



Terms and Conditions

1. Documents constituting agreement and definitions

- (a) The contract between Ascention Assets Pty Ltd ABN 49 124 757 811 (**Ascention Assets**) and the customer (**Customer**) relating to any products supplied by Ascention Assets (**Products**) or transactions are subject to these terms and conditions (**Terms**) and the document to which these Terms are attached (**Purchase Order**) (together the **Contract**).
- (b) To the extent that the Products are not manufactured by Ascention Assets, the original manufacturer's warranty of such Products will apply and this Contract will be necessarily subject to the terms and conditions of such warranty.
- (c) **Consequential Loss** means loss of product, loss of contract, loss of profit, loss of business reputation, loss of opportunities, loss of production, loss of revenue howsoever arising and whether in an action in contract, tort (including negligence), in equity, product liability, under statute or on any other basis.
- (d) **PPSA** means the Personal Property Securities Act 2009 (Cth), as amended from time to time.
- (e) **Price** has the meaning specified in clause 4.
- (f) **Second Hand Products** means Products owned by Ascention Assets which have been used and which may have been modified by the manufacturer or other third party, for the purposes of the Contract.

2. Orders

- (a) Unless otherwise specified in the Contract, any quotation provided by Ascention Assets for the purchase of the Products shall lapse and have no effect 30 days from the date of issue and may be withdrawn by Ascention Assets at any time prior to acceptance by the Customer for any reason.
- (b) The quantity, quality and description of and specification of the Products are unless otherwise agreed, as set out in the Purchase Order.
- (c) The Purchase Order once accepted by the Customer forms part of the Contract and may not be terminated, except pursuant to clause 18.
- (d) In the event that the Customer wishes to vary the Contract, and instructs Ascention Assets in writing to perform a variation (**Variation**), if Ascention Assets agrees to the Variation, then Ascention Assets will perform the Variation. Ascention Assets will only perform the Variation after the Customer has agreed the price in writing within 7 days of receipt by Ascention Assets of the Variation. The agreed price of the Variation will be added to or deducted from the Price. Reasonable extensions of time or reductions of time to the Contract shall be granted to Ascention Assets for such Variation.

3. Delivery of Products

- (a) The terms of delivery of the Products are as stated in the Contract.
- (b) Delivery will be deemed complete if the Products are delivered to the Customer at Ascention Assets' premises, or at such other address as nominated in the Contract. If delivery occurs at a nominated address, delivery is deemed to have occurred irrespective of whether the Customer is in attendance for receipt of the delivery.
- (c) Ascention Assets will not be liable for delay, failure or inability to deliver the Products. The Customer will not be entitled to terminate the Contract because of any delay in delivery.
- (d) If delivery is delayed at the request of the Customer and such delay is for more than 7 days the payment of the balance of the Price shall become immediately due and payable to Ascention Assets, including any applicable storage costs.
- (e) Except as expressly provided in these Terms, Ascention Assets shall not be under any obligation to accept the return of any Products supplied to the Customer.
- (f) Where the Customer is responsible for its own installation of the Products then the Customer shall have access to inspect the Products 24 hours prior to dispatch and shall pay the balance of the Price before the Products are dispatched.
- (g) Unless otherwise provided for in the Contract, the Customer shall pay all transport costs associated with the delivery of the Products.
- (h) If Ascention Assets uses pallets in the delivery of the Products, the pallets used shall remain the property of Ascention Assets and the Customer shall compensate Ascention Assets for all pallets not returned to Ascention Assets in good condition within 14 days of the delivery of the Products.

4. Price

- (a) Unless otherwise designated in the Contract, the price of Products shall be on an "EXW" (ex works) basis.

- (b) If the price of Products at any time will be other than EXW any associated costs incurred by Ascention Assets which arise as a result of Ascention Assets insuring or transporting the Products from the point where the risk of loss passes to the Customer shall be invoiced to and paid by the Customer.
- (c) Ascention Assets' price lists, invoices and statements exclude GST and government taxes unless expressly noted thereon.
- (d) Ascention Assets may vary any of the prices set out in its price list without notice to Customers.
- (e) The Customer will provide its tax file number, ABN and any information required for any GST or equivalent prior to any dealings.

