



SCHRAMM AUSTRALIA
STANDARD TERMS AND CONDITIONS OF TRADE

PLEASE NOTE: THESE TERMS AND CONDITIONS APPLY TO ALL OUR SALE AGREEMENTS AND ANY ORDER PLACED WITH US CONSTITUTES YOUR AGREEMENT TO BE BOUND BY THESE TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context otherwise requires, in these Terms and Conditions:

"**Agreement**" means a contract or agreement between Schramm and the Customer for the sale or supply of Goods to which these Terms and Conditions apply or are incorporated;

"**Australian Consumer Law**" or "**ACL**" means the *Australian Consumer Law* within the meaning of the *Competition and Consumer Act 2010* (Cth) and/or the *Fair Trading Act 2010* (WA);

"**Customer**" means the person buying, ordering or purchasing the Goods as specified by or in any order, request, quote, purchase order, invoice or document;

"**Default Event**" has the meaning given to it by clause 16;

"**Goods**" means all goods or services supplied or to be supplied by Schramm to the Customer at the Customer's request from time to time;

"**GST**" means the goods and services tax as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"**Intellectual Property**" means all present and future rights in or in relation to copyright, trademarks, patents, designs, circuit layouts and any other intellectual property rights or licences;

"**Loss**" means any and all damage, loss, injury, harm, liability, action, claims, proceedings, expenses, disbursements and/or costs (whether direct, indirect, consequential, incidental or otherwise), including arising out of a claim by a third party;

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth);

"**PPSR**" means the Personal Property Securities Register within the meaning defined under the PPSA;

"**Prescribed Event**" means any Acts of God, war, flood, fire, storms, natural disasters, riots, terrorism, strikes, criminal acts, accidents, industrial action, government restrictions, technical malfunctions, supply issues, transportation issues and other facts, circumstances, matters or things beyond Schramm's reasonable control;

"**Price**" means the price payable for the Goods as agreed between Schramm and the Customer in accordance with an Agreement;

"**Schramm**" means Airdrill Pty Ltd (ACN: 109 184 447) trading as Schramm Australia and its successors and assigns; and

"**Terms and Conditions**" means the terms and conditions set out in this document;

1.2 Unless the context indicates otherwise, in these Terms and Conditions:

- (a) a reference to the singular include the plural and vice versa;
- (b) a reference to any gender include the other genders;
- (c) a reference to a person includes a body corporate, firm or unincorporated association or authority;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns;
- (e) a reference to any statute refers to that statute as amended from time to time;
- (f) a reference to a numbered clause includes a paragraph, sub-paragraph or sub-clause;

- (g) any other grammatical form of a defined word or phrase will have a corresponding meaning;
- (h) a reference to writing includes email;
- (i) if a day on or by which an obligation must be performed is not a business day, the obligation must be performed on or by the next business day;
- (j) every obligation entered into by two or more parties binds them jointly and each of them severally; and
- (k) the headings contained in the Terms and Conditions are included for convenience only and do not affect the meaning or interpretation of these Terms and Conditions.

2. APPLICATION

2.1 Unless otherwise agreed in writing, these Terms and Conditions shall apply to all transactions and be incorporated into every contract between the Customer and Schramm in relation to the supply of Goods.

2.2 Unless otherwise agreed in writing, these Terms and Conditions embody the entire agreement between the parties in relation to the subject matter covered by these Terms and Conditions.

2.3 Under an Agreement, any special terms or conditions expressly agreed between the parties in writing shall take precedence over these Terms and Conditions to the extent of any inconsistency.

3. QUOTES

3.1 Schramm may provide the Customer with a quote in relation to Goods. Unless otherwise stated or unless varied or withdrawn earlier, a quote is valid and open for acceptance for 30 days from the date of issue.

4. ORDERS

4.1 An order with Schramm may be placed in person, by phone, fax, email, post or other means of communication.

4.2 Any order for Goods placed by the Customer whether in writing, orally or by conduct shall constitute acceptance by the Customer of these Terms and Conditions.

