

# Master Supply Agreement - CMS Electracom

## 1. PURPOSE OF DOCUMENT

1.1 This *Master Supply Agreement* governs every agreement for the supply of goods and/or services by Electracom Pty. Ltd (ACN 096 969 729), trading as CMS Electracom (CMS), to the Customer including as contemplated by any *Proposal* and any relevant *Service Schedule*.

## 2. FAIR TRADING ACT DISCLOSURE

2.1 For the purposes of section 47A of the *Fair Trading Act 1987* (NSW) CMS draws the attention of the Customer to the following provisions of this *Master Supply Agreement*: clauses 6 (*Fee increases*); 7.4 (*delays and late delivery*); 14 (*suspension rights*); 15 (*indemnities*); 17 (*limitations of liability*); 18 and 19 (*termination*); 20 (*audit rights*); 23 (*security interests*) and 26.2 (*infosec*).

## 3. ORDER OF PRECEDENCE

3.1 Subject to clause 3.2, if there is any inconsistency between clauses 1 to 31 of this *Master Supply Agreement*, a *Proposal*, a *Service Schedule* or any other documents referred to in the agreement of which this *Master Supply Agreement* forms part, that inconsistency will be resolved using the following order of precedence:

- (a) clauses 1 to 31 of this *Master Supply Agreement*;
- (b) the relevant *Proposal*;
- (c) the relevant *Service Schedule*; and
- (d) any other documents referred to in the agreement of which this *Master Supply Agreement* forms part.

3.2 The parties may agree to disapply the above provisions with respect to precedence. However, in order to do so the relevant *Proposal* or other document must expressly identify the inconsistency, call it out by reference to this clause 3.2 and detail any conditionality or limitations in respect of the application of relevant contractual provisions. The purpose of this clause 3.2 is to ensure flexibility with respect to the ability of the parties to agree provisions that may differ in effect from the contemplated provisions in clauses 1 to 31 of this *Master Supply Agreement* or as otherwise contemplated by clause 3.1.

## 4. TERM

4.1 The relevant term or duration of a *Proposal* and pertinent obligations under it shall be specified in it and commence from the *Proposal* Commencement Date or other pertinent start date.

4.2 The obligations under the *Proposal* shall subsist (subject to any contrary provision or continuing terms) until its expiry or the date on which all Deliverables specified in it have been provided to and (if required) accepted by the Customer, unless terminated earlier in accordance with the provisions of the *Proposal*, relevant *Service Schedule* or this *Master Supply Agreement*.

## 5. PROPOSALS

5.1 Subject to compliance by the Customer with its obligations, CMS shall perform the services and provide relevant other Deliverables in accordance with the *Proposal* and any relevant or contemplated *Service Schedule*.

5.2 If the Customer wishes to order any Deliverables, it will notify CMS of the particular Deliverables it requires and request that CMS prepares a *Proposal*.

5.3 Upon acceptance of such a *Proposal* by the Customer (if so capable of acceptance) or by other means (as the case may be) such *Proposal* shall incorporate the terms of this *Master Supply Agreement* and together with any relevant or contemplated *Service Schedule* and as contemplated by clause 3.1 form a separate contract between the parties (**Agreement**).

## 6. FEES + PAYMENT

6.1 The Customer shall pay when due (without deduction or set-off, whether in law or in equity) all Fees detailed in or contemplated by the *Proposal* and any relevant *Service Schedule*.

6.2 If Fees are not specified in a *Proposal* or *Service Schedule* then the applicable Standard Rates apply.

6.3 Fees for the supply of Deliverables are based on the cost prevailing and the specification supplied at the date of the *Proposal*.

6.4 Subject to the Customer's rights under law (including under the ACL), CMS reserves the right to vary Fees (whether as an increase or a decrease) if there is any movement (after the *Proposal* Commencement Date) in the cost of supplying the Deliverables specified in a *Proposal* or *Service Schedule*, or change of specification and CMS provides the Customer with reasonable notice of any such variation of Fees.

6.5 Such a variation of Fees may arise and be imposed upon the Customer, without limitation, as a result (directly or indirectly) of changes to applicable exchange rates, an increase in energy prices, a change of specification or functionality, a Third Party vendor or licensor varying its pricing, or for any other reason of any kind that varies the input prices and costs of supply of the relevant Deliverables.

6.6 Except as otherwise expressly agreed in a relevant *Proposal*, any Fees payable shall increase on each anniversary of a *Proposal* Commencement Date by the higher of:

- (a) 4%; and
- (b) the increase in the Index in the prior 12 month period (or as close as may be reasonably determined by CMS at the time by reference to available published data from the *Australian Bureau of Statistics* as CMS shall reasonably determine).

6.7 All Fees are exclusive of GST and other similar sales taxes.

6.8 Interest is payable on any overdue and unpaid Fees, commencing on the date the amount became overdue, at the rate of 2 per cent of the outstanding balance per calendar month, or the maximum rate permitted by applicable law, whichever is less.

