

1. Definitions

- 1.1 **“Amtrax”** means Amtrax Limited, its successors and assigns.
- 1.2 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Amtrax 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 a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 **“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.
- 1.4 **“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 Amtrax’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.
- 1.5 **“Goods”** means all Goods or Services supplied by Amtrax 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).
- 1.6 **“Live Date”** means the date in which Amtrax provides the Support Services as per initial acceptance of Amtrax’s quotation.
- 1.7 **“Price”** means the Price payable (plus any Goods and Services Tax (“GST”) where applicable) for the Goods as agreed between Amtrax and the Client in accordance with clause 6 below.
- 1.8 **“Prohibited Content”** means any content on any media (including advertising, posts, comments, etc.) that:
 - (a) are, or could reasonably be considered to be, in breach of the Broadcasting Services Act 1989 or any other applicable law or applicable industry code; or
 - (b) contains, or could reasonably be considered to contain, any misrepresentations; or is, or could reasonably be considered to be, misleading or deceptive, likely to mislead or deceive or otherwise unlawful; or
 - (c) is or could reasonably be considered to be, in breach of any person’s Intellectual Property Rights.
- 1.9 **“Service Agreement”** means the Service Agreement payable for the Services as agreed between Amtrax and the Client in accordance with clause 6 below.
- 1.10 **“SNT”** means any Social Network Tool being a social media platform and/or application which is accessible on the internet through the World Wide Web, and which provides multimedia content via a graphical user interface (including, but not limited to Facebook, Twitter, LinkedIn, Pinterest, etc.).
- 1.11 **“Support”** means to provide direct support to the Client for technical issues. Support includes the following Services:
 - (a) attending onsite at the Client’s premises;
 - (b) any time spent to resolve any issues with the Client’s computer system created by any operator error on the part of the Client or any action of any third parties whether authorised or unauthorised by the Client;
 - (c) resolving any issues which are solely caused by the actions of third parties and originate outside of the Client’s computer system e.g. problems that relate to the supply of services by the Client’s internet service provider.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is 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 Goods on credit shall not take effect until the Client has completed a credit application with Amtrax and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Amtrax reserves the right to refuse Delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by Amtrax in relation to Goods or Services supplied is given in good faith to the Client, or the Client’s agent and is based on Amtrax’s own knowledge and experience and shall be accepted without liability on the part of Amtrax. Where such advice or recommendations are not acted upon then Amtrax shall require the Client or their agent to authorise commencement of the Services in writing. Amtrax shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 None of Amtrax’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Amtrax in writing nor is Amtrax bound by any such unauthorised statements.
- 2.8 Once accepted by the Client, Amtrax’s quotation shall be deemed to interpret correctly the Client’s instructions, whether written or verbal. Where verbal instructions only are received from the Client, Amtrax shall not be responsible for errors or omissions due to oversight or misinterpretation of those instructions.
- 2.9 In the event that the Client requests Amtrax to provide the Services urgently and there is no Service Agreement in place, that may require Amtrax’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then Amtrax reserves the right to charge the Client additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between Amtrax and the Client.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Amtrax 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 Amtrax 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 Amtrax in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Amtrax; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 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 Amtrax 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. Amtrax is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

4. Change in Control

- 4.1 The Client shall give Amtrax 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by Amtrax as a result of the Client's failure to comply with this clause.

5. Fixed Term Contracts

- 5.1 Where this Contract is for ongoing Services, the commencement date shall be the date of the first Delivery of the Services under a Service Agreement or from the date of signing, whichever, is the earlier. A Service Agreement shall be for the period ("**initial term**") as agreed between both parties and shall revert to a month-to-month basis automatically, thereafter, unless agreed otherwise until terminated by either party by giving at least thirty (30) days required notice as defined in the Service Agreement prior to the expiration date of the initial term or any additional term.
- 5.2 The Client acknowledges and accepts that all fixed Contracts are subject to periodic Price reviews to allow for increases to Amtrax in the cost of labour and materials (including, but not limited to, movement in the Consumer Price Index (CPI), which are beyond the control of Amtrax.

