

Titomic Terms & Conditions

1) Sale of goods / Provision of services

- a) Titomic Ltd (ACN 602 793 644) and/or its wholly owned subsidiaries Titomic Europe B.V and/or Titomic USA, Inc. (Titomic) provides goods and/or services subject to these terms and conditions, unless otherwise agreed in writing (Conditions).
- b) When a person (Purchaser) places an order in the form prescribed by Titomic to purchase goods and/or services and that order is accepted by Titomic (Order), the Purchaser agrees and acknowledges that these Conditions will be binding on both Titomic and the Purchaser for the purposes of the sale of the goods and/or provision of services.
- c) Offers, estimates or quotations (Quotation) given by Titomic are, except to the extent otherwise stated in such document, subject to these Conditions.
- d) Any Quotation from Titomic:
 - i) will not bind Titomic or form part of a contract unless given, or subsequently confirmed, in writing, and accepted by the Purchaser through placement of an Order; and
 - ii) may be subject to alteration at any time prior to Titomic accepting an Order from the Purchaser.
- e) The entire agreement (Agreement) between Titomic and the Purchaser for the purchase or supply of the goods and/or services is:
 - i) these Conditions;
 - ii) the Order;
 - iii) any other terms and conditions which are imposed by Law and which cannot be excluded; and
 - iv) any variation agreed to by both parties in writing.
- f) These Conditions shall apply to all Agreements to the exclusion of any terms and conditions or any other materials which the Purchaser may purport to apply, or which are endorsed upon any correspondence or documents issued by the Purchaser irrespective of their date of communication to Titomic, except to the extent that the Purchaser's terms and conditions are agreed to in writing and signed by Titomic.
- g) Titomic may vary or amend these Conditions by written notice to the Purchaser at any time. Any variations or amendments will apply to quotes or Orders placed after the date of written notice.

2) Orders

- a) Information provided by Titomic in respect of goods and/or services (including price lists) does not constitute an offer to sell but an invitation to treat only.
- b) An Order or offer to purchase is an offer to purchase goods and/or services at the price set by Titomic as at the date of the Agreement (plus delivery and other applicable charges).
- c) Titomic reserves the right to accept or reject any Order (in whole or in part) for any reason.
- d) An Offer is accepted by Titomic when Titomic accepts, in writing or electronic means, an Offer from the Purchaser or provides the Purchaser with the goods or services.

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- e) Without limiting clause 2(b), Titomic may reject an Order or offer if:
 - (i) the Purchaser fails to pay for other goods and/or services ordered; or
 - (ii) the goods are unavailable; or
 - (iii) there is an error in the price or the description of goods and/or services; or
 - (iv) there is an error in the Order.
- f) An Order placed by the Purchaser will only form part of an Agreement when it has been received and accepted by Titomic. Acceptance by Titomic of any Order issued by the Purchaser may be in writing or by Titomic delivering to the Purchaser the goods or services which are the subject of an Order. Any terms and conditions contained in any Order or other document issued by the Purchaser will not form part of the Agreement unless they are expressly signed and accepted by Titomic's authorised representative.

3) Specifications

Titomic reserves the right to change the specifications of goods and/or services in a Quotation from time to time to the extent that these are necessary for safety, performance or engineering requirements.

4) Price

- a) Unless otherwise notified by Titomic in writing, all prices for goods and/or services:
 - (i) Are in the currency as stated in the Quotation; and
 - (ii) exclude delivery and other applicable charges.
- (b) Unless otherwise agreed in writing and subject to Clause 5, the price payable for the goods and/or services is the price set under a valid and binding Quotation (plus delivery and other applicable charges).
- (c) If the Purchaser requests any variation to the Agreement, Titomic may increase the price to account for the variation, including any relevant increase in exchange rates, costs of labour, parts, materials and other inputs, including, without limitation, energy and other overheads.
- (d) Unless otherwise stated in the Quotation, prices quoted for export of goods are Ex-Works (Incoterms 2021) with dispatch location nominated by Titomic and for non-export are Ex Works (Incoterms 2021) and do not include freight costs, insurance, import duties or government taxes in the destination country, or costs of delivery within the destination country, which are the sole responsibility of the Purchaser. In addition, unless otherwise agreed, the Purchaser assumes the responsibility and costs of export formalities.

5) Payment

- a) The Purchaser must pay the price (and delivery and other applicable charges) for the goods and/or services without set off or deduction in accordance with the payment terms specified on the invoice provided by Titomic. Titomic reserves the right to pass on to the Purchaser all costs associated with particular forms of payment.

