

Terms and Conditions

1 Definitions and interpretation

1.1 Definitions

In these terms and conditions:

Agreement means each Offer which is accepted by Dorner under clause 2(b).

ACL means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in Melbourne, Victoria, Australia.

Commencement Date means the date the Offer is accepted by Dorner under clause 2(b) or such other date as is set out in the Proposal.

Confidential Information means all information disclosed to or acquired by a party before or after the date of the Agreement, whether orally, in writing or in electronic or machine readable form but does not include Information that:

- (a) the party can prove by contemporaneous written documentation was in the lawful possession of the party before the party had any dealings with the other party or was independently generated by the party or on its behalf;
- (b) is in the public domain otherwise than as a result of a breach of the Agreement or any other obligation of confidentiality owed to the other party; or
- (c) was legally and properly obtained by the party from any other source without restriction on further disclosure,

and, in the case of Dorner as the disclosing party, includes the User Resources.

Consequential Loss means:

- (a) any form of indirect, special or consequential loss, including loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunity; and
- (b) any loss beyond the normal measure of damages.

Consumer has the meaning provided to it in section 3 of the ACL.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the ACL.

CPI means the Consumer Price Index - weighted average of eight capital cities, as published by the Australian Bureau of Statistics or the index officially substituted for it.

Customer means the person who has requested that Dorner supply it with the System and provide it with the Services, as specified in the Proposal.

Data means all information and other data uploaded to the System by or on behalf of the Customer.

Default Rate means the interest rate which is fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

Dorner means [Dorner Australia Pty Ltd (ACN 625 557 413)] of [Level 25, 108 St. Georges Terrace, Western Australia 6000].

Equipment means the equipment and hardware to be supplied by Dorner to the Customer under the Agreement as specified in the Proposal.

Equipment Price means the amount payable by the Customer for the Equipment, as set out in the Proposal.

Expiry Date means the date that is one month after a party provides the other party notice that it wishes to terminate the Agreement or such other date as is set out in the Proposal.

Fees means the Equipment Price, Installation Fee and Service Fees.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; in relation to

a trust, the making of an application or order in any court for accounts to be taken in respect of the trust or for any property of the trust to be brought into court or administered by the court under its control; or the occurrence of any event that has substantially the same effect to any of the preceding events.

Installation Fee means the amount payable for the installation of the Equipment, as set out in the Proposal.

Intellectual Property includes all patents, designs, copyright, trade marks or circuit layout rights and any right to apply for the registration or grant of any of the above.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

OH&S Laws means all applicable laws, regulations, codes of practice and guidelines concerning the health, safety and welfare of people at work.

Order means any order or request by or for the Customer to Dorner to supply to the Customer the System and provide it with the Services, whether the order or request is written, verbal or implied in the circumstances and which may have been given in response to a Proposal.

PDH Goods or Services means goods or services which, for the purposes of the ACL, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Proposal means a proposal or quote provided by Dorner to the Customer in respect of the System and Services.

Service Level Failure means the service level failures specified in the Proposal.

Services means the services to be supplied by Dorner to the Customer under the Agreement, being the Support Services and any other services which have been selected in the Proposal.

Service Fees means the amount payable by the Customer for the provision of the Services, as set out in the Proposal and as increased in accordance with clause 8.3.

Site means the site owned or occupied by the Customer which is set out in the Proposal.

Support Services means the support services set out in the Proposal.

Software means the software which is used as part of the System as described in the Proposal.

System means the system which comprises the Equipment and the Software, as more fully specified in the Proposal.

System Generated Information means the information and data generated by the System based on the Data submitted by the Customer and which is made available to the Customer through the System.

Term has the meaning given to it in clause 3.

User Resources means any manuals, guides, reference materials, reports or other similar documents in any form made available by Dorner to the Customer in connection with the System.

