

1. GENERAL

- 1.1 All new materials, consumables, software, hardware, components and parts (including remanufactured and rebuilt parts) (**Goods**) and all labour or services in connection with such Goods (**Services**) sold or supplied to you (the **Customer**) by Reliable Software Solutions ABN 62 588 496 672 (**RSS**) is or are supplied on these terms and conditions (**Terms**), and supersede all previous communications either oral or written. Any quotation or tender by RSS shall be deemed to be subject to these terms and conditions. No term or condition contained in the Customer's acceptance or order shall add to, amend or delete these terms and conditions or any of them unless expressly agreed in writing by a duly authorised officer of RSS.
- 1.2 It is the Customer's responsibility to obtain any approvals, licences or permits necessary for the performance of the contract. Unless otherwise expressly agreed in writing by a duly authorised officer of RSS.
- 1.3 All descriptive specifications, performance figures, drawings, data, dimensions and weights furnished by RSS or contained in catalogues, price lists or advertisements are by way of general description only of the goods and shall not form any part of the contract.
- 1.4 It is the Customer's responsibility to provide all information necessary to enable performance of the contract and the Customer shall be responsible for any costs arising directly or indirectly from any error or omission in that information or any delay in providing that information.
- 2. THE CONTRACT**
- 2.1 Until RSS has accepted an Order in accordance with clause 2.3 of these Terms:
- (a) any quotation, estimate or price prepared or represented by RSS (**Quote**) is:
 - (i) indicative only;
 - (ii) not an offer to contract; and
 - (iii) only valid for 30 days.
 - (b) no Order by the Customer to RSS following a Quote will by itself or in association with a Quote bind RSS; and
 - (c) all Quotes prepared by RSS may be withdrawn or varied by RSS prior to acceptance.
- 2.2 If the Customer:
- (a) requests or orders Goods or Services from RSS; and
 - (b) that order is consistent with a Quote, (an **Order**) the Customer offers to contract with RSS on the basis of the Order and the Quote.
- 2.3 RSS accepts and is deemed to have accepted an Order made by the Customer under clause 2.2 of these Terms:
- (a) to the extent it is for materials, consumables, hardware, software, components or parts (including remanufactured and rebuilt parts) or Services on the earlier of:
 - (i) when those Goods are delivered to the Customer or the Services are completed by RSS as the case may be;
 - (ii) when notification or acceptance is provided by RSS to the Customer; and
 - (iii) 3 days after RSS receives an Order and does not dispute it or any part of it.
- 2.4 Upon acceptance by RSS under clause 2.3, a binding contract comes into existence between RSS and the Customer incorporating the following documents (together the **Contract**):
- (a) any Quote, invoice or other document of RSS whether attaching these Terms or not;
 - (b) any notice of acceptance provided by RSS in accordance with clause 2.3(a)(ii);
 - (c) these Terms;
 - (d) any document attached or annexed to these Terms by RSS; and
 - (e) the Order placed by the Customer including any attached or associated terms and conditions.
- 2.5 In the event of any inconsistency, ambiguity or discrepancy, the order of precedence set out above applies with the first listed document taking the highest priority and so on.
- 2.6 If, after applying the order of precedence, there still remains an inconsistency, ambiguity or discrepancy, either party may give the other party written notice.
- 2.7 If notice is given under clause 2.6, RSS shall (acting reasonably) direct the Customer as to the proper interpretation and determine (acting reasonably) liability for any additional costs.

