incurred by GCI TRAYTEC (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, GCI TRAYTEC's contract default fee, and bank dishonour fees) in connection with any breach of these terms and conditions by the Client.
- 13.3 Without prejudice to any other remedies GCI TRAYTEC may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions GCI TRAYTEC may suspend or terminate the supply of Goods to the Client. GCI TRAYTEC will not be liable to the Client for any loss or damage the Client suffers because GCI TRAYTEC has exercised its rights under this clause.
- 13.4 Without prejudice to GCI TRAYTEC's other remedies at law GCI TRAYTEC shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GCI TRAYTEC shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to GCI TRAYTEC becomes overdue, or in GCI TRAYTEC's opinion the Client will be unable to make a payment when it falls due; or
- (b) an Insolvency Event occurs in respect of the Client or any asset of the Client.

## 14 Client's Disclaimer

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- 14.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for any Claim arising out of any misrepresentation made to the Client by GCI TRAYTEC and the Client acknowledges that the Services are bought relying solely upon the Client's skill and judgement.

## 15 Cancellation

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- 15.1 GCI TRAYTEC is not obligated to accept an order for Goods and retains the discretion to reject, cancel or terminate an order.
- 15.2 GCI TRAYTEC may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice GCI TRAYTEC shall repay to the Client any money paid by the Client for the Goods. GCI TRAYTEC shall not be liable for any loss (including Consequential Loss) whatsoever arising from such cancellation.
- 15.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred by GCI TRAYTEC as a result of the cancellation (including, but not limited to Consequential Loss).
- 15.4 To the extent permitted by law, cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

## 16 Privacy

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- 16.1 The Client acknowledges that GCI TRAYTEC may obtain a credit report containing personal credit information about the Client from a credit reporting agency.
- 16.2 The Client agrees that GCI TRAYTEC may exchange information about the Client with credit providers, either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency, for the following purposes:
- (a) to assess an application by the Client;
  - (b) to notify other credit providers of a default by the Client;
  - (c) to exchange information with other credit providers as to the status of the Client's credit account with GCI TRAYTEC, where the Client is in default with other credit providers; or
  - (d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity as permitted under the Privacy Act.

- 16.3 The Client agrees that personal credit information provided may be used and retained by GCI TRAYTEC for the following purposes (and as agreed in writing or required by law from time to time):
- (a) the provision of Goods;
  - (b) the marketing of Goods by GCI TRAYTEC, its agents or distributors;
  - (c) analysing, verifying or checking the Client's credit, payment or status in relation to the provision of Goods;
  - (d) processing of any payment instructions, direct debit facilities or credit facilities requested by the Client; or
  - (e) enabling the daily operation of Client's account or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 16.4 GCI TRAYTEC may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; or
  - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 16.5 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, gender, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that GCI TRAYTEC is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, loan repayments or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of GCI TRAYTEC, the Client has committed a serious credit infringement (that is, fraudulent or shows an intention by the Client not to comply with the Client's credit obligations);
  - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once; or
  - (h) that credit provided to the Client by GCI TRAYTEC has been paid or otherwise discharged.

## 17 Building and Construction Industry Payments Act 2004

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- 17.1 If there are any disputes or Claims for unpaid Goods or Services then the provisions of the *Building and Construction Industry Payments Act 2004* (Qld) may apply.
- 17.2 Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Payments Act 2004* (Qld), except to the extent permitted by law where applicable.

## 18 Force majeure

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- 18.1 Neither party is in breach of these terms and conditions or is liable to the other party for any loss incurred by that other party as a direct result of a party (**Affected Party**) failing or being prevented, hindered or delayed in the performance of its obligations (other than an obligation to pay money) under this agreement where such prevention, hindrance or delay results from a Force Majeure Event.
- 18.2 If a Force Majeure Event occurs, the Affected Party must take all reasonable steps to minimise the effect of the Force Majeure Event and must notify the other party (**Non-affected Party**) in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.
- 18.3 The performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

## 19 General

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- 19.1 The failure by GCI TRAYTEC to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect GCI TRAYTEC's right to subsequently enforce that provision. If any provision of these terms and conditions is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and the parties submit to the jurisdiction of the courts of Queensland.
- 19.3 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by GCI TRAYTEC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.4 GCI TRAYTEC may assign, charge, license or subcontract all or any part of its rights or obligations under these terms and conditions, and any other contract between GCI TRAYTEC and the Client, without the Client's consent. The Client acknowledges that GCI TRAYTEC, to the maximum extent permitted by law, will not be liable for any loss (including Consequential Loss) or damage of the Client caused or contributed to by a subcontractor.
- 19.5 If GCI TRAYTEC makes a change to these terms and conditions, then that change will take effect from the date on which GCI TRAYTEC notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for GCI TRAYTEC to provide Goods to the Client.
- 19.6 The Client warrants that it has the power to enter into agreements with GCI TRAYTEC and has obtained all necessary authorisations to allow it to do so, it is not the subject of an Insolvency Event and that these terms and conditions create binding and valid legal obligations on it.
- 19.7 Any reference to a party in these terms and conditions includes, and any obligation or benefit under these terms and conditions will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.
- 19.8 If any part of these terms and conditions is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or

alternatively will be deemed deleted; and these terms and conditions will remain otherwise in full force.

19.9 The Client will sign and complete all further documents and do anything else that may be reasonably necessary to effect, perfect or complete the provisions of these terms and conditions and the transactions to which they relate.

19.10 An obligation of two or more persons under these terms and conditions binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in terms of these terms and conditions will take effect for the benefit of those persons jointly and severally.

## Construction

19.11 In these terms and conditions:

- (a) words in the singular include the plural and vice versa;
- (b) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (c) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (d) references to any document (including these terms and conditions) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (e) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations;
- (f) monetary references are references to Australian currency;
- (g) headings are included for convenience only and do not affect interpretation of these terms and conditions; and
- (h) no provision will be construed adversely to a party solely on the grounds that the party was responsible for the preparation of that provision.