5. SUPPLY OF GOODS

5.1 In respect of an Agreement, Schramm agrees to supply the Goods to the Customer in accordance with the Agreement and in consideration of the payment of the Price by the Customer.

6. PRICE

6.1 The Customer agrees to pay the Price to Schramm in accordance with the Agreement.

6.2 Unless otherwise agreed under an Agreement, the Price will be payable by the Customer:

- (a) according to an instalment payment schedule specified by Schramm as part of an Agreement;
- (b) if no payment schedule is specified and Schramm agrees to supply Goods on credit, the date specified on any invoice as being the due date for payment or, in the absence of such a date, twenty-one (21) days following the date of the invoice; or
- (c) otherwise, on or before supply or delivery of the Goods.

6.3 Unless otherwise stated, the Price and all other prices and amounts quoted, advertised or invoiced by Schramm are exclusive of any applicable taxes, duties and freight charges.

6.4 Schramm reserves the right to vary the Price if Goods are ordered by the Customer on back-order to be supplied at a later date.

7. GOODS AND SERVICES TAX (GST)

7.1 In addition to the Price, the Customer agrees to pay to Schramm an amount being the amount of GST payable in relation to any taxable supply made by Schramm. Unless otherwise agreed by Schramm, the Customer is liable to pay such an amount at the time when the Customer is liable to pay the Price for any Goods.



8. INVOICING AND PAYMENT

- 8.1 Any amount payable to Schramm under an Agreement may be invoiced to the Customer. Unless otherwise agreed or specified by Schramm, all amounts invoiced to the Customer must be paid in full within 30 days from the date of the invoice.
- 8.2 Any amount overdue and outstanding under an Agreement shall attract interest payable by the Customer at the rate of 10% per annum and such interest shall accrue on a daily basis until the amount payable is paid.
- 8.3 Unless otherwise agreed, payment may be made by cash, cheque, bank cheque, credit card, electronic or online banking, or by any other means specified by Schramm.
- 8.4 Any form of payment made to Schramm other than cash shall be deemed not to have been received until that form of payment has otherwise been honoured or cleared.
- 8.5 If any discount is provided to the Customer in relation to the supply of any Goods, it is provided on the condition that payment is made in full by the date required in accordance with the Agreement.
- 8.6 The Customer may not set-off any amount which the Customer is owed or claims to be owed by Schramm from the Price or any other amount owing by the Customer.

9. DELIVERY

- 9.1 Unless Schramm otherwise agrees, the Customer shall pay for the Goods in full prior to delivery or collection by the Customer.
- 9.2 Unless otherwise agreed, any Goods supplied by Schramm are supplied from Schramm's premises and the Customer shall arrange the timely collection of the Goods from Schramm's premises once the Goods are available for collection.
- 9.3 If Schramm agrees to arrange for the delivery of any Goods for the Customer then:
- (a) the Customer shall pay Schramm for any freight and delivery costs including:
 - (1) reasonable packing and handling fees; and
 - (2) any transit insurance requested by the Customer;
 - (b) Schramm may arrange delivery of the Goods through such carrier or by such means of transport as it considers appropriate;
 - (c) Schramm may arrange for the Goods to be delivered in separate deliveries or instalments;
 - (d) in the event that the Customer is unable or unwilling to accept delivery as scheduled or arranged, then Schramm may charge a reasonable fee for re-delivery and storage of the Goods; and
 - (e) Schramm will take reasonable care to ensure that the Goods are packaged adequately for transit however Schramm will not be liable for any damage or loss caused during transit.
- 9.4 For the purposes of these Terms and Conditions, Goods are taken to be delivered ("**Delivery**") at the time that:
- (a) the Customer or the Customer's agent or nominated carrier takes possession of the Goods; or
 - (b) Schramm or Schramm's agent or nominated carrier delivers the Goods to the Customer's nominated address or to a third party nominated by the Customer.
- 9.5 To the extent permitted by law, Schramm shall not be liable to the Customer for any Loss caused by any delays in supplying or delivering Goods.