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Where a payment is due on a weekend or public holiday in the relevant country, payment is required by the preceding Business Day.

- b) In the absence of any other terms specified in our quotation, payment must be made on or before the 30th day from the date of delivery of the goods (Due Date).
 - c) Where the Purchaser fails to make full payment by the Due Date, Titomic may, in its absolute discretion, refuse to supply the Purchaser with further goods and/or services and:
 - (i) charge interest on the overdue account at a rate of 1% per month calculated daily for each day following the Due Date until payment is made in full; and/or
 - (ii) require the Purchaser to pay for further goods and/or services in full prior to delivery; and/or
 - (iii) if the amount due remains unpaid after providing 7 days' notice to the Purchaser of such breach and an opportunity to rectify the breach, treat the failure of the Purchaser to make payments as a repudiation of Agreement by the Purchaser. Such repudiation shall entitle Titomic to elect, without prejudice to any other rights of Titomic, to terminate the Agreement in whole or in part (including any Order or part of an Order) and, in either case, to recover damages for the breach of contract.
 - d) Time is of the essence in respect of the Purchaser's obligation to make payment for goods and/or services.
 - e) Clause 5(c)(iii) may also be relied upon, at Titomic's option where the Purchaser is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Purchaser.
 - f) Any payments the Purchaser makes to Titomic will be applied as follows:
 - i) first, as reimbursement for any collection costs and expenses incurred;
 - ii) second, in payment of any interest charged to the Purchaser in accordance with clause 5(c)(i); and
 - iii) third, in satisfaction or part satisfaction of the oldest portion of the Purchaser's account.
- 6) GST, VAT, Sales tax or other taxes
- a) Unless otherwise stated, all amounts payable for the goods are expressed exclusive of any goods and services tax, VAT, Sales tax or other taxes (GST). Titomic reserves the right to recover from the Purchaser all GST payable in respect of the supply of the goods and/or services.
 - b) Purchaser need not pay the GST amount in respect of a taxable supply made under or in connection with a contract until Titomic has given the Purchaser a tax invoice in respect of that taxable supply.

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7) Delivery

- a) In the case of supply of goods, delivery shall be:
 - (i) in the case of non-export, ex works (Incoterms 2021) at the premises nominated by Titomic, or
 - (ii) in the case of export, Ex-Works (Incoterms 2021) to the dispatch location nominated by Titomic, unless the parties agree in writing to alternative delivery arrangements. If the Purchaser fails or refuses, to take or accept delivery, then the goods shall be deemed to have been delivered on the date when Titomic sought to deliver the goods. The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Purchaser immediately on delivery as outlined herein.
- b) In the case of supply of services, delivery shall be deemed to have occurred on completion by Titomic of the agreed services.
- c) The completion or delivery dates specified in any Quotation are estimates only. Titomic is not bound by any completion or delivery dates specified in a Quotation.
- d) Titomic will endeavour to effect delivery in any time stated (if a time is stated in writing) and otherwise within a reasonable period. Titomic will endeavour to deliver all goods the subject of an Order at the same time. However, where this is not possible, in order to minimise any detriment that may be caused to the Purchaser, Titomic will deliver goods to the Purchaser by instalments within a reasonable period of time.
- e) Titomic may make part delivery of the goods or services and Titomic may invoice the Purchaser for part of the goods or services provided.
- f) The Purchaser acknowledges that all quoted delivery times are estimates only and failure to deliver by those time will not constitute a breach of these Conditions. Titomic will not be liable for any loss or damage howsoever arising as a result or consequence of any delay in delivery. The Purchaser will not be relieved of any obligation to accept or pay for goods or services by reason of any delay in delivery.
- g) If, at the Purchaser's request, delivery of any goods is delayed after notification by Titomic to the Purchaser that the goods are ready for delivery, the Purchaser agrees to pay any reasonable storage costs incurred or to be incurred by Titomic and will pay Titomic for the full value of the completed goods.
- h) The Purchaser indemnifies Titomic against any loss or damage suffered by Titomic, its sub-contractors or employees as a result of the delivery terms contained in Clause 7 except where Titomic has not used due care and skill.
 - i) If Titomic fails to deliver in accordance with clause 7(d) by reason of:
 - inability to obtain supplies of the goods (where it is not the manufacturer) or materials or parts from approved sources;
 - import or export restrictions;
 - any strike or combination of worker, shortage of labour or lockout;

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- any fault of the Purchaser; or any other event or circumstance beyond the reasonable control of Titomic;

Titomic may at its option cancel any Order or any unfulfilled part of an Order or extend the time for its performance or completion by the time lost because of the event preventing or delaying delivery. Titomic shall not be liable for delay in delivery of the goods or services as a result of any of the causes set out in this clause 7.

