

Customer Terms of Sale

Royal Penny Holdings Pty Ltd Trading as Critical IT

These Terms set out the terms and conditions that apply to Critical IT's supply of Products to its Customers.

1. Definitions

"**Cash Customer**" means a Customer who does not have an approved and available credit line from Critical IT, and as further defined in clause 4.

"**Credit Customer**" means a Customer who:

- a) has an approved and available credit line from Critical IT as described in clause 4 of these Terms;
- b) has credit privileges within their credit limit as needed for the relevant orders subject to these Terms; and
- c) whose credit account remains valid and in good order and has not been reduced or cancelled by Critical IT in the manner described in clause 4.

"**Customer**" means the person or corporate entity who purchases Products from Critical IT.

"**Critical IT**" means Royal Penny Holdings Pty Ltd Trading as Critical IT (ACN 169940372, ABN 32169940372).

"**Order Policy**" means the Critical IT policy located at [Order Policy.aspx](#), as amended from time to time. The policy is incorporated herein by reference.

"**Products**" means all goods and/or services (including software) supplied to Customer by Critical IT or Critical IT's partners or affiliates.

"**Returns Policy**" means the Critical IT policy located at [Return Policy.aspx](#), as amended from time to time. The policy is incorporated herein by reference.

"**Terms**" means these Customer Terms of Sale as updated by Critical IT from time to time.

2. Interpretation

In these Terms:

- a) the singular includes the plural and vice versa;
- b) a gender includes all genders;
- c) a document (including these Terms) is a reference to that document as amended, consolidated, supplemented, novated or replaced;
- d) a person (including a party) includes:
 - i) an individual, company, other body corporate, association, partnership, firm, joint venture, trust or government agency; and
 - ii) the person's successors, permitted assigns, substitutes, executors and administrators;
- e) a law includes any legislation, judgment, rule of common law or equity or rule of any applicable stock exchange, and is a reference to that law as amended, consolidated, supplemented or replaced and includes a reference to any regulation, by-law or other subordinate legislation;
- f) the words "including" or "includes" means "including, but not limited to" or "includes, without limitation" respectively;
- g) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- h) headings are for convenience only and do not affect interpretation of this agreement; and
- i) these Terms may not be construed adversely to a party only because that party was responsible for preparing them.

3. Formation of agreement

- a) These Terms and all other documents expressly referred to in these Terms set out the entire agreement of the parties about the subject matter of these Terms and supersede all other representations, negotiations, arrangements, understandings or agreements and all other communications.
- b) The parties agree that a separate contract is formed each time Customer acquires Products from Critical IT on the then current version of these Terms. Customer agrees to check Critical IT's Website for a copy of the current Terms and Order Policy before ordering Products. By placing an order for Products with Critical IT from time to time, Customer accepts and agrees that these Terms will be updated and amended from time to time to reflect the current version of the Terms (and other documents expressly referenced in these Terms) as displayed on Critical IT's Website at the time of the order, and that such updated Terms will apply to that order, and that to the full extent permitted by law all other terms and conditions (wherever contained) will be excluded, unless agreed by Critical IT in writing and signed by a Critical IT authorised representative.

4. Credit and Cash Customers

- a) Credit Customers.
 - i) Customers by default have an approved credit limit of \$2000 and Critical IT in its sole discretion will assign Customer a maximum credit line and will have the right to increase, decrease, or terminate Customer's credit privileges or to change the terms and conditions on which those privileges are provided ("Credit Terms") at any time without prior notice to Customer, except as otherwise provided by law. Critical IT may, at any time or from time to time, without assigning any reason therefore refuse to extend any further credit.
 - ii) To the extent the Customer is a Credit Customer, the Customer agrees to immediately notify Critical IT of any changes to any of the details contained in its credit application or as otherwise provided by Customer to Critical IT, and any other material changes to Customer's ownership, shareholding, structure and/or business, trading or financial activities.

- b) Cash Customers must pay for Products in full before they can take physical possession of, or title in, the Products. Cash transactions must be paid via a payment method approved by Critical IT.