10. COMMISSIONING

- 10.1 Unless otherwise agreed, where Schramm is to commission Goods for the Customer under an Agreement:

- (a) the responsibility of Schramm in commissioning the Goods is limited to ensuring all systems and components of the Goods are functioning as they are designed;
- (b) the Customer shall (at its own cost):
 - (1) provide such access to the site at the Customer's premises to Schramm's employees and agents as required by Schramm to allow for the commissioning to occur;
 - (2) arrange and provide all travel, accommodation and meals for Schramm's employees and agents;
 - (3) arrange and provide transport to the Customer's premises of any specialty tools or equipment which are required by Schramm to facilitate the commissioning;
 - (4) pay Schramm for any necessary modifications required by the Customer which were not previously agreed with Schramm; and
 - (5) provide such other assistance that may be reasonably required by Schramm to facilitate the commissioning.

11. ACCEPTANCE OF GOODS

- 11.1 The Customer shall inspect any Goods on delivery (or collection as the case may be) and must within seven (7) days of Delivery notify Schramm in writing of any:
- (a) reasonably evident faults, defects, damage or shortage in quantity; and
 - (b) other matter or thing that the Customer alleges is not in accordance with the Customer's order.
- 11.2 Upon such notification under this clause 11:
- (a) the Customer must allow Schramm the opportunity to inspect the Goods; and
 - (b) Schramm must rectify or otherwise ensure that the Goods comply with the Agreement.
- 11.3 Subject to these Terms and Conditions and any non-excludable warranties or applicable law, if the Customer fails to notify Schramm in accordance with this clause, the Goods shall be deemed not to be defective and to have been supplied to the Customer in accordance with the Agreement.

12. RISK

- 12.1 The risk in the Goods passes to the Customer immediately upon the earlier of:
- (a) Delivery; or
 - (b) title in the Goods passing to the Customer.

13. TITLE

- 13.1 Any Goods shall remain the property of Schramm until full payment is received for the Goods.
- 13.2 Until ownership of the Goods passes to the Customer:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Schramm in the event that a Default Event occurs;
 - (b) the Customer must ensure the Goods are kept safe and secure and are not otherwise damaged or destroyed;
 - (c) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Schramm and must pay to Schramm the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (d) the Customer shall not sell, dispose, or otherwise part with possession of the Goods and shall not grant any interest or encumbrance in or over the Goods. In the event that the Customer sells, disposes or parts with possession of the Goods or grants any encumbrance in the Goods then the Customer holds any proceeds received on trust for Schramm; and

