

OMC STANDARD TERMS & CONDITIONS FOR SAAS PRODUCTS

1. STANDARD TERMS & CONDITIONS

- 1.1 These standard terms & conditions (**Standard Terms & Conditions**) apply to all Proposals and Contracts, and all Products and Services supplied by OMC International Pty Ltd ACN 066709724 (**OMC, we, us**) to you (**Customer, you**). The Customer will be bound by and agrees to accept the Standard Terms & Conditions which apply at date of the Proposal.
- 1.2 Under the Contract (being these Standard Terms & Conditions, the EULA and the relevant Proposal):
- "App" means a Product we supply in a software application form.
 - "Contract" means the Proposal prepared by us and accepted by you binding the parties for the supply of relevant Products and Services in that Proposal (and includes these Standard Terms & Conditions and the EULA).
 - "Operating Procedures" means the operating procedures for a Product including:
 - the relevant Product training package/s;
 - the customer's standard operating procedures; and
 - standard operating procedures enforced by the harbour master or relevant authority.
 - "Permitted Use" means the stated intended use of a Product as described in the Product Guide and Operating Procedures relevant to that Product.
 - "Product" means an OMC "software-as-a-service" (**SAAS**) product (as described by OMC in its documentation including the Product Guide). As each Product is an application software program, a reference to "Product" includes the software in it and a reference to "App" is a reference to Product.
 - "Product Guide" means the OMC Product Guide document which includes Product descriptions, and for certain Products, SLAs and uptimes.
 - "Proposal" means the proposal document that is prepared and sent by us to the Customer for approval, which amongst other things is subject to these Standard Terms & Conditions and the EULA, details the Customer name and details, delivery details, the types and quantity of the Product and Services for supply, and their respective prices.
 - "Renewal Term" has the meaning given in clause 9.2.
 - "Services" means the services to be performed by OMC that are expressly set out in the Proposal which may include but are not limited to start-up and additional training and support, documentation, database and delivery costs and the like, as specified in the Proposal.
 - "Setup" means the first configuration or implementation of Product with the Customer.
 - "Setup Fee" means the charge for the Setup Services at a single location, site or vessel for the Customer as set out in the Proposal.
 - "SLA" means the express service levels for certain Products as set out in our Product Guide.
 - "Software Licence" means a licence for the use of one OMC Product for the number of Users as set out in a Proposal. Where the Proposal is silent on the number of Users, the Software Licence will be for a maximum of 10 Users only.
 - "Software Licence Term" means the Software Licence period as stated in the Proposal. If not expressly provided for in the Proposal, it will be a Software Licence period of 12 months commencing on the earlier of first download, implementation or use of the relevant Product.
 - "User" means an individual who you have notified us of as an authorised user and has successfully completed the training by OMC to operate the Products (and kept their training and certifications up-to-date).

2. OPERATION OF TERMS

- 2.1 Except as otherwise expressly provided, these Standard Terms & Conditions apply to all Proposals and when the Proposal is accepted by the Customer, these Standard Terms & Conditions and the EULA bind the Customer and together with the Proposal will make up a standalone Contract (which constitutes the entire agreement and supersedes all previous agreements and understandings relating to our supply of the Product and Services as specified in the Contract to you).
- 2.2 You agree that you have not relied on any statement, representation, assurance or warranty that is not explicitly set out in the terms of the Contract.
- 2.3 The Customer agrees that it must procure that, and is liable for, all Users being given a copy of, being bound to and strictly complying with the EULA (which may be updated from time to time).

3. BINDING ORDERS

- 3.1 You may accept a Proposal by executing it, or by otherwise agreeing or confirming it in writing (including by email). Once a Proposal is accepted, it forms part of a binding Contract as described in clause 2.1 above.
- 3.2 We will supply and deliver the Product and Services that you have ordered as described in the Contract. No Contract may be reduced or cancelled, or Product refunded or returned without consultation and first receiving our approval.
- 3.3 We do not accept returns or cancellations for any reason other than where the Product or Service is materially defective at our fault (with reference to our Product Guide) and we cannot remedy it. We do not refund on the basis that you have found a cheaper price, product or service elsewhere, or that you have misused or damaged the Product or Service. If you wish to return or cancel a Product or

Service on the basis of a material defect at our fault you must do so after we have had a 30 day period to provide a remedy.

