

## Section 1 - Terms & Conditions of Sale

These are the entire Terms and Conditions of Sale (“the Terms”) of all products, merchandise and services (“the products”) supplied by PERFECT PTY LTD (ABN 79 125 944 293) (“we”, “us” or “our”) to any person, firm or company placing an order with us for the purchase of any products (“you”). Except as otherwise expressly agreed upon in writing, between a duly authorised officer of PERFECT PTY LTD and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by a Customer. These conditions supersede any prior version.

### 1. Quotation, Orders and Pricing

A quotation by us is not an offer to sell. We reserve the right to revise a quotation within 30 days of issue. All prices quoted are exclusive of GST.

Any quotation provided to you by us is valid only for the period of time specified in the quotation or 30 days and only in respect of the matters set out in the quotation.

Our quotations are confidential and you must not disclose the information in our quotations to any other person without our prior consent.

An order placed by you constitutes an offer to purchase by you subject to the Terms.

We are not obliged to accept any orders from you.

### 2. Delivery

The times quoted for delivery are estimates only and we accept no liability for failure or delay in delivery of products. You are not relieved of any obligation to accept or pay for products by reason of any delay in delivery. Products may be delivered by instalments at our discretion or where you have agreed to partial shipments.

You must examine the goods immediately after delivery. We shall not be liable for any misdelivery, shortage, defect or damage unless we receive details in writing within seven (7) days of the date of delivery of the products.

Our prices are shown exclusive of delivery costs unless specified on the quotation. Delivery and associated costs are payable in addition to the price of our product and must be paid by you at the same time as you pay for our product.

Any date for delivery of our product indicated by us is an estimated date for delivery only. We are under no liability for any loss or damage, however it arises, and you may not treat the relevant purchase order or these terms and conditions as terminated if the product is not delivered by that date.

We may charge you storage, handling and re-delivery fees if you are unable to take delivery of our product at the time our product is delivered to you.

### 3. Risk and Insurance

At all times from the date of delivery, our product is at your risk of loss or damage and you are responsible for its safe custody. You must keep our product insured and promptly provide us with evidence of such insurance and its currency as and when requested by us from time to time.

### 4. Acceptance and Returns

If you wish to return to us product which we have correctly supplied to order, you must let us know within seven (7) days of the date of delivery. If we agree to the return of such product, we may charge you a handling or re-stocking fee of between \$50.00 per product or 15% of the price of product returned plus any delivery costs. If we accept the return of product which was specifically produced to your specifications or has been damaged or altered by you, we will not credit you with the price paid for it.

If you have a dispute with us, you must notify our credit department in writing of your dispute prior to the due date of your payment for our product. You may not set off against or deduct from the price of product you have ordered from us, any money you claim we owe you.

You agree that you shall make no claim against us for any delay in delivery or any damaged product delivered to you as a direct or indirect result of events beyond our control.

We reserve the right, subject to the extent permitted by statute, to refuse any claim you make if not made in accordance with the Terms.

### 5. Limitation of Liability

We shall not be responsible for any loss or damage howsoever caused to the property or person of yours or any third party as a result of any defect in the products whether patent or latent, and you agree to indemnify us against any claims made against us by any third party arising out of any such defects.

### 6. Warranty

We make no warranty in relation to the products or services other than as contained in these Terms or as prescribed by a law which cannot be excluded or, in the case of products, as provided by the products' respective manufacturers. Defects in our services which are reported to us within 30 days of delivery of the service will be rectified by us at no charge to you. We will not provide claimed warranty services for defects or deficiencies in products or services which are caused by:

- external causes including natural disaster, fire, accident, neglect, misuse, vandalism, water, lightning, power surge or spike;
- the use of a product for other than its intended purpose;
- the use with or connection of a product to items not approved by us or the manufacturer;
- the performance of maintenance or attempted repair by persons other than us or as authorised by us;
- any configuration or reconfiguration by you.

Products validly returned will only be credited to your account if they are returned in the same condition as delivered to you and if received by us within 21 days from delivery.