3. CREDIT

- 3.1 Upon completion by the Customer of an *Application for Credit (Credit Application)*, a copy of which can be requested by emailing support@reliablesoftware.com.au; a credit facility may, in the sole and absolute discretion of RSS, be made available to the Customer.
- 3.2 The Customer is not entitled to any credit or use of other funds from RSS until RSS accepts a Credit Application by formal written notice to the Customer from a properly authorised credit officer stating that a credit facility has been made available and the limit.
- 3.3 RSS may, acting in its sole and absolute discretion, and without being obliged to do so
- (a) specify the maximum amount that may be charged to the credit facility within a specified time (Credit Limit); and
 - (b) regularly assess the Credit Limit and adjust it accordingly by increasing or decreasing it, or changing these terms.
- 3.4 The Customer must not charge to the credit facility amounts that exceed the Credit Limit. To the extent that it does, RSS is entitled to immediate repayment of any and all amounts charged to the credit facility in excess of the Credit Limit.
- 3.5 If the personal guarantee on the Credit Application is selected, in consideration of RSS supplying the Goods or Services and a credit facility to the Customer, the guarantors jointly and severally guarantee payment to RSS of all money due and payable by the Customer to RSS on any existing or future account or in any manner whatsoever.
- 3.6 The Customer must notify RSS in writing of any material change in the Customer's structure, management or position or of any other matter that may affect the Customer's credit status (including any sale or disposition of any part of the business, any change in control, or any new charge, mortgage or security given to any supplier or financier) within 48 hours of any such change.
- 4. PRICE**
- 4.1 The rates or prices payable for the Goods and Services, including any deposits or advance payments, are as specified in the Contract (the **Price**).
- 4.2 The Price quoted are based upon the full quantities specified and do not necessarily operate pro-rata for any greater or lesser quantities.
- 4.3 The Price quoted are exclusive of sales tax which (unless shown), when applicable, will be charged to the Customer at the rate applicable on the date of the Tax Invoice.
- 4.4 The Price quoted and this contract are based on present rates and costs of materials, labour, freight, insurance, customs agents and courier fees, government tariffs duties and will be held firm for 30 days thereafter adjusted in line with movements in the published price lists.
- 4.5 The Price excludes freight, duties (including import and customs duties) and any other necessary or incidental items, work or services unless expressly stated in the Contract.
- 4.6 Any costs for third party goods or services incurred by RSS (including freight and handling) must be reimbursed by the Customer with a margin (profit and overhead) of 15% on costs to RSS unless otherwise expressly stated in the Contract.
- 4.7 In the event of the suspension of the manufacture or supply by the Customers instructions, or lack thereof, or due to the inability of the Customer to accept the goods for any reason on or after the date on which they are ready for delivery, the Customer shall be liable for all extra costs and losses thereby incurred by RSS.
- 4.8 Prices are quoted in AUD.

5. TERMS OF PAYMENT

- 5.1 As per Quote / Tax Invoice.
- 5.2 RSS may, from time to time, demand different terms of payment from those specified herein whenever it reasonably appears to RSS that the Customer's financial condition requires it. Any such demand shall be in writing. If the Customer fails to make any payments in accordance to the terms and conditions hereof, or shall fail to comply with any such demand by RSS, RSS may, at its option, and without any liability on RSS's part, treat such failure or refusal as a repudiation of that portion of the contract and of any other existing contracts with the Customer or resell the goods at any one or more public or private sales at wholesale or otherwise, and recover from the Customer the amount by which the prices of the goods under this contract exceeds the amount so received, together with all costs and losses occasioned by the default of the Customer, or stop production and defer deliveries hereunder or under