- 3.4 Where our Product or Service is materially defective at our fault, you have not contributed to the defect (including through misuse or damage):
- if the Product is one where the SLAs apply, our response and rectification commitments are set out in the SLA for that Product; and
 - if the Product is one where the SLAs do not apply, our response and rectification commitments are set out in clause 3.5 below.
- 3.5 Where our Product is materially defective at our fault and with the effect that the Product is inoperable, you have not contributed to the defect (including through misuse or damage) and we cannot provide a remedy within 30 days of being notified of such defect, we will provide a refund for the period that you have paid that the Product is inoperable. However if the fault is directly or indirectly as a result of the Customer or User not adhering to the EULA, the Operating Procedures or our Product Guide, or as a result of their misuse of or damage to the Product, or due to out-of-date, erroneous or malicious data inputs by the User, we are not liable to refund or replace the Product or Service.

4. PRICE AND PAYMENT

- 4.1 The prices for all Products and Services are set out in the Proposal and, unless stated otherwise in the Proposal:
- the pricing in our Proposals are estimates which are valid for 60 days from the date of issuing the Proposal to you; and
 - all prices, fees and costs are in the currency stated in the Proposal and exclude taxes, duties and excises.
- 4.2 Unless we enter into a multi year Contract with you, each 12 months we may update the pricing for our Product and any other goods and services we offer that are subject of these Standard Terms & Conditions.
- 4.3 You are liable for the fees and costs set out in the accepted Proposal. Unless we expressly provide otherwise in the Proposal, we will issue an invoice for your Contract prior to or on date of first delivery of Product and any Services to you and, where we charge:
- annually, we will invoice you at the start of relevant year;
 - quarterly, we will invoice you at the start of relevant calendar quarter;
 - monthly, we will invoice you each month at the start of the month.
- Where the Proposal is silent on when we charge, the default period is monthly.
- 4.4 Unless we expressly provide otherwise in the Proposal, payment of the total invoiced amount is due and payable within 30 days after the date of the invoice. Payment must be in full by way of electronic funds transfer to our bank account as set out in the invoice and be net of any transfer fees.
- 4.5 All prices, fees and charges stated in the Proposal exclude GST, taxes, duties, and excises levied by government (including value added taxes, state and withholding taxes) and these are to be paid by you. Where a withholding tax is applied, the price will be grossed up so that we receive the full amount of the price listed on the relevant tax invoice as if the withholding tax was not applied.
- 4.6 If we pay any extra third party costs, including but not limited to increases in third party data or information supply costs, these costs will be invoiced and charged to you.
- 4.7 If you have not made payment on time for a Contract and payment remains outstanding, we may immediately:
- cancel a Contract or the delivery of (or access to) Product or Services under that Contract; and/or
 - terminate any or all Software Licences (and the relevant Software Licence Term or Renewal Term will end) under that Contract, without refund to you.
- 4.8 If payment of any money you owe us is overdue, it incurs interest daily at the Default Interest Rate of 4% above the rate in the *Penalty Interest Rates Act 1983* (Vic) per annum.

5. USE

- 5.1 You must ensure that each person and individual is a User who uses the Product does so:
- with due care and skill;
 - strictly for the Permitted Use; and
 - in accordance with the Product Guide and Operating Procedures, the instructions and training we provide, and the instructions of third party suppliers of data and inputs for that Product.
- 5.2 Our Products will often apply industry-standard algorithms and the accuracy of calculations produced by our Products are dependent on:
- the accuracy of the information the User inputs into the Products; and
 - the accuracy and soundness of the standard algorithms used by the User with the Product.
- 5.3 The Customer acknowledges and agrees that:
- the User is responsible for the accuracy and completeness of any User inputs, and that the accuracy, completeness, appropriateness or reliability of the outputs may be affected by the provision of inaccurate or incomplete User inputs; and
 - the accuracy, completeness, appropriateness or reliability of output from our Products may be affected by inaccurate, incomplete, inappropriate or unreliable data obtained from a third party, or obtained from data sensors owned or operated by or on behalf of the Customer or User.