### 7. Third Party Product and Support

Where third party products and/or support/maintenance is ordered via Perfekt, the primary vendor's (3<sup>rd</sup> party) terms, conditions and support service levels will apply for the provision of that product and/or support/maintenance for the term of the agreement.

### 8. Payment

If you have a pre-approved account limit with us, our terms are strictly 30 days from the date of invoice. If you do not have a pre-approved account with us, payment in advance by cash, cheque, EFT or credit card is required and must be paid within 48 hours of placing an order (failing which, we will be entitled to cancel the order without notice to you). Payments by cheque will not be considered received by us until the cheque is cleared by our bank. If any payment by you is dishonoured, you must pay us an additional account processing fee of \$40.00.

These terms of payment also apply to any work we perform or service we provided to you on request which is separate from your purchase of product.

### 9. Credit Card Fees

A fee of 1.9% of the value of the sale will be charged, unless otherwise agreed, for all payments made by credit card.

## 10. Account Limit

We allow you to purchase and continue to purchase our product as long as the total of your account does not exceed your pre-approved account limit (if any) and you have provided us with three (3) satisfactory written trade references and/or a satisfactory trade or status report from a credit rating agency acceptable to us.

We may require fresh references/reports from time to time and additional information, if you apply to increase your account limit.

If we perform work or provide a service to you separate from your purchase of product, our fee for providing such work or service is added to your account.

You agree that you will, if we request, also provide us further supporting documentation which may include (but is not limited to) any or all of the following:

- a) evidence that you have been incorporated for at least 12 months; and
- b) a copy of your Financial Statements (which must not be more than 12 months old).

In no circumstances are we obliged to accept any application for an increase in the limit of your account and we are not obliged to give you reasons for our decision.

If any account is not settled within our trading terms, you agree that, in addition to any other right we may have, we may suspend all sales and delivery of our product to you or close your account with us.

You acknowledge that we may decline your application to purchase our products if we are advised by our insurers that they will not grant us appropriate cover in relation to you.

## 11. Default

On any past due invoice, we may, at our discretion, charge interest from the payment due date to the date of payment (at the annual percentage rate charged by our principal Australian bankers for overdraft facilities above \$100,000 plus 2%), plus reasonable legal fees on a solicitor/client basis and collection costs. You acknowledge that such interest and other costs is not a penalty and is a true measure of damages. Payments received from you shall be credited first against any interest charges and all such fees and charges shall be payable on demand.

Any payment made by or on your behalf which is later avoided by the application of any Statutory Provision shall be deemed not to discharge your indebtedness and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.

## 12. Personal Property Securities Act & Title

For the purposes of these terms and conditions, "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time. Where a particular section or term existing or defined in the PPSA is used in this Agreement, it is deemed to be that section or term as used or defined in the PPSA as amended, renumbered or replaced from time to time.

You agree that these terms and conditions create a Purchase Money Security Interest ("PMSI") in the product (and their proceeds) supplied presently and in the future by us to you, in accordance with the PPSA.

You agree to do all things necessary and execute all documents reasonably required by us to register the PMSI granted by you under these terms and conditions and to ensure that we acquire a perfected security interest in the Product under the PPSA.

You agree to pay, upon demand, all of our costs in relation to or in connection with the registration of the PMSI or any other security interest and all other costs associated with protection and enforcement of the PMSI or any other security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the products the subject of these terms and conditions or the exercise, enforcement

or preservation of any right or interest under these terms and conditions or any contract that we have with you. This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.

To the extent that the PPSA applies to any security interest under these terms and conditions, you waive your rights under the provisions of the PPSA, to the maximum extent that it is permitted by law.

To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in our discretion and which would otherwise confer rights on you.

You further agree that where we have rights in addition to those under the PPSA, those rights shall continue to apply.

