

1. Agreement

These general terms and conditions of trade, any Proposal and any other document referred to in that Proposal and any order (including online order) (together, the “**Agreement**”) form a legal agreement between the buyer and the Banlaw Group Member noted in the Proposal and if none, then Banlaw Pty Limited (“**Banlaw**”).

This Agreement may be accepted by the buyer by doing either one or more of the following:

- (a) Signing these terms and conditions of trade; or
- (b) Signing the Proposal where indicated in that document; or
- (c) Issuing a purchase order or similar request for goods or services after receiving notice of these terms and conditions of trade or in response to the Proposal.

2. Meaning of words

Where the following words are not already defined in the Proposal or another part of this Agreement:

Banlaw Group Member means Banlaw Pty Limited or any Associated Entity of Banlaw Pty Limited (as defined by the Corporations Act 2001 (Australia).

Commencement Date means the date of acceptance in accordance with clause 1.

Confidential Information means the content of this Agreement, any information of a party which is marked confidential and any information which is by its nature confidential.

Contract Sum means the sum payable by the buyer to Banlaw, more particularly as set out in the Proposal.

Intellectual Property Rights means all intellectual property rights at any time protected by statute or common law, including patents, copyright and any registered intellectual property rights, registered designs, trademarks and goodwill; and any application or right to apply for registration of any of these rights.

Proposal means a proposal or similar document submitted to the buyer by Banlaw or a third party in which these terms and conditions of trade are either referred to or attached in full.

Site means the site nominated in the Proposal.

Term means the term noted in the Proposal, commencing on the Commencement Date.

the buyer means the entity to which the Proposal is addressed, or if a purchase order is received and accepted by some other entity, that entity.



3. Term

This Agreement will end at the expiry of the Term or otherwise if the buyer and Banlaw by mutual agreement in writing end it at some other time.

Notwithstanding the above, where Banlaw agrees to continue to supply (or recommences supply) of goods or services to the buyer following the expiry of the Term, without the parties entering a subsequent agreement governing that further supply, the parties agree that this Agreement will govern the further supply.

Banlaw may terminate this Agreement immediately by giving the buyer notice if the buyer breaches any provision of this Agreement and fails to remedy the breach within 14 days of Banlaw requiring the buyer to do so.

Banlaw may also terminate this Agreement immediately by giving the buyer written notice if the buyer attempts to assign any of the rights or obligations arising out of this Agreement to a third party without Banlaw's prior consent, or if the buyer is subject to any form of insolvency administration, proceedings, or other external administrator, liquidator, receiver or manager is appointed (**Insolvency Event**).

4. Banlaw Responsibilities

Subject to due and punctual payment of the Contract Sum by the buyer, Banlaw will supply the goods and services specifically set out in the Proposal and will use reasonable endeavours to comply with any time frames set out in the Proposal.

5. Buyer Responsibilities

Among other things, the buyer must:

- (a) Purchase from Banlaw the goods and services described in the Proposal;
- (b) Grant free and reasonable access to the Site to allow that part of Banlaw's supply (if any) occurring at the Site to take place; and
- (c) Use all reasonable endeavours to grant whatever assistance is requested of the buyer by Banlaw.

6. Proposal

Unless otherwise specifically stated in the Proposal, any pricing contained in the Proposal will be valid for a period of 90 days only.

Further, all pricing has been provided on the condition that the entire Proposal is accepted. Should any goods or services be excluded or removed from the Proposal for any reason whatsoever (either by Banlaw or at the request of buyer), then Banlaw reserves the absolute right and discretion to revisit all pricing set out in the Proposal and re-issue the Proposal with new pricing on those items remaining.

7. Contract Sum

The buyer must pay to Banlaw the Contract Sum at the rates and/or calculated in accordance with the methods set out in the Proposal on the date or dates nominated for payment in that document. If no payment dates are nominated in the Proposal, then the Contract Sum (or any part of the Contract Sum) must be paid within 30 days of the date of any tax invoice from Banlaw.

Unless stated otherwise in the Proposal, all amounts are quoted in and must be paid in Australian Dollars.