1.2 Interpretation

In the Agreement, headings are inserted for convenience only and do not affect the interpretation of the Agreement and unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (d) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time
- (e) a reference to a party is to a party to the Agreement and includes the party's successors and permitted transferees and assigns and if the party is an individual, includes executors and personal legal representatives;
- (f) no provision of the Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement; and

- (g) if the day on or by which something must be done is not a Business Day, that thing must be done on the next Business Day.

2 Formation of Agreement

- (a) The Customer acknowledges and agrees that by submitting an Order to Dorner the Customer makes an irrevocable offer to Dorner for Dorner to supply it with the System and provide it with the Services on the terms of these terms and conditions, the Order, and the Proposal (**Offer**).
- (b) A contract will be formed between Dorner and the Customer in respect of each Offer upon the earlier of Dorner:
 - (i) notifying the Customer in writing that it accepts the Offer;
 - (ii) accepting, in full or part, payment from the Customer for any of the Fees;
 - (iii) making delivery of any Equipment to the Customer; or
 - (iv) performing any of the Services.
- (c) An agreement formed under clause 2(b) will comprise these terms and conditions, the Order (only to the extent that any additional terms in the Order are accepted by Dorner in writing) and the Proposal.

3 Term

The Agreement commences on the Commencement Date and expires on the Expiry Date unless terminated earlier in accordance with clause 16 (**Term**).

4 Provision of the System

4.1 System

- (a) In consideration of the Customer paying Dorner the Fees, during the Term Dorner will:
 - (i) supply the Equipment to the Customer in accordance with clause 5;
 - (ii) procure the grant of a licence to use the Software in accordance with clause 6; and
 - (iii) provide the Services to Dorner in accordance with clause 7 and the Proposal.
- (b) The Customer is responsible for satisfying itself that the System is compatible with its own hardware, software and internet and network capabilities and maintaining all hardware, software and other technology necessary to be able to access and use the System.

4.2 Specifications and information

- (a) Where any instructions, materials or information are required to be provided by the Customer to Dorner before Dorner can proceed with or complete the supply of all or part of the System or provision of the Services such instructions, materials or information must be:
 - (i) supplied to Dorner within a reasonable time so as to enable Dorner to deliver the System or Services; and
 - (ii) complete, accurate and not misleading.
- (b) Dorner will only be required to make any change to the specifications, dimensions or other particulars of the System which the Customer requests if:
 - (i) the Customer has provided details of the requested change in writing; and
 - (ii) Dorner has agreed in writing to make that change.
- (c) The Customer acknowledges that Dorner has entered into the Agreement on the basis of, and in reliance upon, any information, specifications, data, representations, statements and documents provided by the Customer.

4.3 Customer obligations

Without limiting the other obligations of the Customer under the Agreement, the Customer must, and must ensure that each of its employees, officers and contractors:

- (a) only use the most recent version of the User Resources provided by Dorner;
- (b) not upload to the System any viruses, bugs, worms, trojan horses, harmful codes or any other form of defect or contaminant which could cause temporary or permanent damage to or will otherwise impair or harm or cause the malfunction of the System or the software or hardware of Dorner or any third party; and

- (c) not make publically available or distribute any part of the System or User Resources for commercial purposes or otherwise transfer, assign, rent, lease, lend, sell or otherwise dispose of all or any part of the System or any compilation derived from the System.

5 Equipment

5.1 Delivery of Equipment

- (a) Dorner will deliver the Equipment to the Customer in the manner and at the time specified in the Proposal or as otherwise agreed between Dorner and the Customer.
- (b) The Customer:
 - (i) expressly authorises and grants Dorner and its agents an express, irrevocable licence to enter the Site in order for Dorner to deliver the Equipment and provide the Services (including installation of the System); and
 - (ii) indemnifies Dorner against any Loss that may be incurred or sustained by Dorner, its employees or agents, as a result of the entry of the Site or incurred while at the Site.
- (c) The Customer must, prior to taking possession of the Equipment, inspect the Equipment and immediately notify Dorner in writing if the Equipment is not fit for any purpose for which the Customer intends to use the Equipment, has any defect or otherwise does not meet any specifications.
- (d) Dorner will use its reasonable endeavours to deliver the Equipment on any date specified or estimated by Dorner, however the Customer acknowledges that:
 - (i) these dates are estimates only; and
 - (ii) if Dorner or its supplier does not currently stock the Equipment, then there may be a delay in the supply of that Equipment.