Your right to possession of goods still owned by us under these terms and conditions shall cease if:

- a) you being an individual, commit an act of bankruptcy, or,
- b) you being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of your assets, any proceedings are instituted for your winding up, or you enter into a Deed of Company Arrangement, or
- c) you cease or threaten to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice, or
- d) any cheque you provide to us is dishonoured for payment, or
- e) you fail to comply with any demand for payment issued by us, or
- f) you breach any of the terms and conditions contained herein and/or are in default of any other agreement between us and you.

You agree that we are entitled to enter any premises where the product supplied by us and still unpaid for is located and to repossess, remove and sell such product. You agree to indemnify and keep us indemnified in respect of any claims, actions and costs that may arise against us in relation to the removal, repossession and sale of the product pursuant to these terms and conditions including any claims brought by third parties.

You agree that repossession and retention of the product pursuant to the PPSA will only satisfy so much of the monies which may become payable to us by you, as is equivalent to our estimation of the market value of the product as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest you have on the product value of product recovered.

Until ownership of the product passes, you must not give us a written demand or allow any other person to give us a written demand requiring us to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.

You agree not to change your name or undertake any changes to any documents that we have registered, require to be registered or are capable of being registered without our prior written consent.

## 13. Intellectual Property Rights

These terms and conditions do not give you any intellectual property rights in our product. If we source, produce or manufacture any product samples or prototypes specifically for you, you do not acquire any intellectual property rights in such samples and prototypes.

Your details and information that you provide us about yourself may be retained by us on our database. You have no rights in that database. We may use such database in the conduct of our business, subject to privacy and other relevant laws.

We are not liable for any infringement or unauthorised use of any intellectual property rights arising from these terms and conditions. If any dispute or claim is made in respect of any infringement or unauthorised use of intellectual property rights, we may terminate

these terms and conditions by notice to you and without liability to you or any other person.

In these terms and conditions, intellectual property rights includes the full benefit of any rights in any copyright, trademark, registered design, patent, trade and business names, know-how, inventions, improvements, discoveries and confidential processes and includes without limitation artistic works, images, illustrations and photographs and any adaptation or concept relating to it.

#### **14. Waiver**

We do not waive any right, power, privilege or remedy because of any failure, delay, relaxation or indulgence on our part; nor does any single or partial exercise of any right, power, privilege or remedy preclude any other or further exercise of that or any other right, power, privilege or remedy. No waiver is valid or binding on us unless in writing, duly signed by one of our authorised officers.

#### **15. Privacy**

Our Privacy Policy is available on our website or upon request to us and forms part of these terms and conditions.

In accordance with the Privacy Policy, you agree that we may use or disclose information to third parties for the purpose of providing the product, providing information about product; sending information on our services; performing our administrative and marketing operations; complying with legislative and regulatory requirements or as otherwise permitted or authorised by law; considering any other application you may make to us; managing our rights and obligations in relation to external payment systems, e.g. credit card schemes and debit payment schemes; conducting market research or customer satisfaction research; developing, establishing and administering arrangements (including rewards programs) with other organisations in relation to the promotion, administration and use of our products; and developing and identifying products and services that may interest you.

#### **16. Termination**

If at any time you:

- a) default in any payment or breach any of these terms;
- b) become unable to pay your debts as and when they fall due; or
- c) declare bankruptcy or being a company, enter into liquidation or provisional liquidation whether compulsory or voluntary or compounds with your creditors generally or has a receiver or receiver manager or administrator appointed over all or part of your assets or passes a resolution for winding-up or a petition is presented for winding-up,

We may without prejudice to any of our rights or remedies under these terms or otherwise by notice to you:

- d) suspend further supply and require payment in advance for future supply;
- e) recover possession of any product for which payment has not been made;
- f) terminate all or any purchase orders for products or services which have been accepted;
- g) claim immediate payment of all moneys due in respect of all products and/or services which will then be immediately due and payable notwithstanding the due date or dates for payment or any terms agreed by us; and/or
- h) continue to enforce our rights and recover from the you such payments and any other amounts owing as and when they fall due.