6. Price and Payment

- 6.1 At Amtrax's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Amtrax to the Client; or
 - (b) Amtrax's quoted Price (subject to clause 6.1) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days; or
 - (c) as per Amtrax's set non-refundable monthly charges for the Services which will be as stipulated (including when due and payable) by Amtrax in the Service Agreement.
- 6.2 *Additional and/or Varied Services:*
- (a) Amtrax agrees that there may be charges in the preparation of the initial quotation, which may include Client discussions, project scoping, research, testing and business analysis, etc. However, in some instances the aforementioned services may be charged to the Client additionally (at Amtrax's sole discretion) which will be charged for on the basis of Amtrax's standard hourly rates (and double such rate for any Services provided outside Amtrax's normal business hours);
 - (b) Amtrax reserves the right to amend the Price:
 - (i) if a variation to the Goods which are to be supplied is requested; or
 - (ii) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the site, service outages, delay in materials and/or other IT related circumstances etc.) which are only discovered on commencement of the Services; or
 - (iii) as a result of increases beyond Amtrax's reasonable control in the cost of materials or labour (e.g. third-party suppliers' costs, transport, freight, insurance, duty, taxes and levies etc.), or due to currency exchange rates.
- 6.3 Variations will be charged for on the basis of Amtrax's quotation, and will be detailed in writing, and shown as variations on Amtrax's invoice. The Client shall be required to respond to any variation submitted by Amtrax within ten (10) working days. Failure to do so will entitle Amtrax 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.
- 6.4 At Amtrax's sole discretion a deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Amtrax, which may be:
- (a) on Delivery of the Goods;
 - (b) before Delivery of the Goods;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Amtrax.
- 6.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge per transaction may apply), or by any other method as agreed to between the Client and Amtrax.
- 6.7 Amtrax may in its discretion allocate any payment received from the Client towards any invoice that Amtrax determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Amtrax may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Amtrax, payment will be deemed to be allocated in such manner as preserves the maximum value of Amtrax's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 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 Amtrax nor to withhold payment of any invoice because part of that invoice is in dispute.

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6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Amtrax an amount equal to any GST Amtrax must pay for any supply by Amtrax under this or any other contract 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.

7. Delivery of Goods

7.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that Amtrax (or Amtrax’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.

7.2 At Amtrax’s sole discretion the cost of Delivery is either included in the Price or is in addition to the Price.

7.3 Amtrax 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.

7.4 The failure of Amtrax to deliver shall not entitle either party to treat this Contract as repudiated.

7.5 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.

7.6 The Client shall ensure that Amtrax has clear and free access to the site at all times to deliver the Goods.

7.7 The Client acknowledges and accepts that:

(a) Amtrax’s driver may assist with unloading only; and

(b) where access and labour are not available then Amtrax at their discretion may charge a handling fee which be shown as a variation on the invoice.

7.8 Any time specified by Amtrax for Delivery of the Goods is an estimate only and Amtrax will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Amtrax is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then Amtrax shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

8.1 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.

8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Amtrax is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Amtrax is sufficient evidence of Amtrax’s rights to receive the insurance proceeds without the need for any person dealing with Amtrax to make further enquiries.

8.3 If the Client requests Amtrax to leave Goods outside Amtrax’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.

8.4 Amtrax shall not responsible for problems caused by changes in the operating characteristics of the hardware or operating system software used by the Client which are made after the release date of the version of the software, nor for problems in the interaction of the software with any other software.

8.5 The Client acknowledges and accepts that:

(a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Amtrax’s or manufacturer’s fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Amtrax;

(b) Amtrax is only responsible for the Goods that are replaced/supplied by Amtrax, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify Amtrax against any loss or damage to the Services, or caused by the Goods, or any part thereof howsoever arising;

(c) that Amtrax shall not be held responsible or liable for any loss:

(i) corruption, or deletion of files or data (including, but not limited to, software programmes) resulting from illegal hacking of Services provided by Amtrax. Amtrax 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 Amtrax providing the Services. The Client accepts full responsibility for the Client’s software and data, and Amtrax is not required to advise or remind the Client of appropriate backup procedures (unless included as part of the Services); and

(ii) or damage to the Client’s software or hardware caused by any ‘updates’ provided for that software.

