

TERMS AND CONDITIONS OF DADI (AUSTRALIA) ENGINEERING COMPANY PTY LTD

The following Terms and Conditions govern all Orders placed by the Purchaser and will be incorporated into each Contract between the Purchaser and DADI (Australia) Engineering Company Pty Ltd ("DADI").

1. Definitions

In these Terms and Conditions:

Term:	Definition:
Approval	means any approval, authorisation, certificate, consent, determination, exemption or permit of any Government Authority.
DADI	means DADI Australia Pty Ltd.
DADI Materials	has the meaning given in clause 18.3.
Business Day	means: (a) for receiving a notice under clause 25, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.
Chain of Responsibility	means chain of responsibility as that concept is enshrined in the Heavy Vehicle National Law.
Change in Law	means: (a) the adoption, enactment or application to DADI of any Relevant Law not existing, foreseeable or otherwise applicable to DADI on the Commencement Date; or (b) any change in a Relevant Law or the application or interpretation of a Relevant Law after the Commencement Date, in either case that materially and adversely affects (in time and/or cost) the ability of DADI to perform its obligations under the Contract
Commencement Date	means the date the parties enter into a Contract in accordance with clause 4.6
Confidential Information	means any information provided by the Purchaser to DADI:

- (a) which the Purchaser has identified as confidential; or
- (b) DADI ought reasonably to know is confidential, but excludes any confidential information of the Purchaser that:
- (c) is in or becomes part of the public domain other than through a breach of the Contract by DADI; or
- (d) was already in DADI's possession at the time of receipt from the Purchaser without any obligation of confidentiality to the Purchaser.

Contract

means:

- (a) any contract to which these Terms and Conditions are expressed to form part; or
- (b) for the supply of Goods or Services pursuant to an Order, the contract (which includes these Terms and Conditions) formed for the supply of Goods or Services to the Purchaser upon the issue of an Order Confirmation.

Credit Account Application

means the document by which a Purchaser applies to DADI for a credit account.

Defaulting Party

means a party subject to an insolvency event in accordance with clause 22.

Delay Event

means:

- (a) a Force Majeure Event;
- (b) a breach of this agreement by the Purchaser; and
- (c) a delay attributable to any act or omission of the Purchaser or any other contractor or sub-contractor of the Purchaser including a delay in the performance of works, providing instructions, giving consent or providing access to any site to enable the performance of the Services or delivery of the Goods.

Delivery Claim

has the meaning given in clause 13.3.

Disclosing Party

means a party whose Confidential Information is disclosed, communicated or delivered or otherwise made known to the other party.

End Customer

means the end customer of the Goods or Services the subject of a Contract who ultimately owns or is intended to ultimately own the Goods or Services.

Force Majeure Event

means any event or circumstance which is beyond the reasonable control of the affected party and which results in or

	causes the failure of that party to perform any of its obligations under the Contract.
Goods	means any goods supplied or to be supplied by DADI to the Purchaser pursuant to the Contract.
Government Authority	means any Federal, State or local government (including any local council), and any agency, department, directorate or instrumentality thereof, including any independent regulator deriving power from statute, within Australia or elsewhere.
Heavy Vehicle National Law	means the road safety regime contained in the <i>Heavy Vehicle (Adoption of National Law) Act 2013</i> (NSW) and related State or Territory legislation.
Insolvency Event	means any of the following events in respect of any party: <ul style="list-style-type: none"> (a) the party disposes of the whole or part of its assets, operations or business other than in the ordinary course of business; (b) the party ceases to carry on business or is deregistered; (c) the party ceases to be able to pay its debts as they become due; (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the party's assets, operations or business; (e) any step is taken to enter into any arrangement between the party and its creditors; (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, an administrator or other like person to the whole or part of the party's assets, operations or business; (g) where the party is a partnership, any step is taken to dissolve that partnership or a partner dies; or (h) where the party is an individual, the party dies.
Intellectual Property Rights	means any and all intellectual property rights granted by law or equity from time to time, including copyright and related rights, designs, patents, trademarks, trade names and service marks, obligations of confidentiality and rights to use and protect the confidentiality of confidential information, know-how, moral rights, business names, domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights to inventions, and all other rights in intangible property including rights of present and future intangible property and all similar rights in any part of the world including any rights to claim priority and, where those rights are obtained or enhanced by registration, any registration,

renewal or extension of those rights and applications and rights to apply for and be granted those registrations, renewals or extensions.

Interest Rate	means the maximum per annum commercial overdraft rate determined by the Commonwealth Bank of Australia on the date payment becomes due to DADI plus 3% per annum.
Ipsso Facto Law Reform	means the law reform outlined in the <i>Corporations Amendment (Stay on Enforcing Certain Rights) Regulations 2018</i> (Cth) which prevents a party from enforcing a provision to terminate or amend a contract because the counterparty enters into voluntary administration, receivership or a scheme of arrangement to avoid being wound up in insolvency.
Loss	means damage, loss, cost, expense, suit, charge, action, right or action, or liability (whether actual or contingent).
Order	means an order placed by the Purchaser with DADI for the purchase of Goods or Services, whether made in writing, electronically (including by email) or verbally.
Order Confirmation	means a confirmation of an Order issued by DADI to the Purchaser.
Personnel	means the officers, directors, employees, agents, contractors, subcontractors and secondees of a person and its Related Bodies Corporate, except that: (a) DADI and its officers, directors, employees, agents, contractors, subcontractors and secondees are not Personnel of the Purchaser; and (b) the Purchaser and its officers, directors, employees, agents, contractors, subcontractors and secondees are not Personnel of DADI.
PPSA	means the <i>Personal Property Securities Act 2009</i> (Cth).
Price	means the price payable for the Supply as agreed between DADI and the Purchaser in accordance with clause 9 of these Terms and Conditions.
Privacy Laws	means the data protection and information privacy laws in Australia, including the <i>Privacy Act 1988</i> (Cth).
Purchaser	means the person to whom a Quotation DADI is addressed. If no Quotation is issued, Purchaser means the person to whom Goods and/or Services are supplied or are to be supplied by DADI.
Purchaser's Materials	has the meaning given in clause 18.1.

