
Falcon Tech Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting FT to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors, and permitted assigns.
- 1.2 **“Client Data”** means all the unprocessed data supplied and inputted by the Client into the secured access area for the Services from time to time in conjunction with the Services. Such data (data or information) may include, but not be limited to, still and moving images, any sound recordings, and personal data.
- 1.3 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using FT’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **“FT”** means Falcon Tech Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Falcon Tech Pty Ltd.
- 1.7 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 **“Price”** means the Price payable (plus any GST where applicable) for the Services as agreed between FT and the Client in accordance with clause 8 below.
- 1.9 **“Services”** means all Goods (which includes any content, files, information, printed or virtual material, data, hardware or software, whether supplied from a third party or where custom developed or programmed for the Client, accessories or parts, etc.) and/or Services (which includes any advice or recommendations, installation of Goods, product support, subscription services including software that is provided as a subscription, consultancy, monitoring, data back-up or storage, strategising and analytical services, technical service, support and training etc.) provided by FT 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).

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with FT and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, FT reserves the right to refuse delivery.
- 2.6 The Client shall as soon as practicable make available to FT all information, documents, software, hardware, and other particulars required by FT for the provision of Services.
- 2.7 Provided FT acts reasonably, they are entitled to assume that any request in connection with the Services that FT receives from the Client (or the Client’s agents, employees or contractors) or from the premises where the Services are being provided or accessed, is authorised by the Client.
- 2.8 The Services are provided on the basis of specifications, information and instructions provided by the Client to FT (whether written or verbal). The Client acknowledges that it is their responsibility to ensure that such are detailed sufficiently to satisfy FT’s requirements of interpretation and understanding, as once accepted by the Client, FT’s quotation shall be deemed to interpret correctly those specifications, information and instructions. Therefore, FT shall not accept any liability for the supply of Services contrary to the Client’s intention, or errors or omissions in the Services, due to insufficient or inadequate provision of detailed specifications, information and instructions by the Client or oversight or misinterpretation thereof, and FT may charge the Client additional costs incurred thereby in remedying the Services, and if reasonably practical, will notify the Client of such costs before they are incurred and the Client agrees to them.
- 2.9 These terms and conditions may be meant to be read in conjunction with FT’s ‘Service Maintenance Agreement, Subscription Services or Proposal’, and if there are any inconsistencies between the documents then the terms and conditions contained therein shall prevail.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Release Waiver

- 3.1 Where FT gives any advice, recommendation, information, assistance or service provided by FT in relation to Goods or Services (including, but not limited to, additional measures required to protect against potential security breaches or cyber-attack, etc.) supplied is given in good faith to the Client, or the Client’s agent and is based on FT’s own knowledge and experience and shall be accepted without liability on the part

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of FT, (human error is possible under these circumstances), and FT shall make all effort to offer the best solution to the Client. Where such advice or recommendations are not acted upon then FT shall require the Client or their agent to authorise commencement of the Services in writing. FT shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that FT shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by FT in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by FT in respect of the Services.
- 4.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Client Error**"). The Client must pay for all Goods it orders from FT notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. FT is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

5. Change in Control

- 5.1 The Client shall give FT not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by FT as a result of the Client's failure to comply with this clause.

6. Subscription Services

- 6.1 The commencement date shall be the date of the first delivery of the Services, or from the date of signing, whichever is the earlier. Fixed price agreements shall be for the period ("initial term") as agreed between both parties and shall revert to a monthly roll over basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least one (1) months required notice as defined in the agreement prior to the expiration date of the initial term or any additional term.
- 6.2 FT may adjust the monthly charges from time to time upon providing one (1) month's written notice to the Client. Services are billed to the Client one (1) month in advance (unless otherwise specified).

