SUPPLY OF GOODS AND SERVICES – TERMS AND CONDITIONS

1. DEFINITIONS

Arbitrator means an arbitrator appointed by the Australian Disputes Centre.

Force Majeure Event means acts of God (including, but not limited to, fire, flood, typhoon, earthquake or similar), epidemics, pandemics, riots, civil commotions, insurrections, wars, strikes or lockouts, government actions or directions (including those in relation to lockdowns, restrictions and quarantine periods) or any other causes reasonably beyond their control.

Fees means the fees set out in any SOW.

Goods means the goods described in each SOW which are owned by RMA Sport.

GST means any goods and services tax, consumption tax, value added tax or similar tax levied by the Commonwealth of Australia or any state or territory of Australia on the provision of goods, services or other things pursuant to *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intellectual Property Rights means any and all rights, title or interest in intellectual property existing in any jurisdiction, including any registered or unregistered trade marks, patents, patent applications, designs, confidential information, know-how, eligible circuit layouts, all other intellectual property as defined in Article 2 of the *Convention establishing the World Intellectual Property Organisation of July 1967*, rights in or to any inventions and copyright (including future copyright and rights in the nature of copyright) including, without limitation, copyright in materials that exist whether such rights are afforded protection by a system of registration or not, and includes all rights to apply for registration of such rights where applicable.

Loss includes, but is not limited to, costs (including party to party legal costs and RMA Sport's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

PPSA means the *Personal Property Security Act 2009 (Cth)*.

RMA Sport means R.M.A. Sport and Leisure Pty Ltd (ACN 091 238 532).

Security of Payment Legislation means the *Building and Construction Industry (Security of Payment) Act 2009 (ACT)*, the *Building and Construction Industry Security of Payment Act 2002 (Vic)*, the *Building and Construction Industry Security of Payment Act 1999 (NSW)* and the *Building and Construction Industry Security of Payment Act 2009 (Tas)*.

Services means the services generally described in each SOW.

SOW means any written quotation, invoice, order confirmation or statement of work entered into between the parties from time to time as indicated in the document attached at Annexure A which is subject to these terms and conditions.

2. TERM

2.1 These terms and conditions commence on the commencement date indicated on the SOW (or as otherwise agreed by the parties) and continue indefinitely until the provision of the Goods and Services has been completed or until otherwise terminated.

2.2 These terms and conditions always apply if RMA Sport accepts any order from the client (whether for cash, or on credit) and, regardless of whether these terms and conditions are signed, they will be binding on the parties. An accepted order is non-cancellable.

3. GOODS AND SERVICES

3.1 In consideration of the receipt of the Fees, RMA Sport will provide the client with the Goods and Services.

3.2 In performing the Services, RMA Sport will exercise that degree of skill, care and diligence, reasonably expected from a professional engaged in the same type of undertaking and under similar circumstances as those envisaged by these terms and conditions and in accordance with all relevant laws and applicable codes of conduct (if any).

3.3 If any warranties are given in relation to the Goods, they will either be specified expressly in a warranty card delivered with the Goods, or otherwise will be set out in a SOW or in other separate written warranty documentation provided by RMA Sport to the client.

3.4 Title to, legal ownership of, and property and risk in, the Goods will pass from RMA Sport to the client only once the Fees have been paid in full and the Goods have been supplied by RMA Sport to the client.

3.5 RMA Sport will deliver the Goods to the place indicated in any SOW and if no place for delivery is indicated in the SOW or if no SOW has been entered into, then the delivery place will be as per the client's written direction to RMA Sport.

3.6 The client must pay for all charges relating to the delivery including storage in the event that the client fails to take delivery during any attempts made by RMA Sport.

3.7 The client acknowledges that if any delivery times are provided by RMA Sport, they are estimated times only unless RMA Sport has expressly agreed in writing to guarantee delivery the Goods and/or provision of the Services by a specific date and/or time.

3.8 The parties may enter into SOWs for the provision of the Goods and/or Services. Each SOW forms a separate contract which incorporates these terms and conditions.

3.9 Unless the parties have agreed to the contrary expressly in an SOW, to the extent there is any inconsistency between these terms and conditions and a SOW, these terms and conditions will prevail.