5. Orders

- a) Customer:
 - i) must only make orders for Products in accordance with Critical IT's Order Policy; and
 - ii) acknowledges that all orders are subject to acceptance by Critical IT.
- b) Critical IT may reject any order placed by Customer if:
 - i) it has an insufficient quantity of Products available to fulfil such order; or
 - ii) Customer is not a Credit Customer and does not otherwise pay for the order in advance as required by clause 6.

6. Payment

- a) The price payable by the Customer to Critical IT for the Products will be Critical IT's quoted price, or in the absence of a quoted price, the price as shown on the [Critical IT's Website](#) or as otherwise advised by Critical IT.
- b) Customer must pay Critical IT for the Products and for all other notified charges (including any handling, delivery, agents' charges and other charges duties or imposts) prior to delivery, or to the extent the Customer is a Credit Customer in accordance with the applicable Credit Terms, unless agreed otherwise in writing by an authorised officer of Critical IT.
- c) To the extent Customer is a Credit Customer, Critical IT may, in its sole discretion suspend the provision of credit to Customer at any time until all amounts owing are paid for in full.
- d) If Customer does not pay any amount due under this agreement by its due date for payment, Customer is liable to pay interest on any overdue amount from the due date until the date of payment, to be calculated on a daily basis at the rate of 2% above the prevailing base lending rate quoted by the Westpac Banking Corporation.
- e) Unless stated otherwise in these Terms (or in writing by Critical IT's authorised representative), all prices quoted for Products are exclusive of all GST and other taxes.
- f) If GST is payable as a consequence of any supply made (or deemed to be made) by one party to the other party in connection with this agreement, the party receiving the supply must pay to the party making the supply an amount equal to the GST payable in respect of the supply ("GST Amount") in addition to the amounts otherwise payable.
- g) Notwithstanding any other provision of this agreement, if either party is required to reimburse or indemnify the other party for any cost, expenses or other amounts, the amount to be reimbursed or indemnified must be reduced by any part which is recoverable as an input tax credit by the party which incurred it (or representative member of that party's GST group).
- h) Terms used in subclauses (e) to (g) above have the meaning as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- i) Customer is responsible for all taxes (other than income tax) payable under these Terms, any matter or thing done under these Terms, or any payment, receipt or other transaction contemplated by these Terms, including the granting of any Security Interest (as defined in clause 11), together with any fine, penalty or interest payable because of a default by Customer in paying such taxes.
- j) Customer must pay to Critical IT any amount Customer must pay under clause 6(b) in full, without any set-off, and shall not deduct from that amount any tax in relation to purchase of the Products. Customer will reimburse Critical IT for any taxes Critical IT pays on its behalf.

7. Delivery

Delivery times advised to Customer are estimates only and to the fullest extent permitted by law, Critical IT will not be liable for any loss, damage or delay suffered or incurred by Customer or by Customer's end customers arising from late delivery of the Products.

8. Part deliveries

Critical IT may make part deliveries of any order, and each part delivery will constitute a separate supply of the Products for the purposes of these Terms.

9. Software

- a) Customer acknowledges that certain Products (including those containing Software) may be subject to licence requirements or other restrictions specific to certain transactions. Where applicable, Customer agrees to be bound by any such terms and conditions and/or restrictions and shall indemnify Critical IT for any liability suffered by it arising from Customer's breach of such terms, conditions and/or restrictions.
- b) Such terms, conditions and restrictions (including software licence agreements) may be packaged with the relevant Product, may be separately provided to Customer for execution or may require on-screen acceptance by Customer. Customer agrees to use the Product in accordance with the terms and conditions of the relevant licence agreement or other applicable terms, conditions and/or restrictions.
- c) Where the term "supply" or "delivery" is used in these Terms to refer to a software Product, such term means the sale and purchase of a licensed copy of that software Product or a right to access a hosted copy of that software Product (regardless of whether such software is supplied in hard copy or electronically, or where access is otherwise provided to a copy of the software).

