Terms and Conditions of Trade

1. Definitions and interpretation

1.1 In these Terms:

- **Supplier**, **we**, **us**, **our** or **Australis M2M** means Australis M2M Pty Ltd (ABN 43 626 409 489).
- **Customer**, **you** or **your** means the person, company or other entity that places an Order with us, accepts a Quotation, or receives or pays for any Products or Services from us and includes your successors and permitted assigns.
- **Terms** means these General Terms and Conditions of Sale, as in force at the time the relevant Order is placed.
- **Contract** means each contract for the supply of Products or Services formed under clause 3, made up of these Terms and the documents listed in clause 2.3.
- **Order** means any request by you for Products or Services, however made, including a Webshop Order, a Purchase Order, an email, a telephone request, a request or enquiry form, or an acceptance of a Quotation.
- **Webshop** means our online shop at our Website or any other online ordering platform we operate.
- **Webshop Order** means an Order placed and submitted through the Webshop.
- **General Order** means any Order that is not a Webshop Order, including an Order placed by telephone, email, request form, Purchase Order or in person.
- **Purchase Order** means a written order document issued by you.
- **Quotation** means a written quote, proposal or price advice issued by us for Products or Services.
- **Order Confirmation** means our written confirmation that we have accepted an Order, which may be sent by email, through the Webshop or as part of an invoice or dispatch notice.
- **Products** means any goods we supply, including machine-to-machine (M2M) and IoT communications hardware such as serial modems, routers, gateways, data loggers, controllers, switches, power supplies, antennas, cables, SIM cards, kits and accessories, and any goods we assemble, configure or customise for you.
- **Services** means any services we supply, including SIM, SMS and data plans, software as a service (SaaS), device management platforms, software, configuration, assembly, installation, support, repair and related services.
- **Custom Products** means Products that are made, assembled, configured, programmed, labelled, kitted or ordered in specifically for you, including Products sourced from a third party at your request that we do not normally stock.
- **Price** means the price for Products or Services determined under clause 4.
- **Charges** means the Price and any other amounts payable by you under a Contract, including freight, handling, recurring Service charges and fees.
- **Credit Account** means a trade credit account we have approved for you following a Credit Application under clause 19.
- **Credit Account Terms** means the Credit Application as approved by us (including the Credit Limit and payment terms we notify to you), any separate guarantee, and clauses 19 to 21.
- **Service Terms** means any plan description, service description, rate card, acceptable use policy or other terms we publish or provide for a particular Service.
- **Business Day** means a day on which banks are open for business in Sydney, New South Wales, other than a Saturday, Sunday or public holiday.
- **Australian Consumer Law** or **ACL** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

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- **Consumer** has the meaning given in section 3 of the ACL.
- **Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, loss of data, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not foreseeable, and whether arising in contract, tort (including negligence), under statute or otherwise.
- **Defect** means a defect, flaw or imperfection in a Product that prevents it from being used for its intended purpose or makes its use dangerous, but does not include anything disclosed to you as a feature or limitation of the Product before purchase, anything trivial or insubstantial, or damage caused by accident, misuse or neglect.
- **Delivery** means the time the Products are made available to you or your carrier at our premises, or, where clause 6.4 applies, the time they are delivered to the delivery address.
- **Delivery Details** means the delivery address, dates, times, carrier and any other delivery instructions set out in an Order or agreed with us.
- **Force Majeure Event** means any event or circumstance beyond a party's reasonable control, including strike, lockout, labour dispute, material or component shortage, supplier failure, utility or network outage, carrier or transport delay, fire, flood, earthquake, severe weather, pandemic, accident, trade sanction, embargo, war, terrorism, national emergency, or a new or changed law.
- **GST** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- **Insolvency Event** means, for you, becoming bankrupt, insolvent or unable to pay your debts as they fall due; having a liquidator, provisional liquidator, administrator, receiver, controller or similar person appointed to you or any of your property; failing to comply with a statutory demand; entering into an arrangement or compromise with creditors; dying or ceasing to be of full legal capacity; or any analogous event.
- **Intellectual Property** or **IP** means all present and future rights in copyright, inventions (including patents), trade marks, designs, circuit layouts, confidential information, software and any other rights resulting from intellectual activity, whether registered or not, anywhere in the world.
- **Loss** means any loss, damage, liability, cost or expense of any kind, including Consequential Loss and any fine or penalty.
- **Our Confidential Information** means information about us, our Related Bodies Corporate or our suppliers that is confidential by its nature, is marked or described by us as confidential, or that you know or ought to know is confidential, but not information that is or becomes public other than through a breach of confidence, or that you independently developed or acquired.
- **Our Policies** means the policies published on our Website from time to time, including our privacy policy, returns policy and acceptable use policy.
- **Our System** means the computer equipment, software, processes and interfaces we use to provide the Services, but not infrastructure used by a Carrier or Carriage Service Provider.
- **Carrier**, **Carriage Service** and **Carriage Service Provider** have the meanings given in the *Telecommunications Act 1997* (Cth).
- **PPSA** means the *Personal Property Securities Act 2009* (Cth).
- **Related Body Corporate** has the meaning given in the *Corporations Act 2001* (Cth).
- **Website** means www.australism2m.com.au or any other website we operate.