8) Defective goods

- a) If the Purchaser claims that the goods were defective, short delivered or are otherwise not the goods specified in the Order, the Purchaser must notify Titomic in writing (including sufficient particulars) within seven (7) days of delivery. If the Purchaser fails to notify Titomic within this time, the goods will be treated as having been accepted by the Purchaser and Titomic will be discharged from any liability in respect of the goods being wrong or defective or short delivered.
- b) Titomic shall not be liable for any loss, deterioration or damage caused to the goods after the passing of risk in the goods to the Purchaser.

9) Title to goods

- a) Ownership in the goods remains with Titomic and title does not pass to the Purchaser until Titomic has received payment in full for the goods and all sums owing on the Purchaser's accounts with Titomic.
- b) From the time the goods are delivered to the Purchaser until the time title passes to the Purchaser in accordance with clause 9(a), the Purchaser takes custody of the goods and retains them as a fiduciary bailee of Titomic.
- c) If the Purchaser:
 - i) defaults in paying any sums due to Titomic under any Order; or
 - ii) is an individual and becomes insolvent, bankrupt, commits any act of bankruptcy, compounds with or enters into any compromise or arrangement with its creditors or if a mortgagee takes possession of any of the Purchaser's assets; or
 - iii) is a company and has a provisional liquidator, liquidator, receiver, receiver and manager, trustee for creditors or in bankruptcy, administrator or analogous person appointed to it or its property, or if a mortgagee takes possession of any of the Purchaser's assets; or
 - iv) is otherwise unable to pay its debts as and when they fall due;

any amount to become due under the Agreement shall become immediately due and payable and the Purchaser shall not sell or otherwise deal with any goods in its possession and, (without prejudice to any other right or remedy Titomic may have) upon Titomic's request, the Purchaser will return the goods to Titomic immediately or consent to Titomic entering the premises at which the goods are stored and retaking possession of the goods.

- d) Subject to clause 9(b), the Purchaser is authorised to sell the goods in the ordinary course of business and shall hold the proceeds of any sales separately from its own moneys and Titomic has a security interest (pursuant to clause 9(g)) in those proceeds. Such authority may be revoked by notice from Titomic at any time if Titomic considers the creditworthiness of the Purchaser to be unsatisfactory or if the Purchaser is in default in the performance of its obligations under the Agreement. Such authority shall be deemed

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automatically revoked if the Purchaser becomes subject to any of the circumstances under clause 9(c).

- e) The Purchaser shall, if required by Titomic, store separately those goods in respect of which title is retained by Titomic and shall clearly identify such goods as the property of Titomic. Titomic shall, upon revoking its authority contained in clause 9(d) or such authority being automatically revoked under clause 9(c), have the irrevocable right to enter upon the premises where the goods are situated, or where Titomic suspects the goods are situated, without committing a trespass and take possession of and remove the goods (or in accordance with clause 9(f), any goods owned by the Purchaser into which they become incorporated) even though they may have been attached to other goods or land which is not the property of the Purchaser, and to use the name of the Purchaser and to act on its behalf to recover possession of Titomic's goods. Furthermore the Purchaser also indemnifies Titomic from and against all costs, Claims, demands or actions by any party arising from such action. The Purchaser will remain liable to Titomic for the price of any damaged, used, incomplete, broken or obsolete goods that Titomic determines have no commercial value or are unable to be resold and for the difference in the original purchase price agreed by the Purchaser from actual resale value. Titomic may also require the Purchaser to pay Titomic's reasonable costs in exercising any of its rights under this clause 9(e) together with any related costs such as transportation and repackaging. The Purchaser indemnifies Titomic from and against all loss suffered or incurred by Titomic as a result of exercising its rights under this clause.
- f) If the goods in which title is held by Titomic are to become fixtures or fittings of any real property owned by the Purchaser or any other person, the Purchaser acknowledges, or where the Purchaser does not own the real property to which the goods are to be affixed, shall procure the owner to acknowledge, and in either case shall procure any mortgagee of such real property to acknowledge that, notwithstanding such incorporation, such goods remain the property of Titomic until title in the goods passes to the Purchaser, and that all rights of Titomic set out in these Conditions remain.
- g) The Purchaser acknowledges and agrees that:
 - i) a contract to which these Conditions apply constitutes a security agreement;
 - ii) in accordance with clause 9 of these Conditions, it grants to Titomic a security interest in all goods supplied by Titomic and has a purchase money security interest in all present and future goods supplied by Titomic to the Purchaser and the proceeds of the goods and all other moneys payable to Titomic by the Purchaser;
 - iii) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Purchaser at any particular time;
 - iv) the Purchaser must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by Titomic;
 - v) Titomic may apply to register and register any security interests created under the Agreement on public registers at any time before or after delivery of the goods by Titomic;
 - vi) Where permitted, the Purchaser waives any rights to receive any notifications, verifications, disclosures or other documentation specified under relevant laws.

