



Standard Terms and Conditions of Trade

Definitions

In these Terms unless the context otherwise requires the following words have the following meanings:

“Contract” means the binding agreement formed between the Parties upon acceptance of a Quote by the Customer or the acceptance of instructions to provide Goods or Services by Nonlinear Solutions and incorporates these Terms and Conditions including any schedules, attachments, and annexures hereto, the terms of any Quoter or other such document as executed by the Parties.

“Customer” is the person or business entity named on the quote provided by Nonlinear Solutions or the person or business entity providing instructions to Nonlinear Solutions, and any person acting on behalf of the Customer;

“Goods” means all goods supplied to the Customer by Nonlinear Solutions;

“Nonlinear Solutions” means Nonlinear Solutions Pty Ltd (ACN 641 754 029) its successors and assigns and any person acting on behalf of and with the authority of Nonlinear Solutions;

“Parties” means Nonlinear Solutions, the Customer, the Guarantor and any other person or entity bound by this Contract and **“Party”** means any one of the Customer or Nonlinear Solutions.

“Quote” means a written quotation provided by Nonlinear Solutions to the Customer for the supply of Goods and/or Services;

“Services” means all services supplied to the Customer by Nonlinear Solutions; and

“Software” means all software supplied or developed by Nonlinear Solutions.

1 Terms of Supply

1.1 These terms and conditions constitute a legally binding contract between you the Customer and Nonlinear Solutions and apply to the ordering, purchase, fulfilment and delivery of Goods and the provision of Services by Nonlinear Solutions. By placing an order for Goods from Nonlinear Solutions or instructing Nonlinear Solutions to undertake Services, the Customer acknowledges that it has read, understood, and agrees to be bound by these Terms and Conditions.

1.2 These Terms and Conditions apply to the exclusion of all other terms and/or conditions that the Customer may seek to impose or incorporate into the Contract, or which are implied by law, trade custom, practice, or course of dealing. No terms or conditions stated by the Customer shall be binding upon Nonlinear Solutions unless accepted by Nonlinear Solutions in writing.

2 Quotes

2.1 If requested to do so by the Customer, Nonlinear Solutions shall give the Customer a Quote specifying the work required to be done in order to fulfil the Customer's instructions and which includes an estimate of Nonlinear Solutions' charge for the performance of such work.

2.2 Any Quote given by Nonlinear Solutions is subject to the following and any changes will be charged at Nonlinear Solutions' standard rates:

- a) Any modifications to original details;
- b) Increases in material costs; and
- c) Any delay in the supply of information, components or labour to Nonlinear Solutions by Nonlinear Solutions' supplier(s) and/or the Customer.

2.3 Any Quote may be altered or withdrawn by a Party prior to delivery of Goods or the provision of Services, or any part thereof,

to the Customer. Unless previously withdrawn, any Quote is open for acceptance within the period stated therein or, when no period is stated, within thirty (30) days of the date of the Quote.

2.4 Where an express term or condition of a Quote provided by Nonlinear solutions conflicts or is inconsistent with these Terms and Conditions, the express term or condition of the Quote shall prevail to the extent of any inconsistency.

3 Acceptance

Notwithstanding the terms and conditions herein, the Customer making full or part payment, providing instructions in relation to the supply of Goods and/or Services or communicating their written or oral agreement to purchase the Goods and/or Services shall all constitute acceptance of these Terms and Conditions, and any Contract incorporating these Terms and Conditions.

4 Acknowledgement

The Customer acknowledges:

3.1 Where a Quote provided by Nonlinear Solutions is for:

- a) the provision of general Services to be paid for by the Customer on an hourly time charge basis; or
- b) investigation, research, development or testing of new, emerging or experimental technology,

any representations made by Nonlinear Solutions in respect of price, delivery, installation, completion dates or overall outcomes are estimates only and any failure by Nonlinear Solutions to comply with any such estimate shall not constitute a breach of any contract between Nonlinear Solutions and the Client, provided that Nonlinear Solutions has

used its best endeavors to deliver the Goods or supply the Services in accordance with the estimate.

3.2 The Customer acknowledges that where it has engaged Nonlinear Solutions to investigate, research, develop or test new, emerging or experimental technology, Nonlinear Solutions does not guarantee it will meet the Customer's expectations or desired outcomes, but covenants to use its best endeavours to do so.

3.3 Where the Customer engages Nonlinear Solutions to supply and/or deliver products, solutions and Goods which include new, emerging or experimental technology, software or methods, those products, solutions and Goods may not function as intended (or at all).