- any other contract with the Customer, except upon receipt of satisfactory security or of cash before delivery.
- 5.3 Time is of the essence in relation to payment for Goods and Services and if the Customer fails to pay RSS any amount when due, RSS is, without limitation, entitled to a payment of interest at the rate of 10% per annum above the Reserve Bank of Australia target cash rate in simple interest calculated daily from the day following the date upon which payment should have been made and without demand being necessary.
- 5.4 RSS may set off, or otherwise account for, amounts paid by the Customer against other amounts owed by the Customer to RSS or claimed to be so owed whether arising under or in connection with this Contract or otherwise.
- 6. COSTS**
- 6.1 The Customer will indemnify RSS on demand against all costs and expenses incurred by RSS in connection with these Terms including in respect of anything instituted against the Customer for the recovery of any debt, the repossession of any Goods, credit collection commissions, legal fees, bank charges and court costs. The costs of registering any financing statement on the Personal Property Securities Register (PPSR) will be paid by the Customer and may be invoiced or debited against the Customer's credit facility.
- 7. TIME FOR PERFORMANCE**
- 7.1 RSS will carry out its supply under this Contract during usual business hours for the branch from which the supply is to be carried out unless otherwise agreed.
- 7.2 The Customer must ensure that RSS has access to its site, the relevant work area and equipment as is safe and reasonably necessary for RSS to supply the Goods and Services.
- 7.3 RSS will deliver the Goods to the delivery place specified in the Contract, or if no place for the delivery of the Goods is specified:
- RSS will notify the Customer promptly when the Goods are ready for collection at RSS; and
 - the Customer must promptly (and within 48 hours) collect its Goods from the RSS premises specified in the Contract.
- 7.4 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 as determined by RSS acting reasonably.
- 7.5 If a date or dates for delivery of the Goods or completion of the Services is specified in the Contract, RSS will deliver or complete as the case may be by those dates.
- 7.6 If no date or date for delivery or completion are specified in the Contract, RSS will deliver the Goods and complete the Services with due diligence, expedition and without delay.
- 8. ACCEPTANCE AND COMPLETION**
- 8.1 The delivery of any Goods is deemed to have occurred and be carried out in accordance with these Terms:
- if the Goods are to be collected by the Customer or its carrier from RSS, when loading of the Goods commences by the Customer or its carrier; and
 - if the Goods are to be delivered by RSS or its carrier to the Customer, when the Goods are unloaded at the delivery place.
- 8.2 RSS will notify the Customer, orally or in writing, promptly when it considers (acting reasonably) that the Services have been completed.
- 8.3 The Customer must:
- promptly inspect the Goods on delivery in accordance with clause 8.1 and any Services following the notice given under clause 8.2; and
 - notify RSS of any non-compliance with the Contract in writing within fourteen (14) days of delivery or from the notice of completion as applicable.
- 8.4 Unless RSS receives a notice under clause 8.3(b) within the time required by that clause, the Customer is deemed, to the extent relevant, to have:
- accepted that the Goods comply with, and have been delivered in accordance with, the Contract; and
 - certified that the Services are complete, and that they have been completed in accordance with, the Contract, and that RSS may claim and invoice for, and is entitled to payment of, the Price for those Goods and Services.
- 8.5 If RSS receives a written notice from the Customer under clause 8.3(b) within the time required by that clause:
- for Goods that are new or remanufactured parts, the Customer may:
 - reject and return them (at Customer's cost) to the RSS office set out in the Contract; or
 - accept them and notify RSS of a dispute.
- 8.6 If the conditions in clauses 8.5(a) above are satisfied, the Customer will be entitled to receive the following credit for the parts purchased:
- if the part is returned within **twenty (20) days** of delivery, the Customer is entitled to receive a credit for the full Price of the parts less a restocking fee of 10% of the Price;
 - if returned after **twenty (20) days but on or before thirty (30) days** after delivery, a credit for the full Price less a restocking fee of \$55 or 15% of the Price whichever is the greater; and
 - if the part is returned **after thirty (30) days** of delivery, RSS will determine a reasonable credit and the terms applicable and as a minimum apply the restocking fee under clause 8.6(b).
- The Goods being returned by the Customer must be undamaged, in good and clean condition and enclosed in the original packaging.
- 8.7 If after fourteen days from the date from which the goods are ready for despatch, delivery is delayed for any reason beyond RSS's reasonable control, RSS may store the goods at its premises or elsewhere and the costs of storage, handling and insurance shall be payable by the Customer on demand by RSS.
- 9. LIMITED WARRANTY**
- 9.1 RSS warrants and the Customer agrees that:
- in relation to **Services**, that for a 3 month period following the date of completion of any of those Services, that those Services were carried out and completed with due skill and care, in a proper and workmanlike manner and in accordance with all relevant law;
 - in relation to **Goods supplied by RSS to which a manufacturer's warranty applies**, that the benefits and obligations of the manufacturer's warranty apply in all respects and is the sole and exclusive warranty for those Goods;
 - in relation to **new Goods supplied by RSS** to which a manufacturer's warranty does not apply, that for a 12 month period (unless otherwise specified) following the date of delivery, those Goods will be free from defects in materials and workmanship, and to the extent designed by RSS, be fit for the purpose specified in the Contract; and
 - usual written warranty shall apply in respect of the Goods.
- 9.2 Warranty repairs shall cover parts that prove to be defective during the warranty period due to faulty workmanship in manufacture. But any parts defective due to incorrect installation or negligence on the part of the buyer shall not be covered by warranty. Warranty repair work shall be carried out in RSS's premises and does not cover the removal of the equipment from site, transportation to RSS premises or back to the site, or reinstallation of the equipment. If the Customer wishes RSS to visit the site to carry out warranty repair work, it will be at RSS' discretion whether or not to charge for this service.
- 9.3 If the goods are not a kind ordinarily acquired for personal domestic or household use the liability of RSS for breach of any condition or warranty implied by the Trade Practices Act 1974 (other than by Section 69) shall be limited to one of the following at RSS option:
- the replacement of the goods or the supply of equivalent goods or
 - the repair of the goods or
 - the payment of the cost of replacing the goods or of acquiring equivalent goods or
 - the payment of the cost of having the goods repaired.
- 9.4 To the full extent permitted by law all other warranties or liabilities imposed or implied whether by law or by statute are expressly negative.
- 9.5 The Customer shall assume all risk and liability resulting from the use of the goods either alone or in conjunction with other goods or materials even if RSS had or should have had prior knowledge of the use to which the goods would be put.
- 10. WARRANTY CLAIM PROCEDURE**
- 10.1 The Customer must notify RSS of any event or circumstance which may give rise to a warranty claim by the earlier of:
- the time expressly required by the manufacturer's warranty for the notification of claims, if any such time applies; or
 - if no such time applies, within 90 days of the event or circumstance occurring that gave rise to the warranty claim, and in any event, within the relevant warranty period stipulated in clause 7.
- 10.2 If the Customer fails to notify in accordance with clause 10.1, RSS may, in its sole discretion, rectify the defect but otherwise has no liability to do so.
- 10.3 The Customer must send a warranty claim to:

Reliable Software Solutions
Shed 28, 35 Ingleston Road, Wakerley QLD 4154
Telephone: 07 3160 9344
Email: support@reliablesoftware.com.au

10.4 The Customer warrants that any claim made by it on warranty is valid and one to which the warranty responds.

10.5 To the extent that the Customer makes an invalid warranty claim, it must reimburse RSS for that work at list rates and prices.

11. DELAY AND DISRUPTION

11.1 To the extent that RSS is, or is likely to be, delayed or disrupted in the supply of any Goods or Services, and that is due to:

- (a) any fact, event, matter or circumstance beyond RSS's reasonable control; or
- (b) any breach, act or omission of the Customer, its agents or contractors,

RSS is entitled to a reasonable extension of time to supply those Goods or Services.

11.2 If a delay or delays under clause 11.1(b) exceed a single or aggregated period of 90 days, RSS may terminate the relevant Order or part thereof for convenience in its sole discretion by written notice to the Customer, in which case, RSS will be entitled to compensation in accordance with clause 16.2 as if the Customer had cancelled or terminated for convenience.

12. VARIATIONS AND EXTRA

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

12.2 To the extent that RSS can reasonably comply with the Variation, RSS will endeavour to do so and if it does, will be entitled to payment as follows:

- (a) an amount as agreed between the parties;
- (b) failing agreement, an amount calculated according to the Contract rates and prices to the extent reasonably applicable; or
- (c) to the extent that rates and prices in the Contract do not reasonably apply:
 - (i) for additions, or changes in nature, quality or location, an amount based on reasonable rates or prices (including profit and overhead of 15% on costs); and
 - (ii) for deletions or omissions, deducting reasonable rates or prices from the Price including profit but retaining an allowance for overhead of 5% on the original costs.

12.3 RSS may at any time and from time to time request a Variation. and the Customer will reasonably and in good faith, determine whether such a Variation should apply and agree to it accordingly.

12.4 Unless otherwise expressly stated in the Contract, RSS is entitled to increase or decrease the rates or prices under the Contract as a Variation in the following circumstances:

- (a) to the extent RSS incurs additional costs due to a change in law that was not reasonably anticipated by RSS as at the date of Contract; and
- (b) to the extent that any ground conditions on or around the site or relevant work area could not reasonably have been anticipated by RSS as at the date of Contract.