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- (c) we have neither investigated or verified the accuracy and soundness of the standard algorithms used or the meteorological predictions, forecasts and observations used; and
- (d) to the extent permitted by law, all express and implied conditions, warranties or liabilities (including liability as to negligence) regarding the condition, accuracy, suitability, or quality of the standard algorithms used or the meteorological predictions, forecasts and observations used are excluded.
- 5.4 You must notify us in writing, as soon as practicable, if you decide to appoint any individuals to become additional Users. Within a reasonable time of receiving an accepted Proposal for training services, we will commence training services to train with due care and skill the additional Users in accordance with the operating procedures and for the Fees set out in the Proposal.
- 5.5 Our Products and Services are not for resale.
- 5.6 USE OF ANY OF OUR PRODUCTS OR SERVICES DOES NOT GIVE ANY INDICATION THAT USERS OR RELEVANT VESSELS OR FACILITIES ARE SAFE OR IN DANGER, OR THAT THE USER IS USING THE PRODUCT CORRECTLY OR IN A MANNER THAT IS SAFE FOR YOUR VESSEL OR FACILITY. NOR DOES IT NECESSARILY RECORD EACH INTERACTION USERS HAVE WITH ANY PERSON, FAUNA, FLORA, THING OR PLACE THAT THEY ARE NEAR OR IN CONTACT WITH. USE OF OUR PRODUCT AND/OR SERVICES DOES NOT MEAN THAT USERS ARE PROTECTED FROM ANY HARM, INJURY, LOSS OR DAMAGE, NOR DOES IT MEAN THAT YOU ARE NOT RESPONSIBLE FOR YOUR OWN SHIPPING AND SAFETY PROTOCOLS AND/OR THEY ARE NOT RESPONSIBLE FOR THEIR OWN HEALTH AND SAFETY.
- 5.7 Our Products and Services are an aid to traditional and industry standard maritime knowledge, skills and experience and are to be used as a guide to assist Users in forming their own view and using their own judgement as to how to use data, inputs and calculations in order to obtain output that will assist in their day to day operations. Due to our Products relying on your inputs and data, the Customer's standard operating procedures, third party data, and changing geographic, climate and weather conditions, inaccuracies may occur. The use of any of our Products or Services are not a substitute for proper navigation, shipping and safety procedures. You accept that no responsibility for the operations or navigation of any vessel rests with us.
- ### 6. SERVICES
- 6.1 The Proposal will set out the Services that we are to perform in addition to supplying the Product/s (for instance, Setup Services will often be a separate line item chargeable by us).
- 6.2 Where a Service is not expressly included in the supply of a Product as set out in the Proposal or Product Guide, you agree that we will charge for the Service at an hourly rate in 15 minute increments in accordance with our usual rates for such Services (please consult with your salesperson/agent for our current hourly rates). We will only perform such Services once you have approved of them and consented to be subject to our Fees.
- 6.3 Often our Product offering will include training and support however where it is not expressly included, we reserve the right to charge the Customer for extra training and support over and above the allowance which we offer as part of the relevant Product.
- 6.4 We have detailed security, privacy and compliance documents available on request, designed specifically for use by your security and compliance teams. Beyond our providing our standard documents in this respect or for any extra specific questions you have, you agree that our time and efforts are a Service and we will charge at an hourly rate in 15 minute increments in accordance with our usual rates for such Services (please consult with your salesperson/agent for our current hourly rates).
- ### 7. CUSTOMER RESPONSIBILITIES
- 7.1 The Customer will be responsible for keeping and using the Product and Services in the IT system and environmental conditions recommended by us (including that its operating systems meet our requirements as set out in the Product Guide).
- 7.2 The Customer will ensure that the Product and Services are only used by properly trained Users in accordance with our instructions (which may be updated from time to time).
- 7.3 From time to time, the Customer will provide us with such information and assistance concerning the Customer's use of the Product, including its application, use, location and environment as we may reasonably require so that we can provide our Products and Services.
- 7.4 The Customer will immediately notify us if there is any failure of the Product or Services, and will allow us full and free access to such items and all documentation, software, materials and services (including its environment) for the purpose of support. The Customer will ensure that relevant trained, qualified and experienced staff are available when required by us to provide us with information required to diagnose and/or repair issues.
- 7.5 Unless we expressly agree to engage a third party supplier for the Customer (where the Customer will be subject to the third party supplier's terms and conditions), it is the Customer's sole responsibility to maintain up-to-date data and information streams and inputs for the use with the Product.