10. Inspection and acceptance

Customer must

- a) in the case of all Products ordered (other than software Products), inspect such Products upon delivery to Customer's premises; or
- b) in the case of software Products, test or inspect such software Products upon those Products being delivered,

and must, within 7 days of delivery, give written notice to Critical IT at help@critical-it.com.au if the Product delivered is not the same

Product that was ordered. Failing such notice and to the extent permitted by law, the Products will be deemed to have been accepted by Customer.

11. Title and risk

- a) Risk in all Products will transfer to Customer immediately upon:
 - i) delivery to Customer, Customer's agent or into Customer's custody or control;
 - ii) collection by Customer's nominated carrier or agent; or
 - iii) collection by Customer from Critical IT's transport agent depot.
- b) Customer must:
 - i) effect and maintain with a reputable insurance company insurance for the full insurable value of the Products, at its cost, against all appropriate risks including loss or damage by fire, theft, accident and other such risks;
 - ii) note the interest of Critical IT on the insurance policy; and
 - iii) produce a certificate of currency of the insurance effected by Customer under this clause 11(b) to Critical IT, upon request.
- c) Risk in the Products will remain with Customer at all times unless Critical IT retakes possession of the Products in accordance with subclause (d) or (e) below.
- d) Except as expressly provided herein, title in and ownership of all Products contained in each delivery will remain with Critical IT until Critical IT has received payment in full for the Products and of any other amounts Customer may owe Critical IT at any time, now or in the future. Until title to the Products has passed, Customer grants Critical IT the right to enter Customer's premises to repossess the Products and to sell or dispose of those Products. Customer hereby acknowledges that until payment for the Products and any other amounts owed to Critical IT has been received in full by Critical IT, Critical IT's Security Interest in the Products automatically attaches to and extends to the proceeds of sale of the Products sold by Customer and Customer is under an obligation to Critical IT to account to Critical IT for the proceeds of the sale of the Products sold by Customer.
- e) Notwithstanding the foregoing, in the event that Critical IT supplies Products as the agent of the manufacturer or other party ("Principal"), ownership of the Products contained in each delivery remains with the Principal until payment has been received in full and until title to the Products passes, and Customer also grants the Principal the right to enter its premises to repossess the Products and to sell or dispose of those Products.
- f) Customer hereby consents to Critical IT registering on the Personal Property Securities Register any and all Security Interests granted by or pursuant to this agreement.
- g) Customer agrees to do, at Customer's own expense, all things necessary, including executing all documents and providing all relevant information, and otherwise co-operating fully with Critical IT to enable Critical IT to register and maintain a financing statement on the Personal Property Securities Register in order to ensure that Critical IT has a perfected Security Interest in relation to all Security Interests created by or pursuant to this agreement and where applicable, a Purchase Money Security Interest in respect of the Products.
- h) Customer must not grant any other Security Interests in the Products which would rank equally with, or in priority to, a Security Interest held by Critical IT over those Products under this agreement except with the prior written consent of Critical IT.
- i) As between debts owed to Critical IT secured by Purchase Money Security Interests and other debts, Critical IT will be entitled to apply monies received from Customer against other debts first at its sole discretion and despite any direction from Customer to the contrary.
- j) To the extent the law permits:
 - i) for the purposes of sections 115(1) and 115(7) of the *Personal Property Securities Act 2009* (Cth) ("PPSA"):
 - (A) Critical IT need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (B) sections 142 and 143 are excluded;
 - ii) for the purposes of section 115(7) of the PPSA, Critical IT need not comply with sections 132 and 137(3);
 - iii) if the PPSA is amended after the date of this document to permit Customer and Critical IT to agree to not comply with or to exclude other provisions of the PPSA, Critical IT may notify Customer that any of these provisions is excluded, or that Critical IT need not comply with any of these provisions, as notified to Customer by Critical IT; and
 - iv) Customer agrees not to exercise its rights to make any request of Critical IT under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
 - k) If Critical IT exercises a right, power or remedy in connection with this agreement, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless Critical IT states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.
 - l) To the extent the law permits, Customer waives:
 - i) its rights to receive any notice that is required by:
 - (A) any provision of the PPSA (including a notice of a verification statement); or
 - (B) any other law before a secured party or receiver exercises a right, power or remedy; and
 - ii) any time period that must otherwise lapse under any law before a secured party or receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits Critical IT or any receiver from giving a notice under the PPSA or any other law.