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- h) The Purchaser must immediately upon Titomic's request:
 - i) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - ii) procure from any person considered by Titomic to be relevant to its security position such agreements and waivers (including as equivalent to those above) as Titomic may at any time require.
- i) The parties agree and undertake that these Conditions and any information pertaining to the sale of goods and details of the goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Conditions or the sale of the goods, except as otherwise required by law or that is already in the public domain.

10) Recalls

- a) In the event of a product recall over the goods, the Purchaser agrees to give Titomic such assistance as is reasonably required in relation to that recall.

11) Certificates

- a) In the absence of manifest error:
 - i) the written records of Titomic in relation to a delivery of goods will be conclusive evidence of the type and quantity of goods delivered and the date and time of delivery; and
 - ii) certification from a Titomic authorised representative will be conclusive evidence of the amount owed for the goods.

12) Exclusion of warranties and liability

- a) Pursuant to clause 7, Titomic will use reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage the Purchaser suffers or suffered by any third party for failure to meet any estimated date.
- b) Titomic gives no express warranty in relation to the performance of the goods and/or provision of the services. These Conditions do not include any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods. As, to the fullest extent permitted by law, all conditions and warranties, whether express or implied by Law or otherwise, which may be binding on Titomic are

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excluded. For the avoidance of doubt, where a Quotation is provided by Titomic for a project or sale of goods which is deemed to be or nominated as developmental in nature there is no guarantee of a successful outcome and Titomic reserves the right to end the project and still charge the Purchaser for work carried out up to that point as detailed in the Quotation.

- c) Where a condition or warranty cannot be lawfully excluded, the sole liability of Titomic for any breach of that condition or warranty is limited, at Titomic's election, to:
 - (i) replace or repair the goods (including the possible replacement with equivalent goods);
 - (ii) payment of the cost of replacing or repairing the goods (including purchasing or acquiring equivalent goods); or
 - (iii) re-performing any non-conforming services.
- d) The Purchaser agrees and acknowledges that it:
 - (i) has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by Titomic in relation to the goods or their use or application; and
 - (ii) has not made known, either expressly or by implication, the purpose for which it requires the goods and it has the sole responsibility of satisfying itself that the goods are suitable for their use.
- e) The Purchaser indemnifies Titomic for any costs incurred when the Purchaser requests Titomic, pursuant to clause 12(c) to repair faulty goods that are subsequently found not to be faulty, or where the Purchaser is found to have caused the goods to become faulty through abnormal use or otherwise.
- f) Titomic is not liable for any indirect or consequential losses or expenses suffered by the Purchaser or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- g) Any description of the goods and/or services contained in the Order or any other document is given by way of identification only.

13) Indemnity

- a) To the fullest extent permitted by law, the Purchaser indemnifies Titomic and agrees to keep Titomic indemnified, against all loss, liability, costs (including legal costs) and expenses arising directly or indirectly as a result of or in connection with the supply of goods and/or services.
- b) For the avoidance of doubt Titomic excludes any liability for legal costs and disbursements on and, without limitation, any indirect or consequential expense, loss or damage, loss of profits, revenue, use, expectation or opportunity, wasted expenditure, lost production or similar losses suffered by the Purchaser under or in connection with these Conditions.

14) Default

- a) The Purchaser will be in default if the Purchaser breaches these Conditions.