3.4 Nonlinear Solutions makes no representation and gives no warranty that the products, solutions, Services and/or Goods that it supplies to the Customer will be free from errors and/or defects or fit for any purpose not set out in the Quote.

3.5 Nonlinear Solutions makes no representation and gives no warranty in relation to the suitability or performance of any third party service provider (other than a subcontractor of Nonlinear Solutions) referred to the Customer by Nonlinear Solutions.

5 Deposit

5.1 Nonlinear Solutions may require the Customer to pay a deposit prior to the supplying Goods or Services. If a deposit is requested by Nonlinear Solutions and the Customer does not pay the deposit, Nonlinear Solutions is under no obligation to supply any Goods or Services until the deposit is received in full by Nonlinear Solutions and all details pertaining to Contract have been finalised. In the event of default as to payment owing to Nonlinear Solutions on the part of the



Customer, the Customer shall forfeit its deposit to Nonlinear Solutions and Nonlinear Solutions may claim any profit or margin contemplated by or allowed for in the contract in addition to any remedy available to Nonlinear Solutions at law or in equity.

6 Contract Price

6.1 The price for Goods and Services provided by Nonlinear Solutions will either be as stated in writing in Nonlinear Solutions' Quote or, if no written Quote is provided, calculated in accordance with Nonlinear Solutions' schedule of standard charges. Unless otherwise stated in writing, prices are exclusive of packaging, delivery costs (including insurance), GST or other applicable tax or levy, all of which will be payable by the Customer.

6.2 Nonlinear Solutions' Quote includes the supply of Goods and Services noted in the Quote and does not include (unless specified in the Quote):

- a) the supply of Goods and Services which are not contained in the Quote;
- b) the supply of Goods and Services outside of business hours (9:00am – 5:00pm Monday to Friday, excluding public holidays);
- c) travel and accommodation costs where Nonlinear Solutions is contracted to supply Goods or Services outside of the Perth metropolitan area or is required by the Customer to remain on site for more than 24 consecutive hours, which costs are payable to Nonlinear Solutions in addition to any quoted price;
- d) the removal of pre-existing fixtures, fittings, machinery, equipment rubbish or waste;
- e) repair work by other contractors; or
- f) Urgent repairs or emergency callouts, which are charged in accordance with Nonlinear Solutions' schedule of standard charges.

6.3 An additional charge ("Additional Charge") will be payable to Nonlinear Solutions by the Customer where:

- a) additional Goods and Services are required to be supplied or undertaken;
- b) the Customer alters the specifications after the Quote is agreed to; or
- c) the Customer requires Nonlinear Solutions to deliver Goods or perform work urgently.

6.4 Where an Additional Charge will be required, Nonlinear Solutions will endeavour to advise the Customer prior to

supplying the additional Good or Service. The Customer acknowledges and agrees that in some urgent and unforeseen circumstances, Nonlinear Solutions will be unable to advise the Customer of the Additional Charge before it is incurred, and the Customer agrees to pay for all urgent and unforeseen Additional Charges.

7 Variations

7.1 Any works completed by Nonlinear Solutions that are not specified in a Quote or accepted Purchase Order will be charged to and paid for by the Customer. Nonlinear Solutions may charge the Customer for variations to a Quote or accepted Purchase Order with a verbal Quote, and without the submission of a written Quote. In such circumstances, any invoice issued to the Customer will be prima facie evidence of the additional work completed pursuant to the variation, and the appropriate charge for that additional work.

7.2 Nonlinear Solutions assumes that any information supplied by the Customer and/or the Customers' employees is correct.

7.3 Nonlinear Solutions' Quote does not include any extra charges associated with correcting work where incorrect or insufficient information has been supplied by the Customer and/or the Customers' employees.

7.4 Where incorrect or insufficient information has been provided to Nonlinear Solutions and any works completed by Nonlinear Solutions has to be redone as a direct result of the provision of incorrect or insufficient information by the Customer and/or the Customers' employees to Nonlinear Solutions and/or Nonlinear Solutions' employees, Nonlinear Solutions may charge the Customer for that additional work at Nonlinear Solutions standard rates, and the Customer shall pay for that additional work.

8 Goods

The Customer acknowledges that all Goods described in the Quote, order and/or Contract are described in general terms and may incorporate such structural and cosmetic design and mechanical alterations or modifications as are made from time to time made by the respective manufacturers thereof in accordance with their policies for altering, modifying, and updating their products.