- m) For the purposes of this clause 11, the terms financing change statement, financing statement, Purchase Money Security Interest, Personal

Property Securities Register, Security Interest and verification statement have the meanings given in the PPSA.

- n) If Customer sells, disposes of or otherwise deals with Products or any part thereof before full payment has been received by Critical IT, Customer must advise Critical IT in writing, at such times as Critical IT may request, specifying full details of the Products sold, disposed of, utilised or otherwise dealt with.
- o) Customer acknowledges that in the case of software Products, any refusal or failure to pay may result in cancellation of the licence to use the software Product.
- p) Customer agrees that the provisions of this clause 11 apply despite any arrangement under which Critical IT grants credit to Customer.

12. Returns

- a) Where a claim is made under a statutory provision to which clause 18(d) below applies, such claims will be dealt with in accordance with that clause.
- b) In all other cases, claims for the return of Products by Customer will be dealt with in accordance with the Returns Policy and this clause 12. Any substitute Products to be shipped to Customer in accordance with the Returns Policy will be sent by Critical IT to Customer by ordinary freight pre-paid.
- c) Customer must notify Critical IT in writing of any Products it wishes to return within 7 days from the date of the invoice relating to those Products.
- d) To the full extent permitted by law and subject to clause 18(d), Critical IT will not be liable and has no obligation to accept or process any claim for any return request if:
 - i) there has been damage to or defects in the Products that have been caused by the improper storage, warehousing or transport, or by any neglect, abuse or improper use, installation, maintenance or unauthorised repair, in each case by any person other than Critical IT;
 - ii) the Product has been added to, varied, or otherwise modified by, any person other than Critical IT;
 - iii) in connection with the claim Customer alleges that cartons were damaged in transit but the Proof of Delivery (POD) does not identify that cartons were damaged in transit; or
 - iv) the claim for a return request is not notified to Critical IT in writing within the period stated in clause 12(c).

13. Customer Claims

- a) Where the Customer has a claim for reimbursement or payment in connection with rebate claims and claims for manufacturer subsidies, such claims will be dealt with in accordance with this clause 13.
- b) A rebate claim or a claim for a manufacturer subsidy must be submitted in writing by Customer to Critical IT with full and complete documentation in order to support the claim.
- c) Customer agrees that no claim is approved until the manufacturer so confirms in writing to Critical IT and Critical IT notifies Customer of such approval.
- d) Critical IT will provide any reimbursement or payment to Customer following notification by Critical IT to Customer under clause 13(c).
- e) Customer agrees that it has no right to set-off any amount against an invoice from Critical IT.

14. Force majeure

If the performance of any of Critical IT's obligations under these Terms is prevented, restricted or affected by force majeure including strike, lock out, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the reasonable control of Critical IT, Critical IT will not be liable for any delay in performing or failure to perform its obligations if such failure is due to such force majeure event. The performance of Critical IT's obligation will be suspended for the period of delay due to the force majeure event and Critical IT will give notice of such cause to Customer.

15. Customer's cancellation

- a) Unless otherwise agreed in writing by an authorised officer of Critical IT, Customer may not cancel an order which has been accepted by Critical IT.
- b) If Customer's right of cancellation is agreed to by an authorised officer of Critical IT in writing, the right must be exercised by notice in writing from Customer to Critical IT not later than 24 hours before the estimated date of shipment by the manufacturer or Critical IT (as the case may be).
- c) Unless otherwise agreed between Customer and Critical IT, upon cancellation prior to shipment, any amounts paid by Customer will be forfeited to Critical IT.

16. Default

- a) Without prejudice to any of Critical IT's other rights under these Terms, if Customer fails to make any payment due to Critical IT under these Terms as and when such payment becomes due, Critical IT may, in its sole discretion, and without further liability to Customer:
 - i) refuse to make further Product supplies to Customer;
 - ii) terminate a current ongoing Product supply to Customer (e.g., a supply of a Product via a subscription); and/or
 - iii) cancel or amend any credit privileges as anticipated by clause 4 above.
- b) Any provision in these Terms, including but not limited to provisions relating to payments, that by its nature or context is intended to survive the termination of credit privileges, shall so survive.

