

1. Documents constituting agreement and definitions

(a) **Contract:** the contract between **Tele Radio** and the person, company or other legal entity who orders products and/or services from Tele Radio (**Customer**) relating to:

- (i) any products supplied by Tele Radio (**Tele Radio Products**); and/or
 - (ii) any services supplied by Tele Radio (**Tele Radio Services**),
- or other transactions, comprises:
- (iii) the Credit Application (if any)
 - (iv) these terms and conditions (**Tele Radio Terms**);
 - (v) the quotation given by Tele Radio which is the subject of the Purchase Order;
 - (vi) the Purchase Order.
- (together the **Contract**).

By ordering any Tele Radio Products or Tele Radio Services, the customer will be deemed to accept this Contract. Any terms or conditions stated in a Purchase Order which are in addition to or inconsistent with the Tele Radio Terms and the quotation given by Tele Radio have no legal effect, do not constitute part of the Contract and will not bind Tele Radio notwithstanding any statement that the Customer's terms and conditions will prevail over the Tele Radio Terms.

The Contract in each case is the entire agreement and understanding between the parties on everything connected with the subject matter of the Contract.

The Contract may only be varied in accordance with clause 9.

The Customer acknowledges that the Contract is entered into on the basis that both parties are in trade and all goods or services supplied under this Contract are supplied and acquired in trade. If the Customer is a consumer, within the meaning of the Consumer Guarantees Act 1993, or is not otherwise in trade, please contact Tele Radio.

- (b) **Consequential Loss** means loss of product, loss of contract, loss of profit, loss of business reputation, loss of opportunities, loss of production, loss of revenue howsoever arising and whether in an action in contract, tort (including negligence), in equity, product liability, under statute or on any other basis.
- (c) **Credit Application** means the Tele Radio application for credit form signed by the Customer, Tele Radio and any Guarantor.
- (d) **Guarantor** means any person named as Guarantor in the Credit Application.
- (e) **PPSA** means the Personal Property Securities Act 1999, as amended from time to time.
- (f) **Price** has the meaning specified in clause 3.
- (g) **Purchase Order** means:
 - (i) where Tele Radio has provided a quotation for the supply of Tele Radio Products and/or Tele Radio Services, the acceptance in writing of that quotation without variation in accordance with clause 2;
 - (ii) in any other case the acceptance in writing by Tele Radio of a Customer's order for Tele Radio Products and/or Tele Radio Services on the Tele Radio Terms;

and specifically excludes any terms or conditions set out in the Customer's order in addition to or inconsistent with the Tele Radio Terms.

- (h) **Tele Radio** means Tele Radio New Zealand Limited (company number 8460081) which is intended to be the contracting party under this Contract in all cases, except where the context shows that Tele Radio Australia Pty Ltd ACN 615 573 263 is intended to be the contracting party.

2. Orders for Tele Radio Products and/or Tele Radio Services

- (a) Unless otherwise specified in the Contract, any quotation provided by Tele Radio for the purchase of Tele Radio Products and/or Tele Radio Services shall lapse and have no effect 30 days from the date of issue and may be withdrawn by Tele Radio at any time prior to acceptance by the Customer for any reason. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it unless and until the Purchase Order containing the quotation is accepted by Tele Radio.
- (b) The quantity, quality and description of and specification of the Tele Radio Products and/or Tele Radio Services are unless otherwise agreed, as set out in the Contract.
- (c) Non-stock items indented against the Customer's specific requirements will not be ordered until the Customer has provided Tele Radio with a signed declaration acknowledging that the items will be specially indented.

3. Price of Tele Radio Products and/or Tele Radio Services

- (a) The Price of the Tele Radio Products and/or Tele Radio Services will be:
 - (i) where a quoted price has been given and accepted in accordance with clause 2, the price stated in that quote;
 - (ii) where no price is quoted or a Purchase Order is accepted without a price specified, then the prices applying to Tele Radio Products at the date of dispatch of the ordered Tele Radio Products from Tele Radio's premises and the prices applying to Tele Radio Services at the date of the provision of the Tele Radio Services.
- (b) All Prices are in New Zealand dollars and exclusive of GST (in accordance with clause 4) unless otherwise stated.
- (c) Where a Price is quoted it is for the specific quantities specified in the quote and will not apply to any order for a lesser quantity or greater quantity unless otherwise agreed in writing by Tele Radio.
- (d) A delivery charge per order, charged at Tele Radio's rate applicable at the time of delivery, will be applied on all orders which are delivered to a Customer's premises, or as directed by the Customer. This amount will be shown as a separate item on all invoices. The delivery charge will not be applied to the supply of Tele Radio Product back orders from an original order which is beyond the control of the Customer.
- (e) Unless stated otherwise in a quotation:
 - (i) the Price quoted includes packing in accordance with Tele Radio's standard practice. Any other specific packing and marking requirements are not included in the price of Tele Radio Products and where such is requested by the Customer and/or deemed necessary by Tele Radio will be charged for in addition to the price quoted;
 - (ii) Tele Radio Products are sold on an ex warehouse/ex works basis and unless specified otherwise, prices do not include any transport costs. Where the Customer requires freight to be prepaid, all expenses will be to the Customer's account at cost; and
 - (iii) where the Customer requests a particular method of delivery and Tele Radio agrees in writing, the Customer must pay for the cost of delivery by that

method from the point of dispatch of the Tele Radio Products by Tele Radio.

- (f) All prices shown in any Tele Radio publications including price lists, brochures, catalogues, electronic media and other advertising material (**Advertising Material**) are recommended selling prices only and there is no obligation on the part of Tele Radio or any reseller to maintain the same prices. All Advertising Material, quotations and Purchase Orders are issued on an errors and omissions excepted basis. Prices in Advertising Material are subject to change without notice. Prices in quotations are subject to change on notice by Tele Radio to the Customer, with such notice being deemed to be a new quotation for the purposes of this Contract (with the previous quotation being void from the date the new quotation is issued). Where Tele Radio has accepted a Purchase Order and a Contract has been formed, Tele Radio may make reasonable variations to the Price of any Products to be supplied under the Contract, by giving notice to the Customer, provided the Price variation is a direct consequence of unforeseen increases in Tele Radio's costs charged by Tele Radio's suppliers.
- (g) Tele Radio Products which are quoted ex stock are subject to prior sale and any delivery time quoted is made without commitment.
- (h) Tele Radio may correct any clerical errors or omissions, whether in computation or otherwise in any quotation, Purchase Order or invoice.
- (i) Time and material services will be provided in accordance with Tele Radio's published service rates (including applicable overtime and travel expenses) in effect as of the date such services are provided, unless otherwise confirmed by Tele Radio's written quotation or Purchase Order. Billable service time includes travel time to and from the job site and all time Tele Radio's representatives are available for work and waiting (whether on or off the job site) to perform the services.
- (j) If certified drawings with regard to Tele Radio Products purchased are requested, Tele Radio may in its absolute discretion provide certified drawings to the Customer and may charge its reasonable expenses and overhead costs of producing and certifying the copies.