- 7.6 The Customer undertakes to keep in place adequate and up-to-date security measures and practices to protect the Product and any Services from any improper or unauthorised access or uploading of any viruses, malicious code or harmful code. We shall not be responsible for, and you covenant that you will not undertake, any unauthorised access to the Product or Services by means of reverse engineering, copying, hacking, jailbreaking or any unauthorised access with intent to commit or facilitate the commission of any excessive use, offence or any unauthorised modification or infringement of the intellectual property of the Product, software or Services by the Customer, any User, any personnel of the Customer or by a third party.
- 7.7 The Customer is responsible for ensuring that their login and password to the Products (and those of the Users) remain secure and confidential. The Customer should update their passwords regularly (including requiring it of their Users) and 'remember me' type functions should not be used on publicly available or shared computers.
- 7.8 Unless the Proposal expressly provides that we will backup data for you or the Product Guide for the Product you have licensed expressly provides for backup, the Customer acknowledges that:
- it and its Users are solely responsible for creating an independent offline backup of any of the User inputs and outputs processed by our Products, together with any sensory data processed or otherwise inputted into the relevant Product;
 - inputs, outputs or sensory data may not be retained by us and may be permanently deleted.
- ### 8. INTERNET/NETWORK REQUIREMENTS
- 8.1 Our Products require a reliable and robust connection to the internet (or VPN) to use the Products and take advantage of all of the online features and benefits. We set out the internet requirements in the Product Guide. It is the Customer's responsibility to ensure that it has an appropriate internet (or VPN) connection in place for use of the Products at all times (including at sea, in coastal areas and other remotes regions) and includes up-to-date security practices to protect against improper, illegitimate or malicious access or use of the Product at the Customer's end or via the Customer's environment.
- 8.2 Larger use sites, facilities and vessels require higher internet speeds and capacity as appropriate to the size of relevant sites, business and vessels. This speed and capacity requirement does not include any additional internet usage required over and above for use of the Products such as staff or guest networks or other business requirements. Internet speeds, capacities and consistencies can be checked by using internet speed test websites or by contacting the applicable internet service provider.
- 8.3 The Customer is solely responsible and liable for the setup, configuration and management of the local network, internet, telecommunications and/or wifi infrastructure for use with the Product.
- 8.4 Our representatives may provide advice and an indication of the suitability of the Customer's internet, telecommunications or local network connections, it remains the Customer's sole responsibility to ensure it has a suitable internet, telecommunications and local network connections during the use of our Products and at all times during our engagement. We are not responsible for any slow or delayed responses to the Customer's own systems.
- ### 9. SOFTWARE LICENCE
- 9.1 The Software Licence, use of the Product, and any other Services we supply may only be used for the Permitted Use, for the Software Licence Term in the Proposal (and for any Renewal Term), and is subject to these Standard Terms & Conditions, the EULA and Product Guide.
- 9.2 Unless terminated earlier pursuant to an express provision of the Contract or either party gives the other party written notice of non-renewal at least 60 days prior to the expiration of the then-current term, the Contract (and the Software Licence/s within) will automatically renew and is chargeable for additional successive period/s as identified as the renewal term in the Proposal and where the Proposal is silent on the renewal term, the automatic renewal will be for additional successive 12 month periods (each a "Renewal Term"). The Software Licence Term together with Renewal Term/s will make up the term of the Contract and the Software Licence within.
- 9.3 If written notice of non-renewal is given at least 60 days prior to the expiration of the then-current term, then at the end of that Software Licence Term or Renewal Term your Software Licence for the relevant Product and your use of the relevant Product will expire (including your access to the relevant App).
- 9.4 Where you renew, or you use the relevant Product or Software Licence after giving notice or after the expiry of the Software Licence Term or Renewal Term, notwithstanding any term in this clause 9 it is deemed that you have agreed to extend the Software Licence for a further Renewal Term and we will invoice you for the Fees for the use of that Product at our standard pricing for the Product which applies at the time of the renewal and not as set out in the original Proposal (unless the Proposal expressly provides otherwise).
- 9.5 Subject to the terms and conditions of the relevant Contract (including the relevant Product Guide), where a Product doesn't operate as intended by OMC or is materially defective, a repair or replacement Product will be supplied.
- 9.6 At no time do we transfer any title or interest in our Products, App or software to you.