8.6 Amtrax, its directors, agents or employees will not be liable in any way for any form of loss or damage of any nature whatsoever suffered, whether arising directly or indirectly, by the Client or any person related to or dealing with the Client out of, in connection with or reasonably incidental to the provision of the Services by Amtrax to the Client.

8.7 In the event that the Goods are to be installed by Amtrax the Client agrees to make the premises, and access thereto, available immediately upon request by Amtrax. It is the Client’s responsibility to provide electricity and have a clear and safe area for the purposes of installation. Amtrax shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Amtrax.

9. Support Services

9.1 Support Services shall only be used by the Client for lawful purposes. Any use which violates any applicable national or international laws is strictly prohibited (e.g. posting or transmitting any unlawful, threatening, abusive, libellous, defamatory, obscene, offensive, indecent, pornographic, profane, or otherwise objectionable information of any kind – including, but not limited to, any transmission constituting or encouraging conduct that would constitute a criminal offense or give rise to civil liability).

9.2 Unless otherwise agreed the Support Services exclude domain registrations and SSL Certificates.

9.3 Amtrax will make best efforts to ensure that the Client receives continual and uninterrupted Services (including network servers) during the term of this Contract, however Amtrax does not in any way warrant or otherwise guarantee the availability of the Services, which shall be subject to regularly scheduled maintenance cycles, and many events/circumstances beyond the control of Amtrax. In no event though, shall Amtrax 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, lack of connection or slow connection) of Amtrax to provide Services under this Contract, or any loss of data,

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if such delays or failures are due to circumstances beyond our control. Such a failure or delay shall not constitute a default under this Contract.

- 9.4 Amtrax may, at their sole discretion, limit or deny access to the Services if, in the judgement of Amtrax, 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.

Support Requests

- 9.5 If the Client requires Support, then the Client must request such Support from Amtrax provided that for:
- (a) non-urgent Support the Client must contact Amtrax by email provide detailed information outlining the issue in respect of which they require Support and the name and contact details of the person to whom Amtrax should respond or contact for further clarification of the Support request; and
 - (b) urgent Support the Client must contact Amtrax and leave a detailed message outlining the issue in respect of which they require Support and the name and contact details of the person to whom Amtrax should respond or contact for further clarification of the Support request.
- 9.6 Amtrax will make efforts to respond to a Support request received during the support hours of 0830-1700 Monday to Friday (“**Support Hours**”) within two (2) hours unless the Client is notified otherwise at the time of lodging the Support request. Amtrax will then make efforts to provide a resolution to the issue in question within a timeframe reflective of the severity of the issue. Any day that is a Saturday, Sunday or public holiday in New South Wales is regarded as being outside of Support Hours, unless otherwise stated.

After Hours Support

- 9.7 Subject to any confirmed After Hours Support in accordance with Amtrax’s Service Agreement, Amtrax will provide the Client with after-hours support for any incident classified as urgent under the Support requirements. Clients that do not have a SLA in place Amtrax will ensure to supply appropriate support when necessary i.e datacentre wide failure.
- 9.8 The provision of Support outside of Support Hours in response to a Support request will be entirely at Amtrax’s discretion, acting reasonably, on the basis of:
- (a) the information provided to Amtrax as part of the Support request;
 - (b) Amtrax’s current available resources which would enable it to provide the Support as requested; and
 - (c) whether Amtrax believes such requested Support could be supplied during the next period of Support hours with a minimum of disruption and inconvenience to the Client.
- 9.9 The hours worked after hours will be charged at Amtrax’s standard after hours rate specified on the Service Agreement.