Quotation	means a written or verbal quotation by DADI setting out the proposed terms of a Supply.
Receiving Party	means a party who is in receipt of Confidential Information of the other party.
Related Body Corporate	has the same meaning as in the <i>Corporations Act 2001</i> (Cth).
Relevant Law	means any present and future applicable law including legislation, ordinances, regulations, codes, by-laws, orders, judgments, ordinances and other subordinate legislation, in force from time to time in any applicable jurisdiction that may be applicable in connection with the performance of the Supply.
Scope of Work	means the entire Works and requirements being performed by DADI under the Contract, as may be amended pursuant to the Contract from time to time.
Services	means any works or services supplied or to be supplied by DADI to the Purchaser pursuant to the Contract including the undertaking of Works.
Specification	means any written specification document in respect of the Goods or Services which has been incorporated in the Contract.
Supply	means the supply of Goods or Services pursuant to the Contract.
Terms and Conditions	means these terms and conditions of sale.
Variation	has the meaning given in clause 21.1.
Warranty Terms	means the warranty terms set out in Annexure A.
Works	means the entire works being performed by DADI under the Contract.

2. Interpretation

2.1 In the Contract, headings and bold text are for ease of reference only and do not affect the interpretation of this agreement and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph or schedule is to a clause or paragraph of or schedule to the Contract and a reference to the Contract includes any schedule or annexure;

- (d) a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a party to the Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural body, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it.

2.2 If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

3. Application of these Terms and Conditions

- 3.1 The Terms and Conditions apply to every Order, unless otherwise agreed in writing by DADI. Placement of an Order by the Purchaser is conclusive evidence of the Purchaser's acceptance that the Terms and Conditions apply and are binding on the Purchaser.
- 3.2 The Contract constitutes the entire agreement between the Purchaser and DADI with respect to an Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of the Contract.
- 3.3 Any purported incorporation of other standard terms and conditions by the Purchaser is void and of no effect, unless specifically identified in the Contract.
- 3.4 Where there is any discrepancy between the Terms and Conditions and those that may be included in or implied by any document forming part of any enquiry, order or contract, the Terms and Conditions will prevail, except in so far as they are expressly varied by DADI in writing or otherwise by law.

4. Quotations, Orders and Contract Formation

- 4.1 A Quotation issued by DADI to the Purchaser is an offer to perform the Supply and will not create any contract except in accordance with clause 4.6.
- 4.2 Unless the Quotation states otherwise, the Quotation is provided on the basis that the Supply will be subject to these Terms and Conditions.
- 4.3 DADI may withdraw, revoke or vary a Quotation at any time prior to its acceptance.
- 4.4 Unless otherwise stated in writing by DADI, all Quotations will automatically lapse thirty (30) days after the date of the Quotation.

- 4.5 The Purchaser may submit an Order in response to a Quotation.
- 4.6 A Contract is formed and binding on the Parties:
- (a) if the Purchaser issues an Order validly accepting a Quotation, without any qualification, when DADI receives the Order; or
 - (b) if there is no Quotation or if the Purchaser purports to qualify its acceptance of a Quotation or vary the terms of a Quotation, when DADI issues an Order Confirmation to the Purchaser.

5. General Obligations

- 5.1 DADI will:
- (a) subject to the terms of the Contract, perform the Supply to the standard of reasonable care and skill to be expected of contractors who regularly act in the capacity in which DADI is engaged and who possess the knowledge, skill and experience of a contractor to act in that capacity; and
 - (b) carry out the Supply on the basis of information available to DADI at the time when the Supply is being carried out. DADI will not take any responsibility, nor accept any liability, for Loss arising out of matters relevant to the Supply that arise due to circumstances that become known to DADI after completion of the Supply.
- 5.2 The Purchaser must:
- (a) pay the Price to DADI in consideration for the Supply in accordance with clause 9;
 - (b) provide DADI with any technical information, approval or drawings or other information reasonably required by DADI in carrying out its obligations regarding the Supply; and
 - (c) provide all reasonable support and co-operation reasonably requested by DADI in connection with the Supply.