5. Ascention Assets warranties and liability

- (a) Subject to any applicable law, Ascention Assets warrants that the Products to be supplied under the Contract will conform to the description on the face of the Contract, will be of acceptable quality and that good title to the Products will be transferred.
- (b) Ascention Assets does not provide any warranty as to the acceptability or fitness for the Products for any particular purpose if the Products are made or modified by Ascention Assets or the manufacturer in compliance with the Customer's design or specifications.
- (c) Subject to sub-clause (a), to the full extent permitted by law and except as otherwise provided therein:
 - (i) Products that are Second Hand Products are sold "as is" and in the condition as inspected by the Customer.
 - (ii) The Second Hand Products are used goods and will be subject to wear and tear and other possible damage or faults. The Customer must satisfy themselves by inspection or otherwise as to all aspects of the Products including their condition and fitness and suitability for any purpose intended by the Customer.
 - (iii) all warranties, guarantees, conditions, rights and remedies, express or implied, statutory or otherwise, are hereby expressly excluded (except to the extent such liability is legally incapable of being excluded or limited), including (but not limited to) liability in respect of any:
 - (A) damage to the Products caused after risk passes;
 - (B) injury, loss or damage arising out of any representation, statement, recommendation or advice given by Ascention Assets, its employees or agents before or after the issue of the Contract by Ascention Assets; or
 - (C) indirect injury, loss (including Consequential Loss) or damage suffered by reason of defects in the Products or arising from any breach of warranty or condition or any misrepresentation.
 - (iv) Ascention Assets' liability, if any, in respect of any breach of any conditions or warranties or under or pursuant to such rights or remedies referred to in sub-clause (c) above shall be limited to:
 - (A) the replacement of the Products or the supply of equivalent Products;
 - (B) the repair of the Products;
 - (C) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
 - (D) the payment of the cost of having the Products repaired.
 - (v) it is expressly agreed that the Customer will not pursue any claim against Ascention Assets or hold Ascention Assets liable for any Consequential Losses whatsoever that may be suffered by the Customer arising out of quality defects or the performance by Ascention Assets of the Contract or failure to comply with any standard as to fitness for purpose or compliance.
- (d) Any Products claimed by the Customer to be defective must be returned at the cost of the Customer to Ascention Assets by the Customer and the Products must be returned at the risk of the Customer and in accordance with Ascention Assets' instructions.
- (e) The Customer may not claim against Ascention Assets in respect of any defect which should have been apparent on a reasonable visual examination of the



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Products but is not notified to Ascention Assets after the Customer has had a reasonable opportunity to discover the defect in the Products and in any event within 30 days of delivery of the Products.

- (f) Ascention Assets will not be liable for any losses or damages suffered by the Customer as either a direct or indirect consequence of any regulatory non-compliance whatsoever resulting from any act or omission on the part of the Customer. The Customer warrants that it has made its own independent enquiries from appropriate professionals on all statutory and regulatory compliance issues as relates to the Contract.
- (g) For any Product that is not manufactured by Ascention Assets, the original manufacturer's warranty will apply (subject to the same conditions and limitations). Ascention Assets' liability for such Product(s) shall not exceed the liability of the manufacturer of the Product.
- (h) Ascention Assets does not warrant damage caused by the use of the Products for purposes or in any manner other than those for which it was designed or approved, including but not limited to:
 - (i) experimental uses or processes;
 - (ii) unauthorised attachments or modifications;
 - (iii) abuse or misuse by the Customer or operator;
 - (iv) operation in an environment unsuited for the purpose intended; or
 - (v) operating the Products outside the manufacturer's specified parameters.