1.2 In these Terms, unless the context requires otherwise: the singular includes the plural and vice versa; headings are for convenience only; "including" and similar words are not words of limitation; a reference to legislation includes any amendment or replacement of it; a reference to writing includes email and electronic communications; and all amounts are in Australian dollars.

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2. Application of these Terms

2.1 All supplies. These Terms apply to every supply of Products or Services by us to you, however the Order is placed, quoted, paid for or delivered. This includes Webshop Orders paid by card or on invoice, General Orders invoiced after supply, Orders placed under a Credit Account, and any Order that does not follow our usual processes.

2.2 Acceptance of these Terms. You accept these Terms when you do any of the following: place an Order; tick a box or click a button in the Webshop accepting these Terms; accept a Quotation; issue a Purchase Order; pay any amount; or accept Delivery of any Products or the start of any Services.

2.3 Order of precedence. If there is any inconsistency between the documents that make up a Contract, they apply in the following order (highest first), but only to the extent of the inconsistency:

1. a written agreement signed by both you and an authorised representative of ours that expressly varies or replaces these Terms;
2. the Credit Account Terms, for any matter relating to credit, payment terms, credit limits, guarantees or security;
3. the Service Terms, for any matter relating to the relevant Service;
4. the Order Confirmation or accepted Quotation, for the description, quantity and Price of the Products or Services and the Delivery Details;
5. these Terms.

2.4 Your terms do not apply. Any terms and conditions in or referred to in your Purchase Order, email footer, supplier portal, tender or other document do not form part of a Contract and are excluded, even if we sign or acknowledge that document, unless we expressly agree in writing under clause 2.3(1).

2.5 Changes to these Terms. We may update these Terms from time to time by publishing a new version on our Website. The version that applies to a Contract is the version in force when the Order is placed. An update does not change a Contract already formed unless you agree in writing.

2.6 Credit Accounts. These Terms apply to all Orders placed on a Credit Account. Nothing in these Terms obliges us to offer or continue to offer credit to you. Clauses 19 to 21 set out the additional terms that apply to Credit Accounts and their Guarantors.

3. Quotations, Orders and acceptance

3.1 Quotations and price lists. A Quotation is valid for 30 days from its date unless it states otherwise or we withdraw it earlier. Quotations, price lists, catalogues and prices displayed on the Webshop are invitations to treat, not offers to sell. We may correct any error or omission in them.

3.2 Orders are offers. Every Order, including an acceptance of a Quotation, is an offer by you to buy the Products or Services on these Terms. We may accept or decline any Order, in whole or in part, at our discretion.

3.3 When a Contract is formed. A Contract is formed when we accept your Order, which happens at the earliest of:

1. our sending an Order Confirmation;
2. for a Webshop Order paid by card, our sending a confirmation that the Order has been accepted;
3. for a Webshop Order to be paid on invoice, our issuing an invoice for the Order; or
4. our dispatching or making available the Products, or starting the Services.

An automatic acknowledgement that a Webshop Order or request form has been received is not acceptance. Taking payment does not by itself mean we have accepted the Order; if we decline an Order after taking payment, we will refund the amount paid in full.

3.4 Webshop Orders. When you place a Webshop Order you must check the Order before submitting it. You must give accurate details, including your business name, ABN (if any), contact details and Delivery

Details. Your obligation to pay for a Webshop Order is the same whether you pay by card at checkout or on invoice: in either case you must pay the full Charges for the Order in accordance with clause 5. Choosing to pay on invoice does not make the Order conditional, and does not allow you to delay, reduce or withhold payment.

3.5 General Orders. You may place a General Order by telephone, email, request form, Purchase Order or any other means we accept. Where an Order is not in writing, we may confirm it by email and act on it once that email is sent. If the Order is placed before the Price is agreed, we will advise or quote the Price before dispatch where practicable. If no Price is agreed before dispatch, clause 4.2 applies.

3.6 Other Orders. Where Products or Services are supplied in any other way (for example, samples, replacements, urgent supplies or supplies made before formal paperwork is completed), a Contract on these Terms is formed when you accept Delivery or use the Products or Services.

3.7 Your responsibility for specifications. You are responsible for ensuring that the Products and Services you order are suitable for your purpose, including network coverage, compatibility, certifications and configuration requirements, unless we have expressly agreed in writing to determine suitability for you.

3.8 Changes and cancellations by you. Once a Contract is formed, you may not cancel, suspend or change an Order without our written agreement. If we agree, you must pay our reasonable costs arising from the change or cancellation, including costs of Custom Products, materials ordered, work in progress, labour and supplier cancellation or restocking fees. This clause does not limit your rights under clauses 6.7 and 9 or the ACL.