#### **17. Notices**

All notices you and we give each other must be in writing and signed. A notice from us may be signed by any of our directors or solicitors. Notices must either be delivered by hand or sent by prepaid post. Notices must be given at our registered office (for us) or (for you), any address shown for you in anything you have supplied to us, or a changed address of which due notice has been given. Notices are deemed given on the day of delivery if delivered between 9am and 5pm on a day in which banks are open in Melbourne that is not a

Saturday, Sunday or public holiday, or on the next such day following delivery if delivered at some other time, or two days after posting if given by prepaid post. Any notice by email is taken to be signed by the named sender and is deemed given on the date of transmission, or if sent on a non-business day, then the next business day. .

#### **18. Force Majeure**

We shall not be liable for any failure or delay in supply or deliver of the goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside our reasonable control including, but not limited to, war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, theft, vandalism, civil commotions or accidents of any kind.

#### **19. No Representation**

You acknowledge that we have not made any warranty or representation, express or implied, in relation to the products or the services, including whether they are suitable for a particular purpose (whether such purpose was made known to us or not), unless provided in writing.

#### **20. Governing Law**

These terms and conditions are governed by, and you agree to submit to, the laws applicable in the State of Victoria, Australia and the Commonwealth Personal Property Securities Act 2009 (PPSA).

#### **21. Agreement and Variation**

These terms and conditions form the entire agreement on which we are willing to trade with you and all or any previous agreements or understandings we may have had with you are superseded by these terms and conditions. We may vary these terms and conditions at any time by giving you notice whether in writing or in or by way of a general notification on our website. All transactions after the date specified in such notice will be subject to the altered terms and conditions. If you continue to trade with us after the date such alterations become effective you will be deemed to have agreed to the altered terms and conditions.

#### **22. General**

We may in our sole discretion assign, subcontract or sub licence any or all of our obligations under these terms and conditions from time to time.

Any time, indulgence, waiver or non-exercise by us of any of these terms and conditions shall not affect any of our rights under these terms and conditions nor shall it be deemed a waiver by us of any provision of these terms and conditions or subsequent breach of these terms and conditions.

## Section 2 - Terms & Conditions for Services

### 1. Services

- 1.1. Perfekt agrees to provide the Services to the Customer in accordance with the terms set out in each signed SOW or quotation.
- 1.2. Perfekt will:
  - a) provide the Services as specified in the SOW or quotation subject to these terms and conditions;
  - b) as may be reasonably necessary keep the Customer informed of the progress of the Services;
  - c) promptly advise the Customer of any problems which arise regarding the Services;
  - d) advise the Customer of any permits, approvals or licenses which may be required prior to starting any Services, the Customer will be responsible for providing these if they are not included and costed as part of the SOW or quotation;
  - e) complete the Services in accordance with the time table as set out in the SOW or quotation or otherwise agreed by the parties in writing.
  - f) ensure that all Perfekt's personnel and subcontractors, if any, comply with the Customer's rules and regulations, including those regarding conduct of personnel, onsite security, and system security; and
  - g) use only appropriately qualified and experienced personnel when performing any Services.

### 2. Statements of Work

- 2.1. Each SOW is binding when executed by both parties and forms a separate and binding agreement incorporating these terms and conditions unless a separate MSA has been signed. A SOW can only amend these terms and conditions with regards to a particular SOW, if the SOW expressly identifies the obligations to be amended and clearly references to the respective clauses or section(s) that are being amended.

### 3. Fees and Payment

- 3.1. Taxes. Fees for the Services will be stated in the SOW or quotation and are listed exclusive any applicable taxes, including Goods and Services Tax (GST). The applicable taxes are set out separately.
- 3.2. Expenses. Customer will reimburse Perfekt for pre-approved expenses listed in the SOW or quotation in accordance with Clause 3.3.
- 3.3. Payment Terms. the Customer will pay Perfekt for Services, either on completion of the services or as per the payment schedule in the SOW or quotation, or within 30 days of provision of a correct invoice. Except for Services or Work Product provided pursuant to Section 8.3(a), in the event of termination of any SOW or quotation for any reason, the Customer will only be obligated to pay Perfekt for Services and Work Product actually performed as of the termination date.