5.2 Installation of System

- (a) In consideration for the payment of the Installation Fee, Dorner agrees to install the System at the Site at the time delivery of the Equipment is made under clause 5.1.
- (b) The Customer must:
 - (i) ensure the Site and the condition of the Site is suitable for the installation of the System by Dorner; and
 - (ii) notify Dorner in writing of anything in respect of the Site which may be relevant to the installation of the System.
- (c) The Customer must ensure that:
 - (i) all necessary safety devices on Site are available;
 - (ii) voltage fluctuations within the Customer's power supply are within a tolerance of +/- 5%; and
 - (iii) all waste at the Site is disposed of.
- (d) Without limiting clause 5.2(e), the Customer is responsible for and must eliminate all risks associated with the Site including, without limitation, site condition, suitability of the Site for the installation of the System and health and safety at the Site.
- (e) The Customer is responsible for conducting health and safety risk assessments of the Site and for all aspects of health and safety at the Site and must:
 - (i) comply with all OH&S Laws including ensuring appropriate consultation with other duty holders under OH&S Laws in relation to any work occurring at the Site;
 - (ii) do all things necessary to ensure that its personnel comply with all OH&S Laws; and
 - (iii) provide Dorner with access to such documentation as may be necessary to establish Dorner's compliance with OH&S Laws.
- (f) The Customer must notify Dorner immediately in the event of:
 - (i) any incident or injury that occurs involving any of Dorner's personnel and provide Dorner with copies of any documentation that is created or produced as a result of or relating to such incident or injury; and
 - (ii) any notices issued by a government authority or agency about the systems of work and/or plant at the Site relevant to the attendance of any of Dorner's personnel at the Site.
- (g) Within three Business Days of completion of the installation of

the System, the Customer must undertake acceptance testing of the System. The Customer will be responsible for any costs and expenses incurred by Dorner in connection with Dorner's participation in the acceptance testing (including travel and accommodation costs).

5.3 Title and risk

- (a) Title to, and property in, the Equipment remains with Dorner and will only pass to the Customer once all moneys owing by the Customer to Dorner in respect of the Equipment have been paid in full.
- (b) Risk in the Equipment passes to the Customer upon the Equipment being removed from Dorner's premises (or that of Dorner's supplier or agent) for delivery to the Site.
- (c) The Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Equipment from the time risk passes to the Customer under clause 5.3(d).
- (d) The Customer indemnifies Dorner against any Loss to the Equipment, however caused, occurring after the Equipment has been removed from and left Dorner's premises (or the premises of Dorner's supplier or agent).
- (e) In the event that the Customer is required to return any Equipment to Dorner, risk in the Equipment passes to Dorner on confirmation of receipt of the Equipment by Dorner.

5.4 Use of Equipment and System

The Customer must:

- (a) be responsible for all costs and expenses necessary to operate the System;
- (b) for as long as Dorner is providing Services, not keep or store the Equipment at any location other than the Site;
- (c) only use the Equipment as part of the System in accordance with the Agreement and not for any other or illegal purpose;
- (d) ensure that the System is used only by persons who are suitably trained and qualified to use the System;
- (e) operate the System in accordance with its intended use, any User Resource and any instructions and directions provided to the Customer by Dorner, and all applicable laws and regulations (including any health and safety laws);
- (f) obtain and maintain any authorisations required by law or regulation to use the System; and
- (g) not remove, deface, change, distort, delete or cover up:
 - (i) any name plate or mark on the Equipment; or
 - (ii) any patent, copyright or other proprietary notices which appear in writing on or in any part of the Equipment.