The Contract Sum is exclusive of GST, and any other tax, levy, duty, excise or other government impost or withholding (other than income or company tax payable by Banlaw).

If any GST is imposed on any supply made under this Agreement, then the party making the supply will collect from the recipient, in addition to any consideration due for the supply, an amount equivalent to the GST payable on that supply.

If the recipient of the supply is required to pay an additional amount for GST pursuant to this clause, then the recipient will pay the increased amount in the same manner and at the same time as the consideration, which may be due under this Agreement.

Unless otherwise prohibited by law, the Contract Sum must be paid to Banlaw without set-off, counterclaim or deduction whatsoever. If the buyer disputes the whole or any part of the amount claimed in an invoice submitted by Banlaw pursuant



to this Agreement, the buyer will pay the undisputed portion on the due date. The dispute regarding the remainder may be referred to the dispute resolution procedure prescribed by this Agreement.

Without prejudice to any other rights at law or under this Agreement, if the buyer fails to pay any amount owing under this Agreement by the due date (even if the failure to pay arises due to the following of dispute resolution procedure), the buyer will be liable to pay that amount together with interest which will be calculated on that amount from the due date until it has been paid in full at the rate of 12 per cent per annum.

8. Deliveries

Unless specifically stated otherwise in the Proposal, any goods being provided as part of the Proposal will be made available for pick up ex works ("EXW" Incoterms 2010) from 25 Metro Court, Gateshead NSW, Australia. Banlaw will not be responsible for any costs associated with exportation, or lodgement of export documentation. The buyer acknowledges that goods delivered to or picked up by a courier are outside Banlaw's control and Banlaw will not be liable for any loss, damage, delay or non-delivery of goods contributed to by *any* third party, to the extent permitted by law. For the avoidance of doubt, risk of transport from Banlaw's premises lies with the buyer, not Banlaw.

If a date for availability of completed goods is nominated by the buyer and not otherwise agreed by Banlaw, Banlaw will not be bound to comply with that date unless it expressly agrees to do so in writing. In the case of agreement on such dates, Banlaw will be deemed to agree to use reasonable endeavours to deliver by the relevant date. Banlaw shall be excused from any failure to deliver or complete which is contributed to by causes beyond its reasonable control and the time specified for delivery or completion shall be extended commensurately. Delay in delivery or completion shall not constitute a breach of this Agreement, nor shall it affect any other provisions of this Agreement to Banlaw's disadvantage.

9. Title and Interest

Notwithstanding the delivery of the goods or part of thereof, title to all goods being supplied under this Agreement will not pass to the buyer until payment of all monies owing to Banlaw by the buyer has been received in full by Banlaw. Risk in the goods passes to the buyer on the earlier of delivery or collection of the goods or transfer of title to the goods to the buyer.

Until all monies owed by the buyer to Banlaw are paid in full, the buyer:

- (a) Acknowledges that it receive possession of and holds the goods solely as bailee for Banlaw until such time as payment of all monies owing to Banlaw by the buyer is received by Banlaw;
- (b) must remain in possession and control of any goods delivered under this Agreement; and
- (c) grants to Banlaw unconditional and irrevocable rights of entry into the buyer's premises (or the premises of any associated company or agent where goods are located) without liability for trespass or any resulting damage to retake possession of any goods.

Banlaw may keep or resell any goods repossessed pursuant to the above rights.

Whilst ever any goods supplied under this Agreement are in the buyer's possession or at the buyer's risk then, unless and until title to all goods has passed to the buyer:

- (a) if the buyer sells the goods (with or without the consent of Banlaw) the proceeds of any sale of the goods (or sale of other goods into which the goods have been incorporated) must be paid into a separate account and held in trust for Banlaw. The buyer must account to Banlaw from this fund for the full price of the goods;
- (b) should the buyer die, stop payment or call a meeting of its creditors or suffer an Insolvency Event, Banlaw may at its option notwithstanding any waiver of such default and without prejudice to its other rights under this Agreement suspend or cancel this Agreement or require payment in cash before or on delivery of goods notwithstanding terms of payment previously specified or may, subject to the law, repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale;
- (c) the buyer must purchase and maintain insurance coverage against loss or damage to all goods (for their full replacement value with a reputable insurance underwriter and noting Banlaw's interest as owner);
- (d) the above insurance must include coverage for loss or damage during the course of marine, air and inland transit and during storage at the Site; and
- (e) the buyer must provide evidence of the above insurance immediately upon written request of Banlaw.