3.9 Changes and cancellations by us. We may cancel all or part of an Order by notice to you if the Products are discontinued or unavailable, if there was an obvious error in the price or description, if you are in breach of these Terms, or if a Force Majeure Event or law prevents supply. If we cancel, we will refund any amount you have paid for the cancelled part and will have no further liability for the cancellation.

3.10 Specifications may change. Our suppliers may change the design, firmware or specifications of Products. We may supply Products with such changes provided they do not materially affect form, fit or function, or we have told you of the change before dispatch.

4. Prices and GST

4.1 Agreed Price. The Price is the price shown in the Order Confirmation, the accepted Quotation, or the Webshop at the time you submit a Webshop Order.

4.2 No agreed Price. If no Price has been agreed before the Products are dispatched or the Services are supplied, the Price is our standard price for those Products or Services on the date of dispatch or supply, as shown on our invoice.

4.3 What the Price includes. Unless we state otherwise in writing or in the Webshop, Prices are for Products made available at our premises (EXW, Incoterms 2020) and exclude GST (except Webshop prices, which include GST under clause 4.6), freight, insurance, packing for special transport, installation, configuration and on-site services, which are charged in addition.

4.4 Cost changes before dispatch. For a General Order or Quotation, if there is a material increase in our costs after the Price was agreed and before dispatch that is beyond our control (such as exchange rate movements, supplier price increases, freight, duties or taxes), we may notify you of a revised Price. If you do not accept the revised Price within 3 Business Days, either of us may cancel the affected part of the Order without liability, and we will refund anything you have paid for it. This clause does not apply to a Webshop Order once accepted.

4.5 Pricing errors. If a Price displayed on the Webshop or in a Quotation is obviously wrong (for example, because of a typographical or system error), we are not bound by it. We will tell you of the correct Price and you may either confirm the Order at the correct Price or cancel it for a full refund.

4.6 GST. Prices displayed on the Webshop include GST. Otherwise, unless expressly stated to include GST, all amounts payable under a Contract are exclusive of GST. If GST is payable on a taxable supply,

you must pay the GST in addition to the amount otherwise payable, at the same time. We will provide a tax invoice.

4.7 Recurring Service charges. Charges for Services are set out in the Service Terms or Quotation. We may change recurring Service charges by giving you at least 30 days' written notice. If you do not accept the change, you may cancel the affected Service before the change takes effect without paying any early termination fee.

5. Payment

5.1 Card payment at checkout. Where you pay for a Webshop Order by card or another online payment method, payment is taken when you submit the Order. Webshop prices already include any card processing costs, and no card surcharge is added to a Webshop Order.

5.2 Payment on invoice. Where an Order is to be invoiced (including a Webshop Order with a pay-on-invoice option and any General Order), we may invoice you on or after dispatch or supply, or in advance where we have asked for prepayment or a deposit. You must pay each invoice in full:

1. if you have a Credit Account, within the payment terms that apply to your Credit Account under clause 19.3;
2. otherwise, by the due date shown on the invoice or, if none is shown, within 14 days of the invoice date.

5.3 Prepayment and deposits. We may require full or part payment before we accept an Order, order in stock, start assembly or configuration, or dispatch, including for Custom Products, large Orders, new customers and customers with overdue amounts.

5.4 Partial deliveries and recurring charges. We may invoice separately for each delivery where an Order is delivered in parts. Recurring Service charges are invoiced in advance or arrears as set out in the Service Terms.

5.5 How to pay. You must pay by the methods shown on our invoice or in the Webshop, without any deduction, withholding or set-off. Payment is received only when cleared funds reach our account. You are responsible for your own bank and transfer fees.

5.6 No set-off. You may not set off or deduct any amount you claim we owe you against any amount you owe us, except to the extent required by law.

5.7 Late payment. If any amount is not paid by its due date, we may do any or all of the following:

1. charge interest on the overdue amount, calculated daily from the due date until paid, at 2.5% per annum above the Bendigo Bank Business Overdraft Indicator Rate at the due date;
2. suspend or delay any further supply of Products or Services, including under other Orders, until the overdue amount is paid;
3. require prepayment for future Orders;
4. recover from you our reasonable costs of collecting the overdue amount, including reasonable mercantile agent and legal fees.

5.8 Disputed invoices. If you dispute an invoice in good faith, you must notify us in writing with reasons before its due date and pay any undisputed part by the due date.

5.9 Chargebacks. If a card payment is reversed or charged back other than because of our error, the amount becomes immediately payable and you must pay any fees we incur because of the chargeback.

6. Delivery and risk

6.1 Delivery dates are estimates. Dispatch and delivery dates and times we give, including stock availability shown on the Webshop, are estimates only. We will use reasonable efforts to meet them, but we are not liable for any Loss caused by delay. Delay does not entitle you to refuse Delivery or withhold payment, but if we fail to deliver within 30 days after the estimated date for reasons within our control, you

may cancel the undelivered part of the Order by written notice and receive a refund of any amount paid for it.