7. Credit Card Information

- 7.1 FT will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by FT;
 - (b) not disclose the Client's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 25) or where required by law.
- 7.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, FT is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

8. Price and Payment

- 8.1 At FT's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by FT to the Client upon placement of an order for Goods; or
 - (b) FT's quoted Price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 8.2 FT reserves the right to change the Price:
- (a) if a variation to the plan of scheduled Services, or Client specifications/ instructions is requested (including, but not limited to, additional work required due to hidden or unidentifiable difficulties not evident prior to commencement of the Services, any request to investigate and/or repair any faults or defects outside FT's normal business hours, backups);
 - (b) where the performance of any contract with the Client requires FT to obtain products and/or services from a third party, the contract between FT and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to FT, and the Client shall be liable for the cost in full including FT's margin of such products and/or services;
 - (c) as a result of increases beyond FT's reasonable control in the cost of materials or labour (e.g. third-party network operator or supplier costs, etc.).
- 8.3 Notwithstanding clause 8.2, the Client acknowledges that additional charges may apply to certain Services and support provided by FT (including, but not limited to, Client backups, reconfiguration of the Client's computer or network). Any such charges shall be shown as a variation to the original Price.
- 8.4 Variations will be charged for on the basis of FT's quotation, and will be detailed in writing, and shown as variations on FT's invoice. The Client shall be required to respond to any variation submitted by FT within ten (10) working days. Failure to do so will entitle FT to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 8.5 At FT's sole discretion, a reasonable deposit may be required upon placement of an order for Goods or Services, in accordance with any quotation provided by FT or as notified to the Client prior to the placement of an order for Goods or Services.
- 8.6 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by FT, which may be:
- (a) on provision of the Services;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with FT's payment schedule;

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- (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by FT.
- 8.7 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and FT.
- 8.8 FT may in its discretion allocate any payment received from the Client towards any invoice that FT determines and may do so at the time of receipt or at any time afterwards. On any default by the Client FT may re-allocate any payments previously received and allocated. In the absence of any payment allocation by FT, payment will be deemed to be allocated in such manner as preserves the maximum value of FT's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 8.9 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 FT nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify FT in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as FT investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in FT placing the Client's account into default and subject to default interest in accordance with clause 22.1.
- 8.10 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to FT an amount equal to any GST FT must pay for any supply by FT under this or any other agreement for the sale of the Goods. 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.

9. Terms of Use

9.1 When the Client uses the Services, the Client must:

- (a) comply with all laws, all directions by a regulator, all notices issued by authorisation of, or under, law (e.g., Copyright Act 1968 (Cth)) and reasonable directions by FT;
- (b) keep the Client's account information, password, data, and Goods confidential and secure. The Client remains responsible for any use or misuse of such;
- (c) follow any reasonable instructions provided by FT in relation to the Services;
- (d) access and use the Services solely in accordance with these terms and conditions and any reasonable instructions provided by FT;
- (e) employ back-up power and surge protectors at the Client's premises;
- (f) respond promptly to FT's communications in relation to the Services;
- (g) provide accurate and prompt responses to FT's requests for any information or documentation reasonably required by FT to provide the Services;
- (h) maintain adequate security precautions in connection with the Client's use of the Services (including, but not limited to, failure to use/maintain anti-virus software, accessibility to the data via insecure internet connections, insecure passwords or unsecure access to passwords, leaving active connection to the hosted solution unattended or any other event which on the basis of a reasonable test would in the opinion of FT be inadequate etc.);
- (i) ensure that FT at all times is granted all necessary licences, permissions and access reasonably required by FT to perform support including without limitation:
 - (i) physical access to any relevant premises and hardware;
 - (ii) logon and password access to any relevant computer systems; and
 - (iii) remote online access to any relevant computer systems where available.
- (j) remove most of the downtime risk associated with an "in-house" computer system;
- (k) failure by the Client to comply with clause 9.1 will entitle FT, at its option, to suspend support without liability until such time as clause 9.1 is complied with.