6.9 Unless specified to the contrary in an applicable *Proposal* but subject to clause 6.10, payment of relevant Fees and amounts is due in full prior to the time of despatch or collection of relevant goods.

6.10 In certain circumstances, subject to clause 10.3, CMS may grant credit terms to the Customer. In such circumstances, subject to the terms of any applicable *Proposal* or *Service Schedule*, payment in full of

relevant Fees and amounts is due 30 days from the end of the month in which goods or services are supplied by CMS or on its behalf.

6.11 All Fees and amounts due must be paid to CMS by direct credit to the bank account nominated by it (including by EFT or BPay), or as otherwise agreed by the parties in writing.

6.12 CMS may in its sole discretion accept the payment of Fees in instalments upon such terms as it sees fit from time to time.

6.13 The Customer agrees to pay to CMS, on an indemnity basis, any costs incurred by it in the collection of payment of any invoice.

6.14 The Customer must also pay to CMS:

- (a) all out-of-pocket expenses, costs and disbursements (such as, without limitation, for Third Party Products and also food, travel and accommodation) incurred by CMS Personnel in connection with the relevant *Proposal* or *Service Schedule*;
- (b) all applicable taxes (including GST);
- (c) any relevant insurance (for cover in relation to risks of carriage and delivery) as well as delivery costs; and
- (d) for travel time of CMS Personnel in accordance with CMS Standard Rates.

## 7. DELIVERY + RISK

7.1 In the case of tangible goods, CMS will deliver them to the Customer, its agent or nominee, to a carrier, address of the Customer or as otherwise agreed in writing.

7.2 Without limiting the Customer's rights at law, delivery of tangible goods is deemed to take place upon the earlier of: (a) delivery of them to the Customer, its agent or nominee, or (b) to a relevant carrier commissioned, or (c) at the place otherwise agreed in writing. Delivery and freight charges and related costs and amounts are payable by the Customer.

7.3 The delivery of goods may be made in instalments and each such instalment shall be treated as a severable obligation.

7.4 CMS will use reasonable efforts to deliver relevant goods to the Customer by the date and to the place or person contemplated. Without limiting clause 16 (*Statutory Rights*), CMS shall not be liable for late delivery or any delay in delivery.

7.5 The risk in tangible goods shall pass to the Customer upon delivery in accordance with the above provisions.

7.6 If requested by CMS, the Customer shall from the time of delivery until CMS has received payment for all goods in full, insure the goods for their full replacement value and provide to CMS upon its request evidence of such insurance. CMS reserves the right to take out such insurance (on any terms and in any amount or extent of cover) at the cost and expense of the Customer.

## 8. ACCEPTANCE

8.1 The Customer is deemed to have accepted goods supplied when the Customer intimates to CMS that the Customer has accepted them, or, subject to section 37 of the *Sale of Goods Act 1923* (NSW), when

the goods have been delivered to the Customer and the Customer does any act in relation to them which is inconsistent with the ownership of CMS (or other relevant person), or when after the lapse of a reasonable time the Customer retains the goods without intimating to CMS that the Customer has rejected them.

8.2 A *Proposal* or relevant *Service Schedule* may detail agreed arrangements in respect of the acceptance testing of any relevant goods or other Deliverables.

8.3 Unless a *Proposal* or relevant *Service Schedule* provides to the contrary, Deliverables will be deemed accepted by the Customer (in any event) when used in a production environment.

## 9. DATA PROCESSING

9.1 The *Data Processing Service Schedule* and any relevant *Data Processing Annexure* shall apply with respect to the processing of *Personal Data*.

## 10. CREDIT CHECKING

10.1 The Customer authorises CMS to collect, retain, record, use and disclose *Personal Data* and any information about or concerning the Customer or its *Personnel* as it may relate to the agreement of which this *Master Supply Agreement* forms part (in accordance with applicable laws), to any solicitor, accountant, professional consultant, debt collector, credit reference organisation and/or any other person which maintains or is responsible for or manages credit references and/or default listings or data.

10.2 The Customer also authorises CMS to make enquiries with respect to the Customer's credit worthiness, exchange information with credit providers and other relevant persons concerning defaults of the Customer and to notify other credit providers of a default by the Customer.

10.3 CMS reserves the right to revoke at any time any credit extended to the Customer because of the Customer's failure to make any payment when due or for any other reason whatsoever (even if not connected to credit worthiness or a payment default).

## 11. WARRANTIES

11.1 CMS shall provide the services and other relevant Deliverables to the Customer with reasonable skill and care using reasonable commercial endeavours to provide them by the time stated in the *Proposal* and if no such time is stated then within a reasonable time.

11.2 CMS warrants to the Customer that:

- (a) it has all rights and powers necessary to enter into and perform the Agreement; and
- (b) goods supplied shall be of acceptable quality at the time of delivery.

## 12. SERVICE LEVELS

12.1 Any Service Levels are detailed in the applicable *Services Schedule*.

12.2 Service credits may be available in respect of service levels or guarantees of that nature. To the extent offered (if at all) in a *Proposal* or *Service Schedule* a service credit is the sole remedy of the Customer for a failure to meet a service level or guarantee of that nature and the parties agree that they represent a genuine pre-estimate of the losses arising in respect of such a failure.

