10. Terms and Conditions

1. **Definitions**
   - 1.1 '**Account**' means the credit account with Tsurumi which Tsurumi has opened (or may open) for the Applicant's use pursuant to the Application.
   - 1.2 '**Applicant**' means the applicant named in section 1 of this application form.
   - 1.3 '**Application**' means the request by the Applicant that Tsurumi supply to it Goods and the application by the Applicant to Tsurumi for Tsurumi to open a credit account for the Applicant, as set out in this application form and Contract.
   - 1.4 '**Confidential Information**' means any and all commercially sensitive information relating to Tsurumi's business and the Goods including but not limited to know-how and trade secrets, however it does not include information in the public domain other than as a result of disclosure by the Applicant in breach of its obligations of confidentiality under these Terms and Conditions.
   - 1.5 '**Contract**' means the contracts of guarantee and indemnity forming part of this document.
   - 1.6 '**Day**' means a calendar day and not a business day (unless otherwise specified).
   - 1.7 '**Goods**' means any and all goods provided (or to be provided) by Tsurumi to the Applicant or to any third party at the request of or authorised by the Applicant.
   - 1.8 '**GST**' means Goods and Services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999*.
   - 1.9 '**Intellectual Property Rights**' means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how and any other intellectual or industrial property right, anywhere in the world whether or not registered.
   - 1.10 '**Loss**' means damage, loss, cost, expense or liability (whether actual or contingent).
   - 1.11 '**Tsurumi**' means Tsurumi Australia Pty Ltd ACN 632 173 650 (ABN 19 632 173 650) of 228 Great Eastern Highway, Ascot, Western Australia 6104.
   - 1.12 '**Website**' means each internet site owned by Tsurumi including, without limitation, that operating under the URL: www.tsurumipumps.com.au.
2. **Application**
   - 2.1 These Terms and Conditions apply in every case where Tsurumi provides Goods of any kind to the Applicant, unless otherwise agreed in writing between Tsurumi and the Applicant. Acceptance of Goods by the Applicant is conclusive evidence before any court that these Terms and Conditions (as varied from time to time) apply and are binding on the Applicant.
   - 2.2 The terms and conditions of any contract made pursuant to clause 5.1 prevail to the extent that they are inconsistent with these Terms and Conditions. To the extent to which no inconsistency arises, the provisions of these Terms and Conditions shall be taken to apply in addition to any terms and conditions expressed in the contract.
   - 2.3 These Terms and Conditions prevail to the extent that they are inconsistent with any trading terms or other communication provided by the Applicant to Tsurumi.
3. **Credit terms**
   - 3.1 For the purposes of considering whether to approve the Application and, upon approval of the Application, at any time during the existence and operation of the Account, the Applicant authorises Tsurumi to make such enquiries as Tsurumi may require to be satisfied as to the creditworthiness of the Applicant. For that purpose, Tsurumi may disclose the information in the Application and seek consumer credit information, per Part IIIA of the *Privacy Act 1988* (Cth) (**Privacy Act**). Without limiting the effect of this clause 3.1, Tsurumi may make such enquiries with any trade referee named by the Applicant, credit reporting agency or any other relevant third party. The Applicant agrees to provide such signed written authorities, permitting Tsurumi to access information pertaining to the Applicant, addressed to the Applicant's banker, or other credit providers, as Tsurumi requires from time to time.
   - 3.2 Tsurumi reserves the right to require, as a condition of the provision of credit, that the Applicant spend a minimum dollar amount per year to obtain Goods from Tsurumi.
   - 3.3 Tsurumi may specify in writing to the Applicant the maximum (GST inclusive) amount that may be charged to the Account over a particular period (**Credit Limit**). The Applicant's Credit Limit is subject to review at any time by Tsurumi. Tsurumi may, on request in writing by the Applicant, agree in writing to increase or decrease the Credit Limit. The balance of the Account at any one time must not exceed the Credit Limit. The Applicant agrees to immediately pay the amounts charged to the Account for any Goods supplied by Tsurumi in excess of the Credit Limit, whether or not demand for payment has been made by Tsurumi.
   - 3.4 The Applicant acknowledges and agrees that Tsurumi may (at any time in its absolute discretion, without notice and without giving any reason) refuse credit to the Applicant and/or suspend or cancel the Account or any credit facilities granted by Tsurumi to the Applicant. If Tsurumi suspends or cancels the Account under this clause 3.4, the balance of the Account and any amounts owing to Tsurumi but not then billed are immediately due and payable by the Applicant to Tsurumi.
   - 3.5 Tsurumi is not responsible for any Loss whatsoever or howsoever caused which the Applicant may suffer as a result of Tsurumi refusing to supply the Applicant with any Goods on credit or cancelling or suspending any credit facility granted to the Applicant.
   - 3.6 The Applicant is responsible for and agrees to indemnify Tsurumi against any unauthorised use of the Account. The Applicant must notify Tsurumi in writing of any unauthorised transactions on the Account immediately upon the Applicant becoming aware of them.
4. **Terms of Payment**
   - 4.1 The Applicant must pay to Tsurumi the entire amount payable shown on an invoice issued by Tsurumi to the Applicant (**Amount Payable**), unless otherwise specified by Tsurumi in writing, within thirty (30) Days of the date of the invoice. Notwithstanding this, Tsurumi reserves its right, as a condition of accepting any order for the supply of Goods, to require that the Amount Payable for Goods be paid in full on or prior to the delivery of the Goods to, or the collection of the Goods by, the Applicant.
   - 4.2 Any amount payable by the Applicant under these Terms and Conditions must be paid in Australian Dollars and without deduction, retention or set-off of any kind and for any reason whatsoever.
   - 4.3 If the Applicant makes any payment to Tsurumi, then Tsurumi may apply the payment to satisfy any obligation that the Applicant owes to Tsurumi. Further, Tsurumi may (a) apply or appropriate the payment in any order, in any manner, and at any time that it (in its absolute discretion) thinks fit, and (b) amend, re-apply or re-appropriate any application or appropriation.
   - 4.4 Invoices and statements shall be sent to the Applicant at the email address specified by the Applicant for that purpose in the Application (or such other address as the Applicant may notify Tsurumi in writing from time to time). This shall be sufficient notice of the amount due under the Account.
   - 4.5 Any complaint made by the Applicant that a transaction recorded on the Applicant's tax invoice is incorrect must be advised to Tsurumi in writing within seven (7) Days of the date of the tax invoice. If this does not occur, the transactions recorded in the tax invoice shall be