6. Supply of Services

- 6.1 This clause 6 applies to the extent the Supply includes Services.
- 6.2 DADI agrees to provide the Services in accordance with the Contract.
- 6.3 DADI must do and provide all things reasonably necessary for the provision of the Services in accordance with the description of the Services in the Contract and all Relevant Laws.
- 6.4 DADI must use all reasonable endeavours to perform the Services by the date specified in the Contract (**Completion Date**) or as otherwise agreed in writing by the parties and subject to any extension of time under the Contract. If no Completion Date is specified or agreed, DADI must use reasonable endeavours to undertake the Services in a timely manner.
- 6.5 If DADI is likely to be delayed in completing the Services by the Completion Date by a Delay Event, DADI will be entitled to an extension of the Completion Date by a period of not less than the duration of a Delay Event.
- 6.6 Within a reasonable time after DADI becomes aware of a Delay Event, DADI must notify the Purchaser of the Delay Event and the new date for completion of the Services.

- 6.7 If:
- (a) a Force Majeure Event; or
 - (b) a breach of this agreement by the Purchaser,
- occurs and DADI incurs additional costs in relation to such event, DADI is entitled to claim, and the Purchaser must reimburse DADI for, the actual costs reasonably incurred by DADI in relation to the delay.
- 6.8 Unless the Contract provides otherwise, the Purchaser is responsible for:
- (a) obtaining all Approvals in connection with the Works;
 - (b) ensuring that DADI has clear and uninterrupted access to any site to enable the performance of the Services;
 - (c) securing any such site during the performance of the Services;
 - (d) obtaining all necessary insurances for the Goods or Services (including contract works and public liability insurance) during the performance of the Services; and
 - (e) notifying DADI of the precise location of all hidden services at any site of the Supply.

7. Supply of Goods

- 7.1 This clause 7 applies to the extent the Supply includes Goods.
- 7.2 DADI agrees to Supply the Goods in accordance with the Contract.
- 7.3 DADI will make all reasonable efforts to have the Goods delivered to the Purchaser not later than the time set out in the Contract or otherwise quoted by DADI in writing. If no time is stated or quoted, DADI must use reasonable endeavours to deliver the Goods in a timely manner.
- 7.4 Unless otherwise stated in writing, times quoted for delivery by DADI are given in good faith and are estimates only. The Purchaser will not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- 7.5 DADI will not be liable for:
- (a) any delay in delivery of the Goods to the Purchaser;
 - (b) any damage or loss due to unloading or packaging; or
 - (c) damage to property caused upon entering premises to deliver the Goods,
- except to the extent that such damage was caused by the negligent act or omission of DADI.
- 7.6 Unless the Contract provides otherwise:
- (a) the Price of the Goods is on an ex-works basis for collection by the Purchaser from DADI's premises and does not include delivery;
 - (b) if DADI agrees, in its absolute discretion, to arrange delivery to another location, the Purchaser must bear all freight, handling and insurance charges.

- 7.7 The Purchaser will be responsible at its own cost for unloading the Goods, or for arranging for a suitable means of unloading the Goods, from the relevant delivery vehicle. The Purchaser will indemnify DADI against any loss, liability, costs or expenses incurred by DADI in relation to the unloading of the Goods.
- 7.8 If the Purchaser fails to accept delivery of the Goods or give proper instructions to DADI for their delivery within fourteen (14) days after receiving notification in writing from DADI that the Goods are ready, the Purchaser must pay DADI on demand all reasonable costs for storage, protection and insurance of the Goods after expiration of such fourteen (14) day period. DADI reserves the right to store such Goods at a location of its choosing.
- 7.9 Subject to clause 7.10, legal and equitable title in the Goods sold by DADI to the Purchaser remains with DADI until payment in full of the Price by the Purchaser.
- 7.10 For exports to a country other than Australia:
- (a) DADI will deliver the Goods on a Carriage Insurance & Freight (CIF) basis to the foreign port agreed in the Contract;
 - (b) legal and equitable title in the goods and all risk of loss or damage to them will pass to the Purchaser upon CIF foreign port delivery,
- unless otherwise agreed in the Contract.
- 7.11 DADI and the Purchaser agree that, until property and ownership (including legal and equitable title) of the Goods has passed to the Purchaser:
- (a) the Purchaser will not supply any of the Goods to any person outside its ordinary or usual course of business;
 - (b) the Purchaser will not allow any person to have or acquire any security interest in the Goods;
 - (c) the Purchaser will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by DADI;
 - (d) the Purchaser must not remove, deface or obliterate any identifying mark, number or other indicia on any of the Goods;
 - (e) where the Purchaser is in actual or constructive possession of the Goods:
 - (i) the Purchaser holds the Goods as fiduciary bailee and agent for DADI;
 - (ii) after giving reasonable notice to the Purchaser, DADI will be entitled to enter upon the Purchaser's premises at any reasonable time to inspect the Goods;
 - (iii) the Purchaser will not deliver the Goods, or any document of title to the Goods, to any person except as directed or approved by DADI in writing;
 - (iv) the Purchaser must store the Goods separately and in a manner that enables the Goods to be identified and cross-referenced to particular invoices issued to the Purchaser by DADI; and

- (v) the proceeds of any Goods sold must be kept in a separate account by the Purchaser and must not be mixed with any other moneys, including funds of the Purchaser;
 - (f) the Purchaser acknowledges that if it should mix the Goods with other products or items such that the Goods are no longer separately identifiable, then the Purchaser and DADI will be owners in common of the new product; and
 - (g) the Purchaser has no right to claim any interest in the Goods to secure any amount or obligation DADI owes to the Purchaser.
- 7.12 Unless the Contract provides otherwise, the Goods are at the Purchaser's risk from the time at which they are dispatched to DADI or its nominee and the Purchaser must insure the Goods for their full insurable value with an insurer licensed or authorised to conduct the business of insurance in the place where the Goods will be stored.
- 7.13 Unless the Contract provides otherwise, the Purchaser is responsible for obtaining and maintaining all Approvals required to own, possess, use or operate the Goods.