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- b) Without limiting clause 14(a), the Purchaser breaches these Conditions if:
- (i) payment in full for the goods and/or services is not made by the Due Date;
 - (ii) the Purchaser attempts to assign or transfer the benefit of these Conditions without obtaining the consent of Titomic;
 - (iii) if the Purchaser is an individual and declares or commits an act of bankruptcy or enters into an arrangement or composition with its creditors; or
 - (iv) if the Purchaser is a corporation and suffers the appointment of controller, administrator, receiver or liquidator, has winding up proceedings initiated against it or ceases or threatens to cease carrying on business.
- c) If the Purchaser is in default under clause 14(a), Titomic may:
- i) be reimbursed for and recover from the Purchaser, all costs and expenses incurred by Titomic in seeking to collect debts, including without limitation, the costs of any collection agents and legal costs (on a solicitor and client basis);
 - ii) demand immediate payment for all other goods and/or services supplied by Titomic, notwithstanding that the payment of those goods and/or services would not otherwise have been then due and payable;
 - iii) terminate or suspend delivery of any Order for goods and/or services; and/or
 - iv) terminate any contract with the Purchaser and cease supplying the Purchaser with goods and/or services.
- d) Titomic is not obliged to notify the Purchaser before exercising a right under clause 14(c) and these rights will be in addition to any other rights that Titomic may have.

15) Termination

- a) Titomic may terminate or suspend the Agreement (or any part thereof, including any Order or part of any Order) if the Purchaser is in breach of:
- i) the Agreement, and the Purchaser remains in breach after receiving 7 days' notice from Titomic of such breach and the opportunity to rectify the breach; or
 - ii) in the event a default is triggered under clause 14.
- b) Titomic may, without liability to the Purchaser and in addition to its rights pursuant to Clause 14(a), immediately terminate or suspend the Agreement and any outstanding Orders if the Purchaser or any of its employees or representatives:
- (i) are charged with any criminal offence in relation to bribery or corruption; or
 - (ii) act in a manner which, in Titomic's reasonable opinion, could bring Titomic into disrepute; or
 - (iii) act dishonestly, fraudulently or illegally.

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16) Force majeure

- a) If a party is prevented from or delayed in complying with an obligation (other than to pay money) under these Conditions by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

17) Intellectual property

- a) All intellectual property rights in or relating to goods or services supplied by Titomic, including in relation to the development, manufacture, use, operation, repair or maintenance of the goods, and in or in relation to any company-licensed, commissioned or created tooling, materials, drawings, samples, reports, work results and other documents, vests in and shall remain at all times the sole and exclusive property of Titomic or its licensor.
- b) Titomic is not liable for any Claims arising from an actual or alleged infringement of a third party's intellectual property rights:
 - (i) where such claim arises due to Titomic agreeing to supply the goods or services in accordance with the Purchaser's specifications or using the Purchaser's materials;
 - (ii) where the actual or alleged infringement of the intellectual property rights is due to use of Titomic's product in conjunction with another product not supplied by Titomic; and
 - (iii) where the goods or work results produced by Titomic in providing the services are used in a way which could not have been foreseen by Titomic.
- c) If Titomic supplies any goods or services in accordance with the Purchaser's specifications or using the Purchaser's materials, the Purchaser shall indemnify Titomic from and against all actions, Claims, demands, costs, expenses and liabilities arising in connection with any alleged or actual infringement of the intellectual property rights of a third party.
- d) The Purchaser shall not use any trademark owned or licensed by Titomic, or any substantially identical or misleadingly similar words, in a company name, business name, domain name or email address.

18) Confidentiality of company information

- a) Each party agrees to keep confidential the other party's financial, technological (including designs, drawings, specifications, technical handbooks), strategic, financial and business information, disclosed in the course of, or arising from the Agreement (Information).
- b) All Information owned by Titomic or which may be generated by Titomic in the course of fulfilling the Agreement remains or shall become the property of Titomic and may only be used by the Purchaser where agreed to by Titomic in fulfilling its rights and obligations under the Agreement. Otherwise, no Information may be disclosed to any third party without Titomic's prior written consent.
- c) Each party agrees to effect and maintain adequate security measures to safeguard the other party's Information from access or use by any unauthorised person and not to disclose any terms of the Agreement or Information except where disclosure is necessary

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to comply with that contract or any other agreement between the parties, or if the disclosure is required by law.

- d) Either party must, on becoming aware of any breach of confidentiality, immediately inform the other party, investigate the breach and report to the other party as to the outcome of the investigation.