9.2 The Client must not:

- (a) use, or attempt to use, or permit another person to use or attempt to use, the Services:
 - (i) so as to cause offence, to defame, abuse, communicate obscenities, menace or annoy;
 - (ii) for any purpose or activity of an illegal or fraudulent nature in any jurisdiction, including damaging any property or injuring or killing any person, to breach the security of any computer network (hacking), to breach any person's privacy, or to distribute unsolicited software or junk mail;
 - (iii) for advertising purposes without FT's express written consent;
 - (iv) to breach any of the Intellectual Property rights held by FT or any third party;
 - (v) to transmit, publish or communicate materials which is defamatory, offensive, abusive, indecent, menacing or unwanted;
 - (vi) to expose FT to liability (including any claims for damages);
 - (vii) to install or store any Software applications, code or scripts on or through the Services unless prior written approval from FT has been obtained;
 - (viii) to disable or circumvent any protection or disabling mechanism related to the Services;
 - (ix) to store, access or operate any data, code, or software on, or in connection with, the software that could be categorised or identified as:
 - (a) a computer virus or malicious code;
 - (b) pornographic material; or
 - (c) "warez" or associated with "warez".
 - (x) in any way which damages, interferes with or interrupts the Services, or a supplier's network used to provide the Services;
 - (xi) to intercept or attempt to intercept any communication not otherwise intended for the Client;
 - (xii) contact FT's suppliers or the wholesale / carrier or third party provider of a service in relation to the Services or service faults. Suppliers may impose fees for doing so and these fees will be passed onto the Client. They may, however, contact the Client in relation to any reported service difficulties in relation to appointment making and service restoration, and for this reason FT will need to provide the Client contact details to such parties;
 - (xiii) logon to an account that the Client is not authorised to access;

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- (xiv) access data or take any action to obtain services not intended for the Client;
 - (xv) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - (xvi) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - (xvii) send spam or other duplicative or unsolicited messages in violation of applicable laws including without limitation the Spam Act 2003 (Cth);
 - (xviii) do anything that prevents or hinders FT from providing Support Services to any other person.
- (b) The Client acknowledges that spamming (i.e., the sending of unsolicited email), email address cultivation, or any unauthorised collecting of email addresses without prior notification of the email address owner is strictly prohibited;
- (c) FT at its sole discretion acting reasonably shall be entitled to determine when there has been a breach of clause 9.2 and without limiting any other provision of these terms and conditions, FT shall be entitled without liability to take such actions as it deems appropriate in the circumstances.
- 9.3 If, in FT's opinion, the Services are being used by anyone in breach of these terms and conditions (including clause 9) or internet etiquette, FT may:
- (a) refuse to post such infringing information to public areas;
 - (b) remove, review or edit such infringing information from any computer on FT's network, with the exception of private electronic messages;
 - (c) discontinue any infringing communication;
 - (d) suspend the Services indefinitely, or for a specific period;
 - (e) terminate the Services, and refuse to provide the Services to the Client, or the Client's associates, in the future;
 - (f) inform appropriate government and regulatory authorities of suspected illegal or infringing conduct.
- 9.4 The Client authorises FT to delete without notice or liability any information or materials found on the Goods (or equipment controlled by FT) that is found to be of an obscene nature, unauthorised, unlawful, uncollected for an excessive period of time or excessive in volume.
- 9.5 **Back-ups**
- (a) FT makes no warranties or guarantees, implied or express, in respect of the retention of or continued accessibility of any back-ups in connection with the Services;
 - (b) the Client acknowledges that FT has recommended the Client to take reasonable steps to back-up the Client Data separately from the Services; and
 - (c) FT will put in place and manage back-up procedures described in FT's quotation or proposal and/or other written communication from FT to the Client.
- 10. Provision of the Services**
- 10.1 Where the performance of any contract with the Client requires FT to obtain products and/or services from a third party, the contract between FT and the Client shall incorporate, and shall be subject to, the conditions of supply of such products and/or services to FT, and the Client shall be liable for the cost in full, including FT's margin of such products and/or services.
- 10.2 FT may supply Goods to the Client where it is required for the provision of Services, and
- (a) delivery of the Goods is taken to occur at the time that FT (or FT's nominated carrier) delivers the Goods to the Client's nominated address, even if the Client is not present at the address;
 - (b) the cost of delivery will be payable by the Client in accordance with the quotation provided by FT to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods;
 - (c) FT may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions;
 - (d) 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; and
 - (e) the Client may request upgrades to or newer versions of the Goods and FT will advise the Client of the availability of such Goods and the additional cost associated with the supply of the Goods.
- 10.3 FT will make best efforts to ensure that the Client receives continual and uninterrupted Services (including, but not limited to, IT support, Cloud backup/storage services, and monitoring/testing services) for the duration of this Contract, however:
- (a) FT does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to events/circumstances beyond the control of FT. In no event though, shall FT be liable to the Client for damages (including loss of income) resulting from or in relation to any failure or delay (including server downtime, programming errors, etc.) of FT to provide Services under this Contract, or any loss of data, if such delays or failures are due to circumstances beyond FT's control. Such a failure or delay shall not constitute a default under this Contract; and
 - (b) any time specified by FT for provision of the Services is an estimate only and FT will not be liable for any loss or damage incurred by the Client as a result of provision being late. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that FT is unable to provide the Services as agreed solely due to any action or inaction of the Client, then FT shall be entitled to:
 - (i) charge the Client additionally for re-providing the Services at a later time and date (and any storage fees for Goods); or
 - (ii) subject to clause 23, terminate the Contract.
- 10.4 FT may, at their sole discretion, limit or deny access to the Services if, in the judgement of FT, such limitations or denials of access are required to assure the security of the network, the integrity of the network structure, or to prevent damage to the network.
- 10.5 It shall be the Client's responsibility to ensure that they have adequate data available for the provision of the Services. FT shall not be responsible for any costs incurred by the Client in the event the Client's data limit is reached and/or exceeded.
- 11. Repair Notice**
- 11.1 If the Client is a consumer within the meaning of the CCA, this clause constitutes a Repair Notice given under the Australian Consumer Law ("ACL"), and the Client acknowledges that:
- (a) the repair of equipment may result in the loss of any files stored on the hard drive, etc. ("**User-Generated Data**"). It is the sole responsibility of the Client to back-up any User-Generated Data which they believe to be important, valuable, or irreplaceable prior to submitting the equipment for repair; and