8. Chain of Responsibility

- 8.1 The Purchaser acknowledges that under the Heavy Vehicle National Law, all parties in the road transport supply chain (including consignor, consignee, packer, loader and scheduler, drivers, owner-drivers and operators as well as directors, partners and managers) could be held responsible for their actions (or inactions) relating to breaches of the road transport, fatigue, speed, mass, dimension and load restraint Laws.
- 8.2 The Purchaser must ensure that it, at all times, takes all reasonable steps to comply with the Heavy Vehicle National Law and the Chain of Responsibility provisions it contains.
- 8.3 Without limiting any of its other compliance, reporting or record keeping requirements, the Purchaser must create and maintain, and must ensure that its Personnel create and maintain, records covering compliance with obligations under the Heavy Vehicle National Law, which must be provided to DADI upon request, including after any identification of non-compliance by DADI and after any incident.
- 8.4 The Purchaser must notify DADI in writing immediately in the event that it or any of its Personnel is issued with any warning, request for information, notice or fine in respect of any breach of the Chain of Responsibility provisions in respect of any Supply and must provide DADI with a copy of any such warning, request, notice or fine and any response or submission made.
- 8.5 DADI will not comply with any direction or instruction by the Purchaser that might have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing DADI from taking all steps that it considers to be reasonably necessary to prevent any breach of the Heavy Vehicle National Law.

9. Pricing

- 9.1 The Purchaser must pay the Price in the manner set out in the Contract.
- 9.2 The Price charged will be the price set out in the Contract or as otherwise agreed in writing by DADI and the Purchaser, subject to any adjustment in accordance with the Contract.
- 9.3 Unless expressly stated otherwise the Price excludes:

- (a) fees, duties, taxes, surcharges and all other imposts of any Government Authority; and
 - (b) sea freight, duty, customs clearance, which will all be charged at cost plus 5% handling charge if applicable.
- 9.4 Unless specified to the contrary in the Contract, the Supply does not include, and no allowance has been made by DADI in the Price for:
- (a) any physical conditions on site which differ from the physical conditions which could reasonably have been anticipated by DADI, including hidden services or ground conditions;
 - (b) Changes in Law;
 - (c) the preparation of detailed service drawings, plans or the payment of any fees, which may be required for obtaining Approvals.
- 9.5 If any of the circumstances identified in clause 9.4 occur and result in an increase in the cost to DADI of performing the Supply, and the Contract does not state otherwise, DADI is entitled to make a reasonable adjustment to the Price to recover the additional costs.

10. Invoicing and Payment

- 10.1 DADI will issue an invoice for the Supply on a monthly basis or as otherwise set out in the Quotation (**Invoice**).
- 10.2 Unless the Contract states otherwise, the Purchaser must pay the Price not more than thirty days following the date of the invoice.
- 10.3 If the Purchaser holds a current and valid credit account with DADI in accordance with clause 11 and is not in default under the credit account terms or any other Contract, the Purchaser must make payment according to the agreed account terms.
- 10.4 Where the Purchaser has defaulted in its payment obligations under the Contract, any amounts owing by the Purchaser to DADI for any Goods or Services supplied pursuant to the Contract may be offset by DADI against any amount payable by DADI to the Purchaser under any other contract.
- 10.5 Clause 10.4 does not preclude or otherwise limit the rights of DADI to pursue legal remedies in the event of default by the Purchaser.
- 10.6 DADI may charge a surcharge on payments made by credit card to reimburse the cost of any bank or processing charges incurred by DADI in respect of the payment.
- 10.7 To the maximum extent permitted by law, the Purchaser will be liable for all costs incurred with the recovery of any unpaid invoiced amounts, including legal and collection agents' fees, court costs, interest and DADI's fees for time incurred with the recovery process.
- 10.8 The Purchaser is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Purchaser by DADI, nor is the Purchaser entitled to withhold payment of any invoice because part of that invoice is in dispute.
- 10.9 If the Purchaser does not pay any amount owing to DADI by the due date for payment, DADI may charge default interest on the unpaid amount at the Interest Rate, calculated on a daily basis from the due date until payment is received in full (after as well as before judgment).

11. Credit

- 11.1 Any agreement by DADI to grant the Purchaser credit has been or will be made on the basis of a Credit Account Application and any additional information (including references) required by DADI.
- 11.2 If DADI approves the Purchaser's Credit Account Application and grants the Purchaser credit, the Purchaser must pay the Price within the period of credit and in accordance with any agreed credit terms.
- 11.3 Until DADI grants the Purchaser credit by notice in writing, or if DADI withdraws, suspends or limits credit (which it may do at any time and for any reason, in its absolute discretion), DADI will only Supply the Goods or Services to the Purchaser on the basis of payment by cash in advance.
- 11.4 By completing a Credit Account Application and applying for credit with DADI, the Purchaser agrees to be bound by the Terms and Conditions for each Supply made by DADI to the Purchaser unless and until DADI and the Purchaser agree in writing to the contrary.
- 11.5 If the Purchaser holds a credit account with DADI, the Purchaser must immediately notify DADI in writing of any change in the shareholding or ownership of the Purchaser or any material change in the Purchaser's financial position or any other information provided by the Purchaser in the Credit Account Application.