- c) Unless Customer is otherwise notified in writing signed by an authorised representative of Critical IT, termination of Customer's credit privileges:
 - i) shall not terminate any current subscription-based Product purchases (either pre-paid, post-paid or consumption based) pursuant to a Customer purchase order in effect at the time of the termination, regardless of whether such Product is purchased for use internally by Customer or for use by Customer's end customers ("Subscription Terms"), and shall not impact any agreed renewal provisions of such Subscription Terms; and
 - ii) does not extinguish Customer's liability to pay to Critical IT any fees on account of any existing Subscription Terms as and when they fall due ("Fees").
- d) Where such Fees are payable to Critical IT post Product usage (including set usage post pay fees, pay per consumption fees, etc.), in arrears ("Post-Paid Fees"), and are billed to Customer either monthly or annually or at the end of the Subscription Term or a different billing frequency, Customer agrees that it is unequivocally and irrevocably liable to Critical IT for payment of all Post-Paid Fees as and when they fall due and regardless of whether the Customer receives any payment from its end customers.
- e) If Customer defaults in the payment of any Fees, including Post-Paid Fees, due to Critical IT, Customer acknowledges that Critical IT and/or the vendor of the subscription based offering that the Fees relate to may terminate the Subscription Terms affected by the payment default. Critical IT's and the vendor's aggregate liability for any and all claims related to such terminations is limited to direct damages not exceeding the fees paid by Customer to Critical IT with regards to the terminated Subscription Terms, in the month preceding the event which gave rise to the liability.

17. Resale

- a) All Products supplied by Critical IT may only be sold by Customer within Australia unless otherwise agreed in writing. Customer must not knowingly sell or supply the Products to any person who intends to resell or on-supply them outside of Australia.
- b) The parties acknowledge and agree that the Customer may set the amounts it charges to its end customers for re-supply of the Products in its sole discretion.

18. Warranty

- a) Products may be covered by manufacturers' warranties. To the full extent permitted by law and subject to clause 18(d), Critical IT's entire responsibility with respect to warranties for the Products is to pass on to Customer the benefit of any such manufacturers' warranties that are provided to Critical IT for such Products, to the extent it is permitted and possible to do so.
- b) To the full extent permitted by law and subject to clause 18(d), software Products are not warranted by Critical IT under these Terms. Such software Products are warranted in accordance with the relevant licence agreements governing their use.
- c) To the extent permitted by law and subject to clause 18(d), the manufacturers' warranties referred to in clause 18(a) are in substitution for all other warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantability and fitness for purpose) and to the full extent permitted by law, each party excludes all terms, conditions, representations, warranties and guarantees, whether express or implied (and including those implied by statute, custom, law or otherwise), except as expressly set out in this agreement.
- d) Certain legislation may imply warranties, conditions or guarantees or impose obligations upon Critical IT which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. These Terms must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which Critical IT is able to do so, its liability will be limited, at its option, to:
 - i) in the case of goods: the replacement of the goods or resupply of equivalent goods; repair of the goods; payment of the cost of replacing the goods or acquiring equivalent goods; or the payment of the cost of having the goods repaired; and
 - ii) in the case of services: the supply of the services again; or the payment of the reasonable cost of having the services supplied again.
- e) To the full extent permitted by law, but subject to subclause 18(d) above, Critical IT does not warrant that repair facilities or parts will be available in respect of any of the Products.
- f) Customer warrants that it is acquiring the Products for the purpose of use as inventory in Customer's business, and that it is not acquiring the Products wholly or predominantly for personal, domestic or household use or consumption.