4. GST

- (a) In the Contract "GST" means GST within the meaning of the Goods and Services Tax Act 1985 (the Act).
- (b) All prices quoted or contained in any publication of Tele Radio (including the Tele Radio Terms) are exclusive of GST unless specifically stated otherwise.
- (c) The Customer must provide its tax file number, NZBN (if applicable) and any other information required by Tele Radio for any GST or equivalent purposes prior to any Purchase Order being made.
- (d) GST (and any other tax, duty, levy, charge, withholding, rate, fee or similar imposed by any governmental, administrative, regulatory, judicial, municipal, or statutory authority, organization, body or delegate) will be added to the price payable by the Customer for the Tele Radio Products and the Tele Radio Services (including without limitation any services pursuant to clauses 13, and 14) and any other form of taxable supply at the rate applicable at the time of supply, and Tele Radio will provide a valid tax invoice to the Customer.

5. Payment

- (a) Invoices submitted by Tele Radio are payable only in New Zealand dollars, unless otherwise stated.
- (b) Unless prior arrangements have been made, payment for Tele Radio Products and/or Tele Radio Services is due in full within 28 days from the date of the invoice.
- (c) If payments are agreed in the Contract to be contingent upon delivery, erection or test, and any of these stages are delayed at the request of the Customer, or by reason of the Customer not being able to accept delivery at the time specified in the Contract, payments are to be made within 14 days from the earlier of the Customer's request to delay delivery, and any refusal by the Customer to accept delivery.
- (d) Tele Radio may render partial invoices and require progressive payments. Tele Radio may render invoices electronically.
- (e) Tele Radio may refuse to accept payment by credit card and may impose conditions on any acceptance of payment by credit card.
- (f) If the Customer pays by cheque then payment only occurs when all cheques have been presented and cleared in full.
- (g) No payment due from or payable by the Customer shall be set-off or withheld on account of any claim asserted by the Customer.
- (h) At its discretion, Tele Radio may require a deposit to be paid on certain sales of Tele Radio Products or the supply of Tele Radio Services. Any such requirement, including as to the timing of the deposit, will be notified to the Customer.
- (i) Tele Radio may require the Customer to provide security for payment in a form acceptable to Tele Radio prior to the supply of Tele Radio Products.
- (j) The Customer is not entitled to withhold any payment by way of retention unless the terms and conditions of the retention are agreed in writing by Tele Radio.

6. Interest

Interest on overdue accounts will be charged at the rate specified by Tele Radio from time to time or (if no rate is specified) a rate which is 3 percentage points greater than the rate that would be charged to Tele Radio by its usual bank for overdrafts in excess of \$100,000.00 from time to time.

7. Privacy, credit information and credit limits

- (a) The Customer consents to Tele Radio (or, where applicable, any Related Company of Tele Radio (as that term is defined in the Companies Act 1993) or any financier, credit reporting agency or third party service provider acting at the request of Tele Radio):
 - (i) collecting, holding, using and disclosing information (including, without limitation, credit information from one or more credit reporting agencies) about the Customer from any person for or in connection with the following purposes:
 - (A) assessing the Customer's creditworthiness;
 - (B) administering, directly or indirectly, the Contract and enforcing (or attempting to enforce) Tele Radio's rights, remedies and powers under the Contract;
 - (C) marketing Tele Radio's products or services to the Customer;
 - (D) communicating with the Customer for any purpose;
 - (ii) disclosing information about the Customer to any person who guarantees, or who provides insurance, or who provides any other credit support, in relation to the Customer's obligations to Tele Radio;
 - (iii) disclosing information about the Customer to any credit reporting agencies including information relating to any Customer payments which have not been paid by the due date;
 - (iv) disclosing information about the Customer to such persons as may be necessary or desirable to enable Tele Radio to exercise any power or enforce or attempt to enforce any of Tele Radio's rights, remedies and powers under the Contract.

This is a consent and authority for the purposes of complying with the Privacy Act 2020.

- (b) If Tele Radio grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. Tele Radio can vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party.
- (c) Credit facilities granted, if any:

Tele Radio New Zealand Ltd
6 Hazeldean Road, Addington,
Christchurch 8024
Tel: 027 333 7606
www.tele-radio.com/nz

Tele Radio Australia Pty Ltd
28 Sorbonne Crescent, Canning Vale WA 6155
PO Box 1465, Canning Vale DC WA 6970
P. (08) 6253 4000
www.tele-radio.com/au

- (i) unless otherwise stated will require payment of invoices no later than the last business day of the month immediately following the date of the invoice;
 - (ii) are not transferable without the consent in writing of Tele Radio.
- (d) Tele Radio may reject a Customer's order if it is not satisfied of the Customer's ability to pay at the time of the order.
- (e) If the Customer fails to pay any money when due to Tele Radio, or if the Customer debt exceeds any credit limit granted by Tele Radio, then Tele Radio may refuse to deliver Tele Radio Products and Tele Radio Services until all money due has been paid and all money that will be payable for the undelivered Tele Radio Products and Tele Radio Services.

8. Delivery of Tele Radio Products and/or Tele Radio Services

- (a) The terms of delivery of the Tele Radio Products or provision of the Tele Radio Services are as stated in the Contract.
- (b) Tele Radio may subject to any specific provision in a Purchase Order, at its sole discretion, advise the Customer of the programme for the commencement and the completion of the supply of Tele Radio Products and/or provision of the Tele Radio Services.
- (c) If the delivery of the Tele Radio Products and/or provision of the Tele Radio Services are delayed for any reason beyond the control of Tele Radio, then the completion date will be deemed extended for the period of delay.
- (d) If Tele Radio is delayed in the supply of the Tele Radio Products or provision of the Tele Radio Services (or any of them) for any reason contributed to by the Customer's act or omission, then Tele Radio will be entitled to be paid all reasonable costs of delay including overhead recovery.
- (e) If the Customer requests Tele Radio to change its programme for the delivery of the Tele Radio Products or provision of the Tele Radio Services, and Tele Radio agrees to the change then the Customer shall pay all of Tele Radio's reasonable costs including any increase in cost of goods or services of third party suppliers to Tele Radio and any overhead recovery incurred in following such Customer's request.
- (f) Delivery will be deemed complete if the Tele Radio Products are delivered to the Customer at Tele Radio's premises, or such other address nominated in the Contract. If delivery occurs at a nominated address, delivery is deemed to have occurred irrespective of whether the Customer is in attendance for receipt of the delivery.
- (g) Any period of time for delivery specified in a Contract is an estimate only and while Tele Radio will endeavor to meet any period for delivery specified, Tele Radio will not be liable for delay, failure or inability to deliver the Tele Radio Products and/or Tele Radio Services (or any part of them). The Customer will not be entitled to terminate the Contract because of any reasonable delay in delivery. Tele Radio further reserves the right to substitute the Tele Radio Products with the latest superseding revision or series or equivalent products having comparable form, fit and function if the ordered Tele Radio Products are unavailable.
- (h) Any claims by the Customer for shortages in deliveries must be made in writing to Tele Radio within 7 days of the delivery to which the shortage claim relates. Tele Radio is not liable to compensate the Customer for any shortage claims made after that time.
- (i) If delivery is delayed at the request of the Customer and such delay is for more than 7 days the payment of the balance of the Price shall become immediately due and payable to Tele Radio, including any applicable storage costs.
- (j) Unless otherwise provided for in the Contract the Customer shall pay all freight, shipping and transport costs, taxes, duties and other charges associated with the delivery of the Tele Radio Products.