10. Client’s Obligations:

- 10.1 The **Client will**, at it’s sole cost and expense:
- (a) 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 unattended or any other event which on the basis of a reasonable test would in the opinion of Amtrax be inadequate etc);
 - (b) ensure that Amtrax is at all times is granted all necessary licences, permissions and access reasonably required by Amtrax to perform the Support and additional Support including without limitation:
 - (i) physical access to any relevant premises and hardware;
 - (ii) logon and password access to any relevant computer systems;
 - (iii) remote online access to any relevant computer systems where available;
 - (c) failure by the Client to comply with clause 10.1 will entitle Amtrax, at its option, to suspend the Support and Additional Support without liability until such time as clause 10.1 is complied with;
 - (d) **the Client will not:**
 - (i) logon to an account that the Client is not authorised to access;
 - (ii) access data or take any action to obtain services not intended for the Client;
 - (iii) attempt to probe, scan or test the vulnerability of any system, subsystem or network;
 - (iv) tamper, hack, modify or otherwise corrupt or breach security or authenticity measures without proper authorisation;
 - (v) send spam or other duplicative or unsolicited messages in violation of applicable laws including without limitation the Spam Act 2003;
 - (vi) do anything that prevents or hinders Amtrax from providing the Support Services to any other person;
 - (e) the Client acknowledges and agrees 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; and
 - (f) Amtrax at its sole discretion acting reasonably shall be entitled to determine when there has been a breach of clause 10.1(d) and without limiting any other provision of these terms and conditions, Amtrax shall be entitled without liability to take such actions as it deems appropriate in the circumstances.

10.2 Limitation of Liability Support Services:

- (a) in consideration of clause 26.4 in the event the Support Services provided to the Client are disrupted or malfunction for any reason, Amtrax’s liability shall be limited to damages which under no circumstances shall exceed the amount due and payable by the Client to Amtrax for the Support Services during the period of disruption or malfunction;
- (b) the Client acknowledges and accepts that for Amtrax to carry out maintenance Services that the Services will not be available during this time. To the best of its ability Amtrax will endeavour to:
 - (i) keep any such down time to the absolute minimum necessary to carry out such maintenance;
 - (ii) wherever reasonably possible to do so, schedule such down time for weekends;
 - (iii) wherever reasonably possible to do so, provide the Client with at least three (3) days prior written notice of any such down time;
- (c) without in any way limiting the effect of any other provision of these terms and conditions, Amtrax will make reasonable efforts to ensure that as part of the Support Services nightly backups (“**Backups**”) occur which are stored for sixty (60) days and Amtrax, however where the Client chooses not to accept the option of Backups executed by Amtrax then it shall be the Client’s responsibility to activate regular Backups themselves. Amtrax will not be liable for any loss or damages where the Client fails to execute the said Backups; and

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(d) work required by Amtrax to recover information from any Backup will incur Amtrax's then standard service fee for such work provided that no charge will be made where such recovery is required solely due to the direct fault of Amtrax.

10.3 **Maintenance:**

- (a) subject to sub-clause 10.3(b), Amtrax will provide the maintenance Services in accordance with the maintenance terms set out in Amtrax's maintenance schedule; and
- (b) the Client will procure all necessary authorisations, licences and consents to enable Amtrax to have access to the hosted servers in order to provide the maintenance Services.

11. **Compliance with Laws**

11.1 The Client and Amtrax shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services.

12. **Title**

12.1 Amtrax and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid Amtrax all amounts owing to Amtrax; and
- (b) the Client has met all of its other obligations to Amtrax.

12.2 Where Amtrax has provided computer software and documentation (including, but not limited to, any content updates for such software), Amtrax retains ownership of the computer software and documentation, but grants a licence to the Client for use of the computer software and documentation for which the Client shall pay applicable licence fees. The Client will use any third-party software supplied by Amtrax, and identified as such, strictly in terms of the licence under which it is supplied.

12.3 Receipt by Amtrax 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.

12.4 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 12.1:

- (a) the Client is only a bailee of the Goods and must return the Goods to Amtrax on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Amtrax and must pay to Amtrax 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 Amtrax and must pay or deliver the proceeds to Amtrax 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 Amtrax and must sell, dispose of or return the resulting product to Amtrax as it so directs;
- (e) the Client irrevocably authorises Amtrax to enter any premises where Amtrax believes the Goods are kept and recover possession of the Goods;
- (f) Amtrax 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 Amtrax; and
- (h) Amtrax may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

13. **Licence**

13.1 Amtrax may grant the Client a licence to use computer software referred to in clauses 12.2 and 19.1 in relation solely to the operation of the Client's business however, the Client shall not use nor make copies of such computer software in connection with any work or business other than the work or business specified in writing to the Client unless express approval is given in advance by Amtrax. Such licence shall terminate on default of payment or any other terms of this agreement by the Client.