taken to be correct. If part of the amount in the tax invoice is in dispute, the Applicant agrees to pay the undisputed amount by its due date for payment.

4.6 Notwithstanding clause 4.5, the amount stated in a certificate signed by Tsurumi's duly authorised representative or solicitor as being due and payable by the Applicant to Tsurumi under these Terms and Conditions is prima facie evidence that such amount is owing.

4.7 Where the Applicant has defaulted in its payment obligations under these Terms and Conditions, any amounts owing by the Applicant to Tsurumi in connection with the Account may be deducted by Tsurumi from any fee payable by Tsurumi to the Applicant under any other agreement, contract or arrangement. However, this clause 4.7 does not in any way preclude or otherwise limit the rights of Tsurumi to pursue legal recourse in the event of default by the Applicant.

5. **Quotations, Orders and Contract**

5.1 A written quotation issued by Tsurumi to the Applicant is an offer to provide Goods to the Applicant and will not create any contract for the supply of Goods between Tsurumi and the Applicant until the Applicant accepts the quotation by written communication to Tsurumi or by its conduct in accepting provision of the Goods.

5.2 Tsurumi may withdraw, revoke or vary a written quotation at any time prior to the Applicant accepting the quotation.

5.3 A written quotation expires on the date specified as the expiry date. If no expiry date is specified, the written quotation expires 30 Days after the date of the written quotation.

5.4 Tsurumi shall have the right to cancel any contract made pursuant to clause 5.1 including the cancellation of the supply of Goods in respect of the same, at any time before the supply of the Goods by giving written notice to the Applicant. On giving such notice, Tsurumi shall repay to the Applicant any moneys paid in respect of the contract. Tsurumi shall not be liable for any Loss whatsoever arising from such cancellation.

6. **Price and Delivery**

6.1 The Amount Payable by the Applicant to Tsurumi for the supply of Goods is at Tsurumi's sole discretion and shall be Tsurumi's quoted price provided that the Applicant accepts Tsurumi's written quotation within thirty (30) Days of the date on the written quotation.