13. INSTALLATION AND TESTING

13.1 If included in a Quote;

- (a) installation shall be limited to receiving goods at site, installing goods in accordance with drawings and demonstrating performance of the goods after all other trades have completed the necessary prior work;
- (b) testing shall be in accordance with RSS usual practice and conducted at works or elsewhere at RSS option.

13.2 Prices quoted do not include hiring of lifting equipment for, or external wiring of the goods to be installed.

14. RISK AND TITLE OF GOODS

14.1 Risk in connection with any Goods sold or supplied to the Customer passes upon delivery occurring in accordance with clause 8.1 of these Terms, but passes back in the event of any returned Goods.

14.2 Legal and equitable title, property and ownership in any Goods sold or supplied by RSS under this Contract only passes on receipt of payment by RSS of the Price in full, cleared funds and without any deduction or set off.

14.3 Until the first to occur in the events specified in the previous paragraph hereof;

- (a) the Customer shall store the Goods separately from other items in its possession and shall store, mark and record them in such a

manner that the Goods are readily identifiable as the property of RSS;

- (b) RSS shall have power by itself or by its servants as agents to enter the buyer's premises to search for and retake possession of the Goods in the event of default by the Customer in making payments under this agreement.

14.4 If the property in the goods passes from RSS by virtue of any sale or other disposition thereof occurring before RSS has received payment in full and unconditionally for the goods then;

- (a) the Customer shall stand possessed of any moneys arising on such sale or disposition upon trust for RSS absolutely provided that the amount shall not exceed the total amount owed by the Customer under this agreement; and accordingly
- (b) upon receipt the Customer shall remit such moneys to RSS as soon as practicable and pending such remittance shall keep such moneys separate from any other moneys under its control; and
- (c) the Customer shall furnish RSS with all such information as RSS shall require concerning such moneys; and
- (d) the Customer shall at the request of RSS assign to RSS all (if any) claims available to the Customer against any person to whom the Customer shall have sold or otherwise disposed of the goods and arising out of such sales or disposition.

15. INDEMNITY AND INSURANCE

15.1 Subject to clause 19.11, each party indemnifies the other, its employees and agents against losses for physical destruction of or damage to property, death, injury, illness or disease, and to the extent that a credit facility applies, any act or omission or breach by the Customer of these Terms, arising out of or in connection with the carrying out its obligations to by the other party.

15.2 RSS 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 RSS such insurances as are required by law including workers compensation insurance.

15.3 From the time that risk in the Goods transfers to the Customer and continuing until title also transfers in accordance with these terms, the Customer must insure the Goods with an insurance company with an S&P Financial rating of not less than "A" for their full replacement value against loss or damage including but not limited to fire, malicious damage, theft and transit risks.

15.4 The insurance required under clause 15.3 must cover the respective rights and interests of the Customer and RSS (as owner), note the interests of RSS as owner if required by RSS, and include:

- (a) a cross-liability clause, to the intent that each insured party shall be deemed to be separate insureds under the policy;
- (b) an express provision requiring the insurer to notify RSS if the policy of insurance is not renewed, lapses or is cancelled midterm; and
- (c) an acknowledgement from the insurer that in the event of loss or damage to the Goods, all monies derived from any insurance settlement will be used to either repair or replace the Goods. Such determination will be at the sole discretion of RSS.

15.5 The Customer must not do or permit or allow to be done anything which might or could prejudice any insurance of the Goods.

15.6 Whenever requested by a party, the other party will promptly provide the first party with copies of the certificates of currency for insurances required under this Contract.

15.7 The parties shall be responsible for and must pay any excess or deductible under insurance policies required by these Terms to the extent of their respective contributions to the loss or damage.

15.8 If the Customer fails to insure the Goods in accordance with this clause 15.4 and 15.5, RSS may, but is not obliged to, procure and maintain such insurance and the cost of doing so will be a debt due and immediately payable from the Customer to RSS.

15.9 The Customer must promptly inform RSS in writing of any event or circumstance that may give rise to a claim under insurance required by clause 15.4 and keep RSS informed of subsequent developments and take all reasonable steps to ensure a prompt and favourable settlement of the claim.

16. CANCELLATION OF CONTRACT

16.1 Either party may, in its sole discretion and for any reason whatsoever, cancel or terminate this Contract, or any part of it, by giving the other party 14 days' prior written notice.