- (e) the Customer irrevocably authorises Schramm and its agents to enter any of its premises where Schramm reasonably believes the Goods are kept and retake possession of all or any of the Goods in the event that a Default Event occurs.
- 14. SECURITY AND CHARGE OF PROPERTY**
- 14.1 In consideration of Schramm agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any real, personal or other property capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under any Agreement and, in addition to any security granted under these Terms and Conditions, the Customer further grants to Schramm the right to lodge an absolute caveat against any real property.
- 15. PERSONAL PROPERTY SECURITIES ACT**
- 15.1 In this clause, unless the context requires otherwise, the phrases “**security interest**”, “**security agreement**”, “**financing statement**” and “**financing change statement**”, have the meanings given to them by the PPSA.
- 15.2 The Customer acknowledges, consents and agrees that:
- (a) an Agreement constitutes a security agreement for the purposes of the PPSA;
- (b) an agreement incorporating these Terms and Conditions creates a security interest in any personal property of the Customer which is otherwise charged by these Terms and Conditions;
- (c) to the extent permitted by law, sections 96, 117 and 125 of the PPSA do not apply to an Agreement which is a security agreement;
- (d) Schramm may register a security interest created under an Agreement on the Personal Property Securities Register (PPSR) and the Customer agrees to do all things necessary to affect such a registration and ensure that such a security interest is enforceable;
- (e) it will promptly sign any documents and provide any further information which Schramm may reasonably require to properly register a financing statement or financing change statement in relation to a security interest on the PPSR or any other document required to be registered by the PPSA;
- (f) it will not register a financing change statement in respect of a security interest or a financing change statement in favour of a third party without the prior written consent of Schramm; and
- (g) it will unconditionally ratify any actions taken by Schramm under this clause.
- 15.3 To the extent permitted by law, the Customer agrees that it waives its rights:
- (a) to receive a verification statement in accordance with section 157 of the PPSA or to otherwise receive notice of the registration of any security interest on the PPSR; and
- (b) to receive notices or statements under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 135 of the PPSA.
- 16. DEFAULT**
- 16.1 In this clause, “**Default Event**” means any of the following:
- (a) the Customer fails to make a payment due to Schramm under an Agreement;
- (b) the Customer is alleged to have breached any of the Customer’s obligations under an Agreement and fails to remedy or otherwise address the alleged breach within 14 days of being given notice to do so by Schramm;
- (c) the Customer makes or formally proposes to make arrangements with creditors;
- (d) execution is levied or enforced against any of the Customer’s assets;
- (e) a receiver or manager is appointed over or in relation to the Customer or any of its assets;
- (f) the Customer ceases or suspends, or threatens to cease or suspend, conduct of its business in the normal manner;
- (g) the Customer commits an act of bankruptcy or otherwise becomes bankrupt or insolvent or enters voluntary administration; or
- (h) the Customer has commenced or resolved to commence winding up.
- 16.2 For the purpose of these Terms and Conditions, the Customer will be in default if a Default Event occurs.
- 16.3 The Customer must notify Schramm of the occurrence, or likely occurrence, of a Default Event as soon as practicable.
- 16.4 Upon the happening of a Default Event, any monies payable by the Customer under an Agreement become immediately due and payable.
- 16.5 Where a Default Event occurs, in addition to any other rights or remedies provided by these Terms and Conditions, Schramm may in its discretion do any or all of the following:
- (a) refuse to deliver or further provide or supply Goods to the Customer and cancel or suspend any unfulfilled orders for Goods;
- (b) vary or withdraw any approved credit limits or arrangements;
- (c) cancel or revoke any discount, rebate, or allowance provided to or due or payable to the Customer as at the date of the happening of the Default Event;
- (d) repossess and sell any Goods delivered to the Customer, for which payment has not been received;
- (e) commence any debt recovery process or action as Schramm sees fit;
- (f) retain all other money paid on account of Goods or otherwise (where applicable); and
- (g) terminate any Agreement.
- 17. ORDER CANCELLATION**
- 17.1 No order may be cancelled without the consent of Schramm (which may be withheld by Schramm in its absolute discretion) and any reasonable delay in supplying Goods to the Customer does not entitle the Customer to terminate an Agreement.
- 17.2 Unless otherwise agreed, where Schramm agrees to the cancellation of an order by the Customer, the cancellation is subject to:
- (a) the Customer paying the Price for any Goods already supplied or delivered (or part thereof); and
- (b) the Customer paying Schramm a cancellation fee equal to 25% of the Price within 14 days of Schramm agreeing to the cancellation.
- 18. RETURNS**
- 18.1 Notwithstanding anything contained in this clause, if Schramm is required by a law to accept a return then Schramm will only accept a return on the conditions imposed by that law.
- 18.2 Where there is no material defect(s) in Goods supplied, other than where Schramm is required by law to accept a return of goods, any return of Goods may only be with the Schramm’s approval and on such terms as it sees fit.
- 18.3 Where Schramm accepts a return of Goods and there is no obligation on Schramm to accept a return:
- (a) in its discretion, Schramm may replace or refund the Goods, substitute equivalent goods or provide credit to the Customer;
- (b) Schramm may charge a re-stocking fee of 15% of the Price of the Goods;
- (c) any return freight or transport costs will be the responsibility of the Customer; and