9 Specifications and drawings

All specifications, drawings, and particulars provided by Nonlinear Solutions to the Customer are approximations, and any deviation does not vitiate any contract between the Customer and Nonlinear Solutions or form grounds for any claim against Nonlinear Solutions by the Customer. The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter do not form part of any Contract between the Customer and Nonlinear Solutions or form the description applied to the Goods.

10 Performance

Any performance figures, levels or characteristics contained in catalogues, advertising material or quoted by Nonlinear Solutions are estimates only. Nonlinear Solutions is under no liability for damages for failure of the Goods to attain such performance figures, levels or characteristics unless specifically guaranteed in writing by an authorised representative of Nonlinear Solutions. Any such written guarantees are subject to recognised tolerances and margins of error applicable to such figures.

11 Third party products

The Customer acknowledges that Nonlinear Solutions may make use of or provide third party products and applications to the Customer in connection with the Services. Notwithstanding anything to the contrary in these Terms and Conditions, the Customer's use of and access to those third party products is subject to and conditional upon the Customer's compliance with the third party product terms, which the Customer may request from Nonlinear Solutions. If Nonlinear Solutions' arrangements with the third party for the use of their products ceases for whatever reason, the Customer acknowledges that Nonlinear Solutions may cease to provide the Customer with access to the relevant third party product(s).

12 Payment

12.1 The Customer must pay Nonlinear Solutions the total amount set out in any invoice without set-off, reduction or counter-claim within the time specified in Nonlinear Solutions' Quote and/or work authorisation form. If no payment terms are specified, the time for payment shall be strictly fourteen (14) days from the date of the invoice.



12.2 If full payment for the Goods or Services is not made when due, then Nonlinear Solutions may without prejudice to any other remedies available to it:

- (a) cancel or withhold the supply of Goods or Services; and
- (b) charge the Customer interest at the rate of 15% per annum or part thereof and interest shall continue to accrue both before and after judgment calculated on a daily basis.

12.3 The Customer indemnifies Nonlinear Solutions for all costs, expenses or losses incurred by Nonlinear Solutions as a result of the Customer's failure to pay all sums owing by the Customer to Nonlinear Solutions including without (limiting the generality of the forgoing) any debt collection and legal costs incurred in enforcing payment on an indemnity and/or solicitor and own client basis.

12.4 The Customer indemnifies Nonlinear Solutions against all costs and expenses (including legal costs on an indemnity and/or solicitor and own client basis) incurred by Nonlinear Solutions and/or its agents by reason of any enforcement of obligations and recovery of monies due to Nonlinear Solutions or recovery of possession of Goods from the Customer.

12.5 Nonlinear Solutions may at any time set-off amounts owed by Nonlinear Solutions to the Customer from any money owing by the Customer to Nonlinear Solutions.

12.6 If agreed progress payments are not honoured by the Customer, Nonlinear Solutions may cease any further work, and the provision of Goods and/or Services until such time as the outstanding progress payment(s) is/are received by Nonlinear Solutions.

12.7 If Nonlinear Solutions is responsible for any cost, loss, or damage, it is entitled to:

- (a) issue a certificate to the Customer as to its assessment of that sum, which will be prima facie evidence of the amount due to Nonlinear Solutions;
- (b) set off that sum as against any monies that may be or become due and owing to the Customer; or
- (c) Recover that sum as a debt due and owing to Nonlinear Solutions.

13 Ownership

13.1 Title to Goods supplied by Nonlinear Solutions shall remain with Nonlinear Solutions until the Customer has paid all monies owing to Nonlinear Solutions, whether or not the Goods have been

delivered and or affixed to a building or any structure and until the Customer pays Nonlinear Solutions in full:

- (a) The Customer holds the Goods as bailee for Nonlinear Solutions. Until such time as Nonlinear Solutions is paid in full, the Customer must not encumber or otherwise charge the Goods and the Customer shall be fully responsible for any loss or damage to the Goods;
- (b) The Customer shall identify and store Nonlinear Solutions' Goods separately from their own goods; and
- (c) The Customer irrevocably authorises Nonlinear Solutions and its agents to enter the Customer's property without notice, to uplift and remove any of the Goods for re-sale.

14 Grant of Software License and use of Software

Notwithstanding clause 13:

14.1 Any Software supplied to a Customer by Nonlinear Solutions is supplied to the Customer pursuant to a non-exclusive and limited license to use the Software products and functionalities for which the Customer has paid the applicable fees solely for the Customer's internal business purposes and in accordance with these Terms and Conditions. The Software is licensed, not sold to the Customer.