12. GST

- 12.1 In this clause 12, a word or expression defined in the GST Law has the meaning given to it in that law.
- 12.2 All amounts payable under a Contract are expressed exclusive of GST.
- 12.3 If a party makes a supply under or in connection with a Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 12.3 (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made unless that consideration is stated to already include GST.
- 12.4 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 12.3.
- 12.5 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with a Contract.
- 12.6 A party need not make a payment for a taxable supply made under or in connection with a Contract until it receives a tax invoice for the supply to which the payment relates.

13. Delivery Claims

- 13.1 No defect or claim in respect of Goods delivered will entitle the Purchaser to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of the Order.
- 13.2 The Purchaser must inspect all Goods received as soon as practicable following delivery.

- 13.3 The Purchaser must, within five Business Days of delivery of the Goods, notify DADI of any error, omission, shortage in quantity or damage to the Goods delivered (**Delivery Claim**).
- 13.4 The Purchaser must provide such substantiation of any Delivery Claim as reasonably requested by DADI and must assist DADI to investigate the Delivery Claim.
- 13.5 The Purchaser must allow DADI or its nominee to inspect the alleged error, omission, shortage in quantity or damage within a reasonable time of receiving the Delivery Claim.
- 13.6 DADI will endeavour to rectify any error, omission, shortage in quantity or damage, properly notified and verified in accordance with this clause 13, as soon as reasonably practicable after receiving the Delivery Claim but will not be liable for any delay in respect of such rectification.
- 13.7 If the Purchaser fails to give notice in accordance with clause 13.3, DADI will be deemed to have fulfilled the contract and no Delivery Claim by the Purchaser need be recognised by DADI.

14. Tests on completion

- 14.1 DADI will, at its own expense, carry out any tests required by the Contract together with any tests required by any Government Authority, or absent such requirements, DADI may carry out its standard tests on the Goods. Any additional tests required by the Purchaser will be at the Purchaser's expense.
- 14.2 DADI must give not less than seven (7) days' notice of its intention to carry out any test that the Purchaser is entitled to attend and, unless otherwise agreed, such test may then be conducted by DADI at the nominated time and the Purchaser will be deemed to have been present and to have accepted the reported test results. The Purchaser will give DADI such access as DADI reasonably requires to perform such tests.
- 14.3 Where the Goods, or any part of the Goods, fail to pass the tests carried out in accordance with this clause 14, DADI will be given reasonable opportunity to carry out that work which it considers necessary to achieve the required performance, and to reperform the tests.

15. Warranties, Liability and Indemnities

- 15.1 Nothing in the Contract excludes, restricts or modifies any terms, conditions or warranties or DADI's liability for them which are imposed or implied by any statute, including but not limited to the *Competition and Consumer Act 2010* (Cth), and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that DADI may legally do so.
- 15.2 DADI provides warranties in accordance with the Warranty Terms, but not otherwise.
- 15.3 Except as otherwise provided in the Contract and subject to clause 15.1, DADI's liability for any kind of loss or damage suffered by the Purchaser in connection with the Contract, whether in contract, negligence or other tort, misrepresentation, breach of any statutory or equitable duty, or otherwise, and whether DADI's act or omission is wilful or otherwise, is excluded and/or limited (as the case may be) as set out in clause 15.
- 15.4 DADI accepts unlimited liability for personal injury or death to the extent that it directly results from DADI's negligence, but subject to the contributory liability of any other person.

- 15.5 Subject to clauses 15.1 and 15.4, to the maximum extent permitted by law, the Purchaser acknowledges and agrees DADI's liability to the Purchaser (and any party claiming through the Purchaser against DADI) for any claim for loss or damages (including legal expenses) made in connection with the Contract whether in contract, tort (including negligence), under statute, in equity or otherwise will be limited as follows:
- (a) for any liability for Goods that are claimed to be defective or deficient (whether arising from those goods not meeting the Specification or otherwise), DADI's liability is limited to the cost of repair or replacement of those Goods as soon as reasonably practicable, or repayment to the Purchaser of the Price of those Goods, at DADI's election; and
 - (b) for any liability for Services forming part of the Supply or otherwise provided by, or on behalf of, DADI, not meeting the Scope of Work or Specification or otherwise claimed to be defective or deficient DADI's liability is limited to the provision of the Services again or the payment of the price of having the Services provided again, at DADI's election.
- 15.6 To the maximum extent permitted by law, the Purchaser acknowledges and agrees that DADI will not be liable for, and the Purchaser waives any right it has to claim, any loss not arising naturally according to the usual course of things, any loss of income, loss of actual or anticipated profit, loss of production, loss of contract, loss of customers, goodwill, opportunity or business, or loss of data arising under or in connection with the Contract, whether in contract, tort (including negligence), under statute, in equity or otherwise.
- 15.7 The Purchaser acknowledges and agrees, to the maximum extent permitted by law, that any other liability falling outside the application of clauses 15.4 or 15.5 above, for any loss or damage arising from or caused in any way by DADI, the Goods or Services or this Contract, is excluded.
- 15.8 The Purchaser must ensure that the liability of DADI to End Customers of the Goods or Services the subject of the Contract is limited and excluded in accordance with this clause 14. The Purchaser indemnifies DADI against any claim by End Customers for loss or damages made in connection with the Contract whether in contract, tort (including negligence), under statute, in equity or otherwise.

