

These terms and conditions (**Terms**) apply to the supply of Services by Trescal Australia Pty Ltd (ABN 39 117 603 835) of Unit 14, 153-155 Rooks Road, Vermont, (**Trescal**) for the benefit of the Party identified in the Quotation (**Customer**).

1 Terms and Quotation

1.1 The Customer may at any time request a Quotation from Trescal, and, subject to clause 1.2, Trescal may provide a Quotation to the Customer.

1.2 Where Trescal determines, in its sole discretion, that Diagnostic Activities are required prior to providing a Quotation to the Customer, Trescal and the Customer must cooperate, in good faith to facilitate Trescal to undertake these Diagnostic Activities at the Customer's cost.

1.3 The Customer may accept a Quotation by:

- (a) signing the Quotation and notifying Trescal in writing; or
- (b) by issuing a written purchase order to Trescal referencing and expressly accepting the Quotation.

1.4 Upon the Customer's acceptance of the Quotation (including the Specifications) or engagement of Trescal to undertake Diagnostic Activities, the Customer will be deemed to have accepted these Terms without restriction or reservation, and a binding contract between the Customer and Trescal will be formed (**Agreement**).

1.5 The Customer may request changes to the Agreement in writing, subject to approval by Trescal at its sole discretion.

1.6 Acceptance of a Quotation will be deemed to be a representation by the Customer that it is, and will remain in the future, solvent and able to pay all of its debts as and when they fall due.

1.7 Trescal agrees to supply the Services and Work Product in accordance with these Terms and the relevant Quotation. Where the provisions of these Terms and a Quotation conflict, the terms of the Quotation shall prevail over these Terms.

1.8 Where under the Agreement, Trescal supplies to the Customer any software, the provision and use of such software will be governed by the terms of a separate software licence which must be entered into between the relevant Software Licensor and the Customer. To the extent that there is any conflict between these Terms and such software licence, the terms of such software licence will prevail.

2 Entire Agreement

2.1 Subject to clause 1.5, the Agreement constitutes the entire agreement between the Parties and supersedes all other agreements, oral or written in relation to the Services, the Work Product and the Work set out in the Quotation.

3 Specifications and description of Services

3.1 The Customer, on acceptance of a Quotation, in accordance with clause 1.4, confirms that it accepts the Specifications and description of the Services included in that Quotation.

3.2 The Customer:

- (a) acknowledges that it must use its own skill and judgement to determine if the Services and Specifications meet the Customer's requirements;
- (b) warrants that it has such skill and judgement, and undertakes to exercise it at all times;
- (c) agrees it will be responsible for ensuring that the Services and Specifications are fit or suitable for the Customer's purpose; and
- (d) agrees that Trescal, to the extent permitted by law, will not be responsible for any selection made by Customer and will not have any liability to Customer for any Loss suffered by the Customer as a result of its selection of the Services or Specifications.

3.3 Except to the extent that the following form part of the Specifications or are expressly incorporated into the Agreement in writing:

- (a) all drawings, descriptive matter, specifications and advertising issued by Trescal; and
- (b) any descriptions or illustrations contained in Trescal's catalogues or brochures,

are issued or published by Trescal for general information only and will not form part of the Agreement.

4 Supply of Services

4.1 Trescal must perform the Services and supply the Work Product:

- (a) as described in the Agreement or as otherwise agreed in writing between the Parties; and
- (b) in accordance with the Specifications.

4.2 The Services will be:

- (a) provided by Trescal with due care and skill; and
- (b) fit for the purpose expressly, or by implication, made known to Trescal by the Customer and included in a Quotation.

4.3 Trescal may, acting reasonably and in consultation with the Customer, change the Services where it considers that the Services as described in an Agreement are unsafe or pose unacceptable risks of injury or damage to persons or property.

4.4 Unless otherwise agreed in writing between the Parties:

- (a) Work Product and Equipment will be delivered Ex Works by Trescal at the Site; and
- (b) written notice to the Customer of delivery of any Equipment or Work Product (whether in whole or in part) will constitute delivery of that Equipment or Work Product to the Customer.

