



TERMS AND CONDITIONS OF SALE AND SERVICE IN AUSTRALIA (EXCLUDING HIRE)

Disclosure relating to supply of Goods or Services to Consumers in NSW. This disclosure is only applicable if you are a Consumer.

Section 47A of the Fair Trading Act 1987 (NSW) (Act)

Section 47A of the Act provides that a supplier must, before supplying a consumer with goods or services in NSW, take reasonable steps to ensure the consumer is aware of the substance and effect of any term or condition relating to the supply of the goods or services that may substantially prejudice the interests of the consumer.

Set out below is a summary of the key provisions of our terms and conditions of sale and service in Australia (excluding hire) (**Conditions**) that you (if you are a Consumer) should be aware of before purchasing or entering into the Contract. Terms used but not defined in this disclosure have the same meaning as set out in the Conditions.

Limitation of Liability

Non consumer: If the Goods purchased under the Contract are of a type not ordinarily acquired for personal, domestic or household use then we rely on section 64A of the Consumer Law to limit our liability to you for a failure to comply with a Consumer guarantee to (at our election):

- (a) in respect of Goods supplied by us:
 - (i) replacing the Goods or supplying equivalent goods;
 - (ii) repairing the Goods;
 - (iii) paying the costs of replacing the Goods or of acquiring equivalent goods; or
 - (iv) paying the cost of having the Goods repaired;
- (b) in respect of Services supplied by us:
 - (i) resupplying the Services; or
 - (ii) paying the costs of having the Services supplied again.

Consumer: If the Goods purchased under the Contract are of a type ordinarily acquired for personal domestic or household use then the following statement applies to this Contract: 'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.'

To the extent permitted by law, we exclude Consequential Loss and also limit our liability to you for a breach of Contract or law (other than with respect to a Consumer guarantee) as follows:

- (a) in the case of liability to which an express manufacturer's warranty provided by us applies, our liability under that warranty; or
- (b) otherwise, the total Price paid by you for the Goods and/or Services.

Suspension and Termination

We may refuse, suspend or terminate the provision of Goods and/or Services to you if you fail to make payments on time, breach the Contract and do not remedy that breach within 7 days, fail to take delivery and do not remedy that failure within 48 hours of our notice to you, make false representations as to your credit application, or you become insolvent or bankrupt.

Commitment to Order

If we have accepted your Order for Goods and/or Services, you may not cancel that Order except with our consent. If you do cancel the Order, you may be liable for losses incurred by us as a result of your cancellation.

Risk and Insurance

Risk passes to you upon delivery. Title passes to you on our receipt of payment in full. If Goods are lost, stolen or damaged after delivery to you but prior to you paying for them, you may need to repair or replace them at your cost in addition to paying the Price for the Goods. You must also insure the Goods for the period where risk but not title passes to you.

Interest on late payment

If you fail to make payments to us by the due date, we may charge you interest on overdue amounts at the rate of 5% per annum above the Reserve Bank of Australia Cash rate, calculated daily from the due date until you have made full payment.

Delivery

Delivery dates are an estimate only and we will use our best endeavours to meet delivery dates. If the delay is not our fault we may seek an extension and/or terminate the Contract if the delays exceed 60 days in total. Delayed delivery of Goods and/or Services by us does not entitle you to refuse acceptance, claim damages or terminate the Contract. If you fail to take delivery, we may store your order until delivery takes place and may charge you storage costs.

Provision of Personal Information to Third Parties

In order to effectively provide you with Goods and/or Services, we may be required to provide your personal information to a third-party. Please refer to our privacy policy for further information at www.cea.net.au.

Design and Specifications

If prior to manufacture of Goods, the original equipment manufacturer (OEM) alters the design or specification of Goods you have ordered, you may be required to accept those Goods and pay any increase in the Price resulting from such alteration. If you have a Small Business Contract with us and the OEM modifies the design of Goods after we have accepted your Order such that it will result in an increase in the Price or a material change in functionality, you may elect not to proceed with the Order within 7 days of our notice of the increase or material change.

Jurisdiction

These terms and conditions will be governed by the laws of the State or Territory in which we supply the Goods and/or Services to you. Where the supply of Goods and/or Services to you is in more than one State or Territory, the laws of Western Australia apply.



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1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following words have the following meanings:

Authority means a government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

Business Day means a day on which banks are open for business in capital city of the Jurisdiction, other than a Saturday, Sunday or public holiday in that city.

CEA, we, our and us means whichever of C.F.C. Holdings Pty Ltd (ACN 008 777 348), CEA Air and Power Pty Ltd (ACN 607 825 712), and CEA Specialty Equipment Pty Ltd (ACN 114 023 540), and their Related Bodies Corporate as specified or named as the supplier of the Goods and/or Services in the Contract. Where the context requires, **CEA, we, our and us** includes our Related Bodies Corporate.

CEA Goods means Goods in respect of which we are an authorised distributor in Australia.

CEA Parts means CEA Goods that are spare parts (excluding attachments or accessories for machines).

Conditions means these terms and conditions for the supply of Goods and/or Services.

Confidential Information means:

- (a) the nature and existence of the Contract;
- (b) all information (regardless of form) which concerns the business, operations, finances, strategies, Personnel, suppliers or customers of a party or its Related Bodies Corporate which is disclosed or made available to the other party; and
- (c) information provided by a party to the other party which is designated in writing as confidential.

Consequential Loss means any

- (a) special, indirect or consequential loss arising under or in connection with the Contract; and
- (b) of the following categories of loss (of any nature whatsoever) arising under or in connection with the Contract:
 - (i) loss of profits;
 - (ii) loss of revenue;
 - (iii) loss of sales or business;
 - (iv) loss of production;
 - (v) loss of agreements or contracts;
 - (vi) loss or denial of business opportunity;
 - (vii) loss of anticipated savings;
 - (viii) loss of or damage to goodwill or reputation;
 - (ix) loss of use of any Goods; and
 - (x) increased overhead costs.