(b) equipment presented for repair may be replaced by, or repaired with, refurbished Goods of the same type rather than being repaired.

12. Client's Obligations

12.1 The Client shall:

- (a) cooperate with FT in connection with the provision of the Services, and provide full and free access to the Client's premises, equipment and adequate working space and facilities, such as electrical outlets, within a reasonable distance from the equipment;
- (b) obtain, keep and make available to FT, machine readable copies of all programs, operating systems, drivers and data files relating to the equipment. FT does not assume any liability as a consequence of the Client's inability to use its machine readable data;
- (c) not modify, create any derivative work of, or incorporate any other goods into the network or any portion thereof. FT shall not be responsible for the maintenance of, or the repair of problems or malfunctions caused by any modifications of enhancements made by the Client or by anyone else other than FT.

13. Client's Property and Materials

13.1 In the case of property and materials left with FT without specific instructions, FT shall be free to dispose of them at the end of three (3) months after FT receiving them and to accept and retain the proceeds, if any, to cover FT's own costs in holding and handling them.

13.2 Where materials or equipment are supplied by the Client, FT accepts no responsibility for imperfect work caused by defects in or unsuitability of such materials or equipment.

14. Client Data

14.1 The Client warrants that:

- (a) they have the legal right to supply the Client Data to FT in connection with the contract (and that there are no circumstances likely to give rise to breach of any privacy); and
- (b) the Client Data contains nothing that is defamatory.

14.2 FT will:

- (a) only make copies of the Client Data to the extent reasonably necessary for the Services (which includes, but is not limited to, back-up security, disaster recovery and testing of the Client Data);
- (b) not use, exploit, redistribute, re-disseminate, copy, or store the Client Data other than for the purposes of the Services; and
- (c) take reasonable steps to protect the Client Data.