16. Insurance

- 16.1 DADI will maintain with a reputable insurance company throughout the term of the Contract:
- (a) public liability insurance written on an occurrence basis providing cover for an amount not less than \$10,000,000; and
 - (b) workers' compensation insurance appropriate to its activities in the form and amount required by law.
- 16.2 DADI will provide evidence that it holds the insurance required under clause 16.1 whenever reasonably requested by the Purchaser.

17. Personal Property Securities Act

- 17.1 In this clause 17, terms defined in the PPSA have the meaning given in the PPSA, unless the context requires otherwise.

- 17.2 The Purchaser acknowledges and agrees that, with respect of the Goods identified in the Contract or otherwise supplied to the Purchaser, the Contract constitutes a security agreement and that DADI may register a financing statement in respect of the security interest provided by the Contract.
- 17.3 The Purchaser grants to DADI a security interest in the Goods supplied to secure payment of the amount payable by the Purchaser to DADI (whether or not those amounts have become due for payment) in connection with the Contract. The security interest:
- (a) extends to and continues in all proceeds; and
 - (b) is a purchase money security interest to the extent to which it secures payment of the unpaid Price.
- 17.4 The Purchaser must:
- (a) promptly do anything required by DADI to ensure DADI's security interest is a perfected security interest and has priority over all other security interests in the Goods;
 - (b) not do or permit anything to be done that may result in the purchase money security interest granted to DADI ranking in priority behind any other security interest;
 - (c) not cause or knowingly permit any person to take a security interest over, or to register a financing statement in relation to, the Goods without the prior written consent of DADI; and
 - (d) immediately notify DADI if it becomes aware of any person taking steps to register a financing statement in relation to the Goods.
- 17.5 The Purchaser:
- (a) waives the right under the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing charge statement relating to a security interest created under the Contract;
 - (b) waives any right it may have under section 115 of PPSA upon enforcement;
 - (c) to the fullest extent permitted by the PPSA, contracts out of its rights to receive any other notice or statement under any other provision of the PPSA;
 - (d) agrees to pay all costs incurred by DADI in registering and maintaining a financing statement (including registering a financing charge statement) on the PPSR or enforcing or attempting to enforce the security interest created by the Contract including executing subordination agreements; and
 - (e) is responsible for the full costs incurred by DADI (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA.
- 17.6 If the Purchaser defaults in the performance of any obligation to DADI under the Contract or any other agreement for DADI to provide Goods to the Purchaser, DADI may enforce its security interest in any Goods by exercising all or any of its rights under the Contract or the PPSA.

18. Intellectual Property Rights

- 18.1 The Purchaser warrants that all Specifications, drawings, designs, production requirements or other documents provided by or on behalf of the Purchaser in relation to the Supply are accurate and that DADI is entitled to use such materials for the purposes of the Supply (**Purchaser's Materials**) and that such use does not infringe the Intellectual Property Rights of any third party.
- 18.2 The Purchaser indemnifies DADI from and against all claims and losses and damages incurred by DADI in relation to any actual or alleged breach of a third party's Intellectual Property Rights as a result of DADI using or relying on any Purchaser's Materials.
- 18.3 All Intellectual Property Rights in any Goods or other materials created or provided by DADI to the Purchaser in relation to the Supply, including any design work or preliminary layouts provided to the Purchaser prior to the formation of the Contract (**DADI Materials**), remain the property of DADI and the Purchaser warrants that it will not infringe those rights.
- 18.4 Subject to the Purchaser's payment of the Price in accordance with the Contract, DADI grants the Purchaser a non-exclusive, royalty-free, revocable, non-transferable licence to use DADI Materials for any purpose related to the use of the Goods or Services in accordance with the Contract and otherwise to receive the benefit of the Supply. The Purchaser must not use the DADI Materials for any other purpose.
- 18.5 Any descriptive or shipping specifications, illustrations, drawings, data, dimensions and weights contained in DADI's catalogues, price lists or publicity material or submitted with DADI's tender are illustrative and approximate only and do not form part of the Contract unless stated by DADI in writing.
- 18.6 Without limiting clause 18.3, unless the Contract provides otherwise, all drawings and information issued by DADI remain the property of DADI and may not be distributed or copied without DADI's permission.
- 18.7 All drawings, descriptions, specifications, performance claims and capability claims given by DADI in the Quotation or contained in any catalogue, website or other publication are approximations only, do not form part of the Contract and DADI does not warrant the accuracy or completeness of any such information, unless expressly guaranteed in the Contract.

19. Confidential Information

- 19.1 DADI must:
- (a) take all reasonable steps to safeguard the confidentiality of the Confidential Information; and
 - (b) not disclose, make public or use for purposes other than for the purposes of the Contract any Confidential Information of the Purchaser without the prior written consent of the Purchaser.
- 19.2 Any obligation of DADI under this clause 18.6 will not be taken to have been breached if the confidential information was required to be disclosed by law or court order, provided that DADI, to the extent reasonably practicable, gives the Purchaser prompt notice of the existence of such an obligation and makes a reasonable effort to otherwise protect the confidentiality of such information.