16.2 If the Customer cancels or terminates this Contract, or any part of it, under clause 16.1, the Customer must pay to RSS as compensation for termination:

- (a) the Price for any Goods already delivered and Services (or part thereof) already completed;
 - (b) the cost of any equipment, parts, components and materials ordered by RSS which it is liable to accept and cannot reasonably avoid or cancel;
 - (c) any costs or losses arising due to the cancellation or termination of third party contracts including contract break-costs, cancellation fees and necessary redundancies;
 - (d) reasonable demobilisation costs and any additional transport, freight, handling, packaging, consumables (fluids), insurance or maintenance costs; and
 - (e) in the event of a cancellation or termination of a base machine which RSS is liable to accept and cannot reasonably avoid or cancel:
 - (i) any deposits, fees and any other advance payments paid or required to be paid by the Customer;
 - (ii) the difference between 20% of the Price and the amount paid or required to be paid under clause 16.2(e)(i), if any.
- 16.3 If RSS cancels or terminates this Contract or any part of it under clause 16.1, the Customer may claim its material, reasonable and additional proven direct costs assessed on an open book basis.
- 16.4 Regardless of terms of payment applied to the contract cancelled, an invoice for cancellation costs, will become due payment immediately upon presentation of the invoice to the Customer.
- 17. FORCE MAJEUR**
- 17.1 RSS shall not be liable for any failure or delay to supply to goods due in any substantial part to any cause beyond its control such as, but not limited to, any act or neglect of any carrier, sub-contractor, manufacturer or supplier or RSS, acts of God, strikes, lock outs, bans or other industrial disturbances, fire, flood, explosion, civil riot or commotion, government interference or request or laws, rules, regulations or orders of any competent authority.
- 17.2 No such failure or delay shall entitle the Customer to terminate this contract and RSS obligations to the Customer shall be suspended without liability on the part of RSS while such cause exists.
- 18. DEFAULT**
- 18.1 Upon the happening of any of the following events;
- (a) the commission by the Customer of any act of bankruptcy or the Customer going into liquidation or a petition being presented for the sequestration of the Customer's estate or for the winding up of the Customer; or
 - (b) the Customer assigning its property for the benefit of creditors or having a receiver or official manager appointed; or
 - (c) the Customer failing to make payment to RSS on the due date; or
 - (d) the Customer being in breach of any of these Terms, then in any such event RSS shall without prejudice to any other remedies have the right to:
 - (i) cease production of the Goods; and/or
 - (ii) decline to deliver the Goods or any balance of the Goods still due under this Contract; and/or
 - (iii) stop any Goods in transit; and/or
 - (iv) otherwise cease to perform any of its obligations to the Customer; and/or
 - (v) terminate the Contract without incurring any liability at law or in equity and without prejudice to its rights to recover amounts owing to it by the Customer and/or damages; and/or
 - (vi) enter into premises of the Customer and repossess any goods already delivered and whether or not property in such goods has passed to buyer (in respect of which entry the Customer shall indemnify and keep indemnified RSS for all damages for which RSS may be responsible); and/or
 - (vii) recover from buyer the contract price of all goods delivered and for freight, storage, handling and other expenses incurred by RSS; and/or
 - (viii) to sell elsewhere and charge the Customer with only resultant loss.
- 19. LIMITATION OF LIABILITY**
- 19.1 **Software** Where RSS provide software in any system supplied, including but not limited to any third party software, to the full extent permitted by law that software is and services are provided "as is" without any express or implied warranty of any kind, including without limitation warranties of acceptable quality, fitness for any particular purpose or non-infringement of intellectual property, subject to clause 19.2 below. To the full extent permitted by law, in no event shall RSS or our suppliers or any third parties be liable for any damages whatsoever,