6.2 Delivery method. Unless otherwise agreed, Products are supplied EXW (Incoterms 2020) from our premises. If you ask us to arrange freight, or select a shipping option on the Webshop, we will arrange carriage as your agent using a method we consider reasonable, and you must pay the freight and handling charges quoted or invoiced. If you nominate your own carrier, we may charge a reasonable packing and handling fee.

6.3 Risk. Risk of loss of or damage to Products passes to you on Delivery. Where we arrange freight under clause 6.2, Delivery occurs when the Products are handed to the carrier, and you are responsible for insuring the Products in transit unless we agree otherwise in writing.

6.4 Consumers and delivered Orders. If you are a Consumer, or we have expressly agreed in writing to deliver Products to your address at our risk, Delivery occurs and risk passes when the Products are delivered to the delivery address in the Delivery Details.

6.5 Partial deliveries. We may deliver an Order in instalments. Each instalment is a separate supply, and a delay or defect in one instalment does not entitle you to cancel any other instalment.

6.6 Failed or frustrated delivery. If you fail to collect Products, give adequate Delivery Details, or accept delivery at the agreed time and place, we may charge you our reasonable costs of storage, redelivery and return freight. If you do not collect or accept the Products within 30 days after we notify you that they are available, we may resell them and charge you any shortfall and our reasonable costs, after giving you a further 7 days' written notice.

6.7 Inspection on Delivery. You must inspect Products promptly on Delivery. You must notify us in writing of any shortage, incorrect Products or visible transit damage within 7 Business Days after Delivery, with photographs where relevant. This clause does not limit your rights under clause 9 or the ACL.

7. Title and security interest

7.1 Retention of title. Ownership of Products does not pass to you until we have received payment in full, in cleared funds, for those Products and for all other amounts you owe us on any account. This applies whether or not the Products have been altered, installed or mixed with other goods.

7.2 Before title passes. Until ownership passes, you hold the Products as our bailee and must store them safely, keep them identifiable as our property and insured, and not charge or encumber them. You may sell or use the Products in the ordinary course of your business, but you hold the proceeds of any sale on trust for us to the extent of the amount you owe us.

7.3 Recovery. If you do not pay any amount when due, or an Insolvency Event occurs, we may, on reasonable notice and to the extent permitted by law, enter premises where the Products are stored during business hours to recover them. You must give us reasonable assistance to do so.

7.4 PPSA. These Terms create a security interest in the Products and their proceeds in our favour, which is a purchase money security interest to the extent permitted by the PPSA. You must promptly sign any documents and provide any information we reasonably require to register and perfect our security interest. You must not allow any other security interest in the Products to rank ahead of ours.

7.5 Contracting out. To the extent the law permits, and except where the Products are acquired predominantly for personal, domestic or household purposes: sections 95, 118, 121(4), 130, 132(4), 135, 142 and 143 of the PPSA do not apply; and you waive your right to receive any notice under the PPSA (including a verification statement) unless the notice cannot be excluded.

7.6 PPSA terms. Words used in this clause 7 that are defined in the PPSA have the same meaning as in the PPSA.

8. Change-of-mind returns

8.1 Not required. We are not obliged to accept a return of Products because you have changed your mind or ordered the wrong item. This clause 8 does not apply to faulty, damaged or incorrectly supplied Products, which are covered by clauses 6.7 and 9.

8.2 When we may accept a return. We may, at our discretion, accept a change-of-mind return of stock Products if:

1. you request a return authorisation in writing within 14 days after Delivery and we issue one;
2. the Products are unused, in their original condition and packaging, with all accessories and documentation, and SIM cards have not been activated; and
3. the Products are received by us within 14 days after we issue the return authorisation.

8.3 Costs of change-of-mind returns. You must pay the cost of returning the Products. We may charge a restocking fee of up to 10% of the Price of the returned Products, and deduct it, together with any original freight charge, from the credit or refund.

8.4 Custom Products and Services. Custom Products, activated SIM cards, software licences and Services already supplied cannot be returned or refunded for change of mind unless we agree in writing.

9. Warranty, defects and Australian Consumer Law

9.1 Consumer guarantees. Nothing in these Terms excludes, restricts or modifies any right or remedy you have under the ACL or any other law that cannot lawfully be excluded, restricted or modified. If you are a Consumer, the following applies:

> 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.

9.2 Our warranty. In addition to your rights under the ACL, we warrant that Products will be free from Defects in materials and workmanship for 12 months from Delivery, unless a different warranty period is stated in the Order Confirmation, Quotation or Webshop listing.