20. Privacy

- 20.1 Each party must comply with its obligations under the Privacy Laws.
- 20.2 DADI will deal with personal information in accordance with its published privacy policy. This policy is available on request or on DADI's website.

21. Variations to the Supply

21.1 The Purchaser may, by written notice, request DADI to do any one or more of the following:

- (a) increase, decrease or omit any part of the Works or the Supply;
- (b) change the character or quality of any material or work (including a change in specified performance requirements or functional requirements);
- (c) alter the program for the performance of the Works or the Supply; or
- (d) perform additional work,

(Variation).

21.2 If the Purchaser requests a Variation, DADI must consider the request in good faith and notify the Purchaser in writing whether or not DADI is willing to perform the Variation, and if so, any cost and time implications of the proposed Variation.

21.3 A Variation will not be binding on the Parties unless and until:

- (a) DADI has accepted the proposed Variation in writing; and
- (b) DADI and the Purchaser have agreed in writing any adjustment to the Price or the time form performance, or that no such adjustments are required.

21.4 Unless and until the requirements of clause 21.3 are satisfied, the parties remain bound by the Contract, without the Variation.

22. Termination

22.1 DADI may terminate the Contract by written notice to the Purchaser if:

- (a) the Purchaser has not complied with the terms of payment pursuant to clause 10;
- (b) the Purchaser is subject to an Insolvency Event; or
- (c) the Purchaser is otherwise in breach of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from DADI requesting the breach be remedied.

22.2 The Purchaser may terminate the Contract by written notice to DADI if:

- (a) DADI is subject to an Insolvency Event; or
- (b) DADI is otherwise in breach of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from the Purchaser requesting the breach be remedied.

22.3 Clauses 22.1(b) and 22.2(a) do not apply if the Defaulting Party enters into voluntary administration, receivership or is subject to a scheme of arrangement, as contemplated by

the Ipso Facto Law Reform. For clarity, this clause 22.3 will only apply while the administration, receivership or scheme of arrangement is ongoing, and will cease in the event that the Defaulting Party is wound up.

- 22.4 Without limiting any other remedy available to DADI, to the maximum extent permitted by law:
- (a) the Purchaser must pay for all parts of the Supply performed prior to the termination of the Contract; and
 - (b) if the Contract is terminated by DADI under clause 22.1, the Purchaser must indemnify DADI from and against all liability, claims, costs and expenses, losses and damages incurred by DADI arising out of or in connection with the termination.

23. Disputes

- 23.1 Nothing in this clause 23 prevents DADI or the Purchaser seeking urgent injunctive or other interim relief from a court, or from continuing existing court proceedings.
- 23.2 It is a condition precedent to the commencement of any proceedings in any court in any jurisdiction (other than for urgent interlocutory relief) that the parties first follow the procedure referred to in clauses 23.3, 23.4 and 23.4,
- 23.3 A party claiming that a dispute has arisen out of or in connection with the Contract (**Dispute**) must provide the other party with written notice of the nature of the Dispute and the relevant facts.
- 23.4 In the first instance, the Dispute will be referred to the Representatives. A meeting of the Representatives must be convened and held by DADI and the Purchaser as soon as reasonably practicable to attempt to resolve the Dispute.
- 23.5 If a Dispute is not resolved within 20 days after the issue of a notice under clause 23.3, either party may commence court proceedings for the resolution of the Dispute.
- 23.6 Each party must bear its own costs of complying with this clause 23.

24. Force Majeure

DADI will not be liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed by a Force Majeure Event provided that DADI gives notice to the Purchaser of the delay and uses reasonable efforts to remedy the cause of the delay as soon as reasonably practicable.

25. Notices

- 25.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
 - (b) marked for the attention of the person, and hand delivered or sent by prepaid post or email to the recipient's address specified in the Parties section of this agreement, as varied by any Notice given by the recipient to the sender.

- 25.2 Communications by email need not be marked for the attention in the way required by clause 25.1(b). However, the email must state the first and last name of the sender. Communications sent by email are taken to be signed by the named sender.
- 25.3 A Notice given in accordance with clause 25.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, six Business Days after the date of posting (or fourteen Business Days after the date of posting if posted to or from a place outside the country of delivery); or
 - (c) if sent by email, at the time the email was sent unless the sender receives an automated message that the email has not been delivered,

but if receipt is not on a Business Day or is after 5.00pm on a Business Day (in the time zone of the addressee), the Notice is taken to be received at 9.00am on the next Business Day.

26. Variation of Terms and Conditions

- 26.1 DADI may at any time vary the Terms and Conditions applicable to future Orders and may notify the Purchaser of these changes or provide any other notice of a variation of the Terms and Conditions, by publishing the revised Terms and Conditions or notice on its website.
- 26.2 If DADI publishes the revised Terms and Conditions on its website, the revised Terms and Conditions are effective from the effective date noted in the Terms and Conditions or the date of publication on the website, whichever is later.
- 26.3 If DADI publishes the revised Terms and Conditions on its website, it may (but is not obliged to) notify the Purchaser that it has done so on any invoice or Order Confirmation.

27. Subcontracting and Assignment

- 27.1 DADI reserves the right to subcontract any part of the Supply without the Purchaser's consent.
- 27.2 DADI may assign its rights or novate its rights or obligations under the Contract (in whole or in part) to any person without the consent of the Purchaser.
- 27.3 The Purchaser must not assign or otherwise transfer its rights under the Contract without prior notice to and consent from DADI, which consent must not be unreasonably withheld.