9. Variations

- (a) The Contract shall not be varied without the agreement of Tele Radio in writing executed by a duly authorized representative of Tele Radio.
- (b) In the event that the Customer wishes to vary the Contract, The Customer must instruct Tele Radio in writing of the proposed variation (**Variation**). Tele Radio is under no obligation to accept the request for the Variation.
- (c) If Tele Radio is prepared to consider the Variation, Tele Radio will advise the Customer of:
- (i) the cost to be charged for, or the basis on which any cost will be calculated for, the requested Variation; and
 - (ii) any change to the times for the delivery of the Tele Radio Products and/or Tele Radio Services; and
 - (iii) any changes required by Tele Radio to any other term of the Contract as a condition of agreeing the Variation;
- and if the Customer agrees to such costs and changes in writing within 7 days of Tele Radio advising the costs and changes, the Contract will be varied on those terms.
- (d) If the Customer cancels an order by written notice prior to delivery for stock line items and the cancellation is accepted by Tele Radio:
- (i) Tele Radio may charge the Customer reasonable cancellation and restocking fees, including reimbursement for Tele Radio's direct costs incurred in connection with the cancellation; and
 - (ii) despite anything to the contrary in the Contract, Tele Radio may charge reasonable cancellation fees associated with the Tele Radio Products ordered on a manufactured/assembled to order or indent only basis up to the actual selling price of the Tele Radio Products.

10. Testing

Prior to delivery of the Tele Radio Products, Tele Radio may, at its own expense, carry out any tests on the Tele Radio Products in accordance with Tele Radio's standards and testing procedures. Any additional tests, procedures and associated documentation required by the Customer are at the Customer's expense.

11. Storage

- (a) If delivery is delayed for any reason beyond Tele Radio's reasonable control for a period of 14 days after the date on which the Customer is notified that the Tele Radio Products or any completed items forming part of the Tele Radio Products are ready for delivery, the risk in such Tele Radio Products shall immediately pass to the Customer, and Tele Radio is entitled to present invoices to the Customer for payment of the Tele Radio Products.
- (b) If the Customer fails to take delivery of the Tele Radio Products in accordance with these Tele Radio Terms, Tele Radio may arrange suitable storage of such Tele Radio Products at Tele Radio's premises or elsewhere and all costs of and incidental to such storage must be paid by the Customer. The Tele Radio Products will be stored at the Customer's own risk. Unless Tele Radio expressly agrees in writing to arrange insurance for the Tele Radio Products which have been stored in accordance with this clause, the Customer is responsible for ensuring the stored Tele Radio Products are adequately insured. The Customer must, on demand, pay to Tele Radio all costs of storage, insurance (where Tele Radio has insured the Tele Radio Products), demurrage, handling and other charges incidental to such storage.
- (c) If delivery is delayed for any reason beyond the reasonable control of both Tele Radio and the Customer after the period of 14 days after which the Customer is notified that the Tele Radio Products, or a part only of the Tele Radio Products are ready for delivery:
- (i) the costs of storage, insurance, demurrage, handling and other charges incidental to such storage shall be shared equally between the parties and the risk in the Tele Radio Products remains with Tele Radio; and
 - (ii) Tele Radio is entitled to present invoices to the Customer for payment of half the Price of the Tele Radio Products ready for delivery, the balance being

invoiced when delivery is effected.

12. Damage or loss in transit

- (a) Where carriage is the responsibility of Tele Radio, Tele Radio will repair or replace free of charge and at Tele Radio's absolute discretion, all Tele Radio Products lost or damaged in transit to the contractual point of delivery provided written notice of such loss or damage is given to Tele Radio within 3 days of delivery, or within such times as will enable Tele Radio to comply with the carrier's conditions of carriage applicable to loss or damage in transit.
- (b) Prior to acknowledging delivery to the carrier the Customer must ensure that the complete consignment as per the carrier's note has been received. If there is a shortage or visible damage to the outer packaging of the Tele Radio Products, the Customer must endorse the carrier's note accordingly.
- (c) Tele Radio is not responsible for any loss or damage to the Tele Radio Products caused by or arising from transport or delivery of the Tele Radio Products if Tele Radio has not packed the Tele Radio Products or the Customer has nominated the carrier.
- (d) Claims made for damage or loss in transit must be made against the carrier in the manner prescribed by Tele Radio from time to time.

13. Training

Where training forms a part of the supply of Tele Radio Products, such training will be charged at a rate per 8 hour day (or part thereof) for a specified number of trainees, and cover provision of training equipment, training instructor and course handouts. Where training is carried out external to Tele Radio's offices, the cost of transporting equipment and instructor's air fares, hire car for site transportation, meals, accommodation and miscellaneous out of pocket expenses will be charged at the cost to Tele Radio plus fifteen percent. All travel time and stand-by and waiting time will be charged in accordance with Tele Radio's labour rate applying at the time of supply.

14. Engineering assistance

Any engineering or technical assistance provided by Tele Radio, will be charged at Tele Radio's labour rate applying at the time assistance is provided, (including travel and stand-by/waiting time), plus expenses at the cost to Tele Radio plus fifteen percent. Applicable expenses include, but are not limited to, those described under clause 13 for external training. Any required miscellaneous materials purchased by Tele Radio will be charged at cost to Tele Radio, plus 25 per cent.

15. Loans and Hire

- (a) Any Tele Radio Products loaned or hired out by Tele Radio and not returned to Tele Radio within the specified loan or hire period shall be deemed to have been sold to the Customer, and the list price on the date for return of the loaned or hired Tele Radio Products shall become due and payable by the Customer.
- (b) Any Tele Radio Products loaned or hired out by Tele Radio must be returned by the recipient in the original packing, and in original condition, fair and reasonable wear and tear excepted.
- (c) Any Tele Radio Products loaned or hired out to the Customer by Tele Radio which are returned damaged or defective, due to reasons not covered by Tele Radio's standard warranty provisions, will result in the Customer being charged for repair charges, or the cost of the Tele Radio Products loaned or hired out, whichever is the lesser.
- (d) Return freight, if applicable, will be prepaid by the Customer.