- including without limitation damages for business interruption, loss of information, or lost profits arising out of the use of or inability to use the software, whether based on contract, tort, warranty or other legal premise.
- 19.2 RSS does not exclude or limit the application of any provision of any applicable statute, legislation or other regulation (including the Competition and Consumer Act 2010 and its Schedules and Regulations) where to do so would contravene that statute, legislation or regulation or cause any part of this clause to be void (**Non-Excludable Condition**) and nothing in this document is to be interpreted as doing so.
- 19.3 RSS will, for a period of 12 calendar months from delivery of Goods and/or Services, rectify faulty workmanship and/or non-compliance by us with the final design drawings, at our cost and expense. Freight must be pre-paid by the Customer to and from RSS premises. Costs incurred by RSS to rectify Goods that are not attributable to faulty workmanship and/or non-compliance with final design drawings, or which arise outside of this 12 month period, are at the Customer's expense.
- 19.4 Subject always to clauses 19.2 and 19.3, to the full extent permitted by law RSS exclude all conditions, warranties, guarantees and terms implied by statute, general law, international convention or custom, except any implied term, condition, guarantee or warranty the exclusion of which would contravene any statute or cause this clause to be void.
- 19.5 **Customer Modifications** To the full extent permitted by law, RSS will not be responsible for any consequences of any modification to the Goods (whether or not authorised) or for any loss, damage or claim arising from such actions. The Customer agrees to indemnify, defend and hold RSS harmless against any and all claims, demands, suits, causes of action, damages and legal fees (on a solicitor-own client basis) or expenses or costs whatsoever arising, directly or indirectly, from any modification of the Goods or breach of this document or any contract by the Customer, and unconditionally free, release and discharge RSS and our officers, agents, contractors and employees from any claim or cause of action arising in connection with such matters, to the fullest extent permitted by applicable law.
- 19.6 The Customer acknowledge and agree that the Customer does not rely on any representation, warranty or other provision except as expressly provided in these Terms.
- 19.7 **Limit and Overall Cap** To the extent permitted by law, the liability of RSS, if any, arising out of or in connection with the supply of Goods or Services under this Contract, including negligence, is limited:
- (a) in the case of Goods to which manufacturer's warranty applies or has applied but expired, to that warranty;
 - (b) for any other Goods, at the option and in the (reasonable) discretion of RSS:
 - (i) to the replacement of the Goods or the supply of equivalent Goods;
 - (ii) to the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
 - (iii) to the repair of the Goods by RSS or to the payment of the cost of having the goods repaired; and
 - (c) in the case of Services, at the option and in the (reasonable) discretion of RSS:
 - (i) to a refund of the amount paid for the Services; or
 - (ii) to the supply of the Services again or payment for the cost of having the Services supplied again,
- and in any event and notwithstanding any other provision of this Contract, to an amount in aggregate of all claims up to 35% of the Price.
- 19.8 **Mutual Time Limit** Each party must notify the other of any claim, right, obligation or liability whatsoever arising under or in connection with the Contract within 12 months of when the party claiming was aware or ought reasonably to have been aware of the events or circumstances giving rise to the claim. Any failure to do so, releases the other party from all liability in connection with that claim and its subject matter.
- 19.9 **Exceptions to Limits** The limitations in clauses 19.7 and 19.8 do not apply in relation to, or limit to any extent, a liability by one party to the other party in relation to the damage or destruction of any property (including third party property), injury, illness, disease or death or breach of intellectual property rights.
- 19.10 **Consequential Loss** RSS shall not be liable to the Customer for any consequential, indirect or incidental loss, loss of profits, lost production or revenue, loss of anticipated savings, loss of opportunity, business reputation or damage to goodwill arising from or in connection with its supply under this Contract.

19.11 **Insurable Losses** The total liability of either party to the other party arising out of or in connection with any damage to or destruction of property (including third party property), death, injury, illness or disease is limited to amounts recoverable, or that should have been recoverable, if the insurance policies required by the Contract are in place, or should have been in place.

20. INTELLECTUAL PROPERTY

20.1 Each party licenses to the other party its intellectual property not created predominantly for the purpose of this Contract, whether coming into existence before or after the date of this Contract, limited to the extent necessary to enable the other party to supply, operate or use the Goods or the Services as the case may be.

20.2 In relation to any intellectual property coming into existence after the date of this Contract and created predominantly for the purpose of it, ownership vests in and will be the property of RSS and RSS licenses such IP that it owns or is permitted to own to the Customer limited to the extent necessary for the Customer to operate or use for the Goods or Services.