10. Security and PPSA



For the purposes of this clause, “PPSA” means the *Personal Property Securities Act 2009 (Cth)* as amended from time to time. Where a particular section or term from the PPSA is used in this Agreement, it is deemed to be that section or term as amended, renumbered or replaced from time to time.

To the extent permitted by law, and for better securing payment of the Fees plus any costs or charges, the buyer hereby charges all of its real and personal present and after-acquired property in favour of Banlaw.

The buyer acknowledges and agrees that this Agreement constitutes a security agreement in relation to Banlaw’s security interest in all present and after-acquired goods in accordance with the PPSA. The buyer agrees to grant a “Purchase Money Security Interest” to Banlaw.

The buyer also acknowledges and agrees that the PPSA applies to Banlaw’s separate security interests set out in **clause 9** and this **clause 10**.

To the extent permitted by law, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are contracted out of this Agreement:

- (a) sections 95 (notice of removal of accession), to the extent that it requires Banlaw to give a notice to the buyer, 96 (retain of accession) and 125 (obligation to dispose of or retain collateral);
- (b) section 130 (notice of disposal), to the extent that it requires Banlaw to give a notice to the buyer;
- (c) section 132(3)(d) (contents of statement of account after disposal);
- (d) section 132(4) (statement of account if no disposal);
- (e) section 135 (notice of retention);
- (f) section 142 (redemption of collateral);
- (g) section 143 (reinstatement of security agreement).

For the purposes of section 14(6) of the PPSA, the buyer (and Banlaw) agrees that any payments received from the buyer pursuant to or in any way connected with this Agreement, will be applied in the following order of priority:

- (a) Firstly, if there are any debts or obligations outstanding to Banlaw which are not secured by clause 9 or this clause 10, then to those debts or obligations, in the order they arose;
- (b) Secondly, if there are debts or obligations outstanding to Banlaw which are secured, but are not classified as purchase money security interests (for the purposes of the PPSA), then to those debts or obligations, in the order they arose or were incurred; and
- (c) Lastly, to any obligations or debts to Banlaw secured by purchase money security interests (as defined by the PPSA).

The buyer consents to:

- (a) and agrees to execute any other document or instrument required to give effect to the security interests created by this Agreement; and
- (b) the registration with the relevant authority or public register of any security interest created by this Agreement or any other document required to give effect to a security interest created by this Agreement, including without limitation the registration of a financing statement or financing change statement on the Personal Property Securities Register.

The buyer must pay all costs of and incidental to the preparation, execution and registration of any instrument which is executed for the purposes of giving effect to this clause and must also pay all costs incidental to the withdrawal, discharge or release of such instrument.

To the extent permitted by law, the buyer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement in relation to a Security Interest granted by the buyer, as Grantor, to Banlaw.

11. Banlaw limits its liability

To the extent permitted by law, Banlaw excludes and will not be liable for, and the buyer releases Banlaw in respect of, any loss or damage arising from the performance or non performance of any of Banlaw’s obligations under this Agreement or



otherwise arising out of or in connection with this Agreement except for loss or damage directly caused by Banlaw's negligence.

Notwithstanding any and to the extent permitted by law the parties agree that:

- (a) Banlaw will under no circumstances be liable to the Buyer for any indirect or consequential loss, loss of income, profit or opportunity or for any contingent, consequential, indirect special, or punitive damages arising out of or in connection with this Agreement, at law or in equity; and
- (b) any liability of Banlaw under this Agreement, at law or in equity will be limited in the aggregate to the reimbursement of the Contract Sum received by Banlaw from the buyer .