28. Severance

If any provision or part of any provision of these Terms and Conditions is invalid, illegal or unenforceable, such provision or part thereof will be severed from the Terms and Conditions and the remainder will continue in full force and effect.

29. Waiver

Waiver of any power or right under this agreement must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver.

30. Governing Law and Jurisdiction

- 30.1 The Contract will be governed by and construed in accordance with the laws in force in the State of New South Wales.
- 30.2 Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

ANNEXURE A – DADI AUSTRALIA PTY LTD WARRANTY TERMS

1. These warranty terms apply to the supply of goods or services by DADI Australia Pty Ltd (**DADI**).
2. In these warranty terms:
 - (a) **'Contract'** means a contract for the supply of goods or services by DADI to a Purchaser;
 - (b) **'Defect'** means a defect, deficiency or other fault in materials or workmanship, and **'Defective'** has a corresponding meaning;
 - (c) **'Goods'** means any goods supplied or to be supplied by DADI to the Purchaser pursuant to the Contract;
 - (d) **'Proper Use'** means installation, commissioning, operation and maintenance in accordance with DADI documentation and good engineering practice;
 - (e) **'Purchaser'** means the person to whom Goods and/or Services are supplied or are to be supplied by DADI;
 - (f) **'Services'** means any works or services supplied or to be supplied by DADI to the Purchaser pursuant to the Contract;
 - (g) **'Third Party Goods'** means Goods purchased by DADI from a third party either for incorporation into equipment manufactured by DADI or for sale to the Purchaser; and
 - (h) **'Warranty Period'** means, except as otherwise provided in the Contract, twelve (12) months from the delivery date.
3. Third Party Goods purchased by DADI from a third party either for incorporation into equipment manufactured by DADI or for sale to the Purchaser are subject to any warranties provided by the supplier or manufacturer. To the maximum extent permitted by law, DADI does not give any warranty with regard to such goods, but will provide reasonable assistance to the Purchaser to enforce the Purchaser's rights against the supplier or manufacturer.
4. DADI warrants that the Goods and Services supplied under the Contract will, under Proper Use, be free from Defects during the Warranty Period (**Warranty Against Defects**).
5. The Warranty Against Defects is conditional upon the Purchaser adhering to the servicing and maintenance program available upon request by the Purchaser and as amended from time to time (**DADI Service/Maintenance Program**):
 - (a) for cleaning, inspection and repair of any corrosion in accordance with DADI's Service/Maintenance Program;
 - (b) for the inspection and replacement of lubricants and consumable parts in accordance with DADI's Service/Maintenance Program; and
 - (c) the checking of the general operation of the Goods, and in each and every instance, the undertaking of all activities on or before the time stated in the Service/Maintenance Program.

6. Work performed under clause 5 must, as a condition of DADI providing the Warranty Against Defects, be performed only by a service agent authorised or approved in writing by DADI. Failure to comply with the Service/Maintenance Program, or this clause, will render the Warranty Against Defects void.
7. If the Purchaser considers the Good or Services to be Defective, it must:
 - (a) give DADI notice of the alleged Defect during the Warranty Period by:
 - (i) completing and submitting a Warranty Service Request Form in the form reasonably required by DADI from time to time; or
 - (ii) contacting DADI on the telephone number provided above and providing all information reasonably requested by DADI; and
 - (b) allow DADI or its nominee to inspect the Goods or results of the Services within a reasonable time after such notification.
8. The Purchaser must bear its own costs of making a claim under the Warranty Against Defects, provided that if it is necessary to return Defective Goods, DADI will arrange for the collection and, where relevant, the supply of replacement Goods at DADI's cost.
9. If DADI agrees that the Goods or Services are Defective, DADI will, at its option:
 - (a) repair or replace the Defective goods or pay the cost of the repair or replacement of those Goods; and/or
 - (b) re-perform the Defective Services or pay the cost of their reperformance,
10. DADI will use reasonable endeavours to perform the Warranty Services as soon as reasonably practicable and in a manner which minimises any disruption and inconvenience to the Purchaser.
11. DADI's obligation to provide the Warranty Against Defects will not extend to any defect or failure caused by fair wear and tear, designs, specifications or any things outside DADI's scope of supply, accidents, misuse, wilful damage, neglect, lack of proper use, or repairs or modifications to Goods or Services which have been made without DADI's prior written approval.
12. This clause 12 applies if the Purchaser is a 'Consumer' as that term is defined in the *Australian Consumer Law* which is set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**Australian Consumer Law**).
 - (a) DADI acknowledges the benefits given by the Warranty Against Defects are in addition to any rights or remedies available to the Consumer under the Australian Consumer Law or any other applicable consumer protection laws in relation to the Goods or Services; and
 - (b) DADI provides the following statement:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

 1. *to cancel your service contract with us; and*

2. *to a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund for any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

13. DADI makes no other warranty to any person (including the Purchaser) in relation to the Goods or Services except those expressly set out in the Contract and those warranties which cannot be specifically excluded under law, including the Australian Consumer Law, and DADI expressly excludes all other terms, conditions, warranties, undertakings, inducements or representations, whether expressly or implied or implied by statute.