4.5	To the extent permitted by law, Trescal will not, under any circumstances, be held responsible for the definition of tolerances.			(a)	upon clearance of funds in an account nominated by Trescal or
4.6	The Customer must provide Trescal, in a timely manner, with:			(b)	in the case of payment by cheque, when the cheque has been honoured upon presentation by Trescal.
	(a) access to the Equipment, the Environment and any relevant Customer Materials;	5.4	The Customer acknowledges that transfer of title in any Work Product does not include the assignment or licensing of IP Rights in that Work Product.		
	(b) all information reasonably requested by Trescal including instructions and documents; and	5.5	The Customer will be liable to pay Trescal for the Work regardless of whether or not title in the Work Product, or any part of it, has transferred to the Customer.		
	(c) if applicable, any relevant Authorisations.				
4.7	The Customer acknowledges that non-compliance with clause 4.6 may:	5.6	In addition to any lien to which Trescal may be entitled (by statute or otherwise), if the Customer:		
	(a) result in		(a) fails to pay the Price by or on the due date; or		
	(i) delay or extension of the period for performance of the Work;		(b) suffers, or in the reasonable opinion of Trescal, is likely to suffer, an Insolvency Event,		
	(ii) an increase to the Price; or				
	(b) constitute a breach of an Agreement for the purposes of clause 22.1.		Trescal will be entitled to, without notice and without liability, take possession of the Work Product.		
4.8	Where the Customer does not collect the Equipment or Work Product within seven (7) days of written notice of delivery being given by Trescal in accordance with clause 4.4(b), Trescal may store the Equipment and Work Product at the Customer's:	5.7	If Trescal is entitled to possession of any Work Product under clause 5.6 and the Customer fails to deliver the Work Product to Trescal if and when requested by Trescal to do so, the Customer must pay the reasonable costs of Trescal retaking possession of the Work Product.		
	(a) risk; and				
	(b) cost, which the Customer will reimburse Trescal for in accordance with the Payment Terms.	5.8	If any Work Product is not at the Customer's premises at the time Trescal is to retake possession under clause 5.6; the Customer must arrange for Trescal to collect the Work Product wherever it is situated. For this purpose the Customer permits Trescal to enter the Customer Premises and undertakes to procure any necessary authority to enter any other premises.		
4.9	If the Equipment or Work Product has not been collected by the Customer within sixty (60) days from the date of delivery, or such other time frame as agreed between the Parties, Trescal may:				
	(a) provide the Customer written notice to collect the Equipment or Work Product within the time period stated in the notice, which will not be greater than 30 days; and	6	Access to Customer Premises and Environment		
	(b) if the Customer does not comply with the notice issued under clause 4.9(a), dispose of such Equipment or Work Product at the Customer's cost, which the Customer will reimburse Trescal for in accordance with the Payment Terms.	6.1	Subject to the terms of this clause 6, Trescal will, where included in an Agreement or otherwise agreed in writing between the Parties, undertake all or part of the Work at the Customer Premises.		
		6.2	The Customer must provide Trescal Personnel with access to the Customer Premises and with physical and remote access to the Environment to the extent necessary for the Trescal to perform its obligations under an Agreement.		
4.10	Any Dispute in connection with the Services or the Work Product must be dealt with in accordance with clause 21.	6.3	The Customer must:		
5	Risk and title in Equipment and Work Product		(a) ensure the Customer Premises complies with all applicable workplace safety and security requirements;		
5.1	The Equipment and Work Product will be at the risk of the Customer from the time of collection from Trescal.		(b) at its cost, provide Trescal Personnel with relevant Site induction and safety training;		
5.2	Subject to clause 5.3, title in any Work Product will vest exclusively in Trescal and, upon request from Trescal the Customer must return all Work Product to it.		(c) take reasonable care not to damage any property or injure any person or to delay or otherwise interfere with or disrupt any Work undertaken by Trescal Personnel; and		
5.3	Where the Agreement states that title in any Work Product will pass to the Customer, title will be retained by Trescal until it receives payment of the Price and any other amount due under the Agreement. Title will pass to the Customer:		(d) if the Customer or its personnel damage any property of Trescal or Trescal Personnel, promptly notify Trescal and at Trescal's direction rectify the damage at the Customer's cost and pay any compensation which the law requires the Customer to pay.		