Consumer has the same meaning as in the Consumer Law.

Consumer Law means the Australian Consumer Law contained in Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Contract has the meaning as given to it in clause 2.

Corporations Act means the *Corporations Act 2001* (Cth).

Credit Application means an application by you for a Trading Account with us.

Customer and you means the person, firm, company or other entity that orders Goods and/or Services from us, and enters into a Contract with us.

Default Event has the meaning given to it in clause 17.

Delivery Address means the delivery address specified in the Contract.

Goods means the new or used goods, vehicles, machinery, plant and equipment, materials, consumables, components and parts (including remanufactured and rebuilt parts) supplied or to be supplied by us pursuant to the Contract.

GST has the meaning given to it in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

GST Law has the meaning given to it in the GST Act.

Insolvency Event means the occurrence of any one or more of the following events in relation to a party:

- (a) it is insolvent as defined by section 95A of the Corporations Act as disclosed in its accounts or otherwise, states that it is insolvent or unable to pay its debts, is presumed to be insolvent under an applicable law (including under section 459C(2) or section 585 of the Corporations Act) or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable;
- (b) any step is taken to appoint a receiver, a receiver and manager, a liquidator, an interim liquidator or a provisional liquidator, a statutory manager or other like person to it or all or substantially all of its assets, operations or business;
- (c) an administrator is appointed to it under section 436A, section 436B or section 436C of the Corporations Act;
- (d) a controller (as defined in section 9 of the Corporations Act) is appointed to it or all or substantially all of its assets;
- (e) an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a liquidator, provisional liquidator, interim liquidator, receiver, receiver and manager or manager be appointed, and that application is not withdrawn, struck out or dismissed within 15 Business Days of it being made;
- (f) any step is taken to enter into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- (g) it ceases to carry on business or threatens to do so, other than in accordance with the terms of the Contract; or
- (h) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in paragraphs of this definition.

Intellectual Property Rights means all industrial and intellectual property rights of whatever nature throughout the world conferred under statute, common law or equity, whether existing now or at any time in the future, and includes rights in respect of or in connection with copyright, inventions (including patents), formulae, databases, business processes and methods, circuit layouts, plant varieties, trademarks, service marks, trading names (including both business and company names), domain names, designs, confidential information, trade secrets and know-how and similar industrial and intellectual property rights, whether or not registered or registrable, and includes the right to apply for or renew the registration of such rights.

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Invoice means an invoice supplied by us to the Customer in accordance with clause 5.

Jurisdiction means:

- (a) the State or Territory of Australia in which we supply or offer to supply the Goods or Services under the Contract; or
- (b) Western Australia if the Contract involves supply in more than one State or Territory in Australia.

Loss means any loss, damage, liability, cost or expense.

OEM means the original equipment manufacturer.

Order means an order for Goods and/or Services by the Customer which has been accepted in writing by us but excluding any terms or conditions of the Customer that may be printed on or referred to in the Customer's order or other documentation.

Personal Information has the meaning given to it in the Privacy Act.

Personnel of a party means the directors, officers, employees, agents, contractors and subcontractors of that party but a reference to CEA's Personnel excludes the Customer.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPSR means the Personal Property Securities Register established under the PPSA.

Price means the total amount payable by you in respect of the supply of the Goods and/or Services specified in the Contract.

Privacy Act means the *Privacy Act 1988* (Cth).

Purchase Money Security Interest has the meaning given in section 14 of the PPSA.

Quote means any quotation, estimate or price in respect of Goods and/or Services prepared, issued or represented by us.

Related Bodies Corporate has the meaning given in section 50 of the *Corporations Act 2001* (Cth).

Serviced Goods means goods, vehicles, machinery, plant and equipment, components, parts, accessories and other materials which are the subject of Services provided by us.

Services means all services supplied or to be supplied by us pursuant to the Contract (excluding rental or hire of Goods).

Small Business Contract has the meaning given to it in the Consumer Law.

Tax Invoice has the meaning given to it in the GST Act.

Taxes includes all present or future taxes, fees, levies, duties, imposts, assessment royalties, tariffs, fees and charges imposed or assessed by all authorities, including income tax, payroll tax, statutory pension or superannuation contributions, workers' compensation payments and contributions, sales tax, customs duty, excise and stamp duty, as well as any interest and penalties, but does not include GST.

Third Party Goods means Goods that are not CEA Goods.

Trading Account means a commercial credit account operated by us to supply Goods (including rental or hire) and/or Services to you from time to time on deferred payment terms.

Warranty Period means:

- (a) for CEA Goods, the relevant warranty period for those Goods specified in the applicable manufacturer's warranty (which shall be on a Good-specific basis); and
- (b) for Services, the relevant warranty period for those Services specified in the applicable warranty against defects.

1.2 In these Conditions unless the context otherwise requires:

- (a) headings are for convenience only, and do not affect its interpretation;

- (b) words of one gender include any other gender;
- (c) the singular includes the plural and vice versa;
- (d) a "person" includes an individual, partnership, firm, company, government, joint venture, association, Authority, corporation or other body corporate;
- (e) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency;
- (f) a reference to a thing or amount includes any part of that thing or amount;
- (g) a reference to a clause is a reference to a clause in these Conditions;
- (h) a reference to a document or agreement, including the Contract, includes a reference to that document or agreement as novated, altered, varied, restated or replaced from time to time;
- (i) a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;
- (j) a reference to a party includes its executors, administrators, successors, assigns and permitted assigns;
- (k) a promise or agreement by two (2) or more persons binds those persons jointly and each of them individually;
- (l) if a period of time is calculated from a particular day, act or event (such as the giving of a notice), unless otherwise stated, it is to be calculated exclusive of that day, or the day of that act or event;
- (m) a reference to "in writing" includes by email; and
- (n) wherever "including", "includes" or any other form of that word is used, it will be construed as if it were followed by "(without limitation)".