6.2 Tsurumi reserves the right to vary the price in the event of a variation to the scope or particulars of the Goods to be provided pursuant to the written quotation (**Variation**). In the event that a Variation is proposed by either party, Tsurumi shall specify in writing its amended price for the Goods as varied and upon acceptance by the Applicant of the Goods as varied, alternatively acceptance in writing, that amended price shall determine the Amount Payable.

6.3 In addition to the Amount Payable by the Applicant to Tsurumi for the supply of Goods, the Applicant will pay to Tsurumi any GST or other taxes related to, or arising out of, the supply of the Goods by Tsurumi and any other taxable supply arising under these Terms and Conditions or the Application.

6.4 The Applicant agrees to hold Tsurumi fully indemnified with respect to all GST paid or payable by Tsurumi in respect of any supply to the Applicant.

6.5 Unless otherwise agreed in writing between Tsurumi and the Applicant, the Applicant will, at the Applicant's cost (including all insurance and transport costs), arrange for the collection of Goods, which are the subject of orders, from Tsurumi's premises (or other location specified by Tsurumi) and Tsurumi will provide the Applicant with any documents or information necessary to collect the Goods.

7. **Rights in Relation to Goods**

7.1. The Applicant and Tsurumi agree that:

7.1.1. Property and ownership (both legal and equitable title) in all Goods sold or otherwise provided by Tsurumi to the Applicant remains with Tsurumi until all money which the Applicant (now or in future, actually or contingently) owes to Tsurumi is paid in full;

7.1.2. Risk in the Goods shall pass to the Applicant when the Goods are delivered to or collected by (as the case may be) the Applicant (or the Applicant's agent, contractor, nominee or courier). The Applicant shall insure (and keep insured) all Goods on the following conditions until such time as property and ownership (both legal and equitable title) in the Goods passes to the Applicant:

7.1.2.1. The Goods shall be insured for their full insurable or replacement value (whichever is higher); and

7.1.2.2. The Goods shall be insured by an insurer licensed or authorised to conduct the business of insurance in the place where the Goods will be stored.

7.1.3. If the Applicant fails to pay for the Goods within the period of credit (if any) extended by Tsurumi to the Applicant:

7.1.3.1. The Applicant shall deliver the Goods to Tsurumi, when demanded by Tsurumi or its agent; or

7.1.3.2. Tsurumi may recover possession of the Goods by any necessary means at any site owned, possessed or controlled by the Applicant;

7.1.3.3. The Applicant agrees that Tsurumi has an irrevocable licence to exercise its rights under clause 7.1.3.2;

7.1.3.4. The Applicant shall be liable for all costs associated with the exercise of Tsurumi's rights under this clause 7, and this liability shall be payable on demand.

7.2. Tsurumi and the Applicant agree that, until property and ownership (both legal and equitable title) in the Goods has passed to the Applicant:

7.2.1. The Applicant will not supply or give up possession of any Goods to any third party outside of its ordinary or usual course of business;

7.2.2. The Applicant will not grant or register (or allow any person to have, acquire or register) any 'security interest' (within the meaning of the Personal Property Securities Act 2009 (**PPSA**)) in the Goods;

7.2.3. The Applicant will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by Tsurumi;

7.2.4. The Applicant must not remove, deface or obliterate any identifying place, mark or number on any of the Goods;

7.2.5. Where the Applicant is in actual or constructive possession of the Goods:

7.2.5.1. The Applicant shall hold the Goods as fiduciary bailee and agent for Tsurumi;

7.2.5.2. After giving 48 hours notice to the Applicant, Tsurumi shall be entitled to enter upon the Applicant's premises between 9am and 5pm to inspect the Goods;

7.2.5.3. The Applicant will not deliver the Goods, or any document of title to the Goods, to any person except as directed by Tsurumi;

7.2.5.4. The Applicant shall store the Goods separately and in a manner that enables the Goods to be identified and cross-referenced to particular invoices issued to the Applicant by Tsurumi; and

7.2.5.5. Without limiting the effect of Division 2 of Part 2.4 of the PPSA (Proceeds and Transfer) or any other provision of the PPSA, the proceeds of any Goods sold shall be kept in a separate account and shall not be mixed with any other moneys, including funds of the Applicant.