16. Tele Radio warranties and liability

- (a) Tele Radio warrants that:
 - (i) the Tele Radio Products and/or Tele Radio Services to be supplied under the Contract will conform to the description in the Contract;
 - (ii) all products manufactured by Tele Radio or its supply line partners as published in its current catalogues and supplied by Tele Radio, are guaranteed against faulty workmanship, materials or design for a period of twenty-four months from the date of despatch from Tele Radio's premises (**Warranty Period**);
 - (iii) where Tele Radio undertakes repairs or replacement during the Warranty Period then for those components only that are repaired or replaced the Warranty Period shall be extended for a further period of twelve months from the date of completion of the repair or replacement;
 - (iv) Tele Radio in its discretion may either repair or replace any Tele Radio Products covered by Tele Radio's warranties.
- (b) The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may impose warranties, conditions or obligations on us which cannot by law be excluded (or by law can only be excluded to a limited extent). Where the Customer acquires the Tele Radio Products or the Tele Radio Services for the purposes of a business:
 - (i) The parties acknowledge and agree that:
 - (A) the Customer is acquiring the Tele Radio Products and/or the Tele Radio Services for the purposes of a business in terms of sections 2 and 43(2) of the Consumer Guarantees Act 1993; and
 - (B) that the Tele Radio Products and the Tele Radio Services are both supplied and acquired in trade for the purposes of the Fair Trading Act 1986 and the parties agree to contract out of sections 9 (misleading and deceptive conduct generally), 12A (unsubstantiated representations) and 13 (false or misleading representations); and
 - (ii) the Customer agrees that all warranties, conditions and other terms implied by the Consumer Guarantees Act 1993 or sections 9, 12A and 13 of the Fair Trading Act 1986 are excluded from the Contract to the fullest extent permitted by law and the parties further acknowledge and agree that it is fair and reasonable that the parties are bound by this clause.
- (c) To the full extent permitted by law, subject to sub-clauses 16(a) and 16(b) and except as otherwise provided therein:
 - (i) Tele Radio is not responsible for or liable for any repair, replacement, loss or damage with regard to the Tele Radio Products and/or the Tele Radio Services after the expiration of the Warranty Period.
 - (ii) In the case of goods not manufactured by Tele Radio, Tele Radio does not provide any warranty or guarantee and the Customer must rely solely on any warranty or guarantee given by the manufacturer. Tele Radio will, if requested in writing by the Customer, endeavour to assist the Customer to obtain from the manufacturer the benefit of any guarantee or warranty which the manufacturer may have expressly given in writing as to the quality or fitness for any purpose of the goods, but Tele Radio shall not be liable in any way for any breach by the manufacturer of any obligations pursuant to any manufacturer's warranty or guarantee.
 - (iii) All warranties, guarantees, conditions, rights and remedies, express or implied, statutory, and whether under common law, equity or otherwise in relation to the Tele Radio Products and/or Tele Radio Services, are hereby expressly excluded (except to the extent such liability is legally incapable of being excluded or limited), including (but not limited to) liability in respect of any:
 - (A) damage to the Tele Radio Products caused after risk passes; or

- (B) damage caused by misuse, accident, neglect, lightning, improper installation, operation, maintenance, repair, alteration, modification or adjustment other than by Tele Radio and/or its authorised agents; or
 - (C) damage arising from unusual deterioration or degradation of the Tele Radio Products or parts of the Tele Radio Products due to physical environment or electrical or electromagnetic noise environment; or
 - (D) injury, loss or damage arising out of any representation, statement, recommendation or advice given by Tele Radio, its employees or agents before or after the issue of the Contract by Tele Radio; or
 - (E) indirect injury, loss (including Consequential Loss) or damage suffered by reason of defects in the Tele Radio Products and/or Tele Radio Services or arising from any breach of warranty or condition or any misrepresentation; or
 - (F) indirect injury or damage (including Consequential Loss).
- (iv) Tele Radio's liability, if any, in respect of any breach of any conditions or warranties, or under or pursuant to such rights or remedies referred to in sub-clause 16(c), or for damages for or in respect of any claim arising out of or in connection with any Contract, or any conduct under a Contract other than any liability which is totally excluded by the Contract, (and whether or not such liability results from or involves negligence) shall be limited to:
- (A) the replacement of the Tele Radio Products or the supply of equivalent Tele Radio Products or Tele Radio Services;
 - (B) the repair of the Tele Radio Products;
 - (C) the payment of the cost of replacing the Tele Radio Products or of acquiring equivalent products or services;
 - (D) the payment of the cost of having the Tele Radio Products repaired;
 - (E) supplying the Tele Radio Services again; or
 - (F) payment of having the Tele Radio Services supplied again.

Where Tele Radio elects to replace a product the replacement may be new, re-manufactured, refurbished or reconditioned at Tele Radio's sole discretion.

- (v) Tele Radio does not provide any warranty as to the acceptability or fitness of the Tele Radio Products and/or Tele Radio Services for any particular purpose.
 - (vi) Tele Radio is not liable for, and the Customer is not entitled to recover from or make any claim against Tele Radio or hold Tele Radio liable for any Consequential Losses whatsoever that may be suffered by the Customer arising out of quality defects or the performance by Tele Radio of the Contract or failure to comply with any standard as to fitness for purpose or compliance.
 - (vii) Tele Radio makes no representation nor provides any warranty in respect of standard and custom software and firmware supplied in connection with Tele Radio Products and/or Tele Radio Services or that any such software or firmware will be uninterrupted or error free, or that the functions contained therein will meet or satisfy the Customer's intended use or requirements.
 - (viii) Any repairs, alterations or other work carried out to Tele Radio Products or to rectify, alter or change anything arising from alleged defective Tele Radio Services by a person other than an authorised representative of Tele Radio shall (to the maximum extent permitted by law) invalidate any warranty given by Tele Radio.
- (d) Any Tele Radio Products claimed by the Customer to be defective must be returned at the cost of the Customer to Tele Radio by the Customer and the Tele Radio Products must be returned at the risk of the Customer and in accordance with Tele Radio's instructions.
 - (e) If the Customer requests that any repairs or replacement services covered by a warranty be carried out at the Customer's premises, the Customer agrees to pay Tele Radio a reasonable fee for the time and expenses incurred by Tele Radio for travel to and from the Customer's premises to undertake such work.
 - (f) The Customer may not claim against Tele Radio in respect of any defect which should have been apparent on a reasonable visual examination of the Tele Radio Products but is not notified to Tele Radio after the Customer has had a reasonable opportunity to discover the defect in the Tele Radio Products and in any event within 14 days of delivery of the Tele Radio Products.
 - (g) With respect to the Tele Radio services or any services that Tele Radio provides to the Customer in connection with the Tele Radio Products or otherwise, Tele Radio shall not be liable for any injury, loss or damage incurred, whether direct, consequential, incidental, punitive, exemplary or indirect, by statute, in tort or contract.
 - (h) Tele Radio will not be liable for any losses or damages suffered by the Customer as either a direct or indirect consequence of any regulatory non-compliance whatsoever resulting from any act or omission on the part of the Customer.
 - (i) Any court action for any claim arising from or relating to the Contract or pursuant to any law against Tele Radio must be commenced within eighteen (18) months after the cause of action accrues. This clause will apply regardless of any other contrary provision in the Contract.
 - (j) Each provision of the Contract which provides for a limitation of liability, disclaimer of warranty or condition or exclusion of damages is separate and independent.