6. Customer representations and warranties

- (a) The Customer represents and warrants that:
 - (i) it has full power and authority to enter into and perform its obligations under these Terms;
 - (ii) all information provided to Ascention Assets by or on behalf of the Customer is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading; and
 - (iii) it has not withheld from Ascention Assets any document, information or other fact material to the decision of Ascention Assets to enter into a contract with the Customer.
- (b) The representations and warranties given in this clause 6 survive the Contract.

7. Payment

- (a) Invoices submitted by Ascention Assets are payable only in Australian dollars.
- (b) Unless prior arrangements have been made, payment for Products is due in full within 14 days of the invoice.
- (c) If Ascention Assets agrees to allow the Customer to make monthly progress payments of the Products then Ascention Assets will make a monthly progress claim on or before the 28th day of each month and the Customer shall pay the amount of the progress claim within 30 days of the date of the progress claim without deduction whatsoever.
- (d) No payment due from or payable by the Customer shall be set-off or withheld on account of any claim asserted by the Customer.
- (e) At its discretion, Ascention Assets may require a deposit to be paid on certain sales of Products. Any such requirement, including as to the timing of the deposit, will be notified to the Customer.
- (f) Ascention Assets may require the Customer to provide security for payment in a form acceptable to Ascention Assets prior to the supply of Products.
- (g) The Customer is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed in writing by Ascention Assets.
- (h) If the Customer fails to pay any amount to Ascention Assets when it is due Ascention Assets (in addition to any other rights it may have) shall be entitled to do all or any of the following:
 - (i) suspend further deliveries in respect of any order;
 - (ii) terminate the Contract or any other part of the same without liability; or
 - (iii) deduct any moneys due which may become due to the Customer from any moneys due or recoverable from the Customer in respect of any bona fide claim howsoever arising.

8. Confidentiality and intellectual property

- (a) Each party must treat the existence and terms of the Contract as confidential and will procure that its advertising agents, other agents, contractors and

representatives (**Agents**) treat as confidential unless disclosure is required by law (other than any requirement to disclose under the PPSA to the extent that the PPSA is or may be applicable under these Terms). No announcement or communication relating to the negotiations of the parties or the existence, subject matter or terms of the Contract may be made or authorised by a party unless the other party has first given its written approval.

- (b) Ascention Assets retains all copyright and intellectual property rights whatsoever in all materials it uses or provides to the Customer relating to the Products or the performance of the Products.
- (c) If the Customer provides Ascention Assets with any drawings or other material or documents then the Customer warrants that it is entitled to use those documents and indemnifies and holds harmless Ascention Assets from any claims that may be brought against Ascention Assets in relation to the same.

9. Interest

Interest on overdue accounts will be charged at the rate specified by Ascention Assets from time to time or (if no rate is specified) the Reserve Bank of Australia cash rate from time to time.

10. Retention of title of Products

- (a) The Customer agrees that legal and equitable title to the Products is retained by Ascention Assets and does not pass until Ascention Assets has received payment in full for the Products and all other moneys owed by the Customer to Ascention Assets and until such time the Customer will hold the Products as a bailee of Ascention Assets and a fiduciary relationship will exist between Ascention Assets and the Customer.
- (b) If the Products are converted or assembled into a new product, or form part of a new product (**New Product**), the conversion or assembly shall be deemed to have been effected on behalf of Ascention Assets who shall have full beneficial ownership of the whole of the New Product but without accepting any liability in respect of such New Product.
- (c) The Products must be stored separately and in a manner enabling them to be identified and cross-referenced to particular invoices and the Customer acknowledges that if it should mix the Products with other products or items such that the Products are no longer separately identifiable then Ascention Assets shall be the owner of such products including any New Products.
- (d) Subject to sub-clause (e) below, the Customer shall be free to sell the Products and the New Product in the ordinary course of business, on the basis that all proceeds shall belong to Ascention Assets until it has received full settlement.
- (e) Ascention Assets may at any time revoke the Customer's power of sale by notice to the Customer, provided that such notice shall be based on reasonable grounds.
- (f) The Customer agrees to record and store such New Products in such a way that they are readily identifiable as the property of Ascention Assets.
- (g) If the Customer fails to pay the moneys owed to Ascention Assets, the Customer acknowledges and agrees that Ascention Assets may recover or retake possession of all or any of the Products and dispose of such Products.
- (h) The Customer grants Ascention Assets and any person authorised by Ascention Assets full leave, permission, irrevocable licence to enter without notice and at any time any property where any Product or New Product is placed or stored and do all things necessary and use such force as is necessary in order to recover or retake possession of the Products including New Products.
- (i) The Customer accepts liability for the safe custody and return of the Products to Ascention Assets and indemnifies Ascention Assets for any costs and/or loss relating thereto.
- (j) The Customer agrees that a certificate purporting to be signed by an officer of Ascention Assets identifying Products as unpaid, shall be conclusive evidence that the Products have not been paid for and of Ascention Assets' title thereto.