7.2.6. Without limiting the effect of Part 3.3 (Accessions) or Part 3.4 (Processed or Comingled Goods) of the PPSA, the Applicant acknowledges that if it should mix the Goods with other products or items such that the Goods are no longer separately identifiable, then the Applicant and Tsurumi shall be owners in common of the new product;

7.2.7. The Applicant has no right to claim any interest in the Goods to secure any liquidated debt or obligation Tsurumi owes to the Applicant; and

7.2.8. The Applicant cannot claim any lien over the Goods.

8. **Default and Consequences of Default**

8.1. In the event that the Applicant fails to make any payment when due then (without prejudice to the application of any other provision contained in these Terms and Conditions or to any other remedy provided for by these Terms or Conditions or otherwise):

8.1.1. the Applicant must (on demand) pay to Tsurumi interest on the amount of the overdue payment calculated daily at the rate of ten percent 10% per annum from the date payment was due until the date that it is paid in full; and

8.1.2. Tsurumi may withhold the supply of Goods and may (in addition but without limiting the preceding right) cancel all outstanding orders by the Applicant and retain any payments already made.

8.2. No cheque will be treated as payment if dishonoured despite the issue of a receipt. The Applicant will be responsible for any charge or fee issued to Tsurumi for any cheques not met on presentation.

8.3. The Applicant unconditionally and irrevocably indemnifies Tsurumi from and against all costs and disbursements (including, without limitation, legal and/or collection agency costs) incurred by Tsurumi in pursuing any outstanding amount or amounts owing by the Applicant to Tsurumi which have not been paid by their due date for payment.

8.4. Without prejudice to any other remedies Tsurumi may have, if at any time the Applicant is in breach of any obligation (including those related to payment) which the Applicant owes to Tsurumi, Tsurumi may suspend any of its obligations under these Terms and Conditions. Tsurumi is not liable to the Applicant for any Loss the Applicant suffers because Tsurumi has exercised its rights under this clause 8.4.

8.5. Without prejudice to any other remedies which Tsurumi may have at law or in equity, Tsurumi shall be entitled to cancel all or any part of any order of the Applicant which remains unfulfilled and all amounts owing to Tsurumi shall, whether or not due and payable, become immediately payable in the event that:

8.5.1. any money payable by the Applicant to Tsurumi becomes overdue, or in Tsurumi's opinion the Applicant will be unable to meet its payments as they fall due; or

8.5.2. the Applicant becomes bankrupt, insolvent, convenes a meeting with its creditors or proposes to or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

8.5.3. a receiver, manager, administrator, liquidator (provisional or otherwise), trustee in bankruptcy or similar person is appointed in respect of the Applicant or any asset of the Applicant.

9. **Tsurumi's Warranty**

9.1. Tsurumi warrants that all Goods will, from the date of collection or shipment from Tsurumi's branch, be free from defects in workmanship and materials under normal use and service for a period of one (1) year provided that:

9.1.1. the Applicant notifies Tsurumi immediately upon discovery of such defect by completing Tsurumi's online warranty claim form available via the Website (see URL at clause 9.7) which completed form shall include a detailed description of the defect and photographic evidence;

9.1.2. the Goods are returned to Tsurumi at the address at clause 9.7 (unless otherwise advised by Tsurumi), freight prepaid by the Applicant (including transport insurance costs);

9.1.3. Tsurumi, acting reasonably, is satisfied upon examination that the claimed defect exists and was not caused by:

9.1.3.1. accident, misuse, neglect, alteration, improper use, improper repair, improper testing, misapplication, wilful damage, lightning, power surges, fire, flood or earthquake or any other cause not attributable to Tsurumi;

9.1.3.2. failures due to mechanical damage to wearing parts such as impeller, pump housing and/or mechanical seal;

9.1.3.3. installation, commissioning, operation (e.g. use of the Goods outside their specifications) or maintenance not in accordance with Tsurumi's installation, operation, maintenance or service manuals or other written instructions / directions by Tsurumi; and/or

9.1.3.4. use of faulty or inadequate ancillary equipment in conjunction with the Goods;

9.1.4. the Goods have not been disassembled without the prior written approval of Tsurumi; and

9.1.5. Tsurumi will, at its discretion, have a reasonable time within which to make repairs, to replace the Goods found to be defective, or to credit the Applicant's account or refund the Applicant.