14.3 From time to time, FT will be directed in writing to move data on one piece of hardware ("**Copied Data**") to another, FT will have the right to delete Copied Data no less than one (1) month after copying the Copied Data. The Client agrees that:

- (a) in order to facilitate the movement of Copied Data, FT must retain a copy of the Copied Data on its own hardware;
- (b) if the Client wishes to obtain another copy of the Copied Data, it must notify FT within one (1) month of the provision of the service to copy the Copied Data; and
- (c) if the Client does not respond to FT's notification asking to retain the Copied Data, the Client acknowledges and agrees that the Copied Data will be deleted.

14.4 The Client Data remains the property of the Client at all times.

14.5 On the termination of the Services or the expiry of the minimum subscription period the following shall apply:

- (a) the Client shall immediately cease using FT's intellectual property and the Services;
- (b) where the Client elects for the destruction of the Client Data, FT will as soon as reasonably practicably ensure that all the Client Data is deleted from the secured access area of the website;
- (c) where the Client elects for the return of the Client Data, the Client must make a written request within ten (10) business days after the date of the termination or expiry of the Contract ("the Request"). FT shall use reasonable efforts to fulfil such a request within one (1) month of the Request or in an earlier time frame approved by the Client ("Retention Period") provided that:
 - (i) the Client has paid all monthly subscription fees and any other monies owed to FT as at the date of the Request; and
 - (ii) the Client shall pay all the costs and expenses (including, but not limited to, the costs of data extraction, transfer and migration and any compatibility issues with both parties' technology platforms, hardware or software incurred by FT in return the Client Data ("Return Costs").

14.6 Where the Client fails to stipulate either return or destruction of the Client Data within ten (10) Business Days, FT may destroy or otherwise dispose of any of the Client Data in FT's possession and the Client shall not have any claim whatsoever after this time.

15. Limitation of Liability

15.1 The Client acknowledges and agrees that FT shall not be held responsible or liable for:

- (a) any loss, corruption, or deletion of files or data (including, but not limited to, software programmes) resulting from illegal hacking of Services provided by FT. FT will endeavour to restore the files or data (at the Client's cost), and it is the sole responsibility of the Client to back-up any data which they believe to be important, valuable, or irreplaceable prior to FT providing the Services. The Client accepts full responsibility for the Client's software and data and FT is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services); and
- (b) any loss or damage to the Client's software or hardware caused by any 'updates' provided for that software.

15.2 The Services (and any associated software) are provided on an "as is, as available" basis. FT specifically disclaims any other warranty, express or implied, including any warranty of merchantability or fitness for a particular purpose.

15.3 Subject to clause 20, FT, its partners, associates, and employees shall exclude any indirect, incidental, special and/or consequential loss and/or expense, claim and/or cost (including legal fees and commissions, loss of profit, business, contracts, opportunity, goodwill, reputation and/or anticipated saving), or corruption of data suffered by the Client arising out of a breach by FT of these terms and conditions.

15.4 The maximum liability of FT under this Contract shall at no time exceed the amount of Professional Indemnity insurance cover in respect of any single act, omission, or statement, unless otherwise specified in FT's proposal.

15.5 The Client agrees to indemnify FT, (including its partners, associates or employees) and any other person who may be sought to be made liable in excess of the limit of liability described in clause 15.4 in respect of any activity arising from, or connected with, this Contract in respect

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of any claim of whatsoever kind, that may be made by any person and any costs and expenses that may be incurred by FT. All references herein to loss or damage shall be deemed to exclude loss or damage sustained by any third party in respect of which the Client is liable and responsible (as between the Client and the third party) whether by statute, contract tort or otherwise.