6.4	Trescal must, and must ensure that Trescal Personnel:		Product upon receipt of payment of the Price and any other amounts due and payable by the Customer to Trescal.
	(a) participate in any reasonable Site induction and safety training provided by the Customer;	8.4	Upon assignment of any rights, including IP Rights, under clause 8.3, the Customer grants Trescal a worldwide, royalty-free, irrevocable, non-exclusive licence to use the Work Product for any purpose.
	(b) access and use the Customer Premises and the Environment only as reasonably necessary to undertake the Work;		
	(c) when accessing and using the Customer Premises and the Environment:	8.5	Trescal grants the Customer a worldwide, royalty-free, non-exclusive licence to exercise and sublicense all IP Rights in Trescal's Background IP to use, deal with, maintain, remedy defects or omissions in, modify and develop, its Background IP, in order to enjoy the benefits of the Services and Work Product.
	(i) comply with any other reasonable instructions or requirements of the Customer relating to access and use;		
	(ii) take reasonable care not to damage any property or injure any person or to delay or otherwise interfere with or disrupt any works undertaken by others; and	8.6	If Trescal and the Customer agree that Trescal will use any of the Customer Materials (including incorporating the Customer Material in the Work Product), the Customer must grant to Trescal an irrevocable, royalty-free, worldwide, non-exclusive licence, to use the Customer Materials to the extent required to perform its obligations under these Terms or an Agreement.
	(iii) not knowingly introduce permit the introduction into the Environment of any software viruses or malicious code.		
6.5	The Customer will be liable for any personal injury (including death) or loss of, or damage to, property suffered by any Trescal Personnel when present at the Customer Premises, to the extent that such injury, loss or damage is caused by the conduct (including negligence or wilful misconduct) of the Customer.	8.7	The Customer must, upon request by Trescal, sign all documents and do all things as may be necessary to give full effect to this clause 8.
7	Access to Trescal Premises	8.8	The Customer acknowledges Trescal owns the know-how (including any processes, methods, and operating procedures) that Trescal has developed and implemented in connection with its business and the performance of the Services.
7.1	If required Trescal may provide the Customer and its personnel access to the Trescal Premises.	8.9	In the event that any claim or action is brought against the Customer for infringement of IP Rights relating to the Services or the Work Product, Trescal may, at its option and expense, defend the Customer and bear the cost of any damages and expenses that the court may ultimately impose, provided that the Customer:
7.2	Any access to the Trescal Premises granted under clause 7.1, will be subject to the Customer's compliance with any terms, conditions, directions or instructions of which Trescal notifies the Customer from time to time.		(a) notifies Trescal in writing and without delay of the existence of such claim,
7.3	Trescal may, in its sole discretion, revoke access to, or request the removal of, the Customer and its personnel from the Trescal Premises at any time.		(b) gives Trescal sole control over the defence and settlement of the claim,
7.4	Trescal will not be liable for any personal injury (including death) or loss of, or damage to, property suffered by the Customer or its personnel when present at the Trescal Premises, except where such injury, loss or damage is caused by the negligence or wilful misconduct of Trescal.		(c) provides Trescal with all relevant information in its possession and all possible assistance and gives Trescal full authority to defend the claim,
8	IP Rights		(d) has not terminated the claim by compromise or settlement.
8.1	The Parties agree that other than expressly provided in an Agreement, nothing in these Terms or an Agreement affects the ownership of any rights, including IP Rights, in each Party's Background IP or, subject to this clause 8, any Improvements in that Background IP.	8.10	If a final unfavourable judgement is rendered against Trescal, Trescal will use its best endeavors to:
8.2	IP Rights in the Work Product will vest upon creation in Trescal. The Customer acknowledges that, subject to clause 8.3, all rights, including IP Rights, in any Materials created by Trescal in the course of providing the Services to the Customer under these Terms or an Agreement will be owned by Trescal, or its nominee despite any contribution by the Customer.		(a) obtain the right for the Customer to continue to use the Work product and enjoy the benefit of the Services;
8.3	Subject to clause 8.4, Trescal will assign all rights, including IP Rights, to the Customer in the Work		(b) replace or modify the Services or the Work Product in such a way that there is no infringement of IP Rights.
		9	No solicitation of Trescal Personnel
			The Customer agrees that during the term of the Agreement and for twelve (12) months after completion of the Work it must not solicit or make an offer of employment (or any similar offer of engagement) to any Trescal Personnel.