14. **Personal Property Securities Act 1999 ("PPSA")**

14.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:

- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
- (b) a security interest is taken in all Goods that have previously been supplied and that will be supplied in the future by Amtrax to the Client, and the proceeds from such Goods as listed by Amtrax to the Client in invoices rendered from time to time.

14.2 The Client undertakes to:

- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Amtrax may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Amtrax for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
- (c) 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 Amtrax; and
- (d) immediately advise Amtrax 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.

14.3 Amtrax and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.

14.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.

14.5 Unless otherwise agreed to in writing by Amtrax, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.

14.6 The Client shall unconditionally ratify any actions taken by Amtrax under clauses 14.1 to 14.5.

14.7 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of Amtrax agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, 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). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 15.2 The Client indemnifies Amtrax from and against all Amtrax's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Amtrax's rights under this clause.
- 15.3 The Client irrevocably appoints Amtrax and each director of Amtrax as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.

16. Defects

- 16.1 The Client shall inspect the Goods on Delivery and shall within seven (7) days of Delivery (time being of the essence) notify Amtrax of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Amtrax an opportunity to inspect the Goods within a reasonable time following Delivery if the Client believes the Goods are defective in any way. If the Client fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Amtrax has agreed in writing that the Client is entitled to reject, Amtrax's liability is limited to either (at Amtrax's discretion) replacing the Goods or repairing the Goods.
- 16.2 Amtrax will not accept the return of Goods for credit.

17. Warranty

- 17.1 For Goods not manufactured by Amtrax, the warranty shall be the current warranty provided by the manufacturer of the Goods. Amtrax shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

18. Consumer Guarantees Act 1993

- 18.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 ("CGA") do not apply to the supply of Goods by Amtrax to the Client.

19. Intellectual Property

- 19.1 Where Amtrax has supplied Goods and/or Services to the Client, all intellectual property rights, including copyright, relating to software and any associated manuals are the sole property of Amtrax. The software is supplied solely for the Client's internal use and the Client agrees not to do any of the following without the Seller's written consent:
- (a) copy the software; or
 - (b) allow any third party to have access to the software; or
 - (c) alter, modify, tamper with or reverse engineer the software; or
 - (d) combine the software with any other software.
- 19.2 Where Amtrax has designed Goods specifically in accordance with the Client's instructions or existing software, then all intellectual property rights shall be the sole property of the Client.
- 19.3 The Client warrants that all designs, specifications or instructions given to Amtrax will not cause Amtrax to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Amtrax against any action taken by a third party against Amtrax in respect of any such infringement.

20. Confidentiality

- 20.1 Subject to clause 20.2, each party agrees to treat as confidential the other party's confidential information, and agree not to divulge it to any third party, without the other party's written consent.
- 20.2 Both parties agree to:
- (a) use the Confidential Information of the other party only to the extent required for the purpose it was provided;
 - (b) not copy or reproduce any of the confidential information of the other party in any way;
 - (c) only disclose the other party's confidential information to:
 - (i) employees and third-party providers who need access to the information and who have agreed to keep it confidential;
 - (ii) its legal advisers and insurance providers if those persons undertake to keep such information confidential; and
 - (iii) not disclose the other party's confidential information to any person not referred to in this clause except with the other party's prior written consent or if required by law, any stock exchange or any regulatory body.
- 20.3 Either party must promptly return or destroy all confidential information of the other party in its possession or control at the other party's request unless required by law to retain it.
- 20.4 Confidential information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this Contract);
 - (b) received from a third party entitled to disclose it;
 - (c) that is independently developed.
- 20.5 The obligations of this clause 20 shall survive termination or cancellation of this Contract.