- 15.6 The liability of FT to the Client shall expire twelve (12) months from the issue of the last invoice relevant to the particular project, unless in the meantime the Client has made a claim in writing to FT, specifying a negligent act, omission or statement said to have caused alleged loss or damage sustained or sustainable.
- 15.7 Notwithstanding clauses 15.1 to 15.6, FT shall not be liable for any loss or damage sustained or sustainable by the Client in relation to:
- (a) errors occurring during the course of any services which are not provided by, nor the responsibility of FT;
 - (b) errors occurring in plans or specifications not created or prepared by FT;
 - (c) any failure of any third party component including, without limitation, software failure, hardware failure, network failure, or power failure;
 - (d) the Services being inaccessible to that Client for any reason;
 - (e) incorrect or corrupt data, lost data, or any inputs or outputs of the Services;
 - (f) computer virus, trojan and other malware in connection with the Services;
 - (g) security vulnerabilities in the Services or any breach of security that results in unauthorised access to or corruption of data;
 - (h) any failure of any third party software including, without limitation, the operating system and any other software;
 - (i) failure of the Client to maintain hardware sufficient to meet minimum hardware requirements for the Services;
 - (j) the Client's participation in any experiments, beta software or pilots;
 - (k) reliance on FT's advice;
 - (l) the Client's failure to observe proper safety measures and procedures;
 - (m) the delivery, setup and installation of Goods;
 - (n) any harm to or claim by a third party in connection with the Services or Goods;
 - (o) any unauthorised activity in relation to the Services;
 - (p) the Client's use of or reliance on the Services for a purpose other than the business purposes of the Client or the reasonably expected purpose of the Services;
 - (q) any act or omission of FT, its personnel or any related body corporate under or in relation to the Contract;
 - (r) any delay in the provision of the Services.

16. Compliance with Laws

- 16.1 The Client and FT shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

17. Title

- 17.1 FT and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid FT all amounts owing to FT; and
 - (b) the Client has met all of its other obligations to FT.
- 17.2 Receipt by FT of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 17.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 17.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to FT on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for FT and must pay to FT 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 FT and must pay or deliver the proceeds to FT 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 FT and must sell, dispose of or return the resulting product to FT as it so directs;
 - (e) the Client irrevocably authorises FT to enter any premises where FT believes the Goods are kept and recover possession of the Goods;
 - (f) FT 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 FT; and
 - (h) FT may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

18. Personal Property Securities Act 2009 ("PPSA")

- 18.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 18.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by FT to the Client, and the proceeds from such Goods.
- 18.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which FT 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 18.3(a)(i) or 18.3(a)(ii);

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- (b) indemnify, and upon demand reimburse, FT 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 FT;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of FT;
 - (e) immediately advise FT of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 18.4 FT and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 18.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 18.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 18.7 Unless otherwise agreed to in writing by FT, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 18.8 The Client must unconditionally ratify any actions taken by FT under clauses 18.3 to 18.5.
- 18.9 Subject to any express provisions to the contrary (including those contained in this clause 18), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 19. Security and Charge**
- 19.1 In consideration of FT agreeing to supply the Goods and/or provide its Services, the Client grants FT a security interest by way of a floating charge (registerable by FT pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit FT to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 19.2 The Client indemnifies FT from and against all FT's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising FT's rights under this clause.
- 19.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 17.1, 18.2 and 19.1 as applicable, is deemed insufficient by FT to secure the repayment of monies owed by the Client to FT, the Client hereby grants FT a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 20. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 20.1 The Client must inspect FT's Services on completion (or Goods on delivery) and must within seven (7) days of delivery notify FT 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 or Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow FT to inspect the Goods or review the Services provided.
- 20.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 20.3 FT acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 20.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, FT makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. FT's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 20.5 If the Client is a consumer within the meaning of the CCA, FT's liability is limited to the extent permitted by section 64A of Schedule 2.
- 20.6 If FT is required to replace the Goods under this clause or the CCA, but is unable to do so, FT may refund any money the Client has paid for the Goods.
- 20.7 If the Client is not a consumer within the meaning of the CCA, FT's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by FT at FT's sole discretion;
 - (b) limited to any warranty to which FT is entitled, if FT did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 20.8 Subject to this clause 20, returns will only be accepted provided that:
 - (a) the Client has complied with the provisions of clause 20.1; and
 - (b) FT has agreed that the Goods are defective; and
 - (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.
- 20.9 Notwithstanding clauses 20.1 to 20.8 but subject to the CCA, FT shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (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 FT;
 - (e) fair wear and tear, any accident, or act of God.
- 20.10 Notwithstanding anything contained in this clause if FT is required by a law to accept a return, then FT will only accept a return on the conditions imposed by that law.