2. CONTRACT

- 2.1 Goods and/or Services are supplied by us on these Conditions.
- 2.2 All orders for Goods and/or Services must be placed in the manner and form required by us from time to time and are subject to acceptance by us. We may decline an order or accept an order in whole or part in our absolute discretion.
- 2.3 Until we have accepted an order in accordance with clause 2.2:
 - (a) any Quote or price list is:
 - (i) indicative only and subject to change or revocation by us at any time without notice unless we have agreed in the Quote to fix it for a specified period; and
 - (ii) not an offer by us to contract; and
 - (b) no order made to us (whether prior to or following a Quote) will by itself or in association with a Quote binds us.
- 2.4 Once accepted by us, an Order may not be cancelled by you except with our express written consent. In the event you cancel the Order, you are liable for any Loss incurred by us arising from the cancellation.
- 2.5 Upon our acceptance of each Order, a separate binding contract will arise.
- 2.6 Each Contract for Goods and/or Services will comprise the following documents:
 - (a) the Order;
 - (b) the credit terms applicable to any Credit Application accepted by us in writing;
 - (c) these Conditions;
 - (d) any manufacturer's warranty against defects for the Goods and/or Services supplied by us;
 - (e) any Invoice for the Goods and/or Services; and
 - (f) any Quote for the Goods and/or Services.
- 2.7 If there is any conflict or inconsistency between the above documents comprising the Contract, the documents will rank in order of precedence as listed in clause 2.6.
- 2.8 For the avoidance of doubt, these Conditions prevail over any other terms or conditions purporting to apply to any Customer



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order (including any terms or conditions that may be printed on, contained, or referred to, in your order or offer to purchase). Such terms or conditions shall be of no legal effect and do not form part of the Contract.

3. DESIGN AND SPECIFICATIONS

3.1 If, before the manufacture of the Goods, the OEM alters the design or specification of the Goods (whether before or after our acceptance of an Order), you shall, subject to your rights under the Consumer Law (if applicable) and clause 3.3:

- (a) accept the Goods in accordance with the OEM's altered design or specification in satisfaction of our obligations under the Contract; and
- (b) pay any increase in the Price resulting from such alteration.

3.2 Subject to any rights you may have under Consumer Law and unless expressly agreed otherwise by the Contract:

- (a) images or photographs of Goods on our websites are for illustration purposes only. We use reasonable endeavours to make sure the colours, sizes and details are displayed accurately but errors may occur. We are unable to guarantee that the way in which your computer depicts colours or the details accurately reflect the Goods we make available for purchase. The Goods you receive may therefore vary slightly from those advertised.
- (b) specifications or performance figures relating to Goods whether contained in our catalogues, price lists, websites, or advertising materials are approximates only and do not form part of the Contract or form part of the description applied to the Goods.

3.3 If the Contract is either a Consumer Contract or a Small Business Contract and the OEM modifies the design of Goods after we have accepted an Order such that it will result in an increase in the Price or a material change in functionality:

- (a) we will give you notice of the modification and any Price increase in writing; and
- (b) you may consider the modification and/or Price increase, and if not acceptable to you, you may elect not to proceed with the Order within 7 days of our notice.

4. TRADING ACCOUNT

4.1 We may, in our absolute discretion upon your request, make available to you a Trading Account.

4.2 You will only be entitled to a Trading Account or the supply of Goods and/or Services on deferred payment terms (being payment terms other than in accordance with clause 5.7) if:

- (a) a Credit Application (together with any guarantee required by us in the Credit Application) is duly completed and signed by you and each guarantor to our satisfaction;
- (b) we accept the Credit Application by formal written notice to you from a properly authorised credit officer or other authorised representative of CEA;
- (c) we, in our sole and absolute discretion, open and keep open (and do not terminate, cancel or suspend) a Trading Account; and
- (d) your Trading Account has sufficient credit limit available.

5. PRICE AND PAYMENT

5.1 In consideration of us providing Goods and/or Services in accordance with the Contract, you must pay the Price without deduction or set-off in the manner specified in this clause 5.

5.2 All amounts payable by you under the Contract shall be paid by cash, cheque, electronic funds transfer to our nominated bank account or by such other means acceptable to us and notified to you.

5.3 We may request that you pay a deposit or make one or more advance or progress payments in respect of the supply of particular Goods or Services.

5.4 Unless the Contract expressly provides otherwise, the Price excludes (and you must therefore pay in addition to the Price in accordance with this clause):

- (a) all freight, handling (including loading and unloading) and delivery costs;
- (b) consumables (including grease, oil, coolant, water, diesel);
- (c) any installation and commissioning costs;
- (d) Taxes; and
- (e) any incidental or ancillary items, work or services,

in connection with the supply of Goods and/or Services.

5.5 Any applicable deposit or advance or progress payment required by the Contract must be paid and received by us in full, cleared and available funds as a condition precedent to any of our liabilities or obligations arising under the Contract.

5.6 **(Approved Trading Account)** Where you have a current approved Trading Account with us with an immediately available and sufficient credit limit:

- (a) we may issue an Invoice for payment on or before the last day of each month on account of Goods and/or Services supplied, or undertaken to be supplied, up to and including the date of that Invoice with payment terms being in accordance with the payment terms approved by us in connection with the Trading Account and notified to you (or where no payment terms are specifically notified to you, not later than 30 days from the end of month following the date of Invoice).
- (b) if you dispute the whole or any part of the Invoice issued under clause 5.6(a), you must, within 14 days of the Invoice date, give us notice in writing with detailed reasons as to why you dispute the Invoice; and
- (c) by the due date for payment of the Invoice or claim under clause 5.6(a), except to the extent validly disputed under clause 5.6(b), you must pay in full, cleared and available funds and without any deduction or set off, the amount Invoiced.