11. Credit limit

- (a) If Ascention Assets grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. Ascention Assets can vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party. Credit facilities granted, if any, are not transferable without the consent in writing of Ascention Assets.



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- (b) Ascention Assets will only accept the Customer's order if satisfied of its credit worthiness.

12. Title and risk

- (a) Subject to these Terms, title and risk in the Products will pass from Ascention Assets to the Customer (or its nominated agent) when Ascention Assets receives payment in full for such Products, unless otherwise agreed in writing by Ascention Assets.
- (b) Risk in products delivered on an EXW basis will pass on delivery to the Customer at Ascention Assets' premises or other named place.
- (c) Until payment in full the Customer agrees:
- (i) to provide adequate insurance for the Products; and
 - (ii) only to sell the Products in the ordinary course of its business.
- (d) If delivery is arranged by Ascention Assets at the Customer's cost then Ascention Assets will take out an insurance policy to cover the Products in transit and Ascention Assets' liability to insure will cease immediately upon delivery of the Products.
- (e) The Customer will only require Ascention Assets to make good loss or damage to the amount obtained by Ascention Assets from the insurer and Ascention Assets shall not be liable to the Customer whatsoever for any other damage or Consequential Loss whatsoever.
- (f) The Customer acknowledges and agrees, for the purposes of sub-clause (c)(ii) a sale of any Product for less than its cost price, is not a sale in the "ordinary course of business".

13. Indemnity

The Customer indemnifies Ascention Assets against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Ascention Assets pays, suffers, incurs or is liable for in connection with the use of the Products (or the sale of products made from the Products), other than to the extent the same arises from the negligence or wilful default of Ascention Assets or any employee, agent or officer of Ascention Assets and this indemnity is a continuing obligation of the Customer and remains in full force and effect until all money owing, contingently or otherwise, under this indemnity has been paid in full.

14. Technical advice

With respect to any technical advice it provides to the Customer in connection with the Products, Ascention Assets shall not be liable for any injury, loss or damage incurred, whether direct, consequential, incidental, punitive, exemplary or indirect, by statute, in tort or contract, under any indemnity provision or otherwise.

15. Force majeure

Ascention Assets shall not be liable for any prevention of or delay in performance of its obligations under the Contract which is caused by any event or circumstance which is beyond the reasonable control of Ascention Assets including any act of God, strike, lockout or other labour dispute, war, riot or civil commotion, accidental breakdown to any machinery or facilities necessary for the transportation or delivery of the Products to the delivery point.

16. Non-acceptance

- (a) If the Customer repudiates any contract or wrongfully refuses to accept Products delivered under the Contract (and such Products have been specially produced to the Customer's particular requirements), then the damages payable by the Customer to Ascention Assets in those circumstances shall unless otherwise determined be the full sale price of the Products plus any additional costs incurred by Ascention Assets less the current scrap or release value (if any) of the Products as determined by Ascention Assets.
- (b) Where the Contract is to be fulfilled by delivery in a number of instalments, the failure by Ascention Assets to deliver any particular instalment shall not entitle the Customer to repudiate the Contract or refuse to accept further instalments.