## 13. ACCESS + DELAYS

13.1 The Customer must, at its own expense, provide CMS with:

- (a) such access to the premises and relevant equipment of the Customer or a Customer RBC, upon application to the Customer's IT Personnel, during Business Hours, as is reasonably necessary for CMS to supply the Deliverables and comply with its obligations under a relevant *Proposal* or *Service Schedule*;
- (b) all information reasonably required by CMS to comply with its obligations under a relevant *Proposal* or *Service Schedule*; and
- (c) all reasonable assistance required by CMS.

13.2 CMS must ensure that, when accessing the Customer's premises, its Personnel shall comply with the Customer's reasonable and lawful rules in relation to workplace health and safety matters.

13.3 If the Customer, a Third Party service provider or other person (not being a sub-contractor of CMS) causes a delay in the provision of services then the time period for performance by CMS (including any milestones) shall be extended by an equivalent period of time plus any additional reasonable period considered by CMS as reasonable in all the circumstances. This shall not affect any other rights or remedies available to CMS in such circumstances.

## 14. SUSPENSION RIGHTS

14.1 Without prejudice to any other rights or remedies available to CMS, if any Fees are not paid when due or if the Customer is subject to an Insolvency Event, then CMS shall be entitled, in its sole discretion, to cease or suspend providing all or any part of any Deliverables with immediate effect. Any resumption or reinstatement of the suspended Deliverable(s), in whole or in part, will be at CMS' sole discretion.

## 15. INDEMNITIES

15.1 The Customer indemnifies and shall keep indemnified CMS against all Losses that CMS sustains or incurs in connection with:

- (a) the personal injury or death to any person or damage to, or loss of any property caused or contributed to by the Customer or any of its Personnel in connection with the performance by CMS of its obligations under the Agreement;
- (b) any misleading, deceptive or dishonest conduct, act or omission by the Customer or any of its Personnel;
- (c) a breach of the Agreement by the Customer;
- (d) a failure by the Customer to comply with an obligation under any relevant Third Party licence or right of use;
- (e) any negligent, dishonest, fraudulent or unlawful act or omission of the Customer or any of its Personnel in connection with the Agreement; and
- (f) any failure by the Customer or its Personnel to comply with any Regulatory Requirements.

## 16. STATUTORY RIGHTS

16.1 Certain provisions of the *Competition and Consumer Act 2010* (Cth) (including, without limitation, the ACL) provide consumers (as that expression is used in the ACL) and others with certain rights (collectively, the **consumer guarantees**) in relation to goods or services purchased by consumers.

16.2 Nothing in the Agreement excludes, restricts or modifies any condition, warranty, consumer guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

16.3 If section 23 of the ACL applies to any provisions in the Agreement any such provision(s) shall be void to the extent they are unfair within the meaning of section 24 of the ACL.

## 17. LIMITATION OF LIABILITY

17.1 CMS does not (to the extent lawful and subject to clause 16) give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, written or oral, arising by statute, operation of law, course of dealing, usage or trade or otherwise with respect to the supply by CMS of any goods or services in connection with the Agreement, except as expressly stated in it or any collateral pertinent document concerning warranties against defects (as may be relevant).

17.2 Except as expressly agreed to the contrary in the Agreement and subject to clauses 16 and the other provisions of this clause 17, the aggregate liability of CMS for breach of and all liabilities under, in respect of and in connection with any Agreement, as well as its duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or on any other basis concerning the same is limited to an amount equivalent to the Fees paid by the Customer in the last 12 months under the relevant and most closely connected Agreement calculated by reference to the date when the cause of action first arose or in the case of multiple causes of action with respect to related facts or claims then the first such date).

17.3 To the extent that CMS has failed to comply with a consumer guarantee under the ACL which cannot be excluded, the liability of CMS is limited (to the extent lawful) to, at CMS' option:

- (a) in the case of goods - the replacement of the goods, the supply of equivalent goods, the repair of the goods, 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; or
- (b) in the case of services - the supply of the services again or the payment of the cost of having the services supplied again.

17.4 To the extent lawful, CMS shall have no liability to the Customer for any Third Party Products in respect of which the applicable terms and conditions of the Third Party Product supplier shall apply.

17.5 Except in respect of an indemnity under clause 15, in no circumstances will either party be liable to the other or its successors in title or permitted assignees for Consequential Loss arising out of, in connection with or relating to the performance, breach, termination or non-observance of an Agreement.

17.6 Nothing in the Agreement shall prevent a claim by CMS or limit or exclude a liability of the Customer to pay the Fees.

17.7 Nothing in the Agreement shall exclude or limit the liability of a party for:

- (a) death or personal injury caused by negligence;
- (b) fraud, deceit or fraudulent misrepresentation; or
- (c) any breach of any applicable licence terms or provisions regarding ownership or licensing of IPRs.