5.7 **(No Approved Trading Account)** Where you have no current approved Trading Account with us, you must pay the full Price and any other moneys owing to CEA in cleared and available funds on or before:

- (a) delivery of Goods; or
- (b) completion of any Services (including travel).

5.8 Invoices shall refer to the Order and be a valid Tax Invoice where GST applies, and provide a description of the Goods and/or Services provided.

5.9 If any amounts are not paid in accordance with the Contract, we may, without limiting our other rights under the Contract or at law, charge interest on the overdue amounts at the rate of five percent (5%) per annum above the Reserve Bank of Australia cash rate (from time to time) calculated daily from the date the amount falls due to the extent and for the duration that it remains unpaid. Any interest accruing under this clause shall be immediately payable by you on demand by us.

5.10 Time is of the essence in relation to payment for Goods and/or Services.

6. DELIVERY

6.1 We will supply the Goods and/or Services under the Contract during normal hours of business for the branch from which the supply is to be carried out unless otherwise agreed in the Contract.

6.2 You must ensure that:



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- (a) we have access to your site or third-party site, relevant work area, equipment and facilities as is safe and reasonably necessary for us to supply the Goods and/or Services; and
 - (b) our Personnel attending your site or third-party site to Supply Goods and/or Services receive (where appropriate at your cost) all necessary site inductions and personal protective equipment.
- 6.3 We will deliver the Goods to the Delivery Address, or if no address for delivery of the Goods is specified in the Contract:
- (a) we will notify you promptly when the Goods are ready for collection at our premises; and
 - (b) you must promptly (and within 5 days) collect the Goods from our premises.
- 6.4 If no place for the carrying out of Services is specified in the Contract, they will be carried out at a suitable and convenient location determined by us (acting reasonably).
- 6.5 If a date or dates for delivery of the Goods or completion of the Services is specified in the Contract, we will use reasonable endeavours to deliver or complete as the case may be by those dates.
- 6.6 If no date or dates for delivery or completion are specified in the Contract, we will deliver the Goods or complete the Services with due diligence and expedition.
- 6.7 The delivery of Goods is deemed to have occurred in accordance with these Conditions:
- (a) where Goods are to be delivered to you by us, when the Goods are unloaded at the Delivery Address; and
 - (b) where Goods are to be collected by you from CEA, when loading of the Goods commences by you or your Personnel.
- The signing of a delivery note or docket by you, your Personnel or any carrier of Goods will constitute proof of delivery.
- 6.8 We reserve the right to deliver Orders by instalments and Invoice you separately for each instalment.
- 6.9 Late delivery of Goods or Services does not entitle you to:
- (a) refuse to take delivery of the Goods or Services;
 - (b) claim damages; or
 - (c) terminate the Contract.
- 6.10 If you fail to take delivery of an Order in accordance with the Contract, then, except where the failure is caused by our failure to comply with our obligations under the Contract:
- (a) delivery of the Order is deemed to be complete on the date or dates for delivery in the Contract or where no such date or dates are specified in the Contract within five (5) days of us notifying you the Order is ready for delivery; and
 - (b) we may store the Order until delivery takes place, and may charge you for all reasonable storage and related costs and expenses (including re-delivery costs and insurance).
- 6.11 Each party must comply with the requirements of health and safety legislation applicable to the supply and receipt of the Goods or Services and will consult, co-operate with and co-ordinate activities where the parties have any overlapping health and safety duties.

7. COMPLETION

- 7.1 We will notify you, orally or in writing, promptly when we consider (acting reasonably) that the Services have been completed.
- 7.2 You must promptly inspect:
- (a) the Goods on delivery in accordance with clause 6;
 - (b) the Services following the notice given under clause 7.1,
- and notify us of any non-compliance with the Contract (including a shortage, error, damage, defect or fault) in writing within seven (7) days of delivery or from notice of completion as applicable.

- 7.3 Unless we receive a notice under clause 7.2 and within the time required by that clause, you are deemed, to the extent relevant and permitted by law, to have accepted:
- (a) that the Goods comply with, and have been delivered in accordance with, the Contract; and
 - (b) that the Services are complete, and that they have been completed in accordance with the Contract.

8. RISK AND TITLE

- 8.1 Risk in the Goods passes to you upon delivery to you occurring in accordance with clause 6.
- 8.2 Title in Goods shall only pass to you on our receipt of the Price in full and all other moneys owing by you to us (whether in respect of money payable under a specific contract or on any account whatsoever), in cleared funds and without any deduction or set off.
- 8.3 Until title in the Goods passes to you in accordance with these Conditions, you must:
- (a) ensure the Goods are insured, serviced and kept in good repair and condition (excluding fair wear and tear);
 - (b) not grant a security interest over the Goods to any other party without our prior written consent (other than the security interest created by the Contract);
 - (c) not allow the Goods to become commingled or accede to any other property, or allow any other property to accede to the Goods; and
 - (d) not sell or otherwise deal with the Goods without our prior written consent.
- 8.4 If you sell or dispose of any Goods in accordance with clause 8.3, you do so as our fiduciary agent. You acknowledge that the proceeds of such sale or other disposal constitutes property of CEA and are thereby held by you on trust for us. You must pay all monetary proceeds up to the amount owing to CEA into a separate account until they are paid over to us, and must not mix them with any other amount.