3.10 The termination of these terms and conditions or the termination of any SOW will not affect any other SOWs that contain obligations that have not been fully performed by the parties.

3.11 RMA Sport is not obliged to accept any orders from the client. No tender or quotation by RMA Sport will oblige RMA Sport to accept any order from clients. However, if the client does place an order with RMA Sport, then it becomes

binding from the moment that the order is accepted by RMA Sport even if RMA Sport does not tell the client that it has been accepted.

4. FEES AND COSTS

4.1 The client must pay the Fees in full strictly within the time frame specified on the tax invoice that RMA Sport provides to the client without any deduction or set-off whatsoever.

4.2 Legal action may be commenced without notice to recover all amounts owing. It is acknowledged that RMA Sport may collect all legal and recovery costs incurred.

4.3 The client must pay interest at the rate of 12% per annum calculated on a daily basis on any moneys due and payable but remains unpaid until payment is made in full. The client must also pay any costs and expenses (including legal costs and expenses on a full indemnity basis) incurred by RMA Sport in enforcing its rights under these terms and conditions including seeking or recovering payment of any part of the Fees after the due date.

4.4 Unless otherwise stated, the Fees or other monies payable or consideration to be provided under or in accordance with these terms and conditions are exclusive of GST.

4.5 If GST is imposed on any supply made under or in accordance with these terms and conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with these terms and conditions.

5. SECURITY OF PAYMENT LEGISLATION

5.1 Any claim for payment submitted by RMA Sport (**Payment Claim**) (including any accompanying documentation) submitted by RMA Sport pursuant to the Security of Payment Legislation will comply with these terms and conditions and the Security of Payment Legislation.

5.2 The client will:

(a) promptly give RMA Sport a copy of any notice that the client receives from any of its other suppliers and subcontractors (**Third Party Suppliers**) under any section of the Security of Payment Legislation; and

(b) procure that each of its Third Party Suppliers promptly give RMA Sport a copy of any notice that the Third Party Supplier receives from another person under any section of the Security of Payment Legislation.

5.3 If the client becomes aware that RMA Sport or any other Third Party Supplier to the client is entitled under the Security of Payment Legislation to suspend performing work for the client, then the client must pay to RMA Sport or the Third Party Supplier (as the case may be) such money that is, or may be, owing to RMA Sport or the Third Party Supplier for work forming part of the supply by RMA Sport or by the Third Party Supplier.

5.4 The client acknowledges and agrees that it is not entitled to withhold any payment due to RMA Sport by reason of a claim made by any other Third Party Supplier under the Security of Payment Legislation.

5.5 The client fully indemnifies, and keeps indemnified, RMA Sport against any Loss suffered or incurred by RMA Sport arising out of:

(a) a failure, delay or suspension by any other Third Party Supplier to perform their supply, services or other obligations;

(b) a failure or delay in payment to RMA Sport in connection with any failure, suspension, delay of a Third Party Suppler to perform their supply, services or other obligations; and

(c) a failure by the client to comply with clause 5.2.

5.6 The client agrees that the full amount of the Fees is, to the extent permitted by and for the purposes of the relevant Security of Payment Legislation, the amount of any "progress payment" calculated in accordance with these terms and conditions, which RMA Sport is entitled to.

5.7 The client must not at any time, without the written consent of RMA Sport, divulge or suffer or permit its servants, sub-suppliers or agents to divulge to any person any communication, submissions or statement made or evidence used or relied upon by RMA Sport in an adjudication application.

5.8 The client's obligation in clause 5.7 continues to apply in any subsequent proceedings before a court, arbitrator, expert or tribunal, except where the client is required by a legislative requirement to disclose the communication, submissions, statement or evidence in those subsequent proceedings.

5.9 The client agrees that if RMA Sport makes any claim under the Security of Payment Legislation, then any releases or waivers provided by the client in relation to any kind of liquidated damages or other claims RMA Sport may have against the client (including compromises resulting from negotiation or agreement) or any obligations on RMA Sport to pay any monies pursuant to these terms and conditions shall be of no force or effect and all claims asserted by RMA Sport against the client shall be immediately due and payable by the client to RMA Sport, together with interest calculated in accordance with clause **Error! Reference source not found.** from the due date for payment until that date that the Payment Claim is paid in full.