14.2 Nonlinear Solutions retains all right, title and interest in and to any Software supplied to the Customer, regardless of the form or media in or on which the original and other copies of the Software may subsequently exist. The Customer does not acquire any right of ownership to the Software or to any related intellectual property rights. The Customer agrees to keep the Software confidential and prevent unauthorized disclosure to or use of the Software by third parties without Nonlinear Solutions' prior written consent.

14.3 All Software supplied to a Customer by Nonlinear Solutions is protected by Australian copyright laws and international treaty provisions. The Customer may not copy the Software except with Nonlinear Solutions' prior written consent, and any copies that are made with Nonlinear Solutions' written consent must be used only by users Nonlinear Solutions has authorised to use the Software.

15 Intellectual Property

15.1 Nonlinear Solutions shall, at its absolute discretion, retain indefeasible title to all

intellectual property that it develops or creates on behalf of a Customer.

15.2 Where Nonlinear Solutions develops and/or creates intellectual property on instructions from a Customer which enables it to supply specialised, individualised or unique Goods or Services to the Customer, Nonlinear Solutions will grant the Customer a licence to use that intellectual property for the life of the Contract and may in its absolute discretion, extend the licence beyond the life of the Contract for any period it deems fit.

15.3 The Customer shall not recreate, duplicate, distribute, sell or otherwise copy or dispose of any intellectual property created by Nonlinear Solutions without the express written consent of Nonlinear Solutions.

15.4 The Customer must immediately notify Nonlinear Solutions in writing of any suspected, threatened, anticipated or actual breach of clause 15.3.

15.5 Where the Customer has breached clause 15.3, the Customer shall indemnify and keep indemnified Nonlinear Solutions for any loss or damage suffered because of the breach.

16 Confidential Information

Each party agrees to keep confidential, and not to use or disclose, other than as permitted by this Agreement, any confidential information of the other party provided to or obtained by that party prior to or after entry into this Agreement.

17 Personal Property Securities Act ("PPSA")

17.1 Unless the context requires otherwise, words and phrases defined in the PPSA have their same defined meaning in these Terms and Conditions.

17.2 The Customer acknowledges and agrees:

- (a) that these Terms and Conditions constitute a Security Agreement that creates a Security Interest in: (a) all Goods supplied to the Customer by Nonlinear Solutions; and (b) to be supplied by Nonlinear Solutions to the Customer in the future;
- (b) that the Security Interest created by these Terms and Conditions is a continuing Security Interest in all Goods (whether already supplied or to be supplied in the future) and



Proceeds, which will operate (despite any intervening payment or settlement of account) until Nonlinear Solutions has signed a release; and

(c) to waive its rights in relation to the sections listed in sub-section 115(1) of the PPSA (or as otherwise amended), which will not apply (to the extent, if any, mentioned) to the Security Agreement created by these Terms.

17.3 The Customer undertakes to:

- (a) keep all Goods free from any charge, lien, or Security Interest except as created under these Terms and not to otherwise deal with the Goods in a way that may prejudice any rights of Nonlinear Solutions under these Terms and Conditions or the PPSA;
- (b) sign any further documents and provide any further information (which must be complete, accurate and up to date in all respects) that Nonlinear Solutions may require related to this Security Agreement;
- (c) indemnify, and upon demand reimburse Nonlinear Solutions for all fees (including actual legal fees on a solicitor/own client basis), costs, disbursements, and expenses in registering and maintaining a Financing Statement or Financing Change Statement on the Register or releasing any Goods charged thereby; and enforcing or attempting to enforce the Security Interest created by these Terms; and
- (d) not register or allow a Financing Statement or a Financing Change Statement to be registered in respect of the Goods or Proceeds in favour of a third party, without the prior written consent of Nonlinear Solutions.

18 Risk and Delivery

- 18.1 The risk in the Goods shall pass to the Customer upon delivery/installation of the Goods to the Customer or to a third party nominated by the Customer.
- 18.2 Delivery of the Goods shall be made to the Customer's nominated address. Nonlinear Solutions shall not be liable for any loss or damage whatever due to the failure by Nonlinear Solutions to deliver the Goods (or any part of them) promptly or at all.
- 18.3 The Customer is responsible for and must protect Nonlinear Solutions' Goods and Services including any unfixed materials from theft, loss, or damage. The Customer must rectify all damage and replace all lost or stolen materials at its own cost.