Where any statute or law implies warranties or conditions into this Agreement, which cannot be lawfully modified or excluded under this Agreement ('Non-excludable Condition') then this Agreement will be read subject to such Non-excludable Condition. Where such statute or law permits, Banlaw limits its liability to the buyer for breach of such Non-excludable Condition at Banlaw's option to:

- (a) Where relating to services, re-performing the services or paying for the re-performance of the services or equivalent services; and/or
- (b) Where relating to goods, re-supplying the goods or paying for the goods or equivalent goods to be re-supplied.

12. Warranties and representations

Banlaw agrees to provide the warranties as expressly set out in Banlaw's Warranty Policy attached to the Proposal (if any).

Except as expressly provided above, and to the extent permitted by law, liability for all representations and warranties, whether implied, express or otherwise, are excluded.

The buyer warrants that the buyer has not relied on:

- (a) any representations made by Banlaw which are not expressly stated in this Agreement; or
- (b) any descriptions or illustrations contained in any functional specification document, including any catalogues or publicity material produced by Banlaw.

13. Software licence

Where the proposal includes the supply of software and the Proposal does not attach or refer to a separate software licence agreement, Banlaw grants the buyer a non-exclusive, non-transferable, perpetual licence to use the Software in machine readable format in relation to the goods being supplied pursuant to this Agreement and for no other purpose ("the Licence").

This Licence is granted solely for the buyer's internal business purposes and to make necessary copies for both backup and security purposes only.

The buyer agrees:

- (a) not to decompile, disassemble, reverse engineer or otherwise attempt to derive the Software source code from object code;
- (b) not to sell, rent, lease, licence, sub-licence, display, time share or otherwise transfer the Software to, or permit the use of the Software by, any third party, except to the extent specified in the Licence;
- (c) to preserve the confidential nature of the proprietary and trade secret information contained within the Licence by retaining and using the Software in confidence, and using reasonable care and protection to prevent the unauthorised use, copying, publication or dissemination of the Software and Banlaw's confidential information learned from the Buyer's use of the Software;
- (d) to ensure its employees, consultants, agents and Suppliers to whom the Software is made available by the Buyer also comply with this clause; and
- (e) not to alter, enhance, adapt, develop or modify the Software or attempt to do any of those things or procure a third party to do or attempt to do any of those things.

The buyer acknowledges that the Agreement does not transfer to it any right in the Software other than the Licence. Title to the Software and all intellectual property and/or proprietary rights existing in the Software, any updates, improvements or upgrades will at all times remain vested in Banlaw. In the event the Software is altered, enhanced, adapted, developed or



modified, then title to such altered, enhanced, adapted, developed or modified Software will vest in Banlaw immediately upon its creation. The buyer will do all acts and things to ensure such title vests in Banlaw in a timely fashion if for some reason such vesting does not occur immediately upon creation.

Banlaw will not be liable to the buyer or any third party for any loss, damage, claim or liability arising out of or in connection with:

- (a) any alteration or amendment of the Software by or at the direction of the buyer, its officers, personnel or contractors; or
- (b) the use of the Software for any purpose other than in strict accordance with the Licence.

The buyer hereby indemnifies Banlaw in respect of any loss, cost, damage or liability arising out of the alteration or modification by the buyer of the Software or the use by the buyer of the Software outside of the terms of the Licence.

For the purposes of this clause, "Software" means:

- a) Banlaw FuelTrack™ Software;
- b) Banlaw FuelTrack™ Depot Firmware;
- c) Banlaw LevelTrack™ Software;
- d) Banlaw FuelTrack™ Database hosted on Microsoft SQL Server;
- e) Banlaw FuelTrack™ Reports hosted on Microsoft SQL Server Reporting Services
- f) Banlaw ResTrack™ Fuel Management Software

14. Intellectual Property

Any pre-existing Intellectual Property Rights owned by Banlaw before the commencement of this Agreement, will remain vested in Banlaw.

Any pre-existing Intellectual Property Rights owned by the buyer before the commencement of this Agreement, will remain vested in the buyer.