17. Customer representations and warranties

- (a) The Customer by making a Purchase Order represents and warrants that:
 - (i) The Customer has full power and authority to enter into and perform its obligations under the Contract;
 - (ii) All information provided to Tele Radio by or on behalf of the Customer is true and correct in all material respects and is not, whether by omission of information or otherwise, misleading;
 - (iii) The Customer is entitled to use any drawings, documents and other information and material that the Customer provides Tele Radio with, and indemnifies and holds harmless Tele Radio from any claims that may be brought against Tele Radio in relation to the same;
 - (iv) The Customer has not withheld from Tele Radio any document, information or other fact material to the decision of Tele Radio to enter into a contract with the Customer;
 - (v) The Customer has made its own independent enquiries from appropriate professionals on all statutory and regulatory compliance issues as relates to the Contract and the Customer's intended use for the Tele Radio Products and Tele Radio Services;
 - (vi) The Customer does not rely on the skill and judgment of Tele Radio in relation to the suitability of any of the Tele Radio Products and/or the Tele Radio Services for a particular purpose or application for which they are required by the Customer and, to the maximum extent permitted by the law, Tele Radio is under no liability whatsoever if the Tele Radio Products and/or the Tele Radio Services are not suitable and fit.
 - (vii) The Customer is solely responsible for obtaining all necessary permits and licences to comply with all applicable legislation, regulations, by-laws or rules

(if any) in connection with the installation and operation of the Tele Radio Products; and

(viii) The Customer will comply with all instructions of Tele Radio in relation to the fitting, installation and use of the Tele Radio Products and in the course of the supply of the Tele Radio Services.

(b) The representations and warranties given in this clause survive the Contract.

18. Returns and Credits

- (a) Except as expressly provided in the Tele Radio Terms, Tele Radio shall (to the maximum extent permitted by the law) not be under any obligation to accept the return of any Tele Radio Products supplied to the Customer.
- (b) Returns of unused and re-saleable standard Tele Radio Products which are not under warranty and which are listed in the published price lists, brochures and catalogues, electronic media and other advertising material of Tele Radio may, at Tele Radio's sole discretion, be returned for credit, provided that the Tele Radio Products are:
- (i) returned within 14 days of delivery, at the customers cost to Tele Radio's warehouse;
 - (ii) accompanied by a delivery docket stating Tele Radio's original invoice number and a valid reason for the return; and
 - (iii) returned in an unused, undamaged and resalable condition, in their original packing.
- (c) No Tele Radio Products will be accepted for return under any circumstances (other than for reasons of wrong delivery or because the Tele Radio Products are faulty) if either:
- (i) the goods are non-stock items indented against the Customer's specific requirements; or
 - (ii) the invoiced value of the Tele Radio Products is less than \$200.00 excluding GST.
- (d) Tele Radio Products will not be accepted for return for any reason between 15 and 30 days after the date of delivery unless by prior arrangement between Tele Radio and Customer, and with the payment of a restocking fee of 20% of original invoice value, or \$50.00, exclusive of GST, whichever is the greater.
- (e) No Tele Radio Products will be accepted for return for any reason whatsoever beyond 30 days from date of delivery.
- (f) Where Tele Radio Products which have been supplied by Tele Radio on a manufactured/assembled to order or indent only basis, Tele Radio will not, unless agreed otherwise in writing, accept them for return except where such Tele Radio Products are faulty or have been wrongly delivered against Tele Radio drawings and/or Tele Radio specification sheets signed off by the Customer prior to manufacture.
- (g) Tele Radio may from time to time, develop policies in connection with the return of Tele Radio Products, which will be notified to the Customer and must be complied with before any returned Tele Radio Products are accepted by Tele Radio in exchange for credit, or such returned Tele Radio Products are otherwise repaired or replaced.

19. Goods returned for repair (not under Warranty)

Where Tele Radio Products are returned for repair, and the repair is not covered by any warranty given by Tele Radio, then (to the maximum extent permitted by the law):

- (a) Tele Radio may charge a fee for inspection, assessment of the repairs and preparation of a repair quotation and this fee shall be payable by the Customer in any event even if the Customer does not proceed with the repair.
- (b) Any repairs that Tele Radio undertakes under this clause are guaranteed against faulty workmanship and only in respect of any replacement components that were used in the repair for a period of ninety days from date of completion of the repair.
- (c) Despite anything to the contrary in this clause, Tele Radio is not under any obligation to repair any Tele Radio Products where the repair is not covered by a warranty given by Tele Radio.

20. Retention of title of Tele Radio Products

- (a) The Customer agrees that legal and equitable title to the Tele Radio Products is retained by Tele Radio and does not pass until Tele Radio has received payment in full for the Tele Radio Products and all other moneys owed by the Customer to Tele Radio and until such time the Customer will hold the Products as a bailee of Tele Radio and a fiduciary relationship will exist between Tele Radio and the Customer.
- (b) If the Tele Radio Products are converted or assembled into a new product, or form part of a new product (**New Product**), the conversion or assembly shall be deemed to have been effected on behalf of Tele Radio who shall have full beneficial ownership of the whole of the New Product but without accepting any liability in respect of such New Product.
- (c) The Tele Radio Products must be stored separately and in a manner enabling them to be identified and cross-referenced to particular invoices and the Customer acknowledges that if it should mix the Tele Radio Products with other products or items such that the Tele Radio Products are no longer separately identifiable then Tele Radio shall be the owner of such products including any New Products.
- (d) Subject to sub-clause (e) below, the Customer shall be free to sell the Tele Radio Products and the New Product in the ordinary course of business, on the basis that all proceeds shall belong to Tele Radio until it has received full settlement.
- (e) Tele Radio may at any time revoke the Customer's power of sale by notice to the Customer, provided that such notice shall be based on reasonable grounds.
- (f) The Customer agrees to record and store such New Products in such a way that they are readily identifiable as the property of Tele Radio.
- (g) If the Customer fails to pay any debt owed to Tele Radio when it is due the Customer acknowledges and agrees that Tele Radio may recover or retake possession of all or any of the Tele Radio Products which have not been paid for in full and dispose of such Tele Radio Products.
- (h) If the Customer fails to pay any debt owed to Tele Radio when it is due the Customer grants Tele Radio and any person authorised by Tele Radio full leave, permission and an irrevocable licence to enter, after giving written notice to the Customer of its intention to do so, at any time any property where any Tele Radio Product or New Product is placed or stored and do all things necessary and use such reasonable force as is necessary in order to recover or retake possession of the Tele Radio Products which have not been paid for in full including New Products.
- (i) The Customer accepts liability for the safe custody and return of the Tele Radio Products to Tele Radio and indemnifies Tele Radio for any costs and/or loss relating thereto.
- (j) The Customer agrees that a certificate purporting to be signed by an officer of Tele Radio identifying Tele Radio Products as unpaid, shall for the purpose of this clause be conclusive evidence that the Tele Radio Products have not been paid for and of Tele Radio's title thereto.