6. INTELLECTUAL PROPERTY

6.1 Each party retains all their own Intellectual Property Rights and nothing in these terms and conditions constitutes a grant to any party of any licence or other proprietary right, interest or entitlement to or in respect of any Intellectual Property Rights owned by the other party. Neither party may use the other party's name, trade mark or logo without the prior written consent of the other party.

6.2 The client may only use any materials supplied by RMA Sport for the purposes for which they were specifically provided and not for commercial exploitation.

7. WARRANTY CLAIMS

7.1 If RMA Sport provides any express written warranty in relation to the Goods and/or Services, the client must make a warranty claim by notice in writing to RMA Sport within 1 month from the date of delivery of the Goods and/or provision of the Services and only if the client does not owe any monies to RMA Sport in connection with the Goods and/or Services supplied up to the date the warranty claim is made.

7.2 If requested by RMA Sport, the client must return the Goods (where reasonably practicable) at its own cost to RMA Sport for inspection and investigation in relation to the warranty claim.

7.3 RMA Sport will not be obliged to replace any Goods or rectify any Services in circumstances where, in the sole opinion of RMA Sport, the Goods have, since provision to the client, been used in extreme or unusual circumstances or in any manner for which the Goods were not designed or where the Goods (or any component of the Goods) have been altered, modified, tampered with, serviced or otherwise worked upon by any person not authorised by RMA Sport;

7.4 RMA Sport may reject, without inspection or evaluation, any warranty claims not submitted in accordance with the warranty policy set out in this clause 7.

7.5 All statutory warranties which may apply to the Goods and Services supplied by RMA Sport which can be lawfully excluded are hereby expressly excluded.

8. LIABILITY

8.1 To the fullest extent permitted by law, the client agrees that RMA Sport will have no responsibility or liability for any loss or damage suffered or likely to be suffered by the client or its employees, agents or contractors directly or indirectly arising out of, or in connection with, these terms and conditions or the Goods and/or Services provided by RMA Sport except and only to the extent that RMA Sport has directly caused or contributed to the direct loss suffered by the client directly as a result of RMA Sport's negligent provision of the Services.

8.2 To the fullest extent permitted by law, the client releases and discharges RMA Sport and its agents, officers, contractors and employees from all claims and demands on RMA Sport (and its agents, officers and employees) by any person except and only to the extent RMA Sport has directly caused or contributed to the direct loss suffered by the client directly as a result of RMA Sport's negligent provision of the Services.

8.3 Under no circumstances will either party be liable to the other party for any indirect, consequential, incidental or special losses including, but not limited to, any loss or corruption of data, loss of profit, goodwill, business opportunity, anticipated savings or benefits or damage or injury of any kind.

8.4 To the fullest extent permitted by law, RMA Sport's liability under each SOW is limited to (at RMA Sport's election) the resupply or the Goods and Services or the total amount paid by the client in the twelve (12) month period prior to the date of any claim relating to the SOW and RMA Sport's aggregate liability in connection with these terms and conditions and all SOWs (whether under statute, contract or in tort including negligence) and any other agreement it has with the client is limited to (at RMA Sport's election) the resupply or the Goods and Services or the total amount paid by the client in the twelve (12) month period prior to the date of the claim which must account for all previous claims made and compensated by RMA Sport.

9. TERMINATION AND CONSEQUENCES OF TERMINATION

9.1 Either party may terminate these terms and conditions by written notice to the other party if the other party commits any breach of any provision of these terms and conditions and, if capable of remedy, fails to remedy such breach within 30 days of receipt of written notice requiring it to do so.

9.2 Either party may by notice in writing terminate these terms and conditions effective immediately in any of the following circumstances:

(a) if, subject to the ipso facto amendments as set out in the *Treasury Laws Amendment (2017) Enterprise Incentives No. 2 Act 2017 (Cth)*, an insolvency event occurs; or

(b) upon the making by the other party of an assignment or attempted assignment for the benefit of its creditors.