10	Delay	13	GST
10.1	Trescal will use reasonable endeavours to deliver the Services and Work Product in accordance with the timeframes set out in an Agreement. However, the Customer acknowledges that these time frames are an estimate only and Trescal is not liable to the Customer for any delay in delivery of the Services or Work Product.	13.1	Terms used in this clause 13 have the same meaning given to them in the GST Act.
10.2	Nothing in this clause limits the rights the Customer may have under the ACL.	13.2	Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under or in accordance with these Terms or an Agreement are exclusive of GST.
11	Deposit	13.3	If GST is imposed on any supply made under or in accordance with these Terms or an Agreement, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply subject to the recipient receiving a valid tax invoice before the time of payment. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.
	The Customer agrees to pay Trescal any deposit required by Trescal under an Agreement.	13.4	If these Terms or an Agreement requires a Party to pay for, reimburse or contribute to any expense, loss or outgoing (Reimbursable Expense) suffered or incurred by another Party, the amount required to be paid, reimbursed or contributed by the first Party will be the sum of the amount of the Reimbursable Expense net of input tax credits (if any) to which the other Party is entitled in respect of the reimbursable expense and any GST payable by the other Party.
12	Price for Services	13.5	If GST is payable in relation to a foreign currency amount then the GST will be converted by the Customer into and payable by Trescal in Australian dollars in accordance with the Australian Taxation Office Ruling on foreign exchange conversions. The Customer will set out the conversion day and rate used for the conversion in its invoice.
12.1	The Customer acknowledges that the Price in a Quotation will be valid only for the Period of Validity stated in the Quotation.	14	Payment Terms
12.2	If the Customer accepts the Quotation after the Period of Validity has expired, Trescal may change the Price in its sole discretion.		Unless otherwise agreed in writing by the Parties, payment for the Services must be made within (30) days of the date of an invoice being issued by Trescal to the Customer.
12.3	Where the Price in a Quotation is changed in accordance with clause 12.2:	15	Disputed invoices
	(a) Trescal will provide the Customer with an updated Price within 3 Business Days of the Customer accepting the Quotation;	15.1	If the Customer disputes any invoice or part thereof, the Customer must:
	(b) if the Customer does not provide a written objection within 10 Business Days of receiving the updated Price from Trescal, the Customer will be deemed to have accepted the updated Price; and		(a) notify Trescal in writing of its reasons; and
	(c) if the Customer provides Trescal with a written objection under clause 12.3(b), the Customer's acceptance of the Quotation will be deemed to be rescinded.		(b) pay the undisputed portion of the invoice.
12.4	The Customer must, in accordance with the Payment Terms, pay Trescal:	15.2	The Parties must meet, in person or virtually, to resolve the dispute within 14 days of the Customer's notification to Trescal in accordance with clause 15.1(a).
	(a) any costs associated with the Diagnostic Activities, regardless of whether or not the Customer accepts the Quotation; and	15.3	Where the dispute is unable to be resolved under clause 15.2 the process in clause 21 will apply.
	(b) where calibration is rendered unfeasible due to faults inherent in the equipment, fifty percent (50%) of the applicable calibration fee, and	15.4	Upon resolution of a disputed invoice or part thereof, under this clause 15 or clause 21, any amount that is determined as payable to Trescal must be paid immediately to Trescal, together with any interest accrued on such amount in accordance with clause 16.
	(c) where a Customer accepts the Quotation, the Price.	16	Interest
12.5	Trescal may otherwise vary or adjust its price lists without notice.	16.1	Interest may be charged by Trescal at its election on overdue amounts at the prevailing cash rate target percentage nominated by the Reserve Bank of Australia at the date the relevant invoice was issued, plus an additional 2%.
12.6	The Price for Services in a Quotation is based on the description of the Equipment provided by the Customer to Trescal. Where, in Trescal's reasonable opinion upon inspection of the Equipment, the description is inaccurate, including in respect of the quantity of Equipment, then Trescal may modify the Price and revise the assumptions on which the Quotation relied.		
12.7	The Price will be quoted and payable in Australian dollars and excludes GST and any other applicable taxes, duties or statutory levies or payments, which the Customer is liable to pay to Trescal in addition to the Price.		