9. EXPRESS WARRANTIES

- 9.1 **(New CEA Goods)** New CEA Goods are supplied by us with an express manufacturer's warranty against defects in materials and workmanship for the Warranty Period.
- 9.2 **(Used Goods)** Except as otherwise expressly provided in the Contract and to the fullest extent permitted by law, used or second-hand Goods supplied by us are sold on an "as is" basis with all existing or future inadequacies, faults, deficiencies or defects, if any, whether known or unknown.
- 9.3 **(Services)** Services may be supplied by us with an express warranty against defects in workmanship for the Warranty Period.
- 9.4 **(Goods ordinarily acquired for personal domestic or household use only):** 'Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.'
- 9.5 If Goods or Services are under an express warranty against defects applicable to them, you must comply with applicable terms of the warranty to ensure warranty coverage. Failure to do so may void the warranty in full or in part.
- 9.6 You acknowledge and agree that any warranty on Third Party Goods supplied by us is limited to the warranty that may be given by the manufacturer of those Third Party Goods, and to the maximum extent permitted by law, we shall not be liable for, and give no additional warranties against, defects in relation to Third Party Goods. We agree to assign to you, on your request, the benefit of any unexpired express warranty that the manufacturer

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of Third Party Goods has given to us to the extent that warranty is assignable.

- 9.7 Except as expressly set out in the Contract and to the fullest extent permitted by law, we exclude all rights, representations, conditions, warranties, guarantees, terms, undertakings or remedies and obligations in relation to the Contract or the Goods and/or Services.

10. WARRANTY CLAIMS AND REPAIRS

- 10.1 You must notify us of any event or circumstance which may give rise to a warranty claim under an applicable manufacturer's warranty provided by us within the relevant Warranty Period.
- 10.2 If you fail to notify us in accordance with clause 10.1, we may, in our sole discretion, rectify the defect but, to the fullest extent permitted by law, otherwise we have no liability to do so.
- 10.3 Where we accept Goods or Serviced Goods for repair (whether accepted by us as a warranty claim or otherwise), you acknowledge and agree that:
- (a) if those goods retain, or are capable of retaining, user generated data (for example, machine documentation or data) the repair of the goods may result in the loss of data; and
 - (b) refurbished parts may be used to repair the goods.

11. INSTALLATION AND COMMISSIONING

Unless the Contract expressly provides otherwise, any installation and/or commissioning of Goods is your responsibility and excluded from the Price. You are responsible for all site approvals (including from any principal, landlord or Authority), power, cabling and environment preparation required for any installation, commissioning and use of Goods.

12. TRADE-IN GOODS

- 12.1 We may, in our absolute discretion, accept a trade-in of goods in exchange for a credit (in an amount determined by us) towards the purchase of Goods. An agreement to allow a trade-in is not an independent transaction and if the Contract is terminated for any reason we shall not be obligated to purchase the trade-in goods.
- 12.2 Any purchase of trade-in goods by us (in exchange for credit towards Goods) is subject to, and conditional on, the following:
- (a) a Contract for the sale of Goods being entered into by the parties;
 - (b) the value of the trade-in goods being determined by us upon our appraisal and inspection of the trade-in goods to our satisfaction and the trade-in goods being in substantially the same condition at delivery as at appraisal;
 - (c) you:
 - (i) supplying a Tax Invoice for the sale of the trade-in goods (in the approved credit amount), containing such details as reasonably required by us; and
 - (ii) signing the trade-in declaration set out herein; and
 - (d) delivery to us no later than the delivery date of the Goods to you under the Contract of:
 - (i) possession and control of the trade-in goods free from encumbrances (together with all title and warranty documents, manuals and service records) at your expense and in the condition as inspected by us; and
 - (ii) where applicable, duly completed and signed documents necessary to transfer ownership to us and allow our registration (if applicable) of the trade-in goods.
- 12.3 You warrant that the goods supplied to us by way of trade-in are, or will be at the time of trade-in, owned outright and free from encumbrances.

- 12.4 To the extent that the benefit of any warranties made by the manufacturer or owner of the trade-in goods can be assigned to us, you must, if we request, assign them to us.

13. INSURANCE

- 13.1 We will effect and maintain, in relation to Services, for the duration of carrying out the Services, and for Goods while risk in the Goods rests with us:
- (a) a public liability insurance policy for at least the amount of \$20,000,000 for any one occurrence;
 - (b) a products liability insurance policy for at least the amount of \$20,000,000 limited in the aggregate during any single term of insurance; and
 - (c) such insurances as are required by law including workers compensation insurance.
- 13.2 From the time that risk in the Goods transfers to you until title in those Goods passes to you in accordance with these Conditions, you must insure and keep insured the Goods (and must note our interest as owner) with a reputable insurer to our satisfaction (acting reasonably) for their full replacement value against loss or damage including fire, malicious damage, theft and transit risks.
- 13.3 You must not do or permit or allow to be done anything which might or could prejudice the insurance of the Goods as required by the Contract.
- 13.4 Whenever requested by a party, the other party will promptly provide the first party with copies of the certificates of currency for insurances required by the Contract.
- 13.5 If you fail to insure the Goods in accordance with this clause, we may, but are not obliged to, procure and maintain such insurance and the cost of doing so will be a debt due and immediately payable by you to us.
- 13.6 You must promptly inform us in writing of any event or circumstance that may give rise to a claim under insurance required by the Contract and keep us informed of subsequent developments and take all reasonable steps to ensure a prompt and favourable settlement of the claim.

14. RETURNS

- 14.1 In addition to and without limiting your rights or remedies under Consumer Law (if applicable) and any express manufacturer warranty supplied by us, you may return new CEA Parts to us within seven (7) days of delivery, at your own cost and risk for credit if we have given our prior consent in writing to such return (which we may do in our absolute discretion).
- 14.2 A return under clause 14.1 will only be approved by us if the following requirements are met:
- (a) the CEA Part and its original packaging is unopened, complete and in the same "as new" original condition in which it was delivered, and has not been installed;
 - (b) the return is accompanied by the Invoice or particulars of the Invoice (including its number and date);
 - (c) the Invoice value for the CEA Part is less than \$1,000 (excluding GST);
 - (d) the CEA Part must be a normal stock item that has not been procured or manufactured by us to meet a specific requirement of yours;
 - (e) you meet any other requirements for return outlined in our returns policy (as made available on our website or otherwise notified to you); and
 - (f) you pay a reasonable re-stocking fee as may be required by us (in our discretion) of up to 15% of the Price to cover our costs associated with the return.