9.3 RMA Sport may terminate these terms and conditions at any time and without having to provide a reason by providing 1 month's written notice of such termination to the client.

9.4 The termination of these terms and conditions does not affect any rights accrued to a party prior to the termination and is without prejudice to a party seeking or obtaining damages for any breach of these terms and conditions by the other party.

9.5 Upon termination, each party must:

(a) deliver up to the other party all information belonging to the other party as requested by the other party;

(b) deliver up to the other party any other documents or objects in the party's possession or control which relate to the other party's Intellectual Property Rights; and

(c) pay all amounts payable or owing in accordance with the terms of these terms and conditions within 1 week of the effective date of termination without any set-off or deduction.

10. PPSR

10.1 Upon entering into these terms and conditions, the client acknowledges and agrees that:

(a) the client has granted to RMA Sport at the time the client takes possession of the Goods supplied by RMA Sport, a purchase money security interest pursuant to the PPSA in the Goods and any proceeds of those Goods which shall have priority over all other security interests in the Goods;

(b) these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in the Goods supplied by RMA Sport to the client, in any proceeds of those Goods as security for the repayment of all monies owing by the client to RMA Sport and for the performance by the client of all its obligations to RMA Sport; and

(c) a security interest is taken in Goods previously supplied by RMA Sport to the client and all Goods that will be supplied in the future by RMA Sport to the client.

10.2 The client undertakes to:

(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RMA Sport may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register (the **PPSR**);

(b) pay all costs and expenses incurred by RMA Sport in connection with the registration of its security interest and any enforcement or attempted enforcement and removal of that interest, or preservation of any right or interest under these terms and conditions or otherwise conferred upon RMA Sport by the PPSA;

(c) indemnify, and upon demand reimburse, RMA Sport for all expenses incurred in registering a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby;

(d) not register or enter into any document which seeks to vary or alter RMA Sport's rights in respect of the security interest without RMA Sport's prior written consent;

(e) until all monies owing to RMA Sport are paid in full, not sell or grant any other security interest in the Goods; and

(f) immediately advise RMA Sport of any material change in its business practices.

(g) RMA Sport and the client agree that sections 96, 125, 131 and 140 of the PPSA do not, to the extent permitted by law, apply to the security agreement created by these terms and conditions.

(h) The client hereby waives its rights to receive notices under sections 95, 118, 121 (4), 123, 130, 132 (3) (d), 132 (4), 135 and 157 of the PPSA.

(i) The client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

(j) Unless otherwise agreed to in writing by RMA Sport, the client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

(k) The client consents to RMA Sport recording the details of these terms and conditions on the PPSR and agrees to do all things necessary and reasonably required by RMA Sport to effect such registration.

(l) The client shall unconditionally ratify any actions taken by RMA Sport under these terms and conditions.

11. DISPUTE RESOLUTION

11.1 The parties must first attempt to resolve any dispute, question or difference of opinion concerning or arising out of this these terms and conditions by mediation.

11.2 The mediation procedure is as follows:–

(a) any party may start mediation by serving a mediation notice on the other parties;

(b) the mediation notice must state that a dispute has arisen and identify the substance of the dispute;

(c) the parties must jointly request appointment of a mediator. If the parties fail to agree on the appointment within 7 days of service of the mediation notice, any of the parties may apply to the chief executive officer for the time being of the Law Society of New South Wales or the nominee of the chief executive officer to appoint a mediator;

(d) once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and

(e) the parties agree that it will be a term of the engagement of the mediator that they release the mediator from any court proceedings relating to these terms and conditions or the mediation.

11.3 The parties agree that the mediator's responsibilities are:–

(a) to assist the parties to reach a resolution of the dispute by agreement;

(b) to act impartially and to ensure that the parties have a clear understanding of each other's case to enable proposals to be formulated for settlement of the dispute;

(c) not to impose a solution on the parties and any suggestions made by the mediator during the course of the mediation are not binding;

(d) to keep confidential and not to disclose to any person any information or material received from the parties which is designated "confidential" but not including information and material which has not been designated as "confidential" and which the mediator considers that its disclosure is relevant to the settlement of the dispute; and

(e) to allow each of the parties to appoint one or more persons, including legally qualified persons, to represent or assist it in the mediation process.