17. Dispute resolution

- (a) Any dispute arising under this Contract shall be resolved by the parties first attempting to resolve the matter by mediation and if the parties are unable to resolve the dispute by mediation, then either party shall be at liberty to litigate the matter or by agreement, arbitrate the dispute.
- (b) If the parties elect to arbitrate the dispute, then they shall agree an arbitrator. Failing such agreement, an arbitrator shall be appointed by the President of the State Chapter of the Institute of Arbitrators of Australia.

18. Termination

- (a) It is an event of termination (**Termination Event**) if:
- (i) the Customer breaches the Contract in a material respect and, in Ascention Assets' opinion, the breach cannot be remedied (or, if the breach can be remedied in Ascention Assets' opinion, the Customer does not remedy the breach within 14 days after Ascention Assets gives the Customer notice of the breach);
 - (ii) a judgment in an amount exceeding \$100,000 or its equivalent in any other currency is obtained against the Customer, or any distress, attachment, execution or other process of a government agency in an amount exceeding \$100,000 or its equivalent in any other currency is issued against, levied or enforced on any of the Customer's assets, and is not set aside or satisfied within 14 days;
 - (iii) the Customer suspends payment of its debts generally or it becomes unable to pay its debts when due;
 - (iv) an application or order is made for the winding up or dissolution of the Customer, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Customer;
 - (v) the Customer enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (vi) the Customer ceases, or threatens to cease, to carry on business; or
 - (vii) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the Customer's assets or undertakings.
- (b) If a Termination Event occurs, Ascention Assets may (without affecting the accrued rights and obligations of the parties as at the date of termination) do all or any of the following:
- (i) terminate the Contract immediately by notice to the Customer;
 - (ii) suspend further deliveries of Products or Services under the Contract; or
 - (iii) deduct from any moneys due or which may become due to the Customer from any amount due or recoverable from the Customer under the provisions of the Contract.
- (c) The Customer may not terminate the Contract without the written consent of Ascention Assets, and if Ascention Assets consents to such a termination, reasonable termination charges computed by Ascention Assets shall be assessed in connection with such termination and upon such termination Ascention Assets shall be regarded as discharged from any further obligations under the Contract and any other contract which the Customer may place or have placed with Ascention Assets.

19. Assignment

- (a) The Customer must not assign or otherwise dispose of all or any of its rights in, to and under the Contract without the prior written consent of Ascention Assets.
- (b) Ascention Assets may assign all or any of its rights in, to and under the Contract to any parent or affiliate of Ascention Assets.

20. General

- (a) These Terms are governed by the law of Western Australia. The Customer and Ascention Assets submit to the non-exclusive jurisdiction of the courts of Western Australia.
- (b) Waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this agreement must be in writing and signed by the party granting the waiver.
- (c) The parties agree and acknowledge that nothing in these Terms and conditions shall constitute an agency, employment or partnership relationship between them or any of their respective employees, contractors, servants or agents, unless an agreement in writing provides otherwise.
- (d) If any term or part of these Terms is found to be illegal or unenforceable, that part or term shall be deemed not to be part of these Terms and the remainder of these conditions shall continue in full force and effect.
- (e) No terms and conditions sought to be imposed by the Customer upon Ascention Assets shall apply unless otherwise agreed to in writing by Ascention Assets.

21. Personal Property Securities Act

- (a) Capitalised terms in this clause 21, that are not otherwise defined elsewhere in the Contract, have the same meaning as set out in the PPSA unless the context otherwise requires.