19 Guarantees and warranty

- 19.1 Any warranty as to the Goods is limited to the written warranty provided by the manufacturer to the Customer on or before installation of the Goods.
- 19.2 Any warranty shall become null and void if the Goods are modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.
- 19.3 Nonlinear Solutions does not warrant any goods or components supplied by the Customer.
- 19.4 After completion of the supply of the Goods and/or the Services, the Customer shall notify Nonlinear Solutions of any apparent defects, faults or omissions in the Goods and/or Services.
- 19.5 Nonlinear Solutions shall not be liable to the Customer for any damage occasioned by others repairing any fault, omission or defect in the Goods or Services unless the Customer has given Nonlinear Solutions written notice of the alleged fault, omission or defect and permitted Nonlinear Solutions no less than 48 hours from receiving written notice thereof to make good the apparent fault, omission, or defect by appropriate rectification work.

20 Warranties

- The Customer warrants, acknowledges and represents:
- 20.1 The Customer has full power and authority to enter into any agreement including the Contract with Nonlinear Solutions and the person signing or accepting the Quote incorporating these Terms and Conditions indemnifies Nonlinear Solutions against all losses, costs or claims incurred by Nonlinear Solutions arising out of the person so signing not in fact having such power or authority;
- 20.2 If the Customer is at any time acting as trustee of a trust ("Trust"), then whether or not Nonlinear Solutions has notice of the Trust, the Customer covenants as follows:
- (a) Any contract between the Customer and Nonlinear Solutions extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) The Customer has full and complete power and authority under the Trust to enter into a contract with Nonlinear Solutions and the provisions of the Trust do not purport to exclude or

take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer 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; and

- (c) The Customer will not without consent in writing of Nonlinear Solutions cause, permit or suffer to happen any of the following events:
 - (i) The removal, replacement, or retirement of the Customer as trustee of the Trust;
 - (ii) Any alteration to or variation of the terms of the trust;
 - (iii) Any advancement or distribution of capital to the Trust; or
 - (iv) Any resettlement of the Trust property.
- (d) The Customer has disclosed to Nonlinear Solutions all facts, circumstances, and other information of which the Customer knows or should reasonably know relating to the supply of the Goods and or Services and which are material to or may have an effect on Nonlinear Solutions.
- (e) If the Customer introduces any employee, agent or third party to Nonlinear Solutions as the Customer's duly authorised representative, once introduced, that person shall have full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to vary any order made by the Customer.
- (f) In the event that the Customer's duly authorised representative is to have limited authority to act on behalf of the Customer, the Customer will advise Nonlinear Solutions of the terms of that limitation in writing.
- (g) The Customer acknowledges and accepts that they will be solely liable jointly and severally liable for all costs incurred in providing any Goods and/or Services requested by the Customer's duly authorised representative.

21 Liability

- 21.1 The parties acknowledge that, under the Australian Consumer Law, certain conditions and warranties may be implied in these Terms and there are rights and remedies conferred on the Customer in relation to the provision of the goods and services which cannot be excluded,



restricted, or modified by the Agreement (“Non-excludable Rights”).

21.2 Nonlinear Solutions disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of Nonlinear Solutions for a breach of a Non-Excludable Right is limited, at Nonlinear Solutions’ option, to the supplying of the Goods and/or any services again or payment of the cost of having the Goods and/or services supplied again.

21.3 Notwithstanding any other provision of these Terms, Nonlinear Solutions is in no circumstances (whatever the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:

- (a) any increased costs or expenses;
- (b) any loss of profit, revenue, business, contracts or anticipated savings;
- (c) any loss or expense resulting from a claim by a third party; or
- (d) any special, indirect or consequential loss or damage of any nature whatsoever caused by Nonlinear Solutions’ failure to complete or delay in delivering the Goods or completed the work.

21.4 Nonlinear Solutions will have no liability to the Customer in relation to any loss, damage or expense caused by Nonlinear Solutions’ failure to deliver the Goods or complete the work because of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, pandemic, the inability of Nonlinear Solutions’ normal suppliers to supply necessary material or any other matter beyond Nonlinear Solutions’ control.

21.5 In circumstance where Nonlinear Solutions is held liable for loss or damage suffered by the Customer, Nonlinear Solutions’ liability shall not, under any circumstances, exceed the value of Goods or Services supplied by Nonlinear Solutions.