21. Title and risk

- (a) Subject to the Tele Radio Terms, title in the Tele Radio Products will pass from Tele Radio to the Customer (or its nominated agent) when Tele Radio receives payment in full for such Tele Radio Products, unless otherwise agreed in writing by Tele Radio.
- (b) Risk in Tele Radio Products will pass to the Customer upon delivery to the Customer or his agent or to a transport company nominated by the Customer or in accordance with clause 11(b).

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- (c) Until payment in full the Customer agrees:
 - (i) to provide adequate insurance for the Tele Radio Products; and
 - (ii) only to sell the Tele Radio Products in the ordinary course of its business.
- (d) If delivery is arranged by Tele Radio at the Customer's cost then Tele Radio will take out an insurance policy to cover the Products in transit at the Customer's additional cost and Tele Radio's liability to insure will cease immediately upon delivery of the Tele Radio Products.
- (e) The Customer will only require Tele Radio to make good loss or damage to the amount obtained by Tele Radio from the insurer and Tele Radio shall not be liable to the Customer whatsoever for any other damage or Consequential Loss whatsoever.
- (f) The Customer acknowledges and agrees, for the purposes of sub-clause 21(c)(ii) a sale of any Tele Radio Product for less than its cost price, is not a sale in the "ordinary course of business".

22. Indemnity

The Customer indemnifies Tele Radio against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Tele Radio pays, suffers, incurs or is liable for in connection with the use of the Tele Radio Products (or the sale of products made from the Tele Radio Products or Tele Radio Services), other than to the extent the same arises from the negligence or wilful default of Tele Radio or any employee, agent or officer of Tele Radio and this indemnity is a continuing obligation of the Customer and remains in full force and effect until all money owing, contingently or otherwise, under this indemnity has been paid in full.

23. Technical advice

With respect to any technical advice it provides to the Customer in connection with the Tele Radio Products or Tele Radio Services, Tele Radio shall not be liable for any injury, loss or damage incurred, whether direct, consequential, incidental, punitive, exemplary or indirect, by statute, in tort or contract, under any indemnity provision or otherwise.

24. Information, drawings and documentation

All descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by Tele Radio or otherwise contained in Company publications including price lists, brochures, catalogues, electronic media and other advertising material of Tele Radio are approximate only and are intended to be by way of general description of the Tele Radio Products and shall not form part of the Contract between Tele Radio and the Customer unless otherwise specified by Tele Radio in writing, in which case, they shall be subject to recognized tolerances and rejection limits. Tele Radio does not agree to comply with any specifications and drawings referred to in any order unless such specifications and drawings have been produced to Tele Radio prior to the order of Tele Radio Products and have been agreed to in writing and signed by a duly authorized representative of Tele Radio.

25. Performance standards

- (a) Any performance figures given by Tele Radio are based on Tele Radio's experience and are figures that Tele Radio expects to obtain on testing. Tele Radio is under no liability whatsoever for damages for failure to attain such performance figures.
- (b) Tele Radio is not required to comply with any additional standards, specifications, rules or other requirements requested by the Customer after acceptance of a Purchase Order. If such additional standards, specifications, rules or other requirements are requested by the Customer, the request will be treated as a Variation pursuant to clause 9.

26. Confidentiality and intellectual property

- (a) Tele Radio retains all copyright and intellectual property rights whatsoever in including but not limited to copyright, patents, design rights, trademarks, software and licences in, or related to, all materials it uses or provides to the Customer relating to the Tele Radio Products and/or Tele Radio Services and shall not be available in any form to third parties, nor re-used by the Customer, unless agreed to in writing by Tele Radio.
- (b) Any software supplied by Tele Radio may be used by the Customer only on the computer or equipment configuration specified.
- (c) Use of Tele Radio Products which contain, or are to be used with, standard or custom software or firmware may be subject to the Customer's acceptance of additional terms and conditions in separate Company or third-party licence agreements (Third Party Licence Agreements). Where there is a conflict between any term of a Third Party Licence Agreement and these Terms of Sale, the Third Party Licence Agreement will prevail to the extent of the inconsistency. In the absence of a Third Party Licence Agreement, the Customer is granted a non-exclusive, non-transferable and royalty free licence to use the purchased software or firmware only in object code form and solely in conjunction with the Tele Radio Products, with no rights to sublicense, disclose, disassemble, decompile, reverse engineer, or otherwise modify the software or firmware.
- (d) The Customer must not alter, remove, or in any way tamper with, or otherwise do anything adverse to, any intellectual property rights (including but not limited to trade marks), whether registered or unregistered, or numbers of Tele Radio or its suppliers attached to or placed on the Tele Radio Products.

27. Force majeure

- (a) Tele Radio shall not be liable for any prevention of or delay in performance of its obligations (or of its suppliers and subcontractors) under the Contract which is caused by any event or circumstance which is beyond the reasonable control of Tele Radio including any act of God, strike, lockout or other labour dispute, war, riot or civil commotion, fires, floods, pandemics (including COVID-19), epidemics, quarantine restrictions, acts of terrorism, delays in transportation, or transportation embargoes, accidental breakdown to any machinery or facilities necessary for the manufacture, transportation or delivery of the Tele Radio Products and/or Tele Radio Services. (**Force Majeure Events**).
- (b) In the event of such delay, Tele Radio's performance dates will be extended for such length of time as may be reasonably necessary to compensate for the Force Majeure Event.
- (c) If a Force Majeure Event continues for a period of 3 months or more, Tele Radio may (without affecting the accrued rights and obligations of the parties as at the date of termination) terminate the Contract immediately by written notice to the Customer.

28. Non-acceptance

- (a) If the Customer repudiates any contract or wrongfully refuses to accept Tele Radio Products delivered under the Contract (and such Tele Radio Products have been specially produced to the Customer's particular requirements), then, in addition to any other rights or remedies available to Tele Radio under this Contract or at law, the Customer shall indemnify Tele Radio for any loss or damage (including legal costs on a solicitor-client basis) suffered by Tele Radio as a result of such repudiation or wrongful refusal. The parties agree and acknowledge Tele Radio's rights in accordance with this clause are reasonably necessary to protect Tele Radio's legitimate interests, and are proportional to such interests. The parties also agree and acknowledge that the Tele Radio Products may be or may include bespoke products manufactured or assembled to the Customer's specifications and such Tele Radio Products may not be resaleable in a commercially reasonable manner in the ordinary course of business.
- (b) Where the Contract is to be fulfilled by delivery in a number of instalments, the failure by Tele Radio to deliver any particular instalment shall not entitle the Customer to repudiate the Contract or refuse to accept further instalments.