17.8 Subject to applicable laws, CMS is not liable for any Customer-induced Issue.

17.9 Nothing in the Agreement shall be construed as an agreement to be bound by or submit to any laws or jurisdiction not mentioned in clause 30.

17.10 No person other than a named party may enforce an Agreement.

## 18. TERMINATION

18.1 In addition to any other termination rights specified in an Agreement, a party may by notice in writing terminate any Agreement if the other party:

- (a) commits a material breach of the relevant Agreement:
  - (i) that cannot be rectified; or
  - (ii) if capable of being rectified, it has not been rectified within 20 Business Days after a notice from the non-defaulting Party requiring the defaulting Party to do so; or
- (b) suffers an Insolvency Event.

18.2 CMS may by a notice in writing terminate any Agreement if:

- (a) CMS reasonably forms the opinion that supplying goods or services to the Customer may have a negative impact upon its business or commercial reputation or image;
- (b) any Fees are not paid when due by the Customer; or
- (c) the Customer breaches a licence or the terms of use of any software or other relevant Deliverables or an obligation of confidence or privacy or which relates to data protection.

18.3 A termination under clauses 18.1 or 18.2 will take effect on the date when the notice is deemed to have been given under clause 22.

## 19. CONSEQUENCES OF TERMINATION

19.1 Termination will not prejudice any right of action or remedy which may have accrued to either party prior to that termination (including the right to seek injunctive relief or any other remedy).

19.2 On termination or expiry of any Agreement, the Customer must immediately pay all Fees that have accrued prior to the termination or are otherwise due to CMS. This includes any Recurring Fees and any amount payable in respect of any minimum period or duration that may otherwise extend beyond termination or which is payable on deferred terms.

19.3 Subject to any applicable laws, the Customer shall not be entitled to any refund of Fees paid prior to termination.

19.4 Any indemnity or any obligation of confidence is independent and survives termination.

19.5 Termination of an Agreement shall not affect the continuance of any perpetual licence of software that is fully paid up for the duration of such licence unless the relevant licence provides to the contrary.

19.6 In the event of termination or expiry of any licence or a right of use of or access to any software, service, Deliverable, hardware, documentation, materials or thing the Customer must immediately cease using the same.

19.7 The Customer must in such circumstances, at its own cost and expense, to the extent relevant and as may be directed by CMS, return, erase or destroy all copies of such any software, Deliverable, documentation, materials or thing and any confidential information of CMS. It must also certify to CMS within 10 Business Days following termination that it has done so.

19.8 The Customer acknowledges and agrees that loss or termination of a right of use of, licence or access to any software, hardware, service, Deliverable, documentation or material (including any reduction of service scope) may necessitate additional work by CMS concerning the Customer's information technology which is affected by such event. This may include modifications, de-installation, re-configuration or other work as CMS may reasonably determine.

19.9 Unless agreed in writing to the contrary, any such de-installation or modification work or services supplied by CMS (including any transition out, migration, data transfer or other termination or expiry-related services) will be supplied by CMS (if CMS so agrees or has agreed) on a chargeable time and material basis at CMS Standard Rates.

19.10 Termination for any reason of an Agreement, shall not bring to an end any provision (including without limitation a provision in an Agreement which, in order to give effect to its meaning, needs or is intended to survive such termination or expiration) and such provisions shall remain in full force and effect until they are satisfied or by their nature expire.

19.11 Termination of all or part of an Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to that termination.

19.12 For the avoidance of doubt, the following clauses of this *Master Supply Agreement* survive termination of an Agreement: clauses 3 (*order of precedence*); 6 (*Fees*); 9 (*data processing*); 10 (*credit checking*); 12.2 (*service credits*); 15 (*indemnities*); 16 (*statutory rights*); 17 (*limitations of liability*); 19 (*consequences of termination*); 20 (*audit rights*); 21 (*GST*); 22 (*notices*); 23 (*security interests*); 24 (*force majeure*); 25 (*assignment*); 26 (*information security*); 27 (*general*); 29 (*disputes*); 30 (*governing law*); and 31 (*definitions + interpretation*), together with (unless the contrary is stated) any provisions reliant on such clauses. Likewise, any terms of a *Proposal* or *Service Schedule* shall survive if expressed to survive or which by their nature or context require or contemplate survival.

## 20. AUDIT RIGHTS

20.1 The Customer shall allow, at no cost to CMS, access between 9am and 5pm on Business Days to the IT system(s), premises, facilities, records, files, computing devices and data centres of and used by the Customer including relevant users) so that CMS, a relevant Third Party (including a licensor or vendor)

and/or their respective representatives can verify compliance by the Customer with its obligations under a relevant licence, rights of use terms or Agreement more generally. The Customer will promptly on request and at the Customer's cost provide all relevant information and assistance in respect of the audit.