9.3 Making a warranty claim. To make a claim under clause 9.2, you must notify us in writing within the warranty period and promptly after you discover the Defect. Your notice must include a description of the problem, the Product model, serial number (if any), proof of purchase and any other information we reasonably request. We will issue a return authorisation if a return is needed. To make a claim, contact us at info@australism2m.com.au.

9.4 Our remedy. If a Product has a Defect covered by clause 9.2, we will, at our option, repair or replace the Product (or the defective part), or refund the Price, within a reasonable time.

9.5 Warranty costs. Unless the ACL requires otherwise, you must bear the costs of removing, uninstalling and reinstalling Products and of shipping them to us. We will pay the cost of returning repaired or replacement Products to you. If we find no Defect covered by the warranty, you must pay our reasonable testing, handling and freight costs, and we will tell you these costs before we incur them where practicable.

9.6 What the warranty does not cover. Our warranty under clause 9.2 does not cover: fair wear and tear; use outside the Product's specifications or for a purpose it was not designed for; incorrect installation, configuration or power supply; failure to follow our or the manufacturer's instructions; modification, disassembly or repair by anyone other than us or our authorised agent; damage from accident, misuse, neglect, lightning, power surge, water ingress (beyond the Product's rating) or contamination; network coverage, Carrier or Carriage Service issues; or consumable items.

9.7 Condition of returned Products. You must not disassemble a Product before returning it under warranty. You must clean returned Products and tell us if they have been exposed to any hazardous substance. We may refuse to handle Products that are contaminated.

9.8 Repaired or replaced Products. Repaired or replacement parts are warranted for the balance of the original warranty period or 3 months from return to you, whichever is longer. A whole replacement Product is warranted for 12 months from its return to you.

9.9 Third-party warranties. Where Products are covered by a manufacturer's warranty, we will pass on the benefit of that warranty to you to the extent we can, and may ask you to deal with the manufacturer directly where that is the faster remedy.

9.10 Limits for business goods and services. To the extent permitted by section 64A of the ACL, where Products or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, our liability for failure to comply with a consumer guarantee (other than a guarantee under sections 51, 52 or 53 of the ACL) is limited, at our option, to:

1. for Products: replacing them or supplying equivalent goods, repairing them, paying the cost of replacing or repairing them, or paying the cost of acquiring equivalent goods; and
2. for Services: supplying the Services again or paying the cost of having them supplied again.

9.11 Exclusion of implied terms. Except as set out in these Terms and any rights under the ACL that cannot be excluded, all other terms, conditions and warranties implied by law, statute or custom are excluded to the maximum extent permitted by law.

10. Services

10.1 Service Terms. Each Service is supplied on these Terms and the applicable Service Terms, including any minimum term, included usage, excess usage rates, early termination fee and fair use policy.

10.2 Cancellation by you. You may cancel a Service at any time by notice in writing or through any cancellation option in our portal. Cancellation takes effect at the end of the current billing period unless the Service Terms say otherwise. You must pay all Charges accrued up to the date cancellation takes effect, and any early termination fee stated in the Service Terms if you cancel before the end of a minimum term.

10.3 Suspension or cancellation by us. We may suspend or cancel a Service, acting reasonably and with notice where practicable:

1. in an emergency, or to protect Our System, a Carrier's network or other users;
2. if supply or use of the Service becomes unlawful, or you use it unlawfully or allow anyone else to do so;
3. if you fail to pay any amount when due;
4. if you breach these Terms or the Service Terms;
5. if your use interferes with or disrupts Our System or a Carrier's network; or
6. if the Carrier that supplies the underlying Carriage Service suspends it or directs us to suspend it.

We may restore a suspended Service at any time. Suspension under paragraphs 2 to 5 does not relieve you of the obligation to pay recurring Charges.

10.4 Availability. Services depend on Carriers, Carriage Services, third-party platforms and network coverage that are outside our control. To the extent permitted by law, we do not warrant that Services will be uninterrupted, error-free, completely secure or available in every location, or that an enabled device will be able to connect to a Service from any particular location. Services may be unavailable during scheduled or unscheduled maintenance. You are responsible for confirming that coverage and connection quality are sufficient for your requirements.

10.5 Not for fail-safe use. Products and Services are not designed or intended for applications where failure, delay or loss of data could lead to death, personal injury, or serious property or environmental damage, such as life support, medical devices, aircraft or mass transport control, or safety functions of chemical, petroleum or nuclear facilities. If you use them in such an application, you do so at your own risk and must implement appropriate independent safeguards and redundancy.

10.6 Throttling and fair use. We may limit or throttle transactions or data speed where your usage, individually or in aggregate, adversely affects the performance of a Service or exceeds the fair use limits in the Service Terms.

10.7 Data. We may use third-party providers to transmit and store data, and your data may be transmitted through or stored in other countries. You warrant that you own or are entitled to collect, transmit and use any data you send through the Services, and that your use of the Services complies with all applicable laws, including privacy laws.