The buyer agrees to grant to Banlaw a nonexclusive, transferable, royalty free licence to use the buyer's pre-existing Intellectual Property Rights to the extent that such use relates to any material created by Banlaw pursuant to this Agreement or is otherwise required by Banlaw to fulfil its obligations under this Agreement.

Subject to any Intellectual Property Rights existing in any third party materials, all Intellectual Property Rights, created by Banlaw on or after the commencement of this Agreement will remain vested in Banlaw notwithstanding those rights were created pursuant to or for use in the supply of goods or services under this Agreement.

15. Force Majeure

A Force Majeure event means anything outside reasonable control of a party, including but not limited to:

- (a) power, data or communication outages;
- (b) acts of God or the public enemy, national emergencies, radioactive contamination, insurrection, riot, hostile or warlike action or sabotage;
- (c) a transportation embargo;
- (d) industrial action (including a picket); and
- (e) any legislation or regulation and any action or inaction of any government or government agency.

If any party is wholly or partially unable to perform its obligations because of a Force Majeure event (except for its obligation to pay money) then:

- (a) as soon as reasonably practicable after the Force Majeure event arises, the party must notify the other party of the extent to which the notifying party is unable to perform its obligations; and
- (b) that party's obligation to perform will be suspended for the duration of the delay arising directly out of the Force Majeure event.



16. Resolving disputes

In any dispute arising out of or in connection with this Agreement, the buyer agrees to first negotiate in good faith with a senior Banlaw officer to resolve it.

Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof not resolved by reference to the preceding paragraph, shall be settled by arbitration in accordance with the United Nations Commission on International Trade Law, UNCITRAL Arbitration Rules as at present in force. The appointing authority shall be the Australia Centre for International Commercial Arbitration. The number of arbitrators shall be one. The place of arbitration shall be Sydney, Australia. The language to be used in the arbitral proceedings shall be English.

17. Notices

All notices which are required to be given under this Agreement will be in writing and will be sent to the address of the recipient (of the notice) set out in the Proposal or such other address as the recipient (of the notice) may designate by notice given in accordance with this clause. Any notice may be delivered by hand or by pre-paid letter or telex or electronic mail. Any such notice will be deemed to have been served when delivered (if delivered by hand) or 48 hours after posting (except by pre-paid letter) or when despatched (if delivery by telex) or on transmission by the sender (if sent by facsimile) or the date and time depicted on the sender's email account sent item (if sent by email).

18. Confidential Information

A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.

A party will not be in breach of this clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.

Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.

Notwithstanding any other provision of this clause, a party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

This clause will survive the termination of this Agreement.

19. Guarantor and Buyer's Warranties

The Guarantor/s and buyer (and each director and office bearer if the buyer is a company) separately warrants that:

- (a) in the case of a natural person, he/she has never been a bankrupt or entered into a deed of arrangement or compromise or any other arrangement under Part X of the Bankruptcy Act or otherwise assigned his/her assets for the benefit of creditors;
- (b) it has never been under external administration or subject to the appointment of an external receiver or controller or entered into a deed of company arrangement and that it is solvent and able to pay its debts as and when they fall due;
- (c) it is not executing this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered to them by or on behalf of Banlaw whether in answer to an enquiry or otherwise;
- (d) prior to the placement of any order, it has made its own independent enquiries and satisfied itself as to the capacity, quality and fitness for purpose of the goods and/or services and, to the extent permitted by law, the buyer is not relying on any warranty, promise or representation in relation to the services, either expressly or impliedly given by Banlaw;
- (e) it has satisfied itself that it and its personnel are suitably qualified and hold requisite experience to safely and efficiently deploy and use the goods and completed services.

20. Banlaw Relies on Guarantor and Buyer's Warranties

In entering into this Agreement, Banlaw relies upon the warranties provided above and upon any information supplied by the buyer in any accompanying credit account application or order form.

Banlaw relies upon the representation that the person signing this Agreement has authority to execute it on behalf of the buyer.