16.2	Interest will accrue on a daily basis, from the date on which the invoice becomes overdue until payment is made by the Customer.	(d)	the defect arises as a result of:
17	Set off	(i)	the Customer failing to follow:
17.1	Trescal may, in its sole discretion, set off any amount which the Customer, or any of its related entities, owe to Trescal under these Terms or Agreement against any amount which Trescal owes to the Customer or any of its related entities (whether under these Terms or Agreement or otherwise).	(A)	Trescal's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Work Product or, if there are none, good trade practice; or
17.2	Trescal may apportion payments made by the Customer to outstanding accounts in such amounts and in such order as Trescal may determine in its sole discretion.	(B)	manufacturer's recommendations;
18	Warranty	(ii)	damage due to an accident or bad weather; or
18.1	Subject to the terms of this Agreement, Trescal warrants to the Customer that the Services will comply with the Specifications applicable to the Agreement for twelve (12) months from completion of the Services or as otherwise agreed upon by the parties in writing.	(iii)	wear and tear or misuse.
18.2	Calibration services and consumable items, including fuses and test leads, are expressly excluded from the warranty provided by Trescal under clause 18.1.	18.6	To the extent permitted by law Trescal's obligation to remedy any material non-compliance is Trescal's sole obligation to Customer and Customer's sole remedy for breach of the warranty in clause 18.1.
18.3	Customer must immediately, but no later than ten (10) days after:	18.7	To the extent permitted by law, expect for the warranty in this clause 18, Trescal makes no other express or implied warranties concerning the Services or the Work Product.
(a)	becoming aware of the alleged breach of warranty in clause 18.1; or	19	Liability
(b)	the expiry of the warranty period in clause 18.1,	19.1	To the maximum extent permitted by law, Trescal's liability is limited at Trescal's sole discretion, to:
	notify Trescal in writing of a warranty claim upon which notification Trescal will determine the validity of such claim.	(a)	the resupply of the Services; or
18.4	Trescal will use reasonable endeavours to correct any material non-compliance that it has confirmed in any Work Product that is found to be materially non-compliant with the Specifications resulting from deficiencies in workmanship or Materials. The Customer is responsible for payment of shipping to and from Trescal's designated facility.	(b)	the cost of acquiring equivalent Services.
18.5	To the extent permitted by law, Trescal will not be liable for breach of the warranty in clause 18.1 in circumstances where:	19.2	Subject to clause 19.1, and to the maximum extent permitted by law, the maximum cumulative liability of each Party under these Terms or an Agreement, whether under the law of contract, tort or otherwise, will be limited to the Price.
(a)	the Customer changes the Specifications in any way after the Service has been carried out by Trescal;	19.3	Notwithstanding any other clause in these Terms, clause 19.2 will not apply to liability for:
(b)	the Customer fails to give written notice of the alleged breach to Trescal in accordance with clause 18.3;	(a)	personal injury or death;
(c)	the Customer provides the required notice under clause 18.3, however:	(b)	damage to real or personal property;
(i)	fails to give Trescal a reasonable opportunity to examine the Work Product concerned;	(c)	the Customer's breach of clause 24;
(ii)	fails to return, at the Customer's cost, such Work Product for examination at the Site; or	(d)	acts of fraud, wilful misconduct or wilful or fraudulent misrepresentation; or
(iii)	continues to make full, or substantially full, use of the affected Work Product;	(e)	any amounts due and payable by the Customer to Trescal under these Terms.
		19.4	To the maximum extent permitted by law, neither Party will be liable for any Consequential Loss, and this exclusion of liability will apply whether the liability or claim is based on breach of contract, repudiation, tort (including negligence), under statute, in equity or otherwise.
		20	Insurance
		20.1	Without prejudice to clause 18, Trescal must take out and maintain, at its own expense insurance to cover its liabilities under the terms of an Agreement and will provide the Customer, on request, a certificate of currency for such insurance.
		20.2	The Customer must take out and maintain, at its own expense, insurance policies to sufficiently cover any loss, damage (including personal injury), injury or claim arising from or in connection with the performance of the services under the Agreement.