6 Software

- (a) The Customer acknowledges and agrees that the Customer's use of the Software is subject to the Customer entering into a licence agreement in respect of the use by the Customer of the Software (**Software Licence**).
- (b) Subject to the payment of the Equipment Price by the Customer to Dorner, Dorner will procure the entry into the Software Licence by Dorner Electronic GmbH.
- (c) Subject to the Customer entering into the Software Licence, Dorner will provide the Customer with the Software or with access to the Software at the same time as it delivers the Equipment in accordance with clause 5.

7 Services

7.1 Provision of Services

- (a) Subject to the Customer paying the Fees as required under the Agreement, Dorner will provide the Services to the Customer during the Term, as set out in the Proposal.
- (b) The Customer acknowledges that the Services are the only technical, maintenance or user support services (if any) Dorner will provide to the Customer under the Agreement.

7.2 Additional Services

- (a) In addition to the Services, if requested by the Customer and accepted by Dorner, Dorner may also provide additional services to the Customer (**Additional Services**).
- (b) Unless otherwise agreed, any Additional Services will be provided on the terms and conditions of the Agreement, provided that the fees payable by the Customer for the

Additional Services will be the fees agreed between Dorner and the Customer for the provision of the Additional Services.

7.3 Customer Assistance

- (a) The Customer must cooperate with Dorner in the provision of the Services and provide Dorner with all information and assistance which Dorner may require in order for Dorner to be able to provide the Services, including without limitation:
 - (i) fulsome and detailed description of any error's, defects or issues with the Software, Equipment or System;
 - (ii) assistance in troubleshooting any error, defect or issue;
 - (iii) replacing or repairing hardware;
 - (iv) production of non-conformance reports, system logs and memory extracts;
 - (v) provision of relevant input and output data; and
 - (vi) provision of test results.
- (b) If Dorner is delayed in complying with its obligations to provide Services because the provision of any information or assistance by the Customer is delayed or restricted, the obligations of Dorner to provide such Services will be suspended for the period of the delay or restriction.

7.4 Service Levels

Dorner must use its reasonable endeavours to ensure there are no Service Level Failures in providing the Services.

8 Fees

8.1 Payment of Fees

- (a) The Customer must pay the Equipment Price, the Installation Fee and the Service Fees to Dorner at the times and in the manner specified in the Proposal.
- (b) The Customer acknowledges and agrees that:
 - (i) the System may only be used by the Customer; and
 - (ii) Dorner is only required to provide the Services if all outstanding Fees have been paid.
- (c) All Fees must be paid in Australian dollars, unless an alternative currency is specified in the Proposal.

8.2 Failure to pay

If the Customer fails to make any payment by the due date for payment, then, without prejudice to any other right or remedy available to Dorner and to the extent permitted by law, Dorner may, in its sole discretion, elect to do any one or more of the following:

- (a) suspend the provision of any Services to the Customer;
- (b) suspend the Customer's access to the System;
- (c) exercise any right to terminate any Agreement in accordance with clause 16.1;
- (d) charge the Customer interest (both before and after any judgement) on the unpaid amount at the Default Rate, which interest will accrue and be chargeable from the first day on which an amount becomes overdue until Dorner receives payment of all amounts (including all interest) by way of cleared funds; and
- (e) cancel or reverse any discounts provided, or otherwise offered, to the Customer under the Agreement or other arrangement.

8.3 Adjustment

On each yearly anniversary of the Commencement Date, the Service Fees will be adjusted to be the amount determined in accordance with the following formula, if this formula would result in an increase in the Fees:

$$\text{Fees} = A \times \frac{B}{C}$$

Where: A = the Fees in the immediately preceding twelve months (**Previous Year**)

B = CPI for the Previous Year

C = CPI for year ending immediately prior to the Previous Year

8.4 GST

In this clause, words and expressions which are defined in the *New Tax System (Goods and Services Tax) Act 1999* (Cth) (as

amended, varied or replaced from time to time) have the same meaning given to them by that Act. Unless otherwise expressly stated in writing in the Agreement, all amounts payable by the Customer in connection with the Agreement do not include an amount for GST. If GST is payable on any supply made by Dorner under the Agreement, the Customer must pay to Dorner, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by the Agreement to reimburse or indemnify Dorner for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that Dorner will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by Dorner in respect of the reimbursement or payment.