21. Personal Information

The buyer and Guarantors consent to Banlaw from time to time, seeking, advising, exchanging and verifying any personal or commercial information of the buyer or the Guarantors with any third party and to carrying out any further pertinent investigation about the buyer's or Guarantor's contact/address details, credit arrangements, trading terms, credit worthiness, credit standing, credit history or credit capacity, financial status etc.

Banlaw will comply with its Privacy Policy when dealing with personal information. Banlaw's Privacy Policy can be viewed on Banlaw's website www.banlaw.com. The buyer must review and familiarise itself with the Privacy Policy from time to time as required.

22. Credit Limit

Notwithstanding any other provision in this Agreement, Banlaw may grant credit to the buyer under this Agreement either unconditionally or with any condition it sees fit, including, without limitation, a cap on the amount of credit Banlaw is comfortable extending to the buyer. Banlaw may increase or decrease any such cap as it sees fit from time to time throughout the duration of this Agreement by notice in writing to the buyer.

In the event that Banlaw serves notice in accordance with the preceding paragraph then, apart from any extension, increase or reduction set out in the notice, this Agreement and any supporting guarantee will continue to operate in its amended form.

Notwithstanding the preceding clauses, should Banlaw decide to extend credit to the buyer in excess of the credit cap in place from time to time, such excess will not be a breach of this Agreement by Banlaw, and the credit cap will in no way act to limit the ability or right of Banlaw to recover any monies owing to it nor will such cap act to limit the liability of the buyer or any Guarantor to pay any monies to Banlaw.

23. Guarantee and Indemnity by Director/s

In consideration of Banlaw agreeing to provide the goods or services:

- the Guarantors unconditionally guarantee to Banlaw the due and punctual performance by the buyer of all the buyer's obligations under each and every Agreement including, without limiting the generality of the foregoing, the payment by the buyer of all moneys (which term includes, without limitation, principal, fees, interest and costs) payable or repayable (whether presently or in the future, actually or contingently) under each and every Agreement and the Guarantors promise to pay to Banlaw on demand all moneys which the buyer defaults in paying under any Agreement including all moneys arising by way of costs, expenses, bank charges, losses or damages incurred by Banlaw arising from any default by the buyer under or relating to any Agreement;
- I/We also acknowledge and agree in my/our capacity as Guarantor that the Guarantee and Indemnity that I/we may have previously given continues to secure any and all liabilities and obligations of the buyer /debtor.

24. Banlaw Lien

In addition to any lien which Banlaw may by statute or otherwise be entitled, Banlaw shall on the happening of an Event of Default by the buyer or failure by the buyer to pay any sum owing to Banlaw by the due date, be entitled to a general lien on all property or goods belonging to the buyer which are in the possession of Banlaw (notwithstanding that such goods or some or part of them may have been paid for) for the unpaid price of any goods or services provided to the buyer.

25. General

This Agreement is governed by and construed in accordance with the laws of New South Wales, Australia. The parties hereby irrevocably submit to the exclusive jurisdiction of the Courts of New South Wales, Australia.

This Agreement overrides the provisions of any other documentation that the buyer may issue in relation to the Proposal or the goods or services being supplied by Banlaw.

This Agreement supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to its subject matter. No addition to or modification of any provision of this Agreement will be binding upon the parties unless made by written instrument signed by a duly authorised representative of both parties.

This Agreement may be modified at any time by Banlaw. Banlaw will take appropriate measures to inform the buyer of modifications and will provide the buyer the right and window of time to review any proposed change, discuss it with Banlaw, and terminate the relationship without penalty if all parties cannot abide by or agree to the revisions.

The buyer must not assign, whether in whole or part, the benefit of this Agreement or any rights or obligations hereunder, without the prior written consent of Banlaw. Banlaw may assign any rights or benefits under this Agreement without the buyer's prior written consent. The buyer must do all things and sign all documents to give effect to any assignment by Banlaw.

No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party, nor will any waiver of those rights operate as a waiver of any subsequent breach. Should any part of this Agreement be or become invalid, that part will be severed from this Agreement. Such invalidity will not affect the validity of the remaining provisions of the Agreement.

End of Terms.

Approval Date: March 2, 2020

Ron Fernandes

Financial & Admin Manager