9.2. If a third-party assessment is reasonably required with respect to the Goods returned to Tsurumi under the warranty in this clause 9, the Applicant claiming on the warranty is required to pay for that assessment. If the Goods are found to be defective by reason of a cause attributable to Tsurumi, Tsurumi will refund the Applicant for the cost of that assessment.

9.3. If any Goods returned to Tsurumi are found to be defective by reason of a cause attributable to Tsurumi, Tsurumi will refund or apply a credit to the Applicant's account for the reasonable freight charges incurred by the Applicant in returning the Goods pursuant to clause 9.1.2.

9.4. Tsurumi will return Goods repaired or replaced under warranty freight prepaid to the Applicant.

9.5. The warranty contained in this clause 9 is in addition to the Applicant's rights and remedies at law ("**Statutory Rights**"), including under the Australian Consumer Law (**ACL**).

9.6. If the Applicant is a "consumer" under the ACL, the following notice applies to that Applicant:
Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

9.7. Tsurumi's details for the making of warranty claims are:
Tsurumi Australia Pty Ltd ACN 632 173 650
Telephone Number: 1300 917 915
Address: Unit 8, 175 Campbell Street, Belmont, Western Australia 6104
Email Address: Sales@tsurumipumps.com.au
URL: https://tsurumipumps.com.au/warranty/

10. **Limitation of Liability**

10.1. In respect of any Goods or services supplied under these Terms and Conditions which are acquired by a "consumer" (as defined in the ACL), but are not of a kind ordinarily acquired for personal domestic or household use or consumption, unless the Applicant establishes the following limitation of liability would not be fair and reasonable, Tsurumi's liability for a breach of a guarantee contained in part 3-2, division 1 of the ACL (other than a guarantee under sections 51, 52 or 53) is limited to:

10.1.1. in the case of Goods, any one or more of:

(i) the replacement of the Goods or the supply of equivalent goods;

(ii) the repair of the Goods;

(iii) the payment of the cost of replacing the Goods or of acquiring equivalent goods; and

(iv) the payment of the cost of having the Goods repaired; or

10.1.2. in the case of services:

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

10.2. Except where inconsistent with the Statutory Rights and/or the rights given by clauses 9 or 10.1 (if applicable):
10.2.1. all other warranties and all liability of Tsurumi for any loss or damage direct and consequential is expressly excluded;
10.2.2. Tsurumi assumes no responsibility for compliance with any regulations, codes, standards, or ordinances applicable to the installation, location, operation or maintenance of the Goods;
10.2.3. Tsurumi is not liable for default or failure in performance of its obligations pursuant to this agreement resulting directly or indirectly from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, the elements, strikes, labour disputes, shortage of suitable parts, components, materials including ink, chemicals and paper, labour or transportation or any other cause beyond the reasonable control of Tsurumi; and
10.2.4. the liability of Tsurumi whether in contract or in tort, in respect of all claims for loss, damage or injury in respect of any Goods arising from a breach of any of Tsurumi's contractual obligations, from any negligence or any act, matter or thing done or permitted to be done by Tsurumi, its servants, agents and contractors shall not in the aggregate exceed the amount paid or payable by the Applicant to Tsurumi for those Goods.

11. **The Applicant's Warranty**
11.1. The Applicant warrants, represents, guarantees and acknowledges to Tsurumi that:
11.1.1. all statements made, and documents provided, in connection with the Application and all representations that the Applicant has made or may make during the existence and operation of the Account to Tsurumi are true and correct; and
11.1.2. the Account is required for the Applicant's business or commercial purposes and will not be used for personal, domestic or household purposes.