20.2 If, following an audit CMS reasonably determines that an additional or further or enhanced licence or rights of use to use any relevant software, hardware, service or other Deliverable, the Customer agrees (if so demanded by CMS) to pay CMS immediately for such additional, enhanced, further and/or revised licence or rights of use as may be appropriate for actual use to date and any relevant future periods of contemplated use (including for relevant periods prior to the audit for all users and functionality), together with the costs of the audit. CMS must invoice the Customer accordingly. Nothing in this clause prejudices the rights of CMS (including a claim for damages, statutory rights or under any indemnity) with respect to any unlicensed use or infringement of the rights of CMS or any other person (including a Third Party or with respect to Third Party Products).

## 21. GST

21.1 If GST is imposed on a Supply made under or in connection with this *Master Supply Agreement*, then, to the extent that:

- (a) the consideration for that Supply is not already stated to include an amount in respect of GST; or
- (b) the amount of GST stated to be included in the consideration is less than the amount of the GST liability actually incurred by the Supplier in respect of that Supply,

the Supplier of the Supply may increase the consideration by the applicable amount of GST and the Recipient must pay that increased amount at the same time and in the same manner as any part of the consideration is payable to the Supplier in respect of the Supply.

21.2 Where any expenses incurred by a Supplier are to be reimbursed by the Recipient under the Agreement, the reimbursable amount shall be determined as follows:

- (a) first, any amount which the Supplier is entitled to claim as an Input Tax Credit shall be deducted from the cost to the Supplier of the expense item to arrive at an actual cost; and
- (b) second, the actual cost shall be increased by and to the extent of the amount of GST payable by the Supplier in respect of the Supply to the Recipient for which the expense item is consideration.

21.3 If the GST payable by the Supplier on a Taxable Supply is varied pursuant to any change in legislation, the consideration payable under this *Master Supply Agreement* must be increased or decreased to reflect that variation of the GST.

21.4 The Recipient is not required to pay any amount of GST to the Supplier unless the Supplier has provided a Tax Invoice to the Recipient.

21.5 For the purposes of this clause 21 and, unless the context otherwise provides, any other clauses using the defined terms, Input Tax Credit, Recipient, Supplier, Supply, Tax Invoice and Taxable Supply have

the meanings attributed to those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 22. NOTICES

22.1 All notices and consents required or permitted to be given (**Notice**) must be in writing and given by personal service, mail (postage prepaid by registered or recorded mail with proof of despatch retained) or email to the relevant party at its address stated in a relevant *Proposal* or to such other address as a party may designate to the other by written notice or to its registered address or an ostensibly operable email address (which for these purposes means that a bounce back message of non-delivery is not given within 1 hour of sending) of that party.

22.2 A Notice is taken to be given and received (unless evidence sufficient to raise material doubt is adduced to the effect that the Notice was not actually delivered):

- (a) in the case of a pre-paid posted letter posted by registered or recorded mail, on the 3rd (or 7th, if posted to or from a place outside Australia) Business Day after posting;
- (b) if delivered by personal service on, or before, 5.00pm on a Business Day at the place of delivery, upon delivery, and if later that day then on the next Business Day; and
- (c) in the case of email, when an electronic message is sent to the information system of the recipient party using the email address provided by that recipient party but if after 5:00pm or not a Business Day in the place of receipt then on the next Business Day.

## 23. SECURITY INTEREST + TITLE

23.1 This clause 23 sets out the Security Agreement between CMS and the Customer.

23.2 The Customer (**Grantor**) grants to CMS (**Secured Party**) a Security Interest in all present and after-acquired goods (**Collateral**) as security for all or part of the payment for the goods supplied by CMS. This shall also create a Purchase Money Security Interest (**PMSI**).

23.3 This security interest attaches to the Collateral by virtue of the Customer's possession of the goods as bailee under clause 23.7.

23.4 CMS may, without notice, apply to register a financing statement with respect to the Security Interest described in this clause 23.

23.5 Until full title in goods has passed to the Customer, the Customer will ensure that the goods are identifiable and distinguishable:

- (a) from any other goods that may be in the Customer's possession; and
- (b) as to each particular invoice of goods.

23.6 CMS will retain absolute title over the goods until:

- (a) it has received payment in full in respect of the goods; or
- (b) the Customer sells the goods in the manner prescribed under clause 23.9.

23.7 After delivery of the goods, until full payment has been made the Customer shall possess the goods as bailee only.

23.8 Until payment in full for the goods has been received by CMS, it may, without notice, seize the goods if:

- (a) a right to terminate an Agreement has arisen in favour of CMS; or
- (b) the Customer is in breach of an Agreement.

23.9 For the purposes of carrying out seizure under clause 23.8, CMS may without notice, enter the Customer's premises (or relevant other place) and seek any and all remedies provided under Chapter 4 of the PPSA and any other remedies provided at law or in equity or otherwise.

23.10 The Customer may only sell all or any of the goods in respect of which full payment has not been received to a Third Party if:

- (a) CMS has not exercised its right to seize the goods under clause 23.8;
- (b) the sale is a *bona fide* transaction at market value in the ordinary course of business; and
- (c) all proceeds of sale of those goods is:
  - (i) immediately paid to CMS; or
  - (ii) held on trust for CMS in a separate account, payable immediately on demand.