19) Warranty

- a) The Purchaser must, and warrants that it will:
 - i) comply with all applicable Laws in relation to the conduct of its business including Laws relating to bribery and corruption;
 - ii) ensure that its actions or omissions do not cause Titomic to be in breach of any applicable Laws; and
 - iii) immediately notify Titomic of any breach of this clause.

20) Control and restricted products

- a) The sale, resale or other disposition of products and any related technology or documentation are subject to the export control laws, regulations and orders of the relevant country-and may be subject to the export and/or import control laws and regulations of other countries. The Purchaser agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any products to any country to which such export or transmission is restricted or prohibited. The Purchaser acknowledges its responsibility to obtain any licence to export, re-export or import as may be required.
- b) Titomic shall not be liable for any loss or damage arising from control laws referred to in clause 20(a) or any other restrictions imposed on the resale or use of the goods by other legislation.
- c) If the manufacture or use or sale of the goods shall be forbidden or restricted by any competent government authority, any costs or expenses incurred by Titomic in connection with any contract for manufacture, use or sale shall be paid by the Purchaser.

21) Miscellaneous

- a) If a provision in these Conditions is unenforceable, illegal or void then it is severed, and the remaining Conditions continue to operate.
- b) The Purchaser must not assign or otherwise deal with these Conditions without the consent of Titomic, which may be given or withheld at Titomic's absolute discretion.
- c) All of the rights and obligations of each party under these Conditions which by their nature or context must survive termination and/or expiry, will survive the termination and/or expiry of these Conditions.
- d) A notice to be given by a party to the other party under the Agreement must be in writing, directed to the party's address as specified in the Agreement (or to such other address notified in writing by the receiving party); and left at or sent by prepaid registered post or electronic mail to the party's nominated representative. A notice will be deemed to be given:

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- (i) on the day of delivery;
 - (ii) 48 hours after an electronic mail has been sent from the senders account.
- e) The following applies with regards to any supply of goods or services in Australia and if the Purchaser is a small business (employs less than 20 people, including casual employees employed on a regular and systematic basis) and the upfront price payable when submitting an Order is less than \$300,000 or \$1 million if the Agreement is for more than 12 months:
 - i) Titomic will give 14 days' notice to the Purchaser if Titomic decides to recall a product under clause 10;
 - ii) Titomic will reimburse the reasonable costs of recall incurred by the Purchaser under clause 10 unless the recall results from:
 - (i) a wilful, reckless or negligent act or omission of the Purchaser; or
 - (ii) the Purchaser being in breach of any of the provisions of this Agreement.

22) Governing law

- a) The Agreement shall be deemed to have been entered into in the State of Victoria, Australia and shall be construed, enforced and performed in accordance with the laws of that state. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.
- b) The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) does not apply to the Agreement.

23) Definition and interpretation

a) 23.1 Definition

In this Agreement:

- i) Agreement has the meaning given to it under clause 1(e);
- ii) Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the relevant country;
- iii) Claim includes a claim, notice, demand, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement or otherwise;
- iv) Conditions have the meaning given to it under clause 1(a);
- v) Due Date means the date under clause 5(b);

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- vi) GST, has the meaning given to it in Clause 6a;
- vii) Purchaser has the meaning given to it under clause 1(b);
- viii) Law means:
 - (i) principles of law or equity established by decisions of courts;
 - (ii) statutes, regulations or by-laws of the Commonwealth of Australia, or any State or Territory of the Commonwealth of Australia or a Government Agency; and
 - (iii) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia or a Government Agency that have the force of law;
- ix) Order has the meaning given to it under clause 1(b);
- x) Quotation has the meaning given to it under clause 1(c).

b) 23.2 Interpretation

In this Agreement, unless the context requires otherwise:

- i) the singular includes plural and vice versa;
- ii) a gender includes other genders;
- iii) headings are used for convenience only and do not affect the interpretation of this Agreement;
- iv) other grammatical forms of a defined word or expression have a corresponding meaning;
- v) a reference to a document is to that document as amended, novated, supplemented, extended or restated from time to time;
- vi) a reference to a party is to a party to this Agreement and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;
- vii) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;
- viii) "month" means calendar month and "year" means 12 consecutive months;
- ix) a reference to all or any part of a statute, rule, regulation or ordinance (Statute) is to that Statute as amended, consolidated, re-enacted or replaced from time to time;
- x) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;

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- xi) any provision in this Agreement which is in favour of more than one person benefits all of them jointly and each of them severally; and
- xii) any provision in this Agreement which binds more than one person binds all of them jointly and each of them severally.