8.5 Set off

Dorner may set off any amount owing by the Customer to Dorner, whether or not due for payment, against any money due for payment by Dorner to the Customer under any agreement, understanding or arrangement between Dorner and the Customer.

9 Intellectual Property

9.1 Dorner's Intellectual Property

- (a) Nothing in the Agreement grants the Customer any ownership of, or rights in respect of, the Intellectual Property in the System (including any part of the Software) or any User Resources, any Intellectual Property in any materials created as a result of the performance of the Services or any improvements to the System or User Resources created in connection with the Agreement.
- (b) Any Intellectual Property in respect of the System (including any part of the Software) or User Resources (including in any improvements) or other Intellectual Property described in clause 9.1(a) which is created by or vests in the Customer during the Term is assigned to Dorner immediately upon the Intellectual Property being created or vesting in the Customer and the Customer must do all things reasonably necessary to effect such assignment.
- (c) During the Term Dorner grants the Customer a limited, non exclusive and revocable licence to use the Intellectual Property referred to in clauses 9.1(a) and 9.2(a) (other than Intellectual Property in the Software which will be subject to the Software Licence) solely to the extent such use is necessary for the Customer to use the System and receive the Services. Unless revoked earlier by Dorner, the licence granted under this clause 9.1(c) terminates immediately upon the termination or expiry of the Agreement.

9.2 Customer Intellectual Property

- (a) As between Dorner and the Customer, the Customer will own all Intellectual Property in respect of the System Generated Information and Data.
- (b) The Customer grants Dorner a non-exclusive, irrevocable, royalty free licence to reproduce and otherwise exploit the System Generated Information and Data and any other relevant Intellectual Property which is owned by, or licenced to, the Customer for:
 - (i) the purposes of providing the Services to the Customer;
 - (ii) any purposes which are ancillary to its provision of the Services or are otherwise necessary for the proper operation of the System; and
 - (iii) any purposes relating to the development or improvement of the System or the other products and services of Dorner.
- (c) The Customer grants Dorner a non-exclusive, irrevocable, royalty free licence to reproduce and otherwise exploit any Intellectual Property owned by, or licenced to, the Customer (including any logos or trade marks) for the purposes of Dorner promoting and marketing Dorner and the System.

10 Data

10.1 System Generated Information

The Customer acknowledges and agrees that:

- (a) System Generated Information is based on and generated from certain information which the Customer and its employees, officers and contractors submit to the System (including Data);
- (b) System Generated Information and the provision of the

Services does not constitute the provision of any advice, view or interpretation in respect of the performance or quality of the Customer's plant, the quality of any concrete or other material produced by the Customer's plant or the economics or financial viability of the Customer's plant;

- (c) System Generated Information may not take into account all of the specific circumstances relevant to the Customer; and
- (d) as the System Generated Information is based on and generated from Data and other information not controlled by Dorner, Dorner cannot guarantee the accuracy of any System Generated Information.

10.2 Privacy

Dorner agrees to comply with its obligations under the Privacy Act 1988 (Cth) in relation to its provision of the Services.

10.3 Back ups and archiving

The Customer acknowledges that:

- (a) Dorner is under no obligation to provide back up, archiving, record keeping or other similar services in respect of the System Generated Information and Data and the Customer is responsible for implementing and maintaining its own back up, archiving, record keeping and data retrieval procedures in respect of the System Generated Information and Data; and
- (b) Dorner shall not be held liable for any Loss which the Customer may suffer as a result of any System Generated Information or Data that has been deleted, destroyed or otherwise lost.