12. **Indemnity**
12.1. The Applicant agrees to indemnify and hold harmless Tsurumi, its employees and agents from and against any Loss including, but not limited to:
12.1.1. legal costs and expenses on a solicitor and client basis;
12.1.2. Loss (including consequential loss) in relation to property;
12.1.3. Loss in respect of personal injury, disease, illness or death;
12.1.4. economic Loss; and
12.1.5. Loss in relation to the environment,
caused by a breach by the Applicant of these Terms and Conditions or any other contract between the Applicant and Tsurumi, or any willful, unlawful or negligent act or omission by the Applicant. Tsurumi and its employees and agents shall not be held responsible for any Loss suffered by the Applicant (whether by disruption to the Applicant's normal business operation, defect in workmanship or any other reason whatsoever) in relation to the supply of Goods by Tsurumi to the extent to which the loss is caused by or arises as a result of such breach, act or omission.

13. **Tsurumi's enforcement costs**
13.1. The Applicant must pay to Tsurumi any amounts reasonably incurred or expended by Tsurumi in exercising its rights under or in respect of these Terms and Conditions as a result of any default by the Applicant under these Terms and Conditions or as a result of any of the following circumstances:
13.1.1. Tsurumi being induced by fraudulent misrepresentation on the Applicant's part to approve the Application; or
13.1.2. The amount charged to the Applicant's Account exceeding the Credit Limit at any time without the prior written approval of Tsurumi; or
13.1.3. Any amount charged to the Account being due and unpaid (amounts disputed in accordance with clause 4.5 are not considered due until the dispute is resolved); or
13.1.4. any change of circumstances, including, without limitation, changes in the Applicant's constitution, ownership, membership, control status or ability to provide security for payments of amounts which have been or are likely to be charged to the Account, making the continued operation of the Account undesirable or unsatisfactory (in Tsurumi's opinion); or
13.1.5. The Applicant:
13.1.5.1. Being a company, becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration; or
13.1.5.2. Being a partnership, dissolves, threatens or resolves to dissolve or being in jeopardy of dissolving; or
13.1.5.3. The Applicant being a natural person, dies; or
13.1.6. The Applicant ceasing or threatening to cease conducting business in the normal manner; or
13.1.7. The Applicant using the Account for any non-commercial purposes including, without limitation, for personal, domestic or household purposes; or
13.1.8. The Applicant otherwise being in default of its obligations under these Terms and Conditions or any contract made thereunder.

14. **Confidential Information**
14.1. The Applicant will not, without the prior written approval of Tsurumi, disclose Tsurumi's Confidential Information.
14.2. The Applicant will not be in breach of clause 14.1 to the extent to which it is legally compelled to disclose Tsurumi's Confidential Information.
14.3. The Applicant must ensure that its officers, employees and agents, and any sub-contractors, do not make public, disclose or use for any purpose other than that expressly permitted by these Terms and Conditions Tsurumi's Confidential Information.

15. **Intellectual Property**
15.1. Nothing in these Terms and Conditions constitutes a transfer of any Intellectual Property Rights. Tsurumi reserves all rights not expressly granted to the Applicant.
15.2. Tsurumi (and its licensors as applicable) owns all Intellectual Property Rights in the Goods (including in the specification and design), and all material underlying and forming part of the Goods. The Applicant must not reproduce, copy or reverse engineer the Goods.

16. **Notice**
16.1. Any notice, demand, direction, permission, control, authorisation, or other communication (each a **notice**) required or permitted, whether expressly, or by necessary implication, to be given under these Terms and Conditions is:
16.1.1. to be in writing addressed to the address of the intended recipient shown in the Application or Terms and Conditions (Tsurumi's address is specified at clause 9.7) or to such other address as has been most recently notified by the intended recipient to the party giving the notice;
16.1.2. to be signed by a person duly authorised by the sender; and
16.1.3. be deemed to have been given and served:
16.1.3.1. where delivered by hand or by courier, at the time of delivery;
16.1.3.2. where sent by ordinary mail, seven (7) Days after the day of posting;
16.1.3.3. where dispatched by security post on the seventh (7^{th}) Day after the date on which the notice is accepted for posting by the relevant postal authorities;
16.1.3.4. where dispatched by facsimile transmission, at the time recorded on the transmitting machine; and

16.1.3.5. where dispatched by email, when the sender's computer indicates that the message has been received and that it has not bounced,

but if delivery or receipt is later than 5:00 pm (local time) on a business day, the notice is deemed to have been given and served on the next business day.

17. **Assignment**

17.1. A party must not assign all or any of its rights under these Terms and Conditions without the prior written consent of the other party.