15. DELAY

- 15.1 To the extent we are, or are likely to be, delayed, hindered or disrupted in the supply or delivery of any Goods or Services, and that is due to:



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- (a) any fact, event, matter or circumstance beyond our reasonable control; or
- (b) any breach, act or omission by you or your Personnel,

we are not liable for the delay or disruption and are entitled to a reasonable extension of time to supply the Goods or Services.

15.2 To the extent that we are delayed or disrupted under clause 15.1(b), you must pay us our reasonable additional costs caused by the delay, hinderance or disruption.

15.3 If a delay or delays under clause 15.1 exceed a single or aggregated period of 60 days, we may terminate the relevant Contract or part thereof in our sole discretion by written notice to you and, without prejudice to any other right or remedy available to us, exercise our rights under subclauses 17.2(a) to (g) (inclusive).

16. VARIATIONS

16.1 Prior to delivery or completion (as applicable), you may request to add, delete, omit, or change the nature, quality, of any Goods or Services (**Variation**).

16.2 To the extent that we can reasonably comply with the Variation, we will endeavour to do so and if we do, we will be entitled to:

- (a) an extension of time to the extent completion will be delayed by the Variation; and
- (b) payment as follows:
 - (i) an amount as agreed between the parties;
 - (ii) failing agreement, an amount calculated according to the rates and prices in the Contract to the extent reasonable to use them; or
 - (iii) to the extent that neither 16.2(b)(i) or 16.2(b)(ii) apply:
 - (A) for additions, or changes in nature, quality or location, an amount based on rates or prices reasonably determined by us (which shall include a reasonable amount for profit and overheads on costs); and
 - (B) for deletions or omissions, any costs reasonably incurred by us in complying with the Variation after deducting rates or prices reasonably determined by us from the Price including profit but not overheads.

17. DEFAULT

17.1 It is a Default Event if any of the following occur:

- (a) any amount payable by you to us is not paid when due;
- (b) you breach the Contract and it is irremediable or if the breach (other than a breach with respect to taking delivery) is remediable it is not remedied to our satisfaction within seven (7) days after written notice from us;
- (c) you fail to take delivery pursuant to the Contract which is not remedied within 48 hours after receipt of written notice from us;
- (d) you make any false representation (whether by act or omission) in respect of a Credit Application or Trading Account; or
- (e) an Insolvency Event occurs in respect of the Customer.

17.2 If a Default Event occurs and is subsisting, or where clause 15.3 applies, we may (without prejudice to any other rights or remedy available to us under the Contract or at law) do any one or more of the following:

- (a) declare that all moneys owing by you to us, whether or not due for payment, are immediately due and payable by you (and you shall comply with such demand);
- (b) charge interest on all overdue amounts in accordance with clause 5.9;
- (c) immediately terminate or suspend the whole or any outstanding part of the Contract or any Order;

- (d) vary, cancel, suspend, withdraw or terminate a Trading Account;
- (e) refuse to deliver or further supply Goods and/or Services (whether on deferred payment terms or otherwise) and require payment in advance for future supply;
- (f) immediately recover or retake possession and removal of all Goods for which title has not passed to you in accordance with clause 8 (in which case you irrevocably authorise us to access any premises where Goods are situated). If you have installed Goods on equipment which is not paid for in full, we may take possession of that equipment and transport it to our own premises to remove the Goods; or
- (g) take any action under any security interest or lien granted in our favour under the Contract, including to exercise such rights as are afforded to us under the PPSA.

17.3 You must pay us on demand all Losses (including debt collection or legal costs on a solicitor-client basis) that we incur in recovering, or attempting to recover, any amounts which you owe us, or otherwise enforcing or attempting to enforce our rights under the Contract or at law.

17.4 Termination of the Contract does not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for any breach of Contract that existed at or before the date of termination.

18. LIMITATION OF LIABILITY

18.1 If you are a Consumer, you are entitled to certain rights, protections and remedies under the Consumer Law that cannot lawfully be excluded, restricted or modified.

18.2 Nothing in these Conditions or the Contract excludes, restricts or modifies any guarantee, right or remedy conferred on you by the Consumer Law or any other applicable law insofar as they cannot be excluded, restricted or modified by agreement.

18.3 If you are a Consumer, except to the extent prohibited by law, our total liability to you for a breach of any guarantee under the Consumer Law is limited (at our election) to:

- (a) in respect of Goods supplied by us:
 - (i) replacing the Goods or supplying equivalent goods;
 - (ii) repairing the Goods;
 - (iii) paying the costs of replacing the Goods or of acquiring equivalent goods; or
 - (iv) paying the cost of having the Goods repaired;
- (b) in respect of Services supplied by us:
 - (i) resupplying the Services; or
 - (ii) paying the costs of having the Services supplied again.

18.4 Where we are liable to you in circumstances which are not limited by clause 18.3, except to the extent prohibited by law and subject to clause 18.5, our total liability to you arising out of or in connection with the supply of the Goods or Services or the Contract, whether in contract, tort (including negligence), under any statute, custom or any other basis, is limited to:

- (a) in the case of any liability to which an express manufacturer's warranty provided by us applies, our liability under that warranty; and
- (b) in other cases, the total Price paid by you for the Goods and/or Services.

18.5 Subject to this clause 18, each party excludes any liability to the other, whether in contract, tort (including negligence) or otherwise, for any Consequential Loss.