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10. TERMINATION AND SUSPENSION

- 10.1 We may terminate or immediately suspend a Contract, part of it, or the access or use of the Product or a Service for the Customer, any User or group of Users if the Customer, a User or group of Users breaches a provision of the Contract (made up of its component parts as set out in clause 2 of these Standard Terms & Conditions). Where we suspend, we may suspend for as long as reasonably necessary and without refund or credit. Where we terminate, we will give 7 days written notice and, if the breach can be remedied we will give the Customer the opportunity to remedy the breach within the notice period (such matters at our reasonable discretion). Termination in such instances will be without refund or credit.
- 10.2 We shall not be liable for any loss or damage to you whether direct or indirect as a result of suspension or termination of a Contract. No compensation shall be paid to you to cover any loss or damage, actual or anticipated profits or any consequential, special, contingent or other damages.
- 10.3 Where we can show that an act or omission by you has contributed to the termination of the Contract, we may retain amounts for actual loss and expenses that we incur (including third party costs and expenses whether paid or unpaid).

11. PRODUCT WARRANTY

- 11.1 Except as expressly stated in these Standard Terms & Conditions, the EULA, or the Product Guide, and except where the law does not permit a warranty to be excluded or requires that a warranty is implied on mandatory basis, all Products and Services are supplied "as is" and we do not give any representation, warranties or undertakings in relation to the Product or Services. Any representation, condition or warranty which might be implied or incorporated into these Standard Terms & Conditions or the Contract more generally by statute, common law or otherwise is excluded to the fullest extent permitted by law. All warranties and conditions that are capable of exclusion (other than those expressly contained in this document) are expressly excluded.
- 11.2 During the term of the Contract, we warrant that:
- (a) we are authorised to market, distribute, license and supply the Product;
 - (b) our intellectual property in our Product will not infringe any third party rights;
 - (c) the Product will be supplied in conformance with its relevant specifications and descriptions set out in the Product Guide;
 - (d) the Product will be compatible and interoperable with the IT system requirements defined in the Product Guide;
 - (e) where we source third party data for you, we will source it from reputable sources (the supply of such third party data is subject to the third party supplier's terms and conditions);
 - (f) for certain Products we provide SLAs as set out in our Product Guide (including for uptimes and service levels); and
 - (g) where we do not provide express SLAs, we will use our best endeavours to respond to you and rectify the issue as soon as possible.
- 11.3 You acknowledge that certain goods and services we supply may be sourced from third-party suppliers, and you agree to comply with the terms and conditions of each third party supplier (where required).
- 11.4 Where the law requires a warranty to be implied into these Standard Terms & Conditions or the Contract more generally and we are in breach of such warranty, then your sole remedy (at our discretion) is:
- (a) we may resupply the affected good or service again (at our cost);
 - (b) we may pay a third party to supply the affected good or service again.