22 Cancellation

22.1 Cancellation by the Customer

The Customer may terminate a contract with Nonlinear Solutions by providing

written notice of no less than 30 days, and in so doing may forfeit any Deposit paid to Nonlinear Solutions. Nonlinear Solutions incurs internal costs when the Customer accepts a Quote, including but not limited to obtaining parts from suppliers. If the Customer cancels a contract with Nonlinear Solutions, Nonlinear Solutions is entitled to recover all costs it has already incurred and deduct them from the Deposit or, if in the event the Deposit is insufficient to cover these costs, the Customer shall on demand pay Nonlinear Solutions for any direct (external) costs incurred to date. Such payment must be made within 7 days of the date of Nonlinear Solutions’ invoice for such costs.

22.2 Cancellation by Nonlinear Solutions

Nonlinear Solutions shall be entitled without liability to the Customer to cancel an order or delivery of an order if:

- (a) the Customer becomes insolvent, enter into a scheme of arrangement with creditors (other than with our consent) or the Customer ceases or threatens to cease to carry on all or a material part of the Customer’s business, or have a receiver appointed in respect of any or all of the Customer’s assets or other steps are taken for the Customer’s dissolution;
- (b) the Customer or Nonlinear Solutions are refused any licences, consents, or permits in respect of the Goods or Services; or
- (c) the Customer breaches any of these terms and conditions.

23 Security and Charge

23.1 The Customer hereby charges all property (including personal and real property) both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to Nonlinear Solutions under these Terms or otherwise and hereby authorises Nonlinear Solutions or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property in which the Customer holds a right, title to or interest in at any time.

24 General

24.1 If at any time and for so long as a law (including the *Competition and Consumer Act 2010*) conflicts with a provision of these Terms and Conditions and under that law the conflicting law shall prevail to the extent of any conflicting provision in these Terms and Conditions, each conflicting provision of these Terms and

Conditions will be treated as being amended to the extent necessary to resolve the conflict with that law.

24.2 If any part of these Terms can be read in a way that makes it illegal, unenforceable, or invalid but can also be read in a way that makes it legal, enforceable and valid, it shall be read in the latter way. If any part of these Terms or its application to any person or circumstances is or becomes invalid or unenforceable that part of these Terms is treated as removed for the period of that invalidity or unenforceability and the remaining clauses will not be affected and remain valid and enforceable to the fullest extent permitted by law.

24.3 No failure to exercise or any delay in exercising any right, power or remedy under these Terms and Conditions by a party operates as a waiver. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

24.4 These Terms and Conditions and any Contract between Nonlinear Solutions and the Customer are governed by the laws of the State of Western Australia and where applicable the Commonwealth of Australia. Each party submits irrevocably to the non-exclusive jurisdiction of the courts of the State of Western Australia and where applicable of the courts of the Commonwealth of Australia.

24.5 Nonlinear Solutions has the right to assign to a third party any obligations that it has to the Customer in relation to the supply of Goods and/or Services.

24.6 Nonlinear Solutions will not be liable for any default due to a condition that is out of the reasonable control of Nonlinear Solutions including flood, fire, storm, strike, pandemic or act of God. The Customer acknowledges that if Nonlinear Solutions is hindered or prevented from supplying the Goods and/or Services for any reason beyond its reasonable control or its inability to procure services, materials or articles required to provide the Goods and/or Services whether or not at inflated prices, Nonlinear Solutions may in its sole discretion delay performance of any obligation or cancel the whole or any part of any contract with the Customer and shall not be liable to the Customer for any loss or damage occasioned by that cancellation.

24.7 These Terms and Conditions, when read with any Quote and Contract comprise the



whole agreement between the parties and, subject only to any provision expressly to the contrary, supersedes all prior agreements and understandings between Nonlinear Solutions and the Customer in relation to the Goods and Services.

25 Privacy

25.1 The Customer hereby authorises Nonlinear Solutions to collect, retain, record, use and disclose consumer and/or commercial information about the Customer, in accordance with the *Privacy Act 1988* and subsequent amendments, to persons and/or legal entities who are a

solicitor or any other professional consultant engaged by Nonlinear Solutions, a debt collector, credit reporting agency and/or any other individual or organisation which maintains credit references and/or default listings.

25.2 By the Customer providing their personal information, the Customer consents to receiving marketing material from Nonlinear Solutions about its Goods and Services.

26 Dispute Resolution

26.1 In the event of a dispute between the parties arising out of or in connection with an accepted Quote or Purchase Order as a condition precedent to taking any action in connection with the dispute:

a) the disputing party must give written notice of dispute to the other party and the parties must meet within 7 days in an attempt to resolve the dispute.

b) If the dispute is not resolved within 7 days, then either party is at liberty to commence proceedings in connection with the dispute.