17.2. Tsurumi may sub-contract all or any part of its rights or obligations arising under these Terms and Conditions without the Applicant's consent.

18. **Personal Property Securities Act 2009 (Cth) (PPSA)**

18.1. The Applicant hereby acknowledges that the Application (including these Terms and Conditions) constitutes a security agreement which creates a 'purchase money security interest' in favour of Tsurumi in respect of the Goods.

18.2. The Applicant acknowledges and agrees that these Terms and Conditions create a security interest in the Goods (including, without limitation, by virtue of clause 7.1.1 of these Terms and Conditions) in favour of Tsurumi.

18.3. The Applicant undertakes to:

18.3.1. sign any further documents and provide any further information (which information the Applicant warrants to be complete, accurate and up-to-date in all respects) which Tsurumi may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register (**PPSR**) in respect of any security interest granted by the Applicant to Tsurumi;

18.3.2. do all other things that Tsurumi at any time reasonably requires or considers necessary or desirable to (with respect to any security interest), ensure the security interest is enforceable and perfected or enable the enforcement of the security interest by Tsurumi;

18.3.3. not register a financing statement or financing change statement, or make a demand to alter any financing statement pursuant to section 178 of the PPSA, in respect of the Goods without the prior consent of Tsurumi;

18.3.4. pay all costs incurred by Tsurumi in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce any security interest created by these Terms and Conditions including executing subordination agreements;

18.3.5. be responsible for the full costs incurred by Tsurumi (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA.

18.4. To the full extent permitted by the PPSA and by law, the following apply with respect to each and every security interest granted by the Applicant to Tsurumi:

18.4.1. PPSA sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 are excluded and contracted out of;

18.4.2. the Applicant waives all rights under the PPSA to receive any notice (including the right to notice of a 'verification statement' pursuant to PPSA section 157); and

18.4.3. Tsurumi need not give to the Applicant any notice required under the PPSA.

18.5. The Applicant agrees that immediately on request by Tsurumi the Applicant will procure from any persons considered by Tsurumi to be relevant to its security position such agreement and waivers as Tsurumi may at any time require.

19. **General**

19.1. Upon acceptance of these Terms and Conditions by the Applicant, these Terms and Conditions become binding and, subject to clause 20, can only be amended with the written consent of Tsurumi.

19.2. The Applicant shall give to Tsurumi not less than fourteen (14) Days prior written notice of any proposed change of ownership of the Applicant or any change to the Applicant's constitution, membership, control status, or the Applicant's name and/or any other change in the Applicant's details including, but not limited to, changes in the Applicant's physical or postal address, email address, facsimile number or business practice. The Applicant shall be liable for any loss incurred by Tsurumi as a result of the Applicant's failure to comply with this clause 19.2.

19.3. If any provision of these Terms and Conditions or their application to any person or circumstance is or becomes invalid or unenforceable, that provision will be taken to be omitted without invalidating or modifying the remaining provisions of these Terms and Conditions which will continue in full force and effect as if the invalid or unenforceable provision had not been included in them.

19.4. These Terms and Conditions and any contract to which they apply shall be governed by the laws of Western Australia and the Applicant irrevocably submits to the exclusive jurisdiction of the Courts of that jurisdiction.

19.5. The Applicant acknowledges that the Applicant has had the opportunity to obtain independent legal advice before signing the Application and/or accepting these Terms and Conditions.

19.6. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

19.7. The failure of Tsurumi to enforce any provision of these Terms or Conditions or any provision of any contract made thereunder shall not be treated as a waiver of that provision, nor shall it affect Tsurumi's right to subsequently enforce that provision.

20. **Variation**

20.1. Tsurumi may vary these Terms and Conditions from time to time.

20.2. Tsurumi may give notice of any variation of these Terms and Conditions on its Website and may (but is not obliged to) notify the Applicant that it has varied these Terms and Conditions in an invoice, statement or other written communication by Tsurumi to the Applicant.

20.3. If the Applicant continues to deal with and place orders for the provision of Goods with Tsurumi after any such notification to the Applicant, the Applicant is taken to have agreed to these Terms and Conditions as varied and to have taken delivery of Goods on those varied Terms and Conditions.