### 4. Intellectual Property

- 4.1. Each party acknowledges that ownership of Intellectual Property existing prior to the date of a SOW or quotation will remain with the owner of that Intellectual Property;
- 4.2. Perfekt will grant to the Customer a perpetual, fully paid up, irrevocable royalty-free, non-exclusive, right and license to exploit and exercise all such Intellectual Property in connection with the Customer's use of the Work Product (including using such pre-existing Intellectual Property in providing services to the Customer).
- 4.3. Neither party will be restricted from using general underlying methodologies, techniques or know-how learned or used or developed during the performance of the Services.

### 5. Warranties

- 5.1. General Warranties. Each party represents and warrants to the other party that, as of the date of the service provision:
  - a) it has full authorisation and power to execute and perform its obligations under these terms;
  - b) it has all licences, authorisations, consents, approvals and permits required by all applicable laws to perform its obligations under these terms; and
  - c) it will comply with all applicable laws and regulations in performing its obligations under these terms.
- 5.2. Perfekt warrants to the Customer that:
  - a) it will provide the Services, including any Work Product, with due diligence and in a professional manner in accordance with the requirements specified in each SOW or quotation, and in a manner consistent with industry standards reasonably applied to the performance of such work;
  - b) it will ensure that its personnel and subcontractors, if any, will satisfactorily perform all Services, and comply with all applicable laws and regulations, and with Customer's security, safety and document retention procedures when performing Services;
  - c) its performance of the Services will not breach or conflict with any other agreement or obligation by which Perfekt is bound; and
  - d) the Services provided (including any deliverable) will not infringe any Intellectual Property right of any third party.
- 5.3. Except as specifically set forth in this section 5, Perfekt disclaims all other warranties, express or implied, including but not limited to the implied warranties or merchantability, fitness for a particular purpose, non-infringement and those arising from a course of dealing.

### 6. Confidential Information

- 6.1. Subject to clause 6.2 each party must maintain all Confidential Information in confidence, must keep it secure and not disclose it to any third parties and must use it solely in the discharge of its obligations or enforcing its rights under these terms and any related SOW or quotation. Nothing in these terms will be deemed to restrict a party from disclosing Confidential Information to its employees and authorised subcontractors in the discharge of such obligations or exercise of such rights, provided that the party ensure such employees and subcontractors keep the Confidential Information confidential, and only use the Confidential Information, in accordance with this clause. Before starting work on a project, Perfekt and its subcontractors will execute any additional nondisclosure agreements which may be required for the Customer engagement.
- 6.2. These obligations do not apply to Confidential Information that (i) is lawfully held by the recipient at the time of receipt from the disclosing party (ii) was lawfully received from another person who is not required to hold it in confidence (iii) was developed by the recipient independently or (iv) is or becomes public knowledge through no fault of the recipient. A party will not be in breach of this clause 6 if it discloses the other party's Confidential Information to the extent such disclosure is required by applicable law or regulation (in which case the recipient, if legally permitted will promptly notify the disclosing party).

### 7. Limitations of Liability

- 7.1. Neither party excludes or limits either party's liability to the other for (i) fraud and fraudulent misrepresentation, (ii) loss or damage arising from death or personal injury caused by intentional act or negligence of its employees, servants or agents or (iii) any other

matter to the extent that such exclusion or limitation would be unlawful.

7.2. Except for sections 6 above and to the extent permissible by applicable law:

- a) each party's maximum aggregate liability to the other party for all claims relating to each individual SOW or quotation, whether for breach of contract, breach of warranty or in tort, including but not limited to negligence, will be limited to the amount of fees contracted for under the SOW or quotation that is the subject of the claim; and
- b) neither party will be liable to the other party for any loss of profit, loss of data or any indirect or consequential losses or damage or other costs or liabilities (whether foreseeable or unforeseeable), to include but not be limited to loss of contracts or loss of business.