18.6 To the extent permitted by law, any typographical, clerical or other error or omission in any sales literature, quotation, price lists, acceptance or offer, Quote, Invoice or other documents or

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information issued by us will be subject to correction by us without any liability on our part.

19. INTELLECTUAL PROPERTY

- 19.1 All Intellectual Property Rights in or relating to CEA Goods or Services supplied by us, including in relation to the development, manufacture, use or operation of CEA Goods or repair or maintenance of Goods, and in or in relation to any tooling, materials, design, methods, drawings, samples, reports, work results and other documents, that we create or supply, remains at all times the sole and exclusive property of CEA or its licensors.
- 19.2 Nothing in these Conditions constitutes the creation or granting of any licence or Intellectual Property Rights in your favour in or relating to the Goods or Services.

20. PPSA

- 20.1 You acknowledge that the retention of title arrangement described in clause 8 constitutes the grant of a Purchase Money Security Interest by you in our favour in all Goods supplied to you (and any proceeds of their sale), which secures your payment and performance of your obligations to us.
- 20.2 You undertake:
- (a) to do all things, sign any document and provide all information necessary to enable us to perfect our security interest in Goods for the purposes of the PPSA (including by registration of a financing statement);
 - (b) not to change (without giving us 21 days' prior written notice) any of your details as disclosed under the Contract and that is recorded in a financing statement registered on the PPSR (including your ACN or, in the case you act as trustee of a trust, any ABN allocated to that trust); and
 - (c) to pay or reimburse all costs and expenses incurred by us in connection with the registration of and maintaining a financing statement.
- 20.3 To the extent permitted by law:
- (a) the parties agree that for the purposes of sections 115(1) and 115(7) of the PPSA, we do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 134(2), 135, 136(3), 136(4), 136(5), 137, 142 and 143 of the PPSA;
 - (b) you irrevocably waive your right to receive notice of any verification statement (as defined in the PPSA);
 - (c) if the PPSA is amended after the date of Contract to allow the parties to exclude other provisions of the PPSA (**Further Excluded Provisions**), we may notify you that any of the Further Excluded Provisions are also excluded; and
 - (d) you agree not to make, or cause to be made, any request for information to us under section 275 of the PPSA.

21. LIEN

- 21.1 We shall have a possessory lien over Serviced Goods in our possession and control for all amounts due and payable to us until payment is received in full, cleared and available funds without deduction or set-off.
- 21.2 If the amounts owing to us are not paid when due and you fail to take delivery or return of the Serviced Goods in accordance with the Contract, we may, in addition to our rights under clause 6.10, sell the Serviced Goods by private treaty or public auction after providing 30 days written notice to you of our intention to do so.
- 21.3 In the event that the sale proceeds of the Serviced Goods are insufficient to pay all amounts owing in full, we retain the right to recover any unpaid balance.

22. CONFIDENTIALITY

- 22.1 Subject to clause 22.2 and except to the extent necessary to perform the Contract, each party must keep the Confidential

Information confidential and must not, and must ensure that its Personnel do not, without the prior written approval of the other party, at any time (including after the termination or expiry of this Contract):

- (a) disclose or give to any person any Confidential Information;
- (b) use or exploit any Confidential Information for its own commercial purposes or to the competitive, financial or commercial disadvantage of the other party; or
- (c) reproduce, or permit or allow any other person to reproduce any Confidential Information.

22.2 Clause 22.1 does not apply to the extent that the Confidential Information:

- (a) is or becomes part of the public domain (other than as a result of a breach of the Contract); or
- (b) is required to be disclosed under any law, Authority, regulated securities exchange or order of any Court of competent jurisdiction.

23. PRIVACY

23.1 We comply with our obligations under the Privacy Act and the Australian Privacy Principles (as set out in Schedule 1 of the Privacy Act) in respect of our dealings with Personal Information obtained by or disclosed to us pursuant to the Contract.

23.2 We have a published privacy policy which is incorporated into these Conditions by reference and can be viewed at our website www.cea.net.au.

23.3 You authorise us to:

- (a) obtain credit information about your personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in a Credit Application and from any other credit provider or credit reporting agency for the purpose of assessing the Credit Application or in connection with any guarantee given on your behalf (and you acknowledge that credit reporting agencies may retain any credit information that we provide to them and use it to provide their credit reporting services to other customers);
- (b) use, disclose or exchange with other credit providers and our Related Bodies Corporate information about your credit arrangements in order to assess the Credit Application, monitor credit worthiness, collect overdue accounts and/or notify of default by you, and
- (c) disclose the contents of any credit report about you to any of our Related Bodies Corporate, and any of their solicitors and mercantile agents.

23.4 If you provide any Personal Information about a third party (including Personnel) to us, you confirm that you are authorised to do so by the relevant individual and you have informed the relevant individual that they have the right to contact us to access and, if applicable, request correction of any Personal Information that we hold about them.

24. GST

24.1 Undefined terms and expressions in this clause that are defined in the GST Law have the same meaning as in the GST Law.

24.2 If GST is or becomes payable on a Supply made under or in connection with the Contract, an additional amount (**Additional Amount**) is payable by the party providing the Consideration for the Supply (**Recipient**) equal to the amount of GST payable on that Supply as calculated by the party making the Supply (**Supplier**) in accordance with the GST Law.

24.3 The Additional Amount is payable at the same time and in the same manner as the Consideration for the Supply, and the Supplier must provide the Recipient with a Tax Invoice as a pre-condition to payment of the Additional Amount.

24.4 If for any reason (including the occurrence of an Adjustment Event) the amount of GST payable on a Supply varies from the Additional Amount, then the Additional Amount shall be adjusted

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accordingly and the parties will do everything necessary to give effect to the adjustment.