11 Liability

11.1 Liability of Dorner

- (a) Nothing in the Agreement should be interpreted as attempting to exclude, restrict or modify the application of any applicable provisions of the ACL or the Customer's rights to make a claim in respect of any Consumer Guarantees or other provision of the ACL.
- (b) Subject to clauses 11.1(a) and 11.1(c), the Customer agrees:
 - (i) to possess, use and operate the System at its own risk;
 - (ii) to the extent permitted by law, that Dorner excludes all liability for any Loss incurred by the Customer as a result of the Agreement or the Software Licence including in respect of any Loss to any property of the Customer; and
 - (iii) to the extent permitted by law, to release and discharge Dorner and its agents and employees from all claims and demands which the Customer may, but for this clause, have against Dorner.
- (c) Notwithstanding clause 11.1(b), if the Customer is a Consumer and the goods or services provided under the Agreement are Non PDH Goods or Services, Dorner's liability to the Customer in respect of a breach of a Consumer Guarantee is limited at the Customer's option to:
 - (i) in the case of goods:
 - (A) the replacement of the goods or the supply of equivalent goods;
 - (B) the repair of the goods;
 - (C) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) the payment of the cost of having the goods repaired; and
 - (ii) in the case of services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (d) Notwithstanding or limiting any other provisions under the Agreement and subject to the provisions of the ACL (or any other relevant law for which liability cannot be excluded or limited), the maximum aggregate liability of Dorner to the Customer arising out of or in connection with the Agreement will in no event exceed an amount equal to the Fees paid by the Customer to Dorner in the 12 months immediately prior to date the circumstances of relevant claim occurred.
- (e) Subject to clauses 11.1(a) and 11.1(c), Dorner and its representatives will not be liable to the Customer for any

indirect, special, incidental, or Consequential Loss incurred by the Customer under or in connection with the Agreement or as a result of the Customer's use of the System, even if Dorner and its representatives have been advised of the possibility of such Consequential Loss being incurred.

11.2 Notification of claims

The Customer must notify Dorner immediately if it becomes aware of any claim or any death, serious injury or serious illness in respect of, or caused by, the System, Equipment or Software and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.

12 Warranties

12.1 Warranties excluded

Subject to clause 11.1, Dorner does not warrant or guarantee that:

- (a) the System will be compatible with, or capable of being used on or in connection with, the Customer's hardware, software and communications systems;
- (b) the Customer's access to the System will be uninterrupted or error free;
- (c) the System and any System Generated Information and Data will be accurate, reliable or fit for any particular purpose; or
- (d) the Customer will derive any particular benefits from the use of the System or the provision of the Services.

12.2 Customer's warranty

The Customer acknowledges and warrants that it has relied on its own skill and judgment in the selection of the System and it has satisfied itself that the System is fit for all the purposes which the Customer requires it for.

13 Confidentiality

A party:

- (a) may use Confidential Information solely for the purposes of the Agreement;
- (b) must keep confidential all Confidential Information; and
- (c) may disclose Confidential Information only to (i) employees and contractors who (A) are aware and agree that the Confidential Information must be kept confidential and (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by the other party; (ii) as required by law or securities exchange regulation; or (iii) with the prior written consent of the other party.

14 Promotion

For the purposes of promoting and marketing Dorner and the System, Dorner is entitled to notify others of Dorner's relationship with the Customer and the Customer's use of the System.

15 Force Majeure

Dorner will not be liable for any failure to perform or delay in performing its obligations under the Agreement if that failure or delay is due to a Force Majeure Event.

16 Termination

16.1 Termination with cause

A party (**First Party**) may, by written notice to the other party (**Second Party**), terminate the Agreement with immediate effect:

- (a) if the Second Party fails to comply with any written notice issued by the First Party requiring the Second Party to remedy a breach, non-observance or non-performance of the Second Party's obligations under the Agreement within 7 days of receiving that notice from the First Party;
- (b) if the Second Party commits a material breach of the Agreement which is incapable of remedy; or
- (c) if the Second Party is the subject of an Insolvency Event.