20.3	In performing the Services, the Customer must insure itself against all risks incurred by Trescal's Personnel where any incidents or accidents attributable to or contributed to by the Customer.	22.4	Upon termination of an Agreement, the Customer must, within seven (7) days of termination or issue of an invoice from Trescal, pay to Trescal:
21	Dispute resolution	(a)	all outstanding amounts invoiced by Trescal under an Agreement;
21.1	Subject to clause 15 and to the extent permitted by law, any Dispute in connection with the Services, Work or Work Product must be dealt with by the Parties in accordance with the process described below in this clause 21.	(b)	all reasonable amounts incurred by Trescal for for Work done or in progress at the date of termination;
21.2	A Party must provide written notice of any Dispute to the other Party as soon as possible as it becomes aware of the Dispute.	(c)	all reasonable costs (including overheads) and liabilities incurred by Trescal arising out of or resulting from termination, including but not limited to suppliers' and sub-contractors' cancellation charges..
21.3	The notice required under clause 21.2 must include:	22.5	Any obligations which are expressed to or, by their nature, survive expiry or termination of these Terms or an Agreement, will survive expiry or termination of these Terms or an Agreement and are enforceable at any time at law or in equity.
(a)	details of the Dispute and any remedies sought; and	23	Force Majeure
(b)	all supporting documents and information to enable the other Party to consider the claim.	23.1	A Party will not be in default or breach of these Terms or an Agreement, or will not otherwise be liable to the other Party, for any delay or failure to perform arising from a Force Majeure Event.
21.4	The Parties must meet, in person or virtually, to resolve the Dispute within seven (7) days of a notice being given under clause 21.2.	23.2	Either Party may terminate the Agreement upon written notice to the other Party if the Force Majeure Event lasts more than 180 days.
21.5	Where the Dispute is unable to be resolved within twenty (20) days after the first meeting between the Parties in accordance with clause 21.4, the Parties must refer the Dispute to mediation which:	23.3	Where a Party terminates the Agreement under clause 23.2:
(a)	will occur in Melbourne, Victoria; and	(a)	subject to clause 22.5, the Parties will be released from all obligations under the Agreement;
(b)	be conducted in accordance with the Australian Disputes Centre (ADC) mediation guidelines and with a mediator as agreed by the Parties or, failing agreement, as appointed by the ADC.	(b)	the Customer must pay to Trescal within seven (7) days of giving or receiving written notice of termination or any additional invoice(s) from Trescal:
22	Default and termination	(i)	all outstanding amounts invoiced by Trescal under the Agreement up to and including the date of termination; and
22.1	Subject to clause 15 and clause 21, upon written notice to the Customer, if the Customer commits a breach or default of any of these Terms, Quotation or Agreement with Trescal, and the breach is incapable of remedy or, if the breach is capable of remedy, the Customer fails to remedy the breach within thirty (30) days after receiving notice requiring it to do so, Trescal may, without prejudice to its other rights:	(ii)	an additional amount for any Work completed or in progress, but not yet invoiced at the date of termination, such amount which will be determined by Trescal acting reasonably and in good faith.
(a)	retain all amounts paid by the Customer;	24	Confidential Information
(b)	cease provision of the Services;	24.1	The Parties must keep all Confidential Information confidential and must not disclose any Confidential Information without the prior written consent of the Party which initially disclosed that information.
(c)	seek to recover from the Customer all direct loss and costs incurred;	24.2	Each Party must ensure that its Personnel are bound by obligations of confidence in respect of all Confidential Information to a standard no less than the standard in clause 24.1.
(d)	otherwise suspend its obligations under or, to terminate these Terms and any Agreement.	24.3	The Parties acknowledge that:
22.2	Either Party may, to the extent permitted by law, terminate these Terms immediately:	(a)	damages may not be an adequate remedy for any breach of clause 24.1; and
(a)	upon written notice to the other Party if the other Party commits a material breach of these Terms or an Agreement and the breach is incapable of remedy or, if the breach is capable of remedy, the other Party fails to remedy the breach within thirty (30) days after receiving notice requiring it to do so; and	(b)	without prejudice to any other rights or remedies that the Parties may be entitled to as a matter of law, both Parties will be entitled
(b)	if an Insolvency Event occurs in relation to the other Party.		
22.3	Termination or expiry of these Terms will not affect any accrued rights or liabilities of either Party.		