10.8 Security. You acknowledge that Internet and mobile network connectivity carries inherent risks, including loss of data or privacy and unauthorised access. You are responsible for keeping your log-in credentials, device passwords and configurations secure, and for changing default passwords on Products.

11. Liability and indemnity

11.1 Exclusion of Consequential Loss. To the maximum extent permitted by law, neither party is liable to the other for any Consequential Loss arising out of or in connection with a Contract, however caused, including by negligence.

11.2 Cap on our liability. To the maximum extent permitted by law, and subject to clause 9, our total aggregate liability arising out of or in connection with a Contract, whether in contract, tort (including negligence), under statute or otherwise, is limited to the GST-exclusive amount paid by you for the Products or Services that gave rise to the liability (and, for recurring Services, the Charges paid in the 12 months before the event giving rise to the liability).

11.3 Service-specific exclusions. To the maximum extent permitted by law, we are not liable for any Loss arising from: interruption, unavailability or error of a Service; loss, corruption or inaccuracy of data; unauthorised access to or attacks on your data, devices or systems, or on Our System or a Carrier's network, that are not caused by our negligence; or any act or omission of a Carrier or other third-party provider.

11.4 Exceptions. Clauses 11.1 to 11.3 do not limit liability for death or personal injury caused by negligence, for fraud or wilful misconduct, or for any liability that cannot be limited by law.

11.5 Your indemnity. You indemnify us, our officers, employees and agents against any Loss (including reasonable legal costs) arising from a claim by a third party to the extent it results from: your breach of a Contract; your unlawful use, or a use by your users, of the Products or Services; or any design, specification, data or instruction you provide to us. Your liability under this indemnity is reduced to the extent the Loss is caused or contributed to by us.

11.6 Infringement claims about Services. If a third party claims that a Service infringes its patent or copyright, we may, at our option and cost: obtain the right for you to keep using the Service; modify the Service so it no longer infringes; replace it with a Service of substantially the same functionality; or stop providing it and refund any prepaid Charges for the unused period.

11.7 Mitigation. Each party must take reasonable steps to mitigate any Loss it suffers in connection with a Contract.

12. Intellectual property and confidentiality

12.1 Our IP. Buying Products or Services does not transfer to you any Intellectual Property in them, or in any software, firmware, documentation, configurations or other material we provide. Software and firmware are licensed to you, not sold, for use with the relevant Products or Services, on the terms of any applicable licence.

12.2 Your designs and instructions. You warrant that our use of any design, specification, artwork, data or instruction you provide will not infringe anyone's Intellectual Property or other rights.

12.3 Confidentiality. You must keep Our Confidential Information, including technical information, pricing, configuration and processing methods we disclose to you, confidential and use it only for the purposes of the Contract. You may disclose it to your professional advisers and personnel who need to know it and are bound by confidentiality obligations, or where required by law, provided that (where lawful) you notify us first and disclose only what is legally required.

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13. Privacy

13.1 We collect, use and disclose personal information in accordance with the *Privacy Act 1988* (Cth) and our privacy policy published on our Website. We may use your information to process Orders, deliver Products, provide and bill Services, manage your account, collect overdue amounts, and comply with our obligations to Carriers and regulators. We may disclose it to our Related Bodies Corporate and to service providers such as freight carriers and couriers, payment processors, telecommunications Carriers, IT providers and debt collectors for those purposes.

13.2 Clause 21 sets out how we obtain, use and disclose credit information about Credit Account applicants, account holders and Guarantors.

14. Export control and restricted use

14.1 Compliance. You must comply with all applicable export control and trade sanctions laws when you use, sell or export the Products or Services. Our supply is conditional on that compliance. We are not liable for any failure or delay in supply caused by those laws.

14.2 Prohibited persons. You warrant that you are not, and will not supply the Products or Services to, a person or entity to whom supply is prohibited by law or who appears on any government list of restricted persons or entities.

14.3 Prohibited uses. You must not use, and must ensure your users do not use, the Products or Services for: any use described in clause 10.5 without appropriate safeguards; the design, development, production or use of nuclear, chemical or biological weapons or their means of delivery; terrorism; or any other unlawful purpose.

15. Default, suspension and termination

15.1 Our rights. If you fail to pay any amount when due, breach a Contract and do not remedy the breach within 7 days after notice from us, or an Insolvency Event occurs (to the extent the law permits us to act on it), we may do any one or more of the following:

1. suspend or cancel any undelivered Products or Services under any Contract;
2. terminate any Contract by written notice;
3. require all amounts you owe us to be paid immediately, whether or not they are due or have been invoiced;
4. exercise our rights under clause 7.

15.2 Notification. You must tell us promptly if an Insolvency Event occurs or you sell or cease to carry on your business.

15.3 Effect of termination. Termination does not affect rights and obligations that accrued before termination. Clauses 5, 7, 9, 11, 12, 13, 17, 18, 19.6, 20 and 21 and any other clause that by its nature is intended to survive, continue after termination.