23.11 Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on CMS in favour of the Customer.

23.12 The Customer agrees to waive its right to receive from CMS a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to the Agreement and this Security Agreement.

23.13 The Customer shall immediately notify CMS in writing of any change of name.

23.14 The Customer acknowledges receipt of a copy or due notice of this *Master Supply Agreement* and Security Agreement.

## 24. FORCE MAJEURE

24.1 Notwithstanding any other provision in the Agreement, no default, delay or failure to perform (excepting an obligation of payment) on the part of either party will be considered a breach if such default, delay or failure to perform is shown to be due to a Force Majeure Event.

24.2 If a Force Majeure Event arises, the time for performance required of the party subject to the Force Majeure Event will be extended for any period during which performance is prevented by the Force Majeure Event.

24.3 Nothing in this clause 24 entitles a party to any relief from its obligations which are not affected by the Force Majeure Event.

## 25. ASSIGNMENT

25.1 The Customer may not assign, dispose of or otherwise transfer any rights or obligations under the Agreement without the prior written permission of CMS.

25.2 CMS may assign, in part or in full, its rights under or relating to any Agreement, without the consent of the Customer.

## 26. INFORMATION SECURITY

26.1 CMS adopts information security controls with respect to hosted services in accordance with ISO27001.

26.2 The Customer acknowledges and understands that any such controls are not a guarantee of information or data security and may be impacted by the activities of third persons (including of a foreign person, state or country) and the conduct of the Customer and its Personnel. To the extent lawful, CMS accepts no liability with respect to information security other than to implement (insofar as it is within its control) the above security controls.

## 27. GENERAL

27.1 If a party suffers Losses in connection with the Agreement which the other party is liable (including under an indemnity), the party suffering the Losses must use reasonable endeavours to mitigate its loss.

27.2 Any provision of an Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions nor affect the validity or enforceability of that provision in any other jurisdiction.

27.3 A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

27.4 A variation of an Agreement must be in writing and signed by the parties (including as may be relevant pursuant to any relevant change control procedure).

27.5 The rights and obligations of the parties do not merge on completion of any transaction contemplated by an Agreement.

27.6 Each party must, at its own expense, do all things and execute all documents necessary to give full effect to an Agreement and the transactions contemplated by it.

27.7 The Customer agrees that CMS may publicly refer to the Customer as a customer of CMS, including in marketing materials and public relations communications without reference to the Customer. The Customer grants to CMS a non-exclusive, royalty free licence to use the Customer's name and trade marks for such purposes only (whether before or after termination of any Agreement).

27.8 Each party must pay its own costs of negotiating, preparing and entering into any Agreement.

27.9 Neither party has relied on any statement by any other party not expressly included in a specific Agreement.

27.10 Except where expressly stated otherwise, an Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

## 28. AUTHORISED REPRESENTATIVE

28.1 Each party must nominate an employee who shall be its Authorised Representative. Each party warrants that its Authorised Representative is duly authorised to provide approvals, instructions,

authorisations and consents in relation to each Agreement.

## 29. DISPUTES

29.1 All Disputes must be resolved as set out in this clause 29.

29.2 Subject to clause 29.3, a party must not commence any court proceedings unless it has first complied with this clause 29.

29.3 Nothing in this clause 29:

- (a) prevents a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief; or
- (b) affects a party's right to terminate an Agreement (including a licence or right of use).

29.4 A party claiming that a Dispute has arisen must notify the other party in writing giving details of the Dispute and stating that the notification is given pursuant to this clause 29.4 (**Dispute Notice**).

29.5 The parties must attempt to resolve all Disputes which are the subject of a Dispute Notice by negotiations using the following escalation procedure:

- (a) the Dispute must first be referred to the persons named in the *Proposal* for the purposes of this clause 29 (or in default the relevant Authorised Representatives or other person nominated by a party) who must attempt to resolve the Dispute within 20 Business Days; and
- (b) if the Dispute is not resolved within 20 Business Days of an escalation under clause 29.5(a) then either party may refer the Dispute to the CEO (or equivalent senior management) of each of the parties.

29.6 If the parties cannot resolve a Dispute in accordance with the escalation procedure in clause 29.5 within 20 Business Days of the Dispute Notice being given under clause 29.4, then either party may commence legal proceedings to have the Dispute resolved in a court of competent jurisdiction.

29.7 The parties in writing may agree to the extension of any of the time periods set out in this clause 29 for the sending of any notice or the doing of any act, subject to the maximum extension permitted being equal to the original time period as set out in this clause 29 in respect of each such notice or act.

29.8 Each person involved in the escalation process described in clause 29 must use their reasonable endeavours to seek to resolve all issues escalated to them, in a way that attempts to preserve the relationship between the Customer and CMS.

29.9 Nothing in this clause 29 requires a party to act contrary to its interests.

29.10 If, in relation to a Dispute, a party breaches any provision of this clause 29, the other party need not comply with this clause 29 in relation to that Dispute.