7.3. Subject to the applicable law, no action arising out of or in relation to these terms may be brought by either party more than one year after the cause of action to which it relates first becomes known (or ought to be known).

## 8. Term and Termination

8.1. These terms will start on the starting date of service provision by Perfekt and continue until the services are completed.

### 8.2. Termination Rights

- a) Either party may terminate a service at any time without cause by giving thirty (30) days' prior written notice to the other party.
- b) Subject to sub-clause 8.2(c), either party may terminate any SOW or quotation by notice in writing if the other party breaches a material term of these terms or any SOW or quotation and fails to cure such breach within thirty (30) days of receipt of written notice of the breach from the first party.
- c) Notwithstanding the foregoing, these terms and any SOW or quotation or both, may be terminated by notice in writing immediately by either party in the event of (a) breach of Section 6 (Confidentiality) or Section 4 (Intellectual Property); (b) the sale of all or substantially all of the assets of the other party, or transfer of a controlling interest of the other party to an unaffiliated third party; or (c) Insolvency of the other party.

### 8.3. Effect of Termination

- a) Upon termination by a party for any reason, Perfekt will, complete any SOW or quotations which have not been terminated by the Customer. In addition, if a SOW or quotation is terminated prior to its completion, then Perfekt will give the Customer a full written description of the status of the Service. Perfekt will deliver to the Customer all work in progress with a written explanation. The Customer is liable to Perfekt for all payments for services provided to the Customer up until the time of termination.
- b) Except as specified in Section 8.3(a), upon termination of any SOW or quotation, Perfekt will (i) immediately cease work on the terminated project(s), performing only (if requested by the Customer) efforts reasonably necessary to wind down and preserve work that has been performed; (ii) deliver all Work Product in Perfekt's possession to the Customer; and (iii) at the Customer's request, either return or securely destroy all Confidential Information in Perfekt's possession or control.

## 9. Insurance

9.1. On request by the Customer, Perfekt will provide copies of current certificates of insurance evidencing that Perfekt has insurance for the following :

- a) Public & Product Liability
- b) Professional Indemnity
- c) Worker compensation

## 10. Force Majeure

10.1. Where a party (the Affected Party) is unable to carry out any obligations in accordance with this Agreement by reason of Force Majeure Event, and:

- a) the Affected Party gives the other party written notice as soon as reasonably practicable of the nature and expected duration (as known at that time) of, and the obligation affected by, the Force Majeure Event; and
- b) the Affected Party uses all reasonable endeavours to:
  - i. mitigate the effects of the Force Majeure Event on the Affected Party's obligations under this Agreement; and
  - ii. perform the Affected Party's obligations under this Agreement despite the Force Majeure Event,

that obligation is suspended for so long as, and to the extent that, the Affected Party is affected by the Force Majeure Event.

10.2. If a Force Majeure Event continues for more than 30 continuous days, the Affected Party may terminate the Services, subject to the Force Majeure Event, with immediate effect upon giving written notice to the other party.

## 11. General

- 11.1. In the event of a dispute, both parties will use reasonable efforts to get an appropriate person from both parties' respective management teams to meet and attempt to resolve the dispute in good faith. If these executives are unable to resolve the dispute within 30 days, either party may resort to alternate dispute resolution such as arbitration or otherwise or seek recourse from the courts. Either party may seek injunctive or other urgent equitable relief at any time.
- 11.2. The laws of Victoria, Australia govern these terms and the parties hereby agree to submit disputes to the jurisdiction of the applicable courts located in Melbourne, Victoria.
- 11.3. Neither of the parties will be responsible for any failure to meet any obligations (except payment obligations) due to matters beyond its reasonable control provided reasonable efforts have been made to perform them.
- 11.4. Either party may assign, or otherwise transfer any of the other party's rights under these terms without the other party's prior written agreement.
- 11.5. Notices made under these terms must be in writing to the appropriate representative of the receiver, as identified in the SOW or quotation. Notices will be deemed given: where they are hand delivered, when a duly authorised employee or representative of the recipient gives written acknowledgement of receipt; for email communication, at the time the communication enters into the information system of the recipient; for posting, three days after dispatch.
- 11.6. The parties are independent contractors and there is no actual or deemed partnership, franchise, joint venture, agency, employment or other fiduciary relationship between the parties. Both Parties are solely responsible for their own taxes, withholding and other similar statutory obligations relating to these terms.
- 11.7. Rights and obligations under these terms, which by their nature should survive the termination or expiry, will remain in effect after termination.
- 11.8. If either party fails to promptly exercise any contractual right, this does not of itself mean that the right has been waived. For a waiver of a right to be valid, it must be written and it will not give rise to an ongoing waiver or any expectation that the right will not be enforced, unless it is expressly stated to do so.
- 11.9. These terms are the entire agreement relating to its subject matter and supersedes all prior or contemporaneous oral or written