12. LIABILITY AND INDEMNITY

- 12.1 This clause sets out our liability under a Contract, and all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 12.2 Due to the nature of the Products and Services, the use of these items by the Customer and Users, and knowing that third parties will rely on the Customer's use of such items, where we have supplied the Product or Services in conformance with the Contract (including Product Guide) and done so without a material defect being in issue, the Customer is responsible for using the Products in accordance with the Product Guide and Operating Procedures, and the Customer will release us from liability for the use, acts and omissions in respect of the Product and Services otherwise.
- 12.3 We will not be responsible for or liable for inaccurate results produced by any of our Products due to inaccurate, lacking or not up-to-date data or information supplied or inputted by the Customer, a User, any third party supplier, or by or on behalf of a shipper, harbour master or relevant authority.
- 12.4 Except to the extent that clause 12.5 applies, the Customer shall be liable for and indemnify and keep indemnified us and our directors, officers, agents, employees and contractors (the "Indemnified") against all actual, direct, indirect or alleged claims, damages, demands, losses, costs, liabilities, suits, actions, expenses or proceedings of whatsoever nature whether arising under any statute, equity or at common law arising out of or in connection with:
- (a) your use of the Product or Services, or any claim (including any third party claim) in respect of the use of the Product or Services (or any software or documentation in respect of such), that is in any way in breach of an Operating Procedure, the Product Guide, or is in breach of or inconsistent

- with the Permitted Use (including for damage to property, injury to person, or death of any person (including the Indemnified));
- (b) the Customer's or a User's erroneous use, data input, wilful misuse or or misconduct in connection with a Product, an App or software we supply;
- (c) the Customer's or a User's actual or alleged use of the App or any of our software in breach of the Contract (including EULA) or in violation of applicable law; or
- (d) any actual or alleged infringement or misappropriation of third party intellectual property rights or breach of privacy obligations arising from data provided to us by the Customer or otherwise inputted into the App, whether by the Customer, a User or other person.

- 12.5 Except where the Customer or User breaches a Software Licence provision or confidentiality obligation under the Contract (made up of its parts), or infringes any intellectual property right in the Product or Service, in any other event, the Customer's total liability under the Contract (made up of its parts) under any theory of liability, whether by statute, in an equitable, legal, or common law action, whether for contract, strict liability, indemnity, tort (including negligence), for legal fees and/or costs, or otherwise, for damages which, in the aggregate, will not exceed the amount actually paid and due to be paid by Customer under the Contract for Product, App and Services which gave rise to such damages and expenses. The indemnity in favour of OMC and the Indemnified in clause 12.4 does not apply to the extent that a third party makes a claim for the infringement of its intellectual property rights by us.
- 12.6 To the extent permissible by law you release us and the Indemnified from and against any claims, suits, demands, actions now or at any time in the future by any of your Users relating directly or indirectly to the relevant Contract (made up of its parts) or the supply of Product, software or Services any other good or service by us or your use of those items.
- 12.7 To the maximum extent permitted at law, our liability is limited as follows:
- (a) in respect of a supply of a good or service under a Contract:
 - (i) at our discretion we may resupply the affected good or service again (or we may elect to pay a third party to supply the affected good or service again);
 - (ii) our liability is capped to the amount that the Customer actually paid for the affected good or service (except where we are liable for a claim that our Product, App, software or Service infringes a third party's intellectual property right);
 - (b) IN ANY EVENT, OUR TOTAL LIABILITY UNDER A CONTRACT (MADE UP OF ITS PARTS) UNDER ANY THEORY OF LIABILITY, WHETHER BY STATUTE, IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION, WHETHER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), FOR LEGAL FEES AND/OR COSTS, OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, WILL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER UNDER THE CONTRACT FOR THE GOODS AND SERVICES WHICH GAVE RISE TO SUCH DAMAGES AND EXPENSES;
 - (c) IN NO EVENT WILL WE BE LIABLE TO THE CUSTOMER IN RESPECT OF PRODUCTS OR SERVICES THAT HAVE NOT BEEN PAID FOR;
 - (d) IN NO EVENT WILL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING DAMAGES WHICH DO NOT NATURALLY ARISE) AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OR CORRUPTION OF DATA OR INFORMATION, BUSINESS INTERRUPTION OR LOSS OF PROFITS, LOSS OF BUSINESS OPPORTUNITIES, GOODWILL OR DAMAGE TO THE HEALTH OR SAFETY OF ANY PERSON OR INDIVIDUAL; AND
 - (e) THESE LIMITATIONS APPLY EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