29. Dispute resolution

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- (a) The parties using their best endeavours and acting in good faith must attempt to resolve any dispute arising under the Contract prior to commencing any court proceedings by:
- (i) Negotiations that shall be conducted in English between representatives of the parties who have authority to settle the dispute.
 - (ii) Negotiations must be conducted within 30 days of a party providing written notice to the other party of the matter and circumstances giving rise to the dispute (**Notice of Dispute**).
 - (iii) If the dispute has not been resolved within 30 days of a party giving a Notice of Dispute, the parties must refer the dispute to a mediator with all mediator fees and expenses payable equally by the parties.
 - (iv) If a mediator cannot be agreed upon within 30 days of a party giving a Notice of Dispute, either party may request the President of the New Zealand Law Society to appoint a mediator.
 - (v) Mediation must take place in accordance with any directions of the mediator within 60 days of the date of the Notice of Dispute.
- (b) Any dispute not resolved by negotiation or mediation may then be submitted to a court of competent jurisdiction in New Zealand.

30. Termination

- (a) It is an event of termination (**Termination Event**) if:
- (i) the Customer fails to pay any money payable to Tele Radio when it is due;
 - (ii) the Customer breaches the Contract in a material respect and, in Tele Radio's opinion, the breach cannot be remedied;
 - (iii) the Customer breaches the Contract in a material respect other than no payment of money due and, in Tele Radio's opinion, the breach can be remedied, the Customer does not remedy the breach within 14 days after Tele Radio gives the Customer notice of the breach;
 - (iv) a judgment in an amount exceeding \$10,000 or its equivalent in any other currency is obtained against the Customer in an amount exceeding \$10,000 and is not set aside or satisfied within 14 days;
 - (v) the Customer suspends payment of its debts generally or it becomes unable to pay its debts when due;
 - (vi) an application or order is made for the bankruptcy, liquidation, winding up or dissolution of the Customer, or a resolution is passed or any steps are taken to pass a resolution for the bankruptcy, liquidation, winding up or dissolution of the Customer;
 - (vii) the Customer enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
 - (viii) the Customer ceases, or threatens to cease, to carry on business; or
 - (ix) a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the Customer's assets or undertakings.
- (b) If a Termination Event occurs, Tele Radio may (without affecting the accrued rights and obligations of the parties) in addition to any other rights or remedies it may have do all or any of the following:
- (i) terminate the Contract immediately by notice to the Customer;
 - (ii) suspend further deliveries of Tele Radio Products or Tele Radio Services under any Contract;
 - (iii) in respect of Tele Radio Products which may have already been delivered to the Customer but not paid for, take all reasonable steps to recover those Tele Radio Products and resell those Tele Radio Products for Tele Radio's own benefit.
- (c) The Customer must pay all costs and expenses incurred by Tele Radio arising from any Termination Event and will indemnify Tele Radio against any claim, liability or cost incurred by Tele Radio as a result of any breach by the Customer of its obligations pursuant to the Contract.
- (d) Except as provided in the following sub-clause the Customer may not terminate a Contract or otherwise cancel any Purchase Order unless:
- (i) Tele Radio agrees in writing to the termination; and
 - (ii) the Customer pays to Tele Radio the reasonable loss, cost and expense of Tele Radio as assessed by Tele Radio in connection with such termination; and upon such termination Tele Radio shall be regarded as discharged from any further obligations under any Contract with the Customer.
- (e) The Customer may terminate a Contract for the default Tele Radio only if:
- (i) the Customer serves written notice of the alleged default on Tele Radio requiring the default to be remedied; and
 - (ii) Tele Radio fails to remedy the default within forty five (45) days after receipt of the Customer's written notice and such termination will be without prejudice to the respective parties rights pursuant to that Contract.

31. Assignment

The Customer must not assign or otherwise dispose of all or any of its rights in, to and under the Contract without the prior written consent of Tele Radio.

32. Personal Property Securities Act

- (a) Capitalised terms in this clause 32, that are not otherwise defined elsewhere in the Contract, have the same meaning as set out in the PPSA unless the context otherwise requires.
- (b) This Contract constitutes a security agreement pursuant to the PPSA in relation to the Tele Radio Products and/or Tele Radio Services supplied by Tele Radio to the Customer and any Tele Radio Products and/or Tele Radio Services that will be supplied in the future by Tele Radio to the Customer.
- (c) The Customer acknowledges and agrees that one or more Security Interests (as that term is defined in the PPSA) may be registered by Tele Radio in relation to the Tele Radio Services and/or Tele Radio Products and the Proceeds arising in respect of any dealing in the Tele Radio Product in accordance with the PPSA (and in any other manner Tele Radio considers appropriate).
- (d) The Customer agrees to do all such things and sign all such documentation and/or provide any further information (such information to be complete accurate and up-to-date in all respects) as are necessary and reasonably required to enable Tele Radio to:
- (i) acquire a perfected Security Interest in the Tele Radio Product and its Proceeds (or otherwise to secure payment for the Securities, if any);
 - (ii) register a Financing Statement or Financing Change Statement;
 - (iii) ensure that Tele Radio's security position, and rights and obligations are not adversely affected by the PPSA.
- (e) The Customer waives its rights to receive a copy of any Verification Statement after the registration of a Financing Statement or Financing Change Statement in respect of the Security Interest created by the Contract.
- (f) The Customer agrees to not:

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- (i) register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Contract; or
- (ii) register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Tele Radio Product in favour of a third party,

without Tele Radio's prior written consent.

- (g) For the purposes of section 36 of the PPSA, the collateral is the Tele Radio Product including any Tele Radio Products and/or Tele Radio Services which is/are described in any Purchase Order provided by Tele Radio to the Customer from time to time.
- (h) The parties agree that the following provisions of the PPSA are waived:
 - (i) section 114(1)(a);
 - (ii) section 116;
 - (iii) section 120(2);
 - (iv) section 121;
 - (v) section 125;
 - (vi) section 129;
 - (vii) section 131; and
 - (viii) section 133.
- (i) The Customer agrees that, until all monies owing to Tele Radio are paid in full,
 - (i) it shall not sell or grant any other Security Interest in the Tele Radio Product or its Proceeds, without the prior written consent of Tele Radio.
 - (ii) It will not, without the prior written consent of Tele Radio change its name, its details or initiate any change to any documentation registered under the PPSA pursuant to the Contract.
- (j) If any provisions of the Contract are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

33. On selling

- (a) If the Customer on sells any Tele Radio Products it agrees that it will not make any representations in relation to the Tele Radio Products which are not:
 - (i) contained on the packaging of the Tele Radio Products;
 - (ii) contained in any materials supplied by Tele Radio;
 - (iii) set out in any applicable manufacturer's warranty; or
 - (iv) approved in writing by Tele Radio.