21. Default and Consequences of Default

- 21.1 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 Amtrax's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 21.2 If the Client owes Amtrax any money the Client shall indemnify Amtrax from and against all costs and disbursements incurred by Amtrax in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Amtrax's collection agency costs, and bank dishonour fees).
- 21.3 Further to any other rights or remedies Amtrax may have under this Contract, if a Client has made payment to Amtrax, 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 Amtrax under this clause 21 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.
- 21.4 Without prejudice to Amtrax's other remedies at law Amtrax shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Amtrax shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Amtrax becomes overdue, or in Amtrax'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 Amtrax;
 - (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.
- 22. Cancellation**
- 22.1 Without prejudice to any other remedies Amtrax may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Amtrax may suspend or terminate the supply of Goods to the Client. Amtrax will not be liable to the Client for any loss or damage the Client suffers because Amtrax has exercised its rights under this clause.
- 22.2 Either party may, without liability, cancel these terms and conditions or cancel provision of the Services:
- (a) if there is no contract term specified, at any time by giving thirty (30) days' notice to the other party;
 - (b) if a contract term is specified, at any time after the end of the Contract term by giving thirty (30) days' notice to the other party;
- 22.3 Amtrax may, in addition to their right to cancel under clause 22.2 do so at any time:
- (a) prior to the commencement of the Services, by giving notice to the Client, in the event Amtrax determines it is not technically, commercially or operationally feasible to provide the Services to the Client; or
 - (b) in the event the Client materially breaches these terms and conditions, and such breach is not capable of remedy.
- 22.4 In the event that the Client cancels the:
- (a) provision of Services prior to the expiry of any specified Contract term, then the Client shall be liable to pay for the provision of the Services until the expiration of the Contract term; or
 - (b) Delivery of Goods without giving Amtrax the prescribed notice period in accordance with clause 22.2 then the Client shall be liable for all losses incurred (whether direct or indirect) by Amtrax as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.5 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.
- 23. Privacy Policy**
- 23.1 All emails, documents, images or other recorded information held or used by Amtrax is "**Personal Information**" as defined and referred to in clause 23.3 and therefore considered confidential. Amtrax acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 ("the Act") including Part II of the OECD Guidelines as set out in the Act. Amtrax acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Amtrax that may result in serious harm to the Client, Amtrax will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to Amtrax in respect of Cookies where the Client utilises Amtrax's website to make enquiries. Amtrax 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 Amtrax when Amtrax sends an email to the Client, so Amtrax may collect and review that information ("collectively Personal Information")
- If the Client consents to Amtrax's use of Cookies on Amtrax's website and later wishes to withdraw that consent, the Client may manage and control Amtrax's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client authorises Amtrax or Amtrax's agent to:
- (a) access, collect, retain and use any information about the Client;
 - (i) including, 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 or any overdue fines balance information held by the Ministry of Justice for the purpose of assessing the Client's creditworthiness; or
 - (ii) for the purpose of marketing products and services to the Client.
 - (b) disclose information about the Client, whether collected by Amtrax from the Client directly or obtained by Amtrax from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 23.4 Where the Client is an individual the authorities under clause 23.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 23.5 The Client shall have the right to request (by e-mail) from Amtrax, a copy of the Personal Information about the Client retained by Amtrax and the right to request that Amtrax correct any incorrect Personal Information.
- 23.6 Amtrax will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

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- 23.7 The Client can make a privacy complaint by contacting Amtrax via e-mail. Amtrax will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.
- 24. Service of Notices**
- 24.1 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.
- 24.2 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.
- 25. Trusts**
- 25.1 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 ("Trust") then whether or not Amtrax may have notice of the Trust, the Client covenants with Amtrax as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust 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 or 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 without consent in writing of Amtrax (Amtrax 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 property.
- 26. General**
- 26.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising hereunder, shall be submitted to, and settled by, either adjudication in accordance with section 26 of the Construction Contracts Act 2002 and/or by arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 26.2 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the courts of New Zealand.
- 26.4 Subject to the CGA, Amtrax shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Amtrax of these terms and conditions (alternatively Amtrax's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.5 Amtrax may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.6 The Client cannot licence or assign without the written approval of Amtrax.
- 26.7 Amtrax 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 Amtrax's sub-contractors without the authority of Amtrax.
- 26.8 The Client agrees that Amtrax 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 Amtrax to provide Goods to the Client.
- 26.9 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 Amtrax.
- 26.10 Both parties warrant that they have the power to enter into 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.