16.2 Termination by Dorner

In addition to any rights of termination under clause 16.1, Dorner may, by written notice to the Customer, terminate the Agreement with immediate effect if the Customer uses the System in any way which Dorner considers may damage the reputation, brand or goodwill of Dorner or the System.

16.3 Consequences of termination

Upon termination or expiry of the Agreement taking effect:

- (a) the Customer must immediately:
 - (i) cease using and ensure that each of its employees, officers and contractors ceases using the System;
 - (ii) pay to Dorner all Fees, expenses or other sums payable to Dorner under the Agreement which have accrued or are payable at the date of termination; and
 - (iii) return to Dorner any User Resources in the Customer's possession or control.
- (b) Dorner may retain all Fees which have been paid by the Customer to Dorner prior to the termination or expiry of the Agreement (regardless of whether such Fees have been paid by the Customer in advance); and
- (c) Dorner ceases to have any obligations under the Agreement with respect to the provision of Services and may disconnect the Customer's access to the System.

16.4 Obligations continuing following termination

The termination or expiry of the Agreement does not operate to terminate any rights or obligations under the Agreement that by their nature are intended to survive termination or expiration, including the parties' rights and obligations under clauses 5.3, 8.2, 8.4, 9, 11, 12, 13, 16.3, 16.4, 18 and 19, and those rights or obligations remain in full force and binding on the parties.

17 Inconsistency

- (a) Unless otherwise specified in these terms and conditions, in the event of an inconsistency between any of the documents listed in clause 2(c), the following order of precedence will apply to the extent of the inconsistency:
 - (i) the prices, payment terms and description of the System and Services set out in the Proposal;
 - (ii) these terms and conditions;
 - (iii) any other terms of the Proposal;
 - (iv) without limiting clause 17(b), any terms in the Order which are accepted by Dorner in writing.
- (b) These terms and conditions will prevail over any Customer terms and conditions, except to the extent specifically agreed by Dorner in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on Dorner if expressly agreed by Dorner in writing.

18 Notices

Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party set out in the Proposal or otherwise notified by the receiving party from time to time. Notices will be deemed to have been received: by hand upon delivery; by post within six Business Days of sending; and by email one hour after the email is sent (unless the sender knows that email has failed to send).

18.1 Assignment

- (a) Subject to clause 18.1(b), a party must not assign or otherwise deal with any of its rights, interests or obligations under the Agreement without the prior written consent of the other party.
- (b) Dorner may assign any of its rights, interests or obligations under the Agreement to Dorner Electronic GmbH without the consent of the Customer.

19 General

- (a) Each party must pay its own costs of negotiating, preparing and executing the Agreement and performing its obligations under the Agreement.
- (b) The Agreement may only be amended or varied by a document in writing signed by each party.
- (c) Unless the Agreement expressly states otherwise, a party may, in its absolute discretion, give or withhold any approval or consent that the party may be requested to give under the Agreement in any way it considers appropriate, including by imposing conditions.
- (d) If any provision of the Agreement is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from the Agreement without affecting the validity or enforceability of the remaining provisions of the

Agreement.

- (e) No failure to exercise or delay in exercising any right given by or under the Agreement to a party constitutes a waiver and the party may still exercise that right in the future. No single or partial exercise of any right precludes any other or further exercise of that or any other right. Waiver of any right created under the Agreement must be in writing signed by the party giving the waiver.
- (f) The Agreement does not create a relationship of employment, agency, partnership or joint venture between the parties.
- (g) The *United Nations Convention on Contracts for the International Sale of Equipment (1980)* (**The Vienna Convention**) and any acts or regulations enacting The Vienna Convention will not apply to the Agreement and are excluded.
- (h) The Agreement constitutes the entire agreement between the parties about its subject matter and supersedes all previous communications, representations, understandings or agreements between the parties on the subject matter.
- (i) The Agreement is governed by the laws in force in Victoria and the parties submit to the exclusive jurisdiction of any courts of competent jurisdiction in Victoria and any courts that may hear appeals from those courts about any proceedings in connection with the Agreement.