to seek an injunction, specific performance, and other equitable relief to enforce the provisions of this clause 24.

25 Publicity

25.1 Neither Party may, without the prior written consent of the other Party make use of or refer to:

- (a) the other Party's name;
- (b) the name of any of the other Party's personnel, customers or agents;
- (c) any information obtained under the Agreement for publicity purposes; or
- (d) the other Party or the Agreement in any advertisement or public announcement or notice except to the extent required by law or any competent regulatory body.

26 Compliance with Privacy Laws

The Parties must comply with Privacy Laws to the extent that the laws apply.

27 Anti-corruption practices

27.1 The Customer undertakes to comply with any legal and regulatory provisions relating to the fight against corruption and influence peddling, which are applicable to the Customer in connection with its rights and obligations under these Terms or an Agreement.

27.2 In complying with the undertaking in clause 27.1, the Customer must, at a minimum:

- (a) adopt appropriate and effective anti-bribery measures and business practices;
- (b) conduct its business in a way that does not favour or place any of Trescal's personnel in a situation where a conflict of interest with Trescal may arise, and inform Trescal, if such a situation arises.

27.3 Trescal may, acting reasonably, monitor and request evidence of the Customer's compliance with this clause 27, and, if necessary, require corrective measures to be undertaken by the Customer to ensure its ongoing compliance.

27.4 The Customer acknowledges that any breach of its obligations under this clause 27, will be a material breach of these Terms or an Agreement and be dealt with in accordance with clause 22.2.

28 Notice

28.1 Any notice or other communication under these Terms or an Agreement must be given in writing and may be delivered by hand or sent by email to the authorised representative of the other Party, as identified in a Quotation.

28.2 A communication is taken to be received:

- (a) if delivered by hand, on that day; or
- (b) if sent by email, when confirmation of delivery is received by the sender which records the time that the email was delivered to the addressee's last notified email address unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee.

29 Waiver

29.1 Failure by a Party to insist on strict performance of any term, warranty or provision of the Agreement will not be construed as a waiver, or partial waiver, of:

- (a) these Terms, a Quotation or of any rights a Party may have; or
- (b) any subsequent breach of any term, warranty or condition of these Terms or an Agreement.

30 Variation

These Terms may only be varied, supplemented or replaced by a document executed by the Parties, including by an authorised representative of Trescal.

31 Severability

31.1 If any provision of these Terms would, but for this clause, be unenforceable, that provision must be read down to the extent necessary to avoid that result and, if the provision cannot be read down, must be severed without altering the validity and enforceability of the remainder of these Terms.

32 Excluded terms

To the maximum extent permitted by law, all terms, conditions, warranties and representations expressed or implied by statute, common law, equity, trade, custom or usage are expressly excluded.

33 No limitation of rights and obligations under consumer law

Nothing in an Agreement limits the Customer's rights or Trescal's obligations under the ACL.

34 Governing law and jurisdiction

34.1 The Agreement is governed by and construed in accordance with the laws of Victoria, Australia.

34.2 Each Party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Victoria, Australia, and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

35 Interpretation

35.1 The following terms as used in these Terms and a Quotation are defined as follows:

ACL means Schedule 2 (Australian Consumer Law) of the *Competition and Consumer Act 2010* (Cth).

Agreement means the contract formed in accordance with clause 1.4 between Trescal and the Customer that incorporates the Terms and the Quotation.

Authorisations means any permits, licences or authorisations required by, or associated with, the Equipment and/or the provision of the Services by Trescal.

Background IP means any Materials in which rights, including IP Rights, vest in a Party on and after an Agreement is formed in accordance with clause 1.4.