16. Force majeure

16.1 Neither party is liable for any failure or delay in performing its obligations (other than an obligation to pay money) to the extent it is caused by a Force Majeure Event. The affected party must notify the other promptly and use reasonable efforts to minimise the effect. If the Force Majeure Event continues for more than 60 days, either party may terminate the affected Contract by written notice, and we will refund any amount paid for Products or Services not supplied.

17. Disputes and governing law

17.1 Complaints. If you have a complaint about any Products or Services, please contact us first at info@australism2m.com.au so we can try to resolve it.

17.2 Dispute resolution. If a dispute arises in connection with a Contract, a party must give the other written notice of it. Senior representatives of each party must meet (in person or online) within 15 Business Days after the notice and try in good faith to resolve the dispute. If it is not resolved within 20 Business Days after that meeting, either party may refer it to mediation by a mediator agreed by the parties or, failing agreement within 10 Business Days, appointed by the President of the Law Society of New South Wales. The parties will share the mediator's fees equally. If the dispute is not resolved within 30 Business Days after the mediator is appointed, either party may start proceedings.

17.3 Urgent relief and debt recovery. Clause 17.2 does not prevent a party from seeking urgent interlocutory relief, or us from taking action to recover an undisputed debt. Nothing in clause 17.2 limits a Consumer's right to contact a consumer protection agency or tribunal.

17.4 Governing law. Each Contract is governed by the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales and courts that may hear appeals from them.

18. General

18.1 Notices. Notices under a Contract must be in writing and may be sent by email to the email address last notified by the recipient (for us, info@australism2m.com.au), or by post. An email notice is taken to be received at the time it is sent, unless the sender receives a delivery failure message; if sent after 5.00 pm or on a day that is not a Business Day, it is taken to be received on the next Business Day. A posted notice is taken to be received 3 Business Days after posting.

18.2 Electronic acceptance. A Contract may be formed and these Terms accepted electronically, including through the Webshop, by email or by electronic signature.

18.3 Assignment. You may not assign or transfer your rights or obligations under a Contract without our prior written consent, which we will not unreasonably withhold. We may assign or novate a Contract to a Related Body Corporate or to a purchaser of all or part of our business by notice to you.

18.4 Subcontracting. We may use subcontractors and third-party providers to perform our obligations, but we remain responsible for our obligations under the Contract.

18.5 Severance. If any part of these Terms is void, unenforceable or unfair, that part is severed and the rest of these Terms continue in effect.

18.6 Waiver. A failure or delay in exercising a right is not a waiver of it. A waiver is effective only if given in writing.

18.7 Relationship. Nothing in these Terms creates a partnership, agency, joint venture or employment relationship between the parties.

18.8 Entire agreement. Each Contract is the entire agreement between the parties about its subject matter and supersedes all prior representations and understandings about that subject matter, except any that cannot be excluded by law.

18.9 Interpretation against drafter. No rule of construction applies to the disadvantage of a party because that party prepared these Terms.

19. Credit Accounts

19.1 Application. 19 to 21 apply in addition to the rest of these Terms when you apply for or hold a Credit Account, and when a person agrees to act as guarantor of a Credit Account. You may apply for a Credit Account by completing and signing our Credit Application and Guarantee form (**Credit Application**). You warrant that the information in your Credit Application is true, complete and not misleading. By signing the Credit Application, you accept these Terms, including clauses 19 to 21; a copy of these Terms is provided with the Credit Application and published on our Website.

19.2 Approval and Credit Limit. Whether we approve a Credit Application, and on what terms, is at our discretion. We may set a credit limit for your Credit Account (**Credit Limit**) and may review, reduce or increase it at any time. We may decline an Order that would take your account balance above the Credit

Limit, or require payment of the excess before dispatch. A Credit Limit does not limit your liability, or any Guarantor's liability, for all amounts you owe us.

19.3 Payment terms. You must pay each invoice on your Credit Account within the payment terms we notify to you in writing when we approve your Credit Application. We may vary those payment terms by giving you at least 30 days' written notice. If no payment terms have been notified, you must pay by the due date shown on the invoice.

19.4 Changes you must tell us about. While you hold a Credit Account, you must tell us in writing promptly if:

1. any information in your Credit Application changes, including your name, ABN, address, owners, directors, partners or trustee;
2. you dispose of all or a material part of your assets, operations or business, or cease to carry on business;
3. you cease to be able to pay your debts as they fall due, or any step is taken to enter into an arrangement with your creditors;
4. a mortgagee or other secured party takes any step to take possession of or sell any of your assets; or
5. any step is taken to appoint a receiver, receiver and manager, trustee in bankruptcy, liquidator, provisional liquidator, administrator or similar person to you or any of your assets.

19.5 Suspension and closure. We may suspend or close your Credit Account, or require prepayment for further Orders, by notice to you if you fail to pay any amount when due, exceed your Credit Limit, breach these Terms, an event in clause 19.4(2) to (5) occurs, or we reasonably believe your creditworthiness has materially changed. You may close your Credit Account by written notice to us at any time.