- (d) the returned Goods must be clean and free from dirt, grease and other impurities and must be in their original packaging in a re-saleable condition.
- 19. LIMITED WARRANTY**
- 19.1 Subject to these Terms and Conditions, Schramm warrants:
- (a) any new Goods that are machines manufactured by Schramm (other than component parts) to be free from defects in materials or workmanship for 12 months from the date of Delivery or for 2,000 hours of operation (whichever is earlier);
- (b) any second hand or refurbished Goods that are machines manufactured by Schramm (other than component parts) to be free from defects in materials or workmanship for three months from the date of Delivery;
- (c) any new Goods that are spare parts or consumables supplied by Schramm to be free from defects in materials or workmanship for 3 months from the date of Delivery; and
- (d) for a period of 12 months from the date of Delivery, that Schramm will do all things reasonably necessary to ensure that the Customer receives the benefit of any warranty provided by a third party manufacturer of any component parts of any Goods.
- 19.2 The warranties in this clause are subject to the following limitations and conditions:
- (a) the Goods must have been provided, or made available, to Schramm for inspection within the applicable warranty period;
- (b) the Customer shall be responsible for all transport costs in relation to the defective Goods both to and from Schramm's premises or any other location as is required;
- (c) the warranties do not apply to any Goods (or any components of any Goods) that were not manufactured by Schramm or that are consumables that are regularly consumed and replaced in the ordinary course of use (except for Goods which are supplied by Schramm as consumables or component parts);
- (d) the warranties in this clause shall automatically be voided by:
- (1) any repair, modification or alterations of the Goods other than by Schramm;
- (2) the use of non-approved parts in the Goods;
- (3) any neglect, unreasonable use or abuse of the Goods; and
- (4) any failure to observe reasonable and necessary maintenance of the Goods.
- 19.3 To the extent permitted by law, Schramm's obligation under the warranties in the clause shall be limited to, at Schramm's election, replacing (including with equivalent goods), repairing, remedying, or otherwise providing a refund in relation to such defective Goods.
- 19.4 If upon inspection Schramm determines, to its reasonable satisfaction, that the Goods comply with the warranties under this clause in that the Goods are not defective, the Goods will be returned to the Customer only upon the Customer's request and at the Customer's expense.
- 19.5 Any replacement Goods (or components of Goods) provided by Schramm pursuant to a warranty in this clause are warranted solely for the duration of the unexpired warranty on the original Goods. If defective Goods are replaced by Schramm then the defective Goods shall become the property of Schramm.
- 19.6 The Customer acknowledges that Goods supplied by Schramm may incorporate component parts manufactured by companies other than Schramm (including, but not limited to, engines, compressors, coolers, hydraulic pumps, hydraulic motors and other component parts) and any limited warranty under this clause in relation to defects in materials or workmanship does not apply to such component parts.