communications, understandings, proposals of the parties relating to the subject matter of these terms.

11.10. These terms may not be modified except in writing executed by both parties.

11.11. If there is a conflict amongst the elements between these terms and the SOW or quotation, the following order of precedence will apply (in descending order): (i) SOW or quotation and (ii) these terms. Individual SOW or quotations, incorporate these terms and conditions by reference and will form separate agreements between the parties.

## 12. Definitions

The following terms have the following meanings unless expressly stated otherwise or the context otherwise requires:

**"Customer"** means Perfekt's client who purchases the Services from Perfekt.

**"Confidential Information"** information that (a) is by its nature confidential, (b) is marked or designated as confidential, or (c) under the circumstances would reasonably be considered to be confidential.

**"Fees"** means the fees payable by the Customer for the provision of Services at the rates specified in the Statement of Work.

**"Force Majeure Event"** means, in relation to a party, an event or circumstance which is beyond the reasonable control of that party, which may include:

- a) an act of God;
- b) an act of public enemy, or declared or undeclared war or threat of war;
- c) a terrorist act, blockade, revolution, riot, insurrection, civil commotion, strike (other than a strike of that party's workers), or public demonstration (other than one caused by that party);
- d) earthquake, fire, explosion, flood, storm or other adverse event;
- e) unpredictable and unpreventable delays in delivery of materials, equipment or services necessary for the compliance by that party with any obligation under this Agreement;
- f) governmental action, restraint, direction or embarks; or
- g) any fault or failure in the network supplying telecommunications services to the Customer or Perfekt,

but does not include any event or circumstance which could have been avoided, prevented or circumvented by the exercise of Good Practice by that party or a failure to pay.

**"Insolvent"** means the inability of a party to pay its debts as they fall due, the appointment of a receiver or administrator, liquidator or similar person to the party's affairs under the laws of any jurisdiction; the calling of a meeting of creditors or for any reason, ceasing to carry on business.

**"Intellectual Property"** or **"IP"** means all current and future worldwide statutory or other proprietary rights (including moral rights) in respect of copyright, trade mark, design, patent, mask work, utility models, trade secrets, inventions, software, documentation, reports and drawings, and the related documentation and any rights to registration of such rights.

**"Master Services Agreement"** or **"MSA"** means a separate agreement defining underlying terms and conditions for services. A fully executed MSA will override these general service terms.

**"Quotation"** means a costed list of services and/or products prepared by Perfekt and to be provided by Perfekt for the Customer and is based upon information provided or advised by the Customer.

**"Services"** means the services that Perfekt will provide to its Customers which are described in any SOW or quotation issued pursuant to these terms;

**"Statement of Work"** or **"SOW"** means a statement of work entered into pursuant to these terms which further specifies the Services and Work Product to be supplied by Perfekt and is executed by both Parties;

**"Work Product"** means all items and information that Perfekt may deliver or cause to be delivered in connection with the performance of the Services, whether in hard copy or electronic form, including but not limited to all deliverables, works of authorship, copyrightable works, inventions, programming tools, reports, designs, analysis, source and object code, test results, recommendations, drawings and work papers.