13. CONFIDENTIALITY

- 13.1 A party (**Receiving Party**) will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed (either orally, in writing or by demonstration) to the Receiving Party by the other party (**Disclosing Party**) or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain (**Confidential Information**).
- 13.2 In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
- (a) to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under the Contract;
 - (b) not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party.
- 13.3 The Receiving Party may disclose any Confidential Information which:
- (a) is in or comes into the public domain in any way without breach of the Contract by the Receiving Party (or any person or entity to whom it makes

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disclosure), or was in the possession of the Receiving Party before disclosure of it by the Disclosing Party;

- (b) is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
- (c) is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given clear and timely prior written notice of such request.

14. MISCELLANEOUS

- 14.1 We reserve the right to periodically audit the Customer to ensure that it and its Users are not using any Product in violation of any term of the Contract. The Customer will give full access to its systems, records and personnel to the extent required to conduct the audit in respect of the use of our Products. If the audit discovers that a User is not using the Products or the software in our Products in accordance with the Contract, the Customer shall pay the costs of the audit.
- 14.2 The parties each agree to comply with all applicable laws, regulations, and ordinances relating to such party's performance and obligations under these Standard Terms & Conditions.
- 14.3 No amount owing by you to us may be set off against any liability by us to you (in each case whether present, future, actual, contingent or prospective).
- 14.4 A consent, approval, commitment, waiver or similar to be given by us only binds us if given by way of a written document signed by a director of OMC.
- 14.5 All terms and conditions in respect of liability, indemnities, confidentiality, product warranties and disclaimers, the use of Products or Services and any intellectual property rights shall survive termination of the relevant Contract (however arising).
- 14.6 The law of Victoria, Australia is the proper law of the Contract and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia. The parties agree that the *Goods Act 1958* (Vic) and the *United Nations Convention on Contracts for the International Sale of Goods* (CISG) do not apply to these Standard Terms & Conditions. English is the language of the Contract and any dispute.
- 14.7 If either party is unable wholly or in part, by reason of a Force Majeure Event to carry out any obligation under the Contract it shall promptly give notice to the other party specifying the Force Majeure Event and the likely duration of its inability to perform and that obligation shall be suspended so long as the Force Majeure Event continues. This does not apply to the obligation to make a payment. (Force Majeure Event means any matter outside the control of a party, or industrial action or blockade or embargo or any other form of civil disturbance (whether lawful or not), pandemic, pestilence, industry wide material shortages or component shortages, a major natural weather event, earthquake or any other natural disaster).
- 14.8 An amendment to a Contract or a waiver only binds us to the extent that it is in writing and signed by a director of OMC. Failure to exercise or any delay in exercising any right, power or remedy does not operate as a waiver.
- 14.9 These Standard Terms & Conditions shall prevail over all other terms and conditions including any terms and conditions added to a Proposal by the Customer, any Customer purchase order terms (which will not apply), or other document of the Customer concerning the Product and Services (which will not apply).
- 14.10 If any provision of these Standard Terms & Conditions is or becomes invalid, illegal or unenforceable, in whole or in part, then the provision will apply with whatever deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the commercial intention of the parties. To the extent that it is not possible to delete or modify the provision, in whole or in part, under this clause 14.10, then such provision or part of it will, to the extent that it is illegal, invalid or unenforceable, be deemed to not form part of this document.
- 14.11 The Customer may not assign any part of a Contract or otherwise transfer any licence whether by operation of law, change of control, or in any other manner, without our prior written consent. Any purported assignment of such in violation of this clause will be deemed void. We may assign, in whole or in part, our rights, interests, and obligations without limitation.
- 14.12 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa. Headings are for convenience only and must be ignored in construing this document. References to any person include references to any individual, company, body corporate, association, partnership, firm, joint venture, trust and government. References to any party include references to its respective successors and permitted assigns. The word "include" in any form is not a word of limitation.

15. OMC INFORMATION

For further information relating to a Product or Product Guide, please contact us on +61 3 9412 6500.