- 19.7 Component parts of Goods may be governed by separate warranties provided by the respective component part manufacturers and such warranties may be shorter or longer than the period of any warranties under this clause. Please refer to individual manufacturer warranty terms and conditions for further information.
- 20. LIMITATION OF LIABILITY FOR CONSUMER GUARANTEES**
- 20.1 The Customer may have rights available to them under the Australian Consumer Law which may not be excluded or varied by these Terms and Conditions. For more information in relation to your rights under the ACL, please visit: <http://www.consumerlaw.gov.au>.
- 20.2 If the Customer is a consumer for the purposes of the ACL, the Goods may come with guarantees that cannot be excluded under the ACL. If such guarantees apply under the ACL, the Customer may be entitled:
- (a) to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage; and
- (b) 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.
- 20.3 To the extent permitted by law, where liability for breach of a guarantee under the ACL can, in relation to the supply of goods or services other than of a kind ordinarily acquired for personal, domestic or household use or consumption, be limited, Schramm's liability (if any) arising from any breach of those guarantees is limited:
- (a) with respect to the supply of goods, at Schramm's election:
- (1) to the replacement of the goods or the supply of equivalent goods;
- (2) to the repair of the goods;
- (3) to the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (4) to the payment of the cost of having the goods repaired.
- (b) with respect to the supply of services, at Schramm's election:
- (1) to the supplying of the services again; or
- (2) to the payment of the cost of having the services supplied again.
- 21. LIMITATION OF LIABILITY AND RELEASES**
- 21.1 Under applicable State, Territory and Commonwealth law, including without limitation the ACL, certain statutory guarantees and warranties, may be implied or may otherwise apply in relation an Agreement ("**Non-Excludable Warranties**"). The parties acknowledge that nothing in these Terms and Conditions purports to modify or exclude the Non-Excludable Warranties and any additional rights provided to the Customer by these Terms and Conditions are in addition to those provided by Non-Excludable Warranties.
- 21.2 Except as expressly set out in these Terms and Conditions or in relation to the Non-Excludable Warranties, Schramm makes no express or implied warranties or guarantees and makes no other representations as to the quality or suitability of the Goods.
- 21.3 Subject to these Terms and Conditions and to any Non-Excludable Warranties, to the fullest extent permitted by law, the parties agree that Schramm shall not be liable or responsible for any Loss whatsoever (whether under statute, contract, tort or otherwise and including, without limitation, direct, incidental or consequential losses) caused by or in connection with or in relation to:
- (a) the supply or provision of Goods;
- (b) the use of the Goods by the Customer;
- (c) the Customer failing to follow any instructions or guidelines provided by Schramm;
- (d) any delay in supplying Goods, including any delay caused by shortages or unavailability of stock;
- (e) damage, contamination, or destruction to Goods whilst in transit;