29.11 Unless expressly agreed in writing to the contrary, each party will continue to perform its obligations during the attempted resolution of any Dispute unless such obligations are terminated or cease to apply (as relevant).

29.12 Each party must bear its own costs of complying with this clause 29.

## 30. GOVERNING LAW

30.1 This *Master Supply Agreement*, each *Proposal* and *Service Schedule* as well as any Agreement more generally are governed by the laws of New South Wales, Australia.

30.2 The *U.N. Convention on Contracts for the International Sale of Goods* does not apply.

## 31. DICTIONARY + INTERPRETATION

**Dictionary:** In each Agreement, unless otherwise provided, the following terms shall have their meaning as specified:

**ACL or Australian Consumer Law** means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and corresponding provisions in the laws of Australian states and territories.

**Agreement** has the meaning given in clause 5.3.

**Authorised Representative** means a person so named in a relevant *Proposal*.

**Business Day** means a day which is not a Saturday, Sunday or public or statutory holiday in Sydney, Australia.

**Business Hours** means 9am to 5pm on Business Days.

**Consequential Loss** means any Losses suffered by a party that cannot reasonably be considered to arise naturally, or in the ordinary course of things, from any act or omission (including a breach of contract) in connection with a *Proposal*, SOW or relevant agreement and even if the other party has been advised of the possibility or likelihood of such damage, cost or loss. Each party agrees that loss of profits, revenue (in each case excepting Fees payable to CMS), loss or corruption of data (including any corruption, loss or recovery of content or data, costs of reprogramming, repairing, correcting or reproducing any content or data stored in or used in conjunction with any Deliverable, operational disruption or errors that impede data traffic and any Losses otherwise caused by corrupt or inadequate content or data arising out of or in connection with the use of any Deliverable), goodwill, bargain, opportunities and loss of anticipated savings or use however and whenever occurring, will all constitute Consequential Loss.

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

**CMS** means Electracom Pty. Ltd (ACN 096 969 729), trading as CMS Electracom, whose usual place of business is at 24 Binney Road, Kings Park, New South Wales 2148 Australia.

**CMS RBC** means a Related Body Corporate of CMS.

**Customer** means the person so named or contemplated as the customer, whether pursuant to a *Proposal* or by some other means of contracting with CMS.

**Customer Data** means any data or other content or information relating to its business that the Customer inputs into any relevant software supplied (whether as a service or on premise) by CMS.

**Customer-Induced Issue** means any non-conformity or issue with respect to a Deliverable which is related to, concerns or results from:

- (a) any Deliverable supplied in accordance with instructions or specifications provided by, or on behalf of, the Customer, or under the operational authority or management of the Customer;
- (b) non-conformities or issues otherwise attributable to the Customer (including, for

these purposes, any person acting on its behalf), such as, but without limitation, those resulting from:

- (i) use of the Deliverable in combination with any equipment, software, accessory, data or business methods not provided by or expressly prescribed or permitted by CMS;
- (ii) erroneous or incomplete information from, or provided by, the Customer;
- (iii) modifications or adjustments to the Deliverable, whether or not authorised by CMS, or changes in the Customer's data, database or content;
- (iv) connectivity issues or failure of a network (public and/or private);
- (v) the handling, use or deployment of the Deliverable in a manner other than permitted in applicable documentation or otherwise in non-compliance with any applicable routine or process prescribed by CMS; or
- (vi) any negligence, misuse, improper or unauthorised use, reproduction or distribution of the Deliverable which is not permitted under any applicable terms of use or licence, restrictions of use or any relevant acceptable use policy.

**Customer RBC** means a Related Body Corporate of the Customer.

**Data Processing Annexure** means the relevant annexure to a *Data Processing Service Schedule*.

**Data Processing Service Schedule** means the agreement between the parties by that name concerning the processing of data.

**Data Protection Laws and Regulations** means any and all applicable laws relating to the Processing of Personal Data, data security and privacy applicable to the performance of an Agreement, including applicable guidance and codes of practice, codes of conduct issued by the OAIC, any other relevant supervisory authority, Member States of the European Union or the *European Data Protection Board* (as may be applicable), or any applicable association and including to the extent applicable the General Data Protection Regulation of the EU, the *Privacy Act 1988* (Cth) and corresponding privacy laws and regulations in each state and territory of Australia, such laws as amended from time to time.

**Deliverables** means relevant goods and/or services to be supplied to the Customer pursuant to an Agreement.

**Dispute** means any dispute or difference between the parties arising out of or in connection with an Agreement including any dispute or difference as to the formation, validity, existence or termination of such Agreement.

**Documentation** means documentation and includes, without limitation, user and training manuals, specifications, project definition and scope documents, SOWs, product descriptions, instructions and recommendations.

**Fees** means the applicable fees, charges and expenses for relevant goods and/or services as the case may be.

**Force Majeure Event** means strikes, lock-outs or other labour disputes, riots, civil disturbance, actions or inaction of governmental authorities, epidemics, wars, computer downtime, failure of a relevant network or IT infrastructure, embargoes, storms, floods, fires,

earthquakes, acts of God or the public enemy, nuclear disasters or default of a carrier or any other event which is not within the relevant party's reasonable control.