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- (b) This agreement constitutes a security agreement pursuant to the PPSA in relation to the Product supplied by Ascention Assets to the Customer and any Product that will be supplied in the future by Ascention Assets to the Customer.
- (c) The Customer acknowledges and agrees that a Security Interest may be registered by Ascention Assets in relation to the Product and the Proceeds arising in respect of any dealing in the Product in accordance with the PPSA (and in any other manner Ascention Assets considers appropriate).
- (d) The Customer agrees to do all such things and sign all such documentation and/or provide any further information (such information to be complete accurate and up-to-date in all respects) as are necessary and reasonably required to enable the Ascention Assets to:
- acquire a perfected Security Interest in the Product and its Proceeds;
 - register a Financing Statement or Financing Change Statement;
 - ensure that Ascention Assets' security position, and rights and obligations are not adversely affected by the PPSA.
- (e) The Customer waives its rights to receive a copy of any Verification Statement after the registration of a Financing Statement or Financing Change Statement in respect of the Security Interest created by the Contract.
- (f) The Customer agrees to not:
- register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Contract; or
 - register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Product in favour of a third party, without Ascention Assets' prior written consent.
- (g) For the purposes of section 20(2) of the PPSA, the collateral is the Product including any product which is described in any Purchase Order provided by Ascention Assets to the Customer from time to time.
- (h) If Chapter 4 of the PPSA would otherwise apply to the enforcement of the Security Interest(s) created under the Contract, the parties agree that the following provisions of the PPSA will not apply or are waived, as the context requires:
- section 95 (notice of removal of accession to the extent that it requires Ascention Assets to give a notice to the Customer);
 - section 96 (retention of accession);
 - section 121(4) (notice to grantor);
 - section 125 (obligations to dispose of or retain collateral);
 - sections 129(2), 129(3) and 130 (notice of disposal to the extent it requires Ascention Assets to give a notice to the Customer);
 - section 132(3)(d) (contents of statement of account after disposal);
 - section 132(4) (statement of account if no disposal);
 - section 135 (notice of retention);
 - section 142 (redemption of collateral); and
 - section 143 (re-instatement of security agreement).
- (i) The Customer will not, without the prior written consent of Ascention Assets change its name, its details or initiate any change to any documentation registered under the PPSA pursuant to the Contract.
- (j) The Customer agrees that, until all monies owing to Ascention Assets are paid in full, it shall not sell or grant any other Security Interest in the Product or its Proceeds, without the prior written consent of Ascention Assets.
- (k) Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose information of the kind referred to in section 275(1) of the PPSA to an Interested Person, or any other person requested by an Interested Person. The Customer waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPSA to authorise the disclosure of the above information.
- (l) If any provisions of the Contract are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- (b) the Customer agrees that if the Customer buys any Products for the purposes of re-supply, manufacture or repair of other goods, the CCA will not apply to such supplies;
- (c) if the Customer on sells any Products it agrees that it will not make any representations in relation to the Products which are not:
- contained on the packaging of the Products;
 - contained in any materials supplied by Ascention Assets;
 - set out in any applicable manufacturer's warranty; or
 - approved in writing by Ascention Assets.
- (d) if the Customer on sells the Products to consumers who purchase them for the purposes of re-supply, manufacture or repair of other goods, the Customer agrees to contract out of the CCA in writing with those consumers.
- (e) the Customer agrees that it will indemnify Ascention Assets against any claim, liability or cost incurred by Ascention Assets as a result of any breach by the Customer of its obligations in sub-clause (c).

23. Interpretation

In these Terms headings and bold type are for convenience only and do not affect the interpretation of these Terms and, unless the context otherwise requires:

- words importing the singular include the plural and the converse;
- where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- an expression importing a natural person includes an individual, a firm, a body corporate, an unincorporated association and any government agency;
- a reference to legislation or to a provision of legislation includes any modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- a reference to a party to a document includes that party's successors and permitted assigns; and
- the meaning of terms is not limited by specific examples introduced by expressions "including" or "for example", or similar expressions.

22. Competition and Consumer Act 2010 (CCA)

Where the provisions of the Competition and Consumer Act 2010 (Cth) (CCA) apply, the provisions of these Terms will be read subject to the application of the CCA and in the case of any conflict, the provisions of the CCA will apply:

- nothing in these Terms is intended to limit or replace any rights of "consumers" as that term is defined under the CCA.