



## Terms and Conditions Supply of Service

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These Terms and Conditions apply immediately upon acceptance of the quote to which these Terms and Conditions are attached. Note that the sections relating to *Title and Risk*, and the *PPS Act* apply only at the discretion of INS LifeGuard wherever payment upfront is not made.

### Definitions:

**'INS LifeGuard'** is a division of C. Rafin and Co Pty Ltd., ACN 003640793 and is supplier of the Equipment and Service.

**'Goods'** means the goods to be provided by the Supplier to the Purchaser as described in the attached Quote and as may be varied at any time by agreement of the parties, and any additional goods that the parties agree in writing will be supplied under this agreement.

**'Equipment'** means all of the products provided by INS LifeGuard as listed in the attached Quote.

**'Interest'** means interest on any unpaid monies due to INS LifeGuard by the Purchaser, and is calculated on a daily basis at an interest rate of 10% p.a. with a minimum \$10 administrative charge applied.

**'PPS Act'** means the Personal Property Securities Act 2009 (Cth).

**'Purchaser'** means the individual or entity to which the attached quote is addressed as being the responsible party for payment of Equipment and Service.

**'Quote'** means the attached document titled "QUOTE" issued by INS LifeGuard.

**'Service'** means the installation by INS LifeGuard Technicians of the Equipment at the location stated on the attached quote, or as otherwise specified by the Purchaser and as agreed by INS LifeGuard.

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### 1. Conditions:

- 1.1 INS LifeGuard will provide Service where full and final payment for Equipment has been received at least 14 days prior to the proposed date of the Service.
  - a. INS LifeGuard reserves the right to accept payment for the Equipment at a date later than 14 days prior to the proposed date of service, however in such an event this will be documented in writing with the Purchaser.
  - b. A condition precedent to the creation of the contract for supply of Service is full and final payment for the Equipment being received by INS LifeGuard.
- 1.2 The Purchaser is responsible for obtaining any licence or other approval required in order for INS LifeGuard to deliver the Service.
- 1.3 The Purchaser is responsible for ensuring safe access to INS LifeGuard technicians to perform the Service.
- 1.4 INS LifeGuard reserves the right to refuse Service where:
  - a. The Purchaser is declared bankrupt or enters into an agreement with its creditors;
  - b. Any licence or other approval required to be obtained by the Purchaser, which is essential to the delivery of the Service, is not obtained prior to the date of Service;
  - c. Safe access for INS LifeGuard technicians to perform the Service has not been provided;
  - d. Full and final payment for the Equipment has not been made to INS LifeGuard.

- 1.5 Where the Purchaser requires a change in Service, the Purchaser must request this in writing to INS LifeGuard, who will in turn issue a new quote for acceptance by the Purchaser.
- 1.6 The Purchaser is to notify INS LifeGuard of any circumstances which may impact the delivery of the Service.
- 1.7 INS LifeGuard will not be liable for any direct or consequential loss or damage incurred as a result of INS LifeGuard providing the Service (including any act or omission by INS LifeGuard or any of its authorised representatives) where the loss arises from a cause or causes beyond the reasonable control of INS LifeGuard, including equipment, electrical and telecommunications failures.
- 1.8 The laws of New South Wales govern the supply of Equipment and Services by INS LifeGuard.

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## 2. Payment for Service:

- 2.1 Payment for Service becomes due the earlier of:
  - a. 14 days after the completion of the Service; OR
  - b. 2 days prior to the date that the Commissioning Report or similar documentation, is required from INS LifeGuard by the Purchaser.
- 2.2 INS LifeGuard will not release any commissioning documentation relating to the Service until such time as full payment for Service has been received.
- 2.3 If any money due to INS LifeGuard is not received by the due date, INS LifeGuard may at its sole discretion, charge Interest on the amount owing for Service.

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## 3. INS LifeGuard Warranties for Service:

- 3.1 INS LifeGuard warrants that it:
  - a. Has the necessary expertise, experience, capacity, equipment and personnel to perform the Service;
  - b. Is not aware of any circumstance which could adversely affect its ability to perform the Service;
  - c. Holds all licences necessary to provide the Service;
  - d. Will provide the Services with due care and skill;
  - e. Will comply with all applicable laws and regulations, including without limitation the Privacy Act 1988 (Cth).
- 3.2 INS LifeGuard will not be liable for failure in performing the Service resulting directly or indirectly from government action, strikes or labour disputes, any damage caused by weather, or any other cause beyond the reasonable control of INS LifeGuard.