**Free or Open Source Software** means any software described as or in substantive terms open source, free or open software, public library software or similar. This includes any version of any software licensed pursuant to any GNU public licence).

**Index** means the *All Groups Consumer Prices Index (CPI)* published by the *Australian Bureau of Statistics*.

**Insolvency Event** means:

- (a) for a person in Australia, means any one or more of the following events occurring in respect of that person:
  - (i) a resolution is passed for the winding up of that person (other than for the purposes of reconstruction or amalgamation);
  - (ii) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all of the property of that person;
  - (iii) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all of the business or assets of that person;
  - (iv) that person makes any composition or arrangement or assignment with or for the benefit of its creditors;
  - (v) that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;
  - (vi) that person ceases, or threatens to cease to carry on its business; or
  - (vii) that person becomes insolvent within the meaning of section 95A of the Corporations Act; or
- (b) for a person in any other jurisdiction, means that any event analogous or equivalent to the events described in paragraph (a) occurs in respect of that person.

**Intellectual Property Rights** or **IPR** means all present and future (whether registered or unregistered) intellectual and industrial property rights (whether now known or created in the future), conferred by statute, at common law, in equity or by other means and wherever existing, including patents, copyright (including software), registered designs, trademarks, Know-how, inventions and the right to have confidential information kept confidential, as well as any application or right to apply for registration of any of the same.

**IT** means information technology.

**Know-how** means know-how and includes, without limitation, service or product methods and methodologies, processes, solutions, reports, tables, models and prototypes; pre-studies, presentations, marketing and sales collateral, presentations, drawings, pictures, sound, video, websites and platforms, social media content, and other materials.

**Losses** means all liabilities, losses, damages, costs, claims and expenses, actual and contingent, and of whatever nature including:

(c) legal costs and disbursements, whether incurred or awarded against a party, including costs of investigation, litigation, settlement and compliance with judgments; and

(d) interest, fines and penalties and loss of profits, suffered or incurred by any relevant person, whether arising in contract or tort (including negligence) or under any statute.

**Master Supply Agreement** means the provisions of this document.

**party** means a contracting party.

**Personal Data** means any information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in material form or not, relating to: (a) an identified or identifiable or apparent or reasonably ascertainable natural person or (b) an identified or identifiable legal entity (in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person or otherwise where such information is protected similarly as Personal Data or personally identifiable information or personal information under applicable Data Protection Laws and Regulations). This includes, where the context so requires or is relevant, Personal Information and/or Customer Data.

**Personal Information** means any information or an opinion (including information or an opinion forming part of a database), whether true or not and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

**Personnel** means the officers, employees and contractors (including sub-contractors) of that person or any of its Related Bodies Corporate.

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

**PMSI** means a purchase money security interest as defined by section 14 of the PPSA.

**Process** means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction (subject to applicable laws).

**Proposal** means a *Proposal*, work order, purchase order, services order, service estimate or other contractual order for goods and/or services supplied by CMS and includes any of its Schedules and Annexures. It may also include or reference terms and conditions specific to relevant goods and/or services, in the nature of one or more *Service Schedules*. A *Proposal* must be signed for, or on behalf of, CMS.

**Proposal Commencement Date** means the applicable commencement date of a *Proposal*.

**Recurring Fee** means any Fee that is payable on a recurring basis.

**Regulatory Requirements** means all applicable laws including practice requirements stipulated by any regulatory authority (whether established pursuant to statute or otherwise and whether mandatory or voluntary), regulations, instruments and provisions in force from time to time and any binding codes of practice.

**Related Body Corporate** has the meaning given in section 50 of the Corporations Act.

**Secured Party** means a person who holds the benefit of a security interest.

**Security Agreement** means the security agreement set out in clause 23 (*Security Interest + Title*).

**Security Interest** means the security interest created in clause 23 (*Security Interest + Title*).

**Service Schedule** means a document issued by CMS which has *Service Schedule* in its name and which contains terms and conditions specific to relevant goods and/or services. A *Service Schedule* may be provided or apply as part of a *Proposal* or on a stand-alone basis.

**SOW** means a statement of work.

**Standard Rates** means the standard rates and prices of CMS from time to time concerning relevant goods and/or services for the relevant country or place where delivery is to be made or supplied.

**Third Party** means a legal entity, company, or person that is not a party to the relevant Agreement and is not the Customer or a Customer RBC or CMS or a CMS RBC.

**Third Party Products** means any software goods and/or services owned by or vested in a third party (including for these purposes any Free or Open Source Software) in circumstances where licence and/or user rights have either been granted to the Customer:

- (e) by CMS (on the terms and conditions contemplated by the applicable Agreement); or
- (f) directly by the Third Party Product vendor on terms agreed between the Customer and such vendor (including by way of open source software licence).

A term which is defined in the Corporations Act, but is not defined in the Dictionary above, has the meaning given to it in the Corporations Act.