19. Liability

- a) Customer will be liable for all orders placed with Critical IT through Customer's account, regardless of whether those orders were placed in accordance with Customer's authorisations or instructions. It is Customer's responsibility to ensure that its account is only accessed and used by authorised personnel pursuant to, and in accordance with, any limits on their authority, and safeguarded from misuse by authorised or unauthorised individuals.
- b) Customer will defend, indemnify and hold harmless Critical IT, its related bodies corporate, affiliates and subsidiaries and each of their respective officers, directors, employees and agents from and against any and all claims, demands, proceedings, actions, liabilities, losses, damages, costs or expenses of any kind (including reasonable attorney's fees and disbursements) incurred or sustained as a result of, or arising out of, or relating to any actions taken by Critical IT regarding the Products at the request of, and consistent with, instructions provided by Customer, any breach of these Terms or acts or omissions of Customer or its employees, related bodies corporate, affiliates or agents, the manner in which Customer markets and sells the Products, supply by Customer of any Products for use in conjunction with or in relation to the Products, or any breach or alleged breach of any applicable laws or regulations relating to the storage, marketing or sale by Customer of the Products.
- c) To the extent that an indemnity under this agreement is in favour of a person other than Critical IT, Critical IT contracts as trustee of the rights under that indemnity.
- d) To the fullest extent permitted by law, but subject always to clause 18(d):
 - i) Critical IT will have no liability for (A) failure to deliver Products within a specified time period; (B) availability and/or delays in delivery of Products; (C) discontinuation of Products, Product lines or any part thereof; or (D) cancellation of any orders;

- i) Critical IT has no duty to defend, indemnify or hold harmless Customer, its related bodies corporate, affiliates or their respective customers from and against any claim, demand or cause of action, including any damages, costs or expenses incurred by Customer, its related bodies corporate, affiliates or their respective customers in connection with, arising from or relating to any actual or alleged Product liability or violation or infringement of any patent, trademark, copyright or other intellectual property belonging to a third-party by the Products;
- ii) Customer's, its related bodies corporate, and their respective customers' sole and exclusive remedy relating to these Terms and/or the Products will be the remedy, if any, afforded by the manufacturer of such Products to such parties as anticipated by clause 18(a);
- iii) Critical IT will not be liable for and Customer waives all claims, demands, causes of action or other claims for punitive, exemplary, indirect or consequential damages arising under these Terms or otherwise with respect to the Products or their sale, or for any lost revenues or profits, consequential or incidental damages, injury to persons or property, business interruption or damage to business reputation, regardless of the theory upon which any claim may be based, and even if Critical IT has been advised of the possibility of such damages, including any tort (including negligence) or statutory causes of action;
- iv) the only liability of Critical IT with respect to any damaged Products, defective Products and/or Products erroneously shipped will be the return rights described herein; and
- v) even if this agreement fails in its essential purpose, in no event will Critical IT's cumulative liability (in tort (including negligence), contract (including under any indemnity), warranty, infringement, under statute or otherwise) to Customer exceed the purchase price actually paid by Customer for the Products that give rise to the dispute, or any defective portion thereof, whichever is the lesser amount. Critical IT's liability to Customer (including in tort (including negligence), contract (including under any indemnity), warranty, infringement, under statute or otherwise) will be reduced by the extent, if any, to which Customer contributed to the loss or damage.

20. Privacy

- a) Customer agrees to Critical IT collecting, using and disclosing certain personal information about Customer for various purposes, including to:
 - i) assess credit worthiness;
 - ii) supply the Products to Customer and the management of Customer's account, including suppliers;
 - iii) communicate with Customer about the Products which Critical IT or its partners or affiliates may provide to Customer;
 - iv) implement these Terms and the Credit Terms; and
 - v) comply with relevant laws.
- b) Critical IT, at the written request of Customer, will:
 - i) provide Customer with access to any personal information relating to Customer held by Critical IT; and
 - ii) correct or amend any personal information relating to Customer held by Critical IT which is inaccurate or out of date.
- c) Critical IT will handle Customer's personal information in accordance with relevant laws. Please read Critical IT's Privacy Policy on the website for further information on how Critical IT deals with personal information of its Customers.
- d) Customer must, at Critical IT's request, obtain any consents from, or provide notices to, individuals associated with Customer for Critical IT's privacy compliance purposes.