21. Intellectual Property

- 21.1 If during the course of providing the Services, FT develops, discovers, or puts into operation a new concept, product or process which is capable of being patented, then such concept, product or process shall be and remain the property of FT and the Client shall not use or supply the same in any way whatsoever without first obtaining the written consent of FT.
- 21.2 The Client warrants that all designs, specifications, information, and instructions to FT will not cause FT to infringe any patent, registered design, or trademark in the execution of the Client's order. Furthermore, the Client agrees to indemnify, defend, and hold FT harmless from all loss incurred or suffered by FT arising from any claims (including third party claims) or demands against them where such loss was caused by any infringement or alleged infringement of any person's intellectual property rights by the Client during its use of the Services.
- 21.3 Any coding, routines and other supplied code (if any) remains the intellectual property of FT. Copying or disseminating the code for any purpose whatsoever is strictly forbidden and will be a breach of copyright.
- 21.4 Where FT has developed software (and associated documentation) databases, training materials, electronic tools and/or for any of FT's source code ("Tools"), then a copyright in those Tools shall remain vested in FT and FT retains ownership and all intellectual property rights thereof but grants the Client a non-exclusive and non-transferable licence for its use (solely in relation to the operation of the Client's own business). The Client will use any Tools supplied by FT, and identified as such, strictly in terms of the licence (or any other conditions imposed by FT) under which it is supplied. The Client further agrees that they shall not without FT's prior written consent:
- (a) use in any way, or rely on the Tools for any purpose other than what it was designed or is suitable for;
 - (b) copy, reproduce, translate, adapt, vary, merge, modify, or create any derivative work based on the Tools;
 - (c) reverse engineer, decompile, disassemble, reconfigure or otherwise attempt to discover the source code of the software, or assist another party to do the same;
 - (d) sell, market, network, transfer, lease, licence, sub-licence, rent, lend, or otherwise distribute, the Tools in any way whatsoever;
 - (e) combine the Tools with any other software and/or item, etc.; or
 - (f) use the Tools to commit a crime (including, but not limited to, sending spam) and the Client agrees to indemnify FT against any action taken by a third party against FT in respect of any such infringement.
- 21.5 Notwithstanding anything herein, upon termination of the Contract (in accordance with clause 23) FT shall revoke the licence to use and remove any Tools. Once removed, FT shall accept no liability and the Client indemnifies FT for any losses and/or damages (including, but not limited to, any subsequent security breach or virus infection, etc.) that may occur once FT has removed their Tools.
- 21.6 Subject to copyright laws (and/or any other applicable copyright laws) and the conditions therein, the Client agrees that they shall not in any way sell, reproduce, adapt, distribute, transmit, publish, or create derivative works from, any part of the software (if supplied by FT) without FT's prior consent in writing.
- 21.7 The Client hereby authorises FT to utilise images of the Services created by FT in advertising, marketing, or competition material by FT.

22. Default and Consequences of Default

- 22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at FT's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes FT any money, the Client shall indemnify FT from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising FT's rights under these terms and conditions, internal administration fees, FT's Contract fees owing for breach of these terms and conditions, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 22.3 Further to any other rights or remedies FT may have under this Contract, if a Client has made payment to FT, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by FT under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 22.4 Without prejudice to FT's other remedies at law FT shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to FT shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to FT becomes overdue, or in FT's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by FT;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Cancellation and Termination

- 23.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 23.2 If FT, due to reasons beyond FT's reasonable control, is unable to deliver any Goods and/or Services to the Client, FT may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice FT shall repay to the Client any money paid by the Client for the Goods and/or Services. FT shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 The Client may cancel delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 23.3, the Client will not be liable for the payment of any costs of FT, except where a deposit is payable in accordance with clause 8.5. Failure by the Client to otherwise accept delivery of the Goods and/or Services shall place the Client in breach of this Contract.