34. Guarantee and Indemnity

- (a) In consideration of Tele Radio, at the request of the Guarantor, agreeing to enter into the Contract with the Customer, the Guarantor:
 - (i) guarantees to Tele Radio the due and punctual observance and performance of the Customer's Obligations; and
 - (ii) indemnifies and keeps indemnified Tele Radio against all losses, expenses, claims, and damages incurred or reasonably expected to be incurred by Tele Radio by reason of any breach of the Customer's Obligations.
- (b) The Guarantor's obligations under the Contract are an irrevocable and continuing guarantee and indemnity, and the Guarantor will not be wholly or partially released from the obligations of this clause by any matter or thing, including without limitation:
 - (i) the death, insolvency, bankruptcy, liquidation or mental incapacity of a Guarantor or any of them;
 - (ii) the death, insolvency, bankruptcy, liquidation or mental incapacity of the Customer;
 - (iii) the avoidance of any payment by the Customer or the Guarantor to Tele Radio;
 - (iv) the payment of money to Tele Radio by any person;
 - (v) the performance, observance, non-performance or non-observation of any of the Customer's Obligations;
 - (vi) the granting of time or other indulgence or consideration by Tele Radio to any person;
 - (vii) Tele Radio failing or neglecting to exercise any of Tele Radio's rights under the Contract;
 - (viii) any act, omission, laches or default on the part of Tele Radio which would affect the liability of any person to Tele Radio but for this provision; or
 - (ix) any act or omission of Tele Radio which results, or might result, in prejudice to a Guarantor or any of them.
- (c) The Contract is enforceable against the Guarantor and the Guarantor is liable under the Contract despite any claims that Tele Radio is estopped from enforcing any term of the Contract, or that the Customer has any other defence against an action by Tele Radio to enforce any term of the Contract, and binds the Guarantor until the Customer is released from its obligations under the Contract.
- (d) The Guarantor's obligations under the Contract are principal obligations and are not ancillary or collateral to any other obligation or instrument.
- (e) If Tele Radio is unable to recover from any person any money owing under the Contract, or to enforce a remedy for any other breach of the Customer's Obligations, the Guarantor also agrees to pay Tele Radio on demand the loss, damage, costs and expenses suffered or incurred by Tele Radio in respect of the breach of those covenants and the other provisions of the Contract apply as far as is possible to the indemnity conferred on Tele Radio by this clause.
- (f) This guarantee and indemnity:
 - (i) continues until the Customer has performed all the Customer's Obligations;
 - (ii) extends to the obligations of any assignee of the Customer's interest under the Contract;
 - (iii) extends to all extensions of the Contract and any new Contract relating to the Tele Radio Products or Tele Radio Services;
 - (iv) extends to claims by Tele Radio for any liability arising from the repudiation of the Contract and any default under the Contract by the Customer, and any action taken by Tele Radio as a result of a default including Tele Radio retaking possession of Tele Radio Products or terminating the Contract.
- (g) The Guarantor may not, without Tele Radio's consent:
 - (i) raise a set-off or counterclaim available to the Guarantor against the Customer in reduction of the Guarantor's liability under this clause;
 - (ii) prove or claim in any bankruptcy, liquidation, arrangement or assignment of or in relation to the Customer until Tele Radio has received 100 cents in the

dollar in respect of the money owing by the Customer under the Contract and the Guarantor holds in trust for Tele Radio any such proof or claim or any dividend received by the Guarantor from such proof or claim; or

- (iii) claim to be entitled to the benefit of any other security held by Tele Radio in connection with the Contract, whether because of the rules of contribution, indemnity, subrogation, marshalling or for any other reason.
- (h) If a payment to Tele Radio in connection with the Contract is void or voidable under laws relating to insolvency or protection of creditors Tele Radio remains entitled to the rights against the Guarantor which Tele Radio had under this clause before that payment was made.
- (i) The Guarantor warrants to Tele Radio that where the Customer has executed or will execute the Contract pursuant to any Memoranda and or Articles of Association and or Constitution, trust deed, will, deed of settlement, or other instrument whatsoever (Instrument) the Customer has done or prior to executing the Contract will do, all acts, matters and things required by the Instrument or otherwise to ensure that each party has validly executed or will validly execute the Contract and will be bound in accordance with the terms of the Contract and the Guarantor agrees unconditionally to indemnify and keep indemnified Tele Radio from and against all losses, costs, claims, expenses and damages of any nature whatsoever directly or indirectly incurred or reasonably expected to be incurred by Tele Radio from or out of the breach of any of the warranties contained in this paragraph.
- (j) In this clause, a reference to Customer's Obligations means each agreement, covenant, obligation and duty of the Customer contained or implied in the Contract to be performed by the Customer.

35. Notices

Any notice or other communication including, but not limited to, any request, demand, consent or approval, to or by a party under these Terms of Sale must be in writing and in English addressed to the other party at their address identified in the Contract documents.

36. General

- (a) The Contract is governed by the laws of New Zealand. The Customer and Tele Radio submit to the non-exclusive jurisdiction of the courts of New Zealand.
- (b) The provisions of part 3 of the Contract and Commercial Law Act 2017 will not apply to the Contract.
- (c) Waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under this Contract must be in writing and signed by the party granting the waiver.
- (d) Nothing in the Contract shall constitute an agency, employment or partnership relationship between the parties or any of their respective employees, contractors, servants or agents, unless an agreement in writing provides otherwise.
- (e) If any term or part of the Tele Radio Terms is found to be illegal or unenforceable, that part or term shall be deemed not to be part of the Tele Radio Terms and the remainder of these conditions shall continue in full force and effect.
- (f) If this contract constitutes a "small trade contract" as defined in the Fair Trading Act 1986 in respect of any Customer (**Small Trader**) any provision of this Contract declared to be an unfair contract term will not apply to the Small Trader.
- (g) The covenants of the Customer in the Contract are given for the benefit or and are enforceable in terms of subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 by any related company of Tele Radio (as that term is defined in the Companies Act 1993).

37. Interpretation

In the Tele Radio Terms headings and bold type are for convenience only and do not affect the interpretation of the Tele Radio Terms and, unless the context otherwise requires:

- (a) words importing the singular include the plural and the converse;
- (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (c) If two (2) or more persons undertake an obligation or make or give any warranty or undertaking, or waive any right or entitlement, they shall be bound jointly and severally;
- (d) an expression importing a natural person includes an individual, a firm, a body corporate, an unincorporated association and any government agency;
- (e) a reference to legislation or to a provision of legislation includes any modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (f) a reference to a party to a document includes that party's successors and permitted assigns; and
- (g) the meaning of terms is not limited by specific examples introduced by expressions "including" or "for example", or similar expressions.