11.4 Unless the provisions of this clause 11 have been duly complied with, no party may bring court proceedings in respect of any matter in dispute which arises in relation to these terms and conditions.

11.5 Nothing in this clause 11 will prejudice the right of a party to seek urgent injunctive, interlocutory or declaratory relief in respect of a dispute arising out of these terms and conditions or to apply for adjudication under the Security of Payment Legislation.

11.6 In the event that a dispute is not resolved by mediation, any party may submit the dispute to the Arbitrator and all parties agree that they shall be bound by the Arbitrator's decision.

11.7 The parties agree that, where a dispute is submitted to the Arbitrator for resolution, the parties must each cooperate with the Arbitrator in particular in providing any and all information requested by the Arbitrator.

12. GENERAL

12.1 These terms and conditions may only be amended, supplemented, replaced or novated by another document signed by each of the parties, whether in one or more counterparts.

12.2 Neither party may assign any of their rights under or in respect of these terms and conditions without the prior written consent of the other party except that RMA Sport may assign its rights under or in respect of these terms and conditions to its related bodies corporate as defined in the *Corporations Act 2001 (Cth)*.

12.3 These terms and conditions may be signed in any number of counterparts and each of those counterparts taken together constitute one and the same document. A party may rely on an electronically produced copy of these terms and conditions or a counterpart, and the signatures and other marks in it, as though it is an original. These terms and conditions are binding on each signatory despite any other signatory not having signed them.

12.4 These terms and conditions (including any schedules and annexures) contains the entire agreement between the parties about its subject matter and supersedes all prior discussions, representations, agreements and understandings between the parties in connection with the subject matter.

12.5 These terms conditions prevail even if they are inconsistent with anything in any earlier or later order form or similar document. If the client has provided its own written contract terms, then the client's contract terms shall have no effect and these terms and conditions will apply and will constitute the entire agreement between the parties.

12.6 Each party agrees to do all things and sign all agreements, instruments, transfers and other documents necessary or desirable to give full effect to the provisions of these terms and conditions and any transactions contemplated by it.

12.7 Except where expressly provided otherwise, all payments under these terms and conditions must be made by delivering an unendorsed bank cheque, or by direct transfer of immediately available funds and without set off, counterclaim or withholding.

12.8 Any provision in these terms and conditions which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of these terms and conditions or affecting the validity or enforceability of that provision in any other jurisdiction.

12.9 No failure, delay, relaxation or indulgence on the part of a party in exercising any right, power, privilege or remedy in connection with these terms and conditions, operates as a waiver of that right, power, privilege or remedy 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. A waiver is not valid or binding on the party granting that waiver unless in writing and duly signed on behalf of that party.

12.10 Each person signing these terms and conditions on behalf of a party warrants to the other parties that on the date of signing, that person has full authority to sign these terms and conditions on behalf of that party.

12.11 These terms and conditions are governed by and are to be interpreted according to the laws in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts operating in New South Wales.

13. FORCE MAJEURE

13.1 If a party by reason of a Force Majeure Event is unable to perform or carry out any obligation under these terms and conditions, then that obligation is suspended for so long and to the extent that it is affected by the Force Majeure Event.

13.2 This clause does not apply to any obligation to make a payment.

13.3 In the case of a Force Majeure Event, the affected party must give notice to the other party with reasonable particulars including, so far as it is known, the probable extent to which the party will be unable to perform or carry out or will be delayed in performing or carrying out its obligations.

13.4 A party is not liable for any failure or delay in the performance of any of its obligations under these terms and conditions to the extent that the failure or delay is attributable to Force Majeure Event, regardless of the length of time for which the Force Majeure Event continues.

13.5 For the avoidance of doubt, it is noted that RMA Sport may still suffer damage, which RMA Sport may seek to recover from the client, due to a failure or delay in the performance of an obligation under these terms and conditions by a party to these terms and conditions that is attributable to a Force Majeure Event which involve a third party.