20.3 Each party warrants to the other that it is entitled to grant the intellectual property licenses under this clause, and indemnifies the other against any costs or losses in connection with any breach of intellectual property (including any third party intellectual property) arising from or in connection with the supply, operation or use of the Goods or the Services as the case may be, save to the extent caused by the other party.

21. CONFIDENTIALITY AND PRIVACY

21.1 RSS respects the privacy of personal information as defined by the *Privacy Act 1988* (Cth) (**Personal Information**) including personal and contact information, such as an individual's name, street, postal and email addresses and telephone and fax numbers, professional information, financial and bank account details and consumer credit information.

21.2 The Customer acknowledges, accepts and agrees:

- (a) to RSS's privacy policy available upon request;
- (b) that RSS may obtain and use Personal Information of the Customer and disclose it to its Business Partners; and
- (c) that without using such information, RSS may not be able to properly provide the Goods or the Services.

21.3 For the sole purpose of assessing the creditworthiness of the Customer in connection with a credit facility, the Customer undertakes to provide signed written authorities to any third party on request by RSS, and authorises RSS to make relevant enquiries including:

- (a) reviewing any existing credit facility, obtain credit information or any report containing information about the Customer's commercial activities or credit worthiness, from a credit reporting agency, or any business which provides information about the credit worthiness of a person or an entity in relation to credit provided by RSS;
- (b) use, disclose or exchange with credit providers named in the Credit Application, credit providers that may be named in a credit report issued by a credit reporting agency, credit reporting agencies, and/or any collection agent of RSS or its related parties, information about the Customer's credit arrangements, including any information about the Customer's credit worthiness, credit standing, credit history or credit capacity; and
- (c) disclose a credit report, any information contained in it, and any information about the Customer's credit arrangements to RSS's Business Partners, agent or professional advisor involved in assessing the Application or the Customer's ongoing credit worthiness, or collecting payments overdue.

21.4 Subject to clause 21.5, neither party may disclose, or allow any person to disclose, confidential information to third parties including:

- (a) the subject matter, correspondence in respect of, and contents of this agreement (but not its actual existence);
- (b) information regarding a Customer's machine;
- (c) the subject matter and the existence of any dispute or difference; and
- (d) the Price and any discounts, rebates or cost saving measures.

21.5 The obligations to maintain confidentiality under clause 21.3 apply except for a disclosure:

- (a) permitted with the prior written consent of the other party;
- (b) required by law, any stock exchange or court order; or
- (c) to the parties' respective Business Partners.

22. GOODS AND SERVICES TAX

22.1 Unless otherwise stated expressly all prices are exclusive of GST and the Customer must on demand pay to RSS all GST payable in respect of the supply of the Goods and the Services to the Customer.

23. LAW AND JURISDICTION

23.1 The Contract is governed by and will be construed in accordance with the laws of the State in which the RSS office from which the Goods or Services were ordered, is located.

24. AMENDMENT

24.1 Subject to the Customer notifying RSS that it objects to any changes notified in writing within 30 days, any such changes notified in writing will bind the Customer in respect of any supply of Goods or Services from the date of notification

25. ENTIRE AGREEMENT

25.1 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.

26. MISCELLANEOUS

26.1 If any part of the Contract is void or unenforceable, that part is severable from the Contract and the balance remains enforceable.

26.2 The words including, inclusive of, or similar expressions are not words of limitation.

26.3 If the Customer is more than one person or entity, each person or entity (as applicable) shall be jointly and severally liable to RSS.

26.4 Notices shall be deemed received on the earlier of actual receipt, a reply, notice of receipt or a period of 3 days after issue without the issuer having received notice of a non-receipt or failed delivery.

26.5 RSS may only waive a requirement or breach of the Contract in writing signed by it, and any such waiver is limited to the instance referred to (or if no instance is referred to in the waiver, to past breaches only).

26.6 Each party must bear its own legal, accounting and other costs of and incidental to the preparation and entering into the Contract.

26.7 Nothing constitutes a joint venture, agency, partnership or other fiduciary relationship between the Customer and RSS.

26.8 The singular shall include the plural and vice versa words imparting any gender shall include every other gender and where there is more than one Customer shall be bound to RSS jointly and severally.