24.5 If an amount payable under or in connection with the Contract (whether by way of reimbursement, indemnity or otherwise) is calculated by reference to an amount incurred by a party, whether by way of cost, expense, outlay, disbursement or otherwise (**Amount Incurred**), the amount payable must be reduced by the amount of any Input Tax Credit to which that party or its representative member is entitled in respect of the Amount Incurred.

25. AMENDMENT

We may at any time, and from time to time, revise these Conditions by notice in writing to you. Written notice may be made in accordance with clause 27 or by uploading the revised terms on our public website. You accept and are bound by the revised Conditions in respect of any Order for Goods or Services made after the date of such notification or publication.

26. PERMITS AND APPROVALS

26.1 You warrant that you hold all licenses, permits and approvals necessary to purchase and use the Goods and that no restriction of any kind prevents you from entering any agreement or arrangement for the purchase of the Goods.

27. NOTICES

27.1 Except as provided in clause 25, any formal notice to a party in connection with the Contract must be in writing, sent to the address for service of notices each party has advised to the other (or if nothing has been advised, to each other's office or address with which it normally deals).

27.2 Notices are taken to be received:

- (a) if hand delivered, at the time of delivery;
- (b) in the case of a posted letter, on the third day after posting within Australia or the fifth day after posting for international mail; and
- (c) in the case of email, at the time of successful electronic transmission (which may be confirmed by an electronic delivery receipt confirmation).

28. DISPUTES

28.1 If a dispute arises out of or in connection with the Contract, or the performance, validity or enforceability of it (**Dispute**), then the parties must comply with the procedure set out in this clause 28.

28.2 A party claiming that a Dispute has arisen must notify the other party to the Dispute in writing giving reasonable details and particulars of the Dispute (**Dispute Notice**), together with supporting documents.

28.3 If the parties are unable to resolve the Dispute within 10 Business Days of receipt of the Dispute Notice, each party must escalate the Dispute to a senior representative having authority to resolve the Dispute for the party and those representatives must meet and attempt to resolve the Dispute.

28.4 Subject to clause 28, no party may commence any court proceedings in relation to the whole or any part of a Dispute until 15 Business Days after the meeting of the senior representative of the parties referred to in clause 28.3.

28.5 This clause 28 is not intended to prevent any party from seeking urgent injunctive or similar relief.

29. ASSIGNMENT AND SUB-CONTRACTING

29.1 You may not assign or novate any of your rights or obligations under the Contract without our prior written consent (which we

may withhold in our absolute discretion). We may assign or novate any of our rights or obligations under the Contract to any person by notice to you.

29.2 We reserve the right to sub-contract the performance of the Contract or part thereof to any other party or person we may determine.

30. SET-OFF

Where any amount is payable by us to you under the Contract, including any amount owing by way of a rebate, we may set such amount off against any amount owed to us (or any Related Body Corporate) by you, and continue to do so until the amount outstanding from you has been paid in full.

31. GENERAL

31.1 You must comply with all applicable laws, regulations, industry standards and codes of conduct in Australia in relation to all matters contemplated (whether expressly or implicitly) by the Contract.

31.2 If any provision of these Conditions is held to be invalid or unenforceable in a particular jurisdiction:

- (a) it is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.

31.3 Nothing in these Conditions constitutes or creates a joint venture, agency, partnership, trust, relationship of employment or other fiduciary relationship between us and you.

31.4 Failure to exercise or delay in exercising a right, power or remedy under the Contract does not operate as a waiver or prevent further exercise of that or of any other right or remedy. A single or partial exercise of a right or remedy under the Contract does not prevent a further exercise of that or of any other right or remedy.

31.5 The rights, remedies and power of the parties under the Contract are in addition to any rights, or remedies and powers provided by law.

31.6 You will assist us as reasonably required in the event of a product recall of Goods that you have acquired from us.

31.7 The Contract constitutes the entire agreement between the parties relating in any way to its subject matter. All prior negotiations, agreements, communications, understandings, representations about the subject matter of the Contract are of no effect.

31.8 The Contract is governed by and is to be construed in accordance with the laws of the Jurisdiction. The parties irrevocably agree that the courts of the Jurisdiction will have non-exclusive jurisdiction to settle any dispute which may arise out of or in connection with the Contract (including non-contractual disputes).

31.9 Termination or expiry of the Contract will not affect any provisions of these Conditions which are expressed to, or by implication are intended to, survive termination or expiry of the Contract, including clauses 18, 22, 27, 28 and 31.

31.10 The Contract is not to be interpreted against us merely because we proposed and prepared the Contract or some provision of it, or because we rely on a provision of the Contract to protect us.

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TRADE-IN DECLARATION:

Description of Goods being purchased and anticipated delivery date	
GST inclusive price	
Description of trade-in goods including condition, specification and attachments ("the Trade-in") and indicative Trade-in allowance	
Description of any repairs or service works required to be carried out on Trade-in to bring to saleable condition ("the Works")	
Estimated Costs of the Works	

I(print full name)

am, or am acting on behalf of, the Customer and declare and warrant for the benefit of CEA that:

- a) the Trade-in is the property of the Customer OR the Customer has full authority of the owner to transfer all right title and interest in the Trade-in to CEA;
- b) Title to the Trade-in is not encumbered in any way and there are no monies owing to any person in respect of it;
- c) The information provided to CEA as to the hours of and type of operation of the Trade-in, is not misleading; and
- d) The Customer is not insolvent, has not committed any act of bankruptcy, or is not under external administration receivership or liquidation;
- e) **PAYG (Withholding tax declaration):** The Customer holds an ABN which is....., is registered for GST and will provide a GST compliant tax invoice for the supply of the below described Trade-in.

DECLARANT SIGNATURE.....

Date.....

IMPORTANT: READ THIS DECARATION CAREFULLY BEFORE SIGNING.