21. Intellectual Property

- a) Customer acknowledges that:
 - i) all trademarks, copyright and other intellectual property rights ("Intellectual Property") embodied in or in connection with the Products and any related documentation, parts or software are the sole property of Critical IT or its suppliers; and
 - ii) except as otherwise set out in a licence agreement referred to in clause 9, all Intellectual Property of Critical IT or its suppliers may only be used by Customer with the express written consent Critical IT or its suppliers and only in accordance with the terms of such consent.
- b) Customer must not register or use any trademarks, trade name, domain name, trading style or commercial designation or design used by Critical IT or its suppliers in connection with the Products.
- c) Customer will indemnify Critical IT against all liabilities, damages, costs and expenses which Critical IT may suffer or incur as a result of any work performed by Critical IT in accordance with Customer's specifications or as a result of the combination or use of the Products with other equipment, parts or software not supplied by Critical IT, and which results in the infringement of any Intellectual Property of any person.

22. Confidentiality

- a) Customer acknowledges that Critical IT has disclosed and may from time to time disclose to Customer certain confidential information and documentation of Critical IT relating to the Products, their marketing, use, maintenance and software, including technical specifications ("Confidential Information").
- b) Subject to clause 22(e), Customer must:
 - i) only use the Confidential Information solely for the purpose for which it was provided; and
 - ii) not disclose (whether directly or indirectly) to any third party the Confidential Information, other than is required to carry out such purposes or as permitted by clause 22(f).
- c) If disclosure of Confidential Information to third parties is necessary, Customer will obtain from such third parties binding agreements to maintain in confidence the Confidential Information disclosed at least to the same extent as Customer is bound to protect Critical IT's Confidential Information under this clause 22.

- d) At Critical IT's request, Customer must cease to use and must return or destroy (as Critical IT may instruct) Critical IT's Confidential Information in its possession or control.
- e) The provisions of this clause 22 do not extend to any information which is:
 - i) at the time of disclosure, rightfully known to or in the possession or control of Customer, other than as a result of a breach of confidence by a third party, and which is not subject to an obligation or confidentiality; or
 - ii) public knowledge (otherwise than as a result of a breach of this clause 22 or any other obligation of confidentiality); or
 - iii) developed independently by Customer without reliance on any of Critical IT's Confidential Information.
- f) Customer may disclose Critical IT's Confidential Information if such disclosure is:
 - i) approved in writing by an authorised officer of Critical IT; or
 - ii) required to be disclosed by a government authority or by relevant laws provided that notice of any such required disclosure is first given to Critical IT.

23. General

- a) Any provision of these Terms which is invalid or unenforceable in a jurisdiction is to be read down or severed in that jurisdiction to the extent of the invalidity or unenforceability, and this does not affect the validity or enforceability of that provision in another jurisdiction or of the remaining provisions.
 - b) A provision of or a right under this agreement may not be waived or varied except in writing signed by the person to be bound.
 - c) A party may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless these Terms expressly provide otherwise.
 - d) Customer acknowledges that some Products may be controlled under export laws. Without limiting clause 17(a), Customer shall not export, re-export, or distribute Products, in violation of any such export control laws or regulations.
 - e) Consistent with Critical IT's high standards for business ethics and its determination to be a responsible corporate citizen, Critical IT places a high priority on compliance with laws regulating exports, imports and supply chain security. Critical IT compliance responsibilities include appropriate screening, contractual and security requirements that agents, distributors, suppliers and other parties doing business with Critical IT may have to meet. In addition to meeting Critical IT's requirements, agents, distributors, suppliers and other parties doing business with Critical IT are also required to comply with the letter and spirit of all applicable laws regulating exports, imports, and supply chain security.
 - f) Customer warrants that it complies and will continue to comply in all of its business dealings with the *US Foreign Corrupt Practices Act 1977*.
 - g) Customer may not assign or otherwise transfer, create any charge, trust or other interest in, or otherwise deal in any other way with any of its rights and obligations under these Terms.
 - h) These Terms are governed by the laws of the State of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the state of Western Australia and waives without limitation any claim or objection based on absence of jurisdiction or inconvenient forum.
-