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- 23.4 Either party may, without liability, terminate these terms and conditions or cancel provision of the Services:
- (a) if there is no agreement term specified, at any time by giving thirty (30) days' notice to the other party;
 - (b) if an agreement term is specified, at any time after the end of the agreement term by giving one (1) months' notice to the other party;
 - (c) failure to give notice of intention to cancel at least thirty (30) days prior to the expiration date of the agreement term, the agreement term shall automatically renew on a monthly basis, unless cancelled by way of the Client providing FT with thirty (30) days' notice.
- 23.5 If the Client wishes to terminate the Services during a stipulated term, FT may charge the Client an early termination fee, the amount of which will depend on the Services acquired by the Client and the date of termination.
- 23.6 Should the Client, for any reason, cause the Services to be delayed for more than three (3) months after the acceptance date, this Contract will be terminated by FT (at their sole discretion) and all Services completed, but not billed or paid, will be payable in full within seven (7) days from the date of the submitted invoice.
- 23.7 Upon termination of this Contract, FT will immediately delete all files and content relating to the Client and the Services provided thereto.
- 23.8 It is the Client's responsibility to make arrangements for the transfer of their data prior to the termination date. FT accepts no liability for any loss or damage incurred by the Client as a result of the deletion of such data.

24. Dispute Resolution

- 24.1 FT and the Client will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this Contract, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.

25. Privacy Policy

- 25.1 All emails, documents, images, or other recorded information held or used by FT is Personal Information, as defined and referred to in clause 25.4, and therefore considered Confidential Information. FT acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). FT acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by FT that may result in serious harm to the Client, FT will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to FT in respect of Cookies where the Client utilises FT's website to make enquiries. FT agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to FT when FT sends an email to the Client, so FT may collect and review that information ("collectively Personal Information")
- If the Client consents to FT's use of Cookies on FT's website and later wishes to withdraw that consent, the Client may manage and control FT's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.**
- 25.3 The Client agrees for FT to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by FT.
- 25.4 The Client agrees that FT may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 25.5 The Client consents to FT being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 25.6 The Client agrees that personal credit information provided may be used and retained by FT for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 25.7 FT may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 25.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 25.4 above;
 - (b) name of the credit provider and that FT is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;

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- (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided FT is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and FT has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of FT, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 25.9 The Client shall have the right to request (by e-mail) from FT:
- (a) a copy of the Personal Information about the Client retained by FT and the right to request that FT correct any incorrect Personal Information; and
 - (b) that FT does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 25.10 FT will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 25.11 The Client can make a privacy complaint by contacting FT via e-mail. FT will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 26. Unpaid Seller's Rights**
- 26.1 Where the Client has left any item with FT for repair, modification, exchange or for FT to perform any other service in relation to the item and FT has not received or been tendered the whole of any monies owing to it by the Client, FT shall have, until all monies owing to FT are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 26.2 The lien of FT shall continue despite the commencement of proceedings, or judgment for any monies owing to FT having been obtained against the Client.
- 27. Service of Notices**
- 27.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 27.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 28. Trusts**
- 28.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not FT may have notice of the Trust, the Client covenants with FT as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of FT (FT will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.
- 29. General**
- 29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales, and are subject to the jurisdiction of the courts in Sydney, New South Wales. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 29.3 FT may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 29.4 The Client cannot licence or assign without the written approval of FT.

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- 29.5 FT may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of FT's sub-contractors without the authority of FT.
- 29.6 The Client agrees that FT may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for FT to provide Goods to the Client.
- 29.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to FT, once the parties agree that the Force Majeure event has ceased.
- 29.8 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 29.9 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 29.10 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.