19.6 Payment on closure. If your Credit Account is closed by either party, you must pay all amounts you owe us within 5 Business Days after closure, whether or not those amounts have fallen due or been invoiced. Clause 7 continues to apply until we have been paid in full.

20. Guarantee, indemnity and charge

20.1 Who this clause binds. This clause 20 binds each person who signs the guarantor section of a Credit Application, or a separate guarantee, as guarantor of a Credit Account (**Guarantor**), from the time they sign. In this clause, the **Customer** is the holder or applicant of that Credit Account.

20.2 Guarantee and indemnity. In consideration of our considering the Credit Application and, at our discretion, granting credit to the Customer from time to time, or forbearing from taking legal action against the Customer for one month from the date the Guarantor signs, each Guarantor:

1. guarantees to us the due payment of all amounts, and the performance of all obligations, owed by the Customer to us, whether past, present or future, arising from any dealing with us; and
2. indemnifies us against all Loss we suffer arising from any past, present or future dealing with the Customer, including where any guaranteed amount cannot be recovered from the Customer for any reason.

20.3 Continuing and unlimited. The guarantee and indemnity is a continuing obligation and is unlimited in amount. It is not limited by any Credit Limit. It remains in force despite any variation of a Contract or the Credit Account, any time or indulgence we give, any deed of company arrangement or compromise (whether or not we agree to it), or any other act or event that might otherwise release or reduce a Guarantor's liability.

20.4 Avoided payments. Any payment to us that is later avoided or must be repaid under any law relating to insolvency is treated as never having been made, and each Guarantor's liability is reinstated accordingly.

20.5 Dealings with others. We may make any arrangement or compromise with the Customer or any Guarantor, obtain further guarantees, indemnities or security from any person, or release any Guarantor or security, without affecting the liability of any other Guarantor.

20.6 Joint and several. If there is more than one Guarantor, each Guarantor is jointly and severally liable for the full amount owed to us.

20.7 Trustees. Each Guarantor is bound both personally and as trustee of every trust of which they are a trustee.

20.8 Charge. To secure their obligations under this clause 20, each Guarantor charges in our favour all of their present and future legal and beneficial interest in any land and in all other assets, tangible or intangible. Each Guarantor consents to our lodging a caveat over any land to protect this charge, and must sign a mortgage or other security document in a form we reasonably require if we ask. If a Guarantor does not sign that document within 7 days after our written request, the Guarantor irrevocably appoints us, and each of our directors, as their attorney to sign and lodge it on their behalf.

20.9 Credit information. Each Guarantor agrees that we may handle their personal information, including creditworthiness information, as set out in clause 21.

20.10 Independent advice. Each Guarantor acknowledges that, before signing, they had the opportunity to obtain independent legal and financial advice about this guarantee, indemnity and charge, and that they understand the Customer's indebtedness to us is guaranteed without limit.

21. Credit information

21.1 Consent. This clause 21 applies in addition to clause 13. The Customer and each Guarantor (in this clause, **you**) each agree that, to the extent permitted by law, including Part IIIA of the *Privacy Act 1988* (Cth), we may:

1. obtain information about your commercial credit activities and creditworthiness from any trade referee, bank or accountant named in a Credit Application, and from any business that provides information about the commercial creditworthiness of persons;
2. obtain a consumer credit report about you from a credit reporting body, to assess a Credit Application or an offer to act as Guarantor, or to collect overdue payments;
3. before, during or after we provide credit, give a credit reporting body personal information about you as permitted by law, including your identity details, that you have applied for credit and the amount, that we are or are no longer a credit provider to the Customer, and that a Guarantor has offered to act as guarantor;
4. disclose personal information about the Customer, including credit reports and creditworthiness information, to a Guarantor or proposed Guarantor so that they can decide whether to act as guarantor;
5. exchange personal information about you, including banker's opinions, credit reports and creditworthiness information, with other credit providers to assess a Credit Application or an offer to act as Guarantor, to notify them of a default by the Customer or a failure by a Guarantor to meet its obligations, to exchange information about the status of your obligations where you are in default with another credit provider, to assess your creditworthiness, and for any other purpose permitted by law;
6. exchange that information with our Related Bodies Corporate;
7. use or disclose your personal information to manage the Credit Account (including research, planning, service development, security and risk management), in connection with an actual or proposed acquisition of all or part of our business, to investigate and prevent fraud and crime, and where required or authorised by law;
8. share your personal information with your executor, administrator, trustee, guardian, attorney or agents (such as financial or legal advisers); and
9. share your personal information with our service providers, including providers of archiving, auditing, debt collection, banking, mail, delivery, technology, professional advisory and security services.

Terms and Conditions of Trade

21.2 Access and correction. You may ask us for access to, or correction of, any personal information we hold about you by contacting us at info@australism2m.com.au.