- (f) any advice, recommendation or information given to the Customer in good faith by Schramm, its employees or agents, including any reliance placed on that advice;
- (g) any negligent act or omission of Schramm or its employees or agents in connection with this Agreement; and
- (h) Schramm reasonably exercising its rights under these Terms and Conditions.
- 21.4 Subject to these Terms and Conditions, where liability cannot be excluded by law but may instead be limited, Schramm's liability for any loss or harm caused to the Customer or its employees or agents in relation to or in connection with an Agreement or the supply of Goods thereunder or is limited to, and shall not exceed, the Price under the Agreement.
- 22. SUPPORT SERVICES**
- 22.1 Schramm may agree to provide technical, mechanical and other support services to the Customer upon the Customer's request from time to time and unless:
- (a) such support is included as part of a warranty or an agreement with the Customer;
- (b) such support is required to be provided by Schramm without charge to the Customer by reason of an applicable law; or
- (c) otherwise agreed,
- the Customer agrees that:
- (d) such support services are supplied on these Terms and Conditions and it will pay Schramm in accordance with Schramm's usual hourly or daily support rates and charges (as may be set by Schramm from time to time) for any support services provided by Schramm with any usual hourly rates being billed in 15 minute increments;
- (e) it will pay Schramm for any travel expenses or travel time incurred in providing the support services; and
- (f) it will pay Schramm, on a cost plus 25% basis, for any services provided by external contractors engaged by Schramm.
- 23. CUSTOMER'S OBLIGATIONS**
- 23.1 The Customer agrees that it will:
- (a) follow any reasonable directions or instructions given by Schramm to the Customer in relation to the use, handling and storage of any Goods; and
- (b) if it has reasonable grounds to believe that any Goods are defective and may pose a safety or health hazard, notify Schramm immediately and stop using the Goods.
- 24. INTELLECTUAL PROPERTY**
- 24.1 Any Intellectual Property produced by or on behalf of Schramm in connection with the supply of Goods shall remain the property of Schramm.
- 24.2 The Customer grants Schramm the licence to use any of the Customer's Intellectual Property to the extent necessary to enable Schramm to supply Goods to the Customer under an Agreement.
- 24.3 The Customer warrants that any designs, specifications or instructions given to Schramm in connection with an Agreement will not cause Schramm to infringe any patent, registered design, trademark or other intellectual property and the Customer agrees to indemnify Schramm against any action taken by a third party against Schramm in respect of any such infringement.
- 25. SOFTWARE USAGE**
- 25.1 Unless otherwise specified by Schramm and subject to any other license agreement contained in such software, where Goods supplied by Schramm constitute or contain software or computer programs developed by Schramm (**Software**), Schramm grants the Customer a non-exclusive non-transferable licence to use such Software on one device.
- 25.2 The Customer agrees:
- (a) that it will not copy, reproduce, exploit, distribute, modify, adapt, reverse-engineer, translate, decompile or disassemble the Software;
- (b) that Schramm does not, subject to any applicable law, guarantee the availability, functionality or reliability of the Software;
- (c) that Schramm will retain all copyright and intellectual property rights in the Software;
- (d) that it has no right, title or interest in any part of the Software other than as specified in any licence; and
- (e) to not use the Software to do anything illegal or which is invasive of another's rights (including the violation of privacy).
- 25.3 The Customer acknowledges that Schramm may use or incorporate modules, software or systems provided by third parties in order to provide functionality within the Software and that Schramm will not be responsible for the performance, reliability or functionality of any third party modules, software or systems (including for any loss).
- 25.4 The Customer agrees, authorises and consents that personal information provided to Schramm may be collected, recorded, retained, used and disclosed to third parties for the following purposes:
- (a) providing and improving the functionality of the Software including providing associated services; and
- (b) providing updates and support in relation to the Software.
- 26. INDEMNITY**
- 26.1 The Customer, to the fullest extent permitted by law, indemnifies and shall keep indemnified, Schramm and each of its directors, employees and agents from and against any and all Loss or damage whatsoever caused by, incidental to, arising out of or in connection with:
- (a) a breach by the Customer of an Agreement;
- (b) any negligent act or omission of the Customer, its employees, agents or contractors in connection with an Agreement; and
- (c) any steps taken by Schramm to recover outstanding amounts owing by the Customer including, without limitation, any legal costs (on a solicitor and own client basis) and debt collection costs (including any collection commission payable).
- 26.2 Each indemnity given under these Terms and Conditions is a continuing obligation separate and independent from the other obligations of the Customer under an Agreement and shall each remain in force notwithstanding termination of an Agreement.
- 27. CUSTOMER'S WARRANTIES**
- 27.1 The Customer warrants and represents:
- (a) that it has read and understood these Terms and Conditions and that these Terms and Conditions impose binding and valid legal obligations on it;
- (b) that any information supplied by or on behalf of the Customer to Schramm for the purpose of supplying Goods is, to the best of its knowledge, true and correct;
- (c) that it has not relied on any oral or written representation or statement made by or on behalf of Schramm or any other party that is not expressly included in writing in an Agreement;
- (d) except where the Customer informs Schramm otherwise, that any Goods are not being acquired for personal, domestic or household use or consumption;
- (e) that it has made its own investigations as to whether any Goods are reasonably fit for any purpose for which they are supplied; and
- (f) that the Customer is not insolvent or bankrupt.
- 28. PRIVACY**
- 28.1 Schramm acknowledges the importance of maintaining the confidentiality of the Customer's personal information and the