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## 4. Title and Risk

- 4.1 *Risk*

Risk passes to the Purchaser when the Goods are delivered to the Premises.
- 4.2 *Title in the Goods and dealing with Goods*
  - a. The Supplier's rights under this clause secure the Supplier's right to receive the Price of all the Goods sold under this agreement.
  - b. All payments received from the Purchaser may be applied by the Supplier in the manner the Supplier, in its absolute discretion, determines.
  - c. Until full payment in cleared funds is received by the Supplier for all Goods supplied by it to the Purchaser:

- i. Legal title and property in all Goods supplied under this agreement remains vested in the Supplier and does not pass to the Purchaser;
  - ii. The Purchaser must store the Goods separately and in such a manner and maintain any labelling and packaging of the Supplier, so that the Goods are clearly and readily identifiable as the property of the Supplier;
  - iii. Subject to clause 1.2(c)(iv), the Purchaser must not sell the Goods except in the ordinary course of the Purchaser's business;
  - iv. Despite clause 1.2(c)(iii), the Purchaser must not sell the Goods to any Related Body Corporate or any Related Entity (as that term is defined in section 9 of the Corporations Act), without the prior written consent of the Supplier;
  - v. The Purchaser holds and agrees to hold the proceeds of any sale, lease or other dealing with the Goods on trust for the Supplier in a separate bank account with a bank which does not (and will not in the future) provide finance to the Purchaser;
  - vi. In addition to any rights the Supplier may have under Chapter 4 of the PPS Act, the Supplier may, at any time, demand the return of the Goods and shall be entitled without notice to the Purchaser and without liability to the Purchaser, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Supplier, and for this purpose the Purchaser irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all Loss suffered or incurred by the Supplier as a result of exercising its rights under this clause 1.2(c)(vi). If there is any inconsistency between the Supplier's rights under this clause 1.2(c)(vi) and its rights under Chapter 4 of the PPS Act, this clause 1.2(c)(vi) prevails;
  - vii. The Purchaser acknowledges and warrants that the Supplier has a security interest (for the purposes of the PPS Act) in the Goods and any proceeds described in clause 1.2(c)(iv) and the Purchaser must do all things reasonably required by the Supplier to ensure that such security interest is enforceable, perfected and otherwise effective and has the priority required by the Supplier which, unless the Supplier agrees in writing otherwise, is first priority; and
  - viii. The security interest arising under this clause 1.2(c)(vii) attaches to the Goods when the Purchaser obtains possession of the Goods and the parties confirm that they have not agreed that such security interest attaches at any later time.
- d. The Purchaser warrants that it does not intend to use the Goods predominantly for personal, domestic or household purposes.

#### 4.3 Insurance

- a. The Purchaser must, at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company.
- b. Further, the Purchaser must:
  - i. Note the Supplier as a third party beneficiary and a person to whom the benefit of such insurance policies extend for its respective rights and interests;
  - ii. Provide on request by the Supplier, copies of any schedules, endorsements and wordings of such insurance policies; and
  - iii. Notify the Supplier not less than 30 days before the expiration, cessation or cancellation of any such insurance policies by the insurer and include with such notification, any reasons provided by the insurer for cancellation of any such policies.

## 5. PPS Act

### 5.1 *PPS Act terms*

Unless a contrary intention appears, words or expressions used in this clause that are defined in the PPS Act have the same meaning as given to them in the PPS Act.

### 5.2 *Further assurance*

If at any time the Supplier determines that this agreement (or any of the transactions contemplated by or under it) creates a security interest in its favour over any personal property, the Supplier may apply for any registration, or give any notification, in connection with that security interest and the Purchaser must promptly, upon the Supplier's request, do anything (including, without limitation, signing and producing documents, getting documents completed or signed, obtaining consents and supplying information) to:

- a. Provide more effective security over the relevant personal property;
- b. Ensure that any such security interest in favour of the Supplier:
  - i. Is at all times enforceable, perfected (including, where applicable, by control as well as by registration) and otherwise effective; and
  - ii. Ranks as a first priority security interest;
- c. Enable the Supplier to prepare and register a financing statement or a financing change statement or give any notification in connection with that security interest; and
- d. Enable the Supplier to exercise any of its rights or perform any of its obligations in connection with any such security interest or under the PPS Act.

### 5.3 *Costs*

All costs and expenses arising as a result of actions taken by either party pursuant to this clause will be for the account of the Purchaser. Within 7 days of a written request, the Purchaser must pay to the Supplier any costs or expenses incurred or to be incurred in connection with this clause.

### 5.4 *Contracting out of PPS Act enforcement provisions*

If Chapter 4 of the PPS Act would otherwise apply to the enforcement of the security interest created under this agreement, the Purchaser agrees that the following provisions of the PPS Act will not apply:

- a. Section 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Purchaser;
- b. Section 121(4) (enforcement of security interests in liquid assets – notice to grantor);
- c. Section 125 (obligation to dispose of or retain collateral);
- d. Section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Purchaser;
- e. Paragraph 132(3)(d) (contents of statement of account after disposal);
- f. Subsection 132(4) (statement of account if no disposal);
- g. Section 142 (redemption of collateral); and
- h. Section 143 (reinstatement of security agreement).

### 5.5 *Notices under PPS Act*

The Supplier does not need to give the Purchaser any notice required under the PPS Act (including a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.

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Notices to INS LifeGuard should be made by calling 1800 636 226 or in writing posted to PO BOX 485, UNANDERRA NSW 2526