- importance of any obligations it may have under the *Privacy Act 1988* (Cth) in relation to the collection, use and disclosure of the Customer's personal information.
- 28.2 The Customer agrees, authorises and consents to Schramm:
- (a) collecting and using personal information about the Customer where that information is reasonably necessary for the purposes of performing its obligations under an Agreement;
 - (b) collecting and using personal information for the purpose of sending marketing material to the Customer, except where the Customer informs Schramm it does not wish to receive such material; and
 - (c) collecting and using personal information for any other purposes agreed between the Customer and Schramm or required by law from time to time.
- 28.3 The Customer acknowledges, consents and agrees that personal information, including personal credit information, provided to Schramm may be collected, retained, disclosed to Schramm's solicitors or agents and used for the following purposes:
- (a) the supply and marketing of Goods by Schramm;
 - (b) facilitating the operation of Customer's account including verifying and checking the Customer's credit, payment or status in relation to the provision of Goods;
 - (c) the processing of any payments, including establishing or maintaining any direct debit or credit facilities requested by the Customer;
 - (d) enforcing Schramm's legal rights and enabling the collection from the Customer of any amounts outstanding to Schramm;
 - (e) disclosing such information to Schramm's agents, solicitors and insurers for the any of the above purposes; and
 - (f) any other purposes agreed between the Customer and Schramm or required by law from time to time.
- 29. TERMINATION**
- 29.1 The termination of an Agreement shall not affect any accrued rights or liabilities of either party, nor shall it affect any provision of an Agreement which is expressly or by its nature intended to continue in force after such termination, including but not limited to any indemnity or limitation of liability provided hereunder.
- 29.2 Subject to the Agreement, either party may, by notice to the other party, terminate an Agreement where the other party breaches a term of the Agreement and:
- (a) such breach cannot be remedied; or
 - (b) for a breach capable of remedy, the other party fails to remedy the said breach within 14 days' of being given notice of the breach by the party not in breach.
- 30. FORCE MAJEURE**
- 30.1 If Schramm is at any time prevented or delayed from performing any contractual obligation under an Agreement by reason of a Prescribed Event then:
- (a) the obligation is suspended during the period the Prescribed Event continues and such further period as is reasonable in the circumstances; and
 - (b) if Schramm is prevented from or delayed in performing the obligation by the Prescribed Event for at least 60 days, Schramm may, by notice to the Customer, terminate the Agreement.
- 31. GOVERNING LAW AND JURISDICTION**
- 31.1 An Agreement shall be governed by and construed in accordance with the laws in force in the State of Western Australia.
- 31.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia with regard to any dispute arising from or in connection with an Agreement.
- 31.3 To the extent permitted by law, the *United Nations Convention on Contracts for the International Sale of Goods* does not apply to an Agreement.
- 32. VARIATION**
- 32.1 Schramm may amend these Terms and Conditions from time to time. If Schramm amends these Terms and Conditions, then the revised Terms and Conditions shall apply in relation to an Agreement formed after the date of the amendment.
- 33. SEVERABILITY**
- 33.1 If any provision or part of an Agreement shall be void, illegal, invalid or otherwise unenforceable, that provision or part shall be deemed to be severed to the extent of the invalidity and the remainder of the Agreement shall remain effective.
- 34. WAIVER**
- 34.1 No power or right under an Agreement is taken to be waived by a party except in writing signed by the party waiving the power or right.
- 35. MISCELLANEOUS**
- 35.1 A party may not assign its rights or interests under an Agreement without the written consent of the other party and any purported assignment without written consent shall be of no effect. Schramm may license or sub-contract all or any part of its rights and obligations under an Agreement without the Customer's consent.
- 35.2 Time is to be of the essence for all obligations of the Customer under an Agreement.
- 35.3 If the Customer under an Agreement is more than one person or entity, each person or entity (as the case may be) shall be jointly and severally liable to Schramm.
- 35.4 Unless otherwise agreed, any notice required to be given under an Agreement shall be in writing.
- 35.5 Each party will do all things necessary to give full effect to an Agreement.
- 35.6 These Terms and Conditions are not intended to create a partnership, joint venture or an agency relationship between the parties.