Confidential Information means any information that is disclosed by or on behalf of Trescal to the Customer that is by its nature confidential, is designated by Trescal as confidential or that the Customer knows or ought reasonably to know is confidential, but does not include any information that is in the public domain (other than through a breach of confidence). Confidential Information includes:

- (a) the Price and Quotation details; and
- (b) a Party's trade secrets and all other information of a proprietary nature.

Consequential Loss means loss of profit, loss of revenue, loss of goodwill or reputation and any other loss, not arising naturally from the relevant breach, whether or not that loss may be reasonably considered as having been in the contemplation of both Parties, at the time they made the Agreement, as the probable cause of the relevant breach.

Customer means anyone identified in a Quotation who purchases or orders Services from Trescal.

Customer Materials means all Materials owned by or licensed to the Customer, which is:

- (a) in existence prior to these Terms becoming effective in accordance with clause 1.4; or
- (b) developed independently of these Terms or an Agreement, and

is made available by the Customer to Trescal for the purposes of providing the Services.

Customer Premises means a location at which the Customer conducts its business or operations and at which the Equipment is located.

Diagnostic Activities means any investigations or diagnostic activities Trescal must undertake prior to providing a Quotation to the Customer.

Dispute means any difference or dispute between the Parties.

Environment means the physical, logical and computing environment of the Customer as varied from time to time (including all specified hardware, software and data) into which Work Product must be installed and integrated, and must operate, as set out in the Agreement or as otherwise made known to Trescal by or on behalf of the Customer.

Equipment means the Customer's equipment, systems or tools, on which Trescal will provide the Services in accordance with the Quotation.

Ex Works means Ex Works as defined in the Incoterms.

Force Majeure Event means an event:

- (a) which is outside the reasonable control of the Party claiming that the event has occurred; and
- (b) the adverse effects of which could not have been prevented or mitigated against by that Party by reasonable diligence or reasonable precautionary measures,

and includes natural disasters, acts of terrorism, riots, revolutions, civil commotion or epidemic.

GST has the meaning given by the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Improvement means an invention, discovery, improvement or modification relating to a Party's Background IP.

Insolvency Event in respect of a Party means:

- (a) a step is taken to enter into any scheme of arrangement between that Party and its creditors;
- (b) a step is taken by a mortgagee to enter into possession or dispose of the whole or a substantial part of the assets of the business of that Party;

- (c) a step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator, and administrator or other like person to the whole or a substantial part of the assets of the business of that Party;
- (d) the Party ceases to trade or carry on business; or
- (e) the Party is unable to pay its debts as and when they become due or is presumed insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth) or similar legislation.

IP Rights means any rights normally covered by this term and includes existing and future copyright, rights in designs, patents, trademarks all rights in any applications or registrations of those rights whether registered or unregistered (and whether registrable or not) and existing anywhere in the world.

Materials means any materials, data, information or other work product, including designs, drawings, descriptive matter, pictures, graphic representations, Specifications, photographs, manuals, in any format (including physical or electronic).

Party means each of Trescal and the Customer, and together the **Parties**.

Payment Terms means the terms for payment of the Price and any other amounts due to Trescal, as described in clause 13, or as otherwise agreed in writing by the Parties.

Period of Validity means the time period for which the Price in a Quotation is valid.

Price means the price for the Services as set out in a Quotation, subject to any variation in accordance with these Terms.

Privacy Laws means all applicable privacy laws, including the *Privacy Act 1988* (Cth) and the European Regulation 2016/679 of the Parliament and of the Council of 27 April 2016 (GDPR).

Quotation means a quotation provided by Trescal to the Customer, in accordance with clause 1.1, for the supply of the Services.

Services means the Work and Work Product to be undertaken by Trescal as described in the Agreement;

Software Licensor means the party, either Trescal or a third party, providing the licence to the Customer to acquire and use the software.

Specification means the description, purpose and technical requirements of the Services as provided to Trescal by the Customer and subsequently described in a Quotation, or as otherwise agreed between the Parties in writing.

Site means the location at which the Services are performed or another location nominated by Trescal.

Subcontractor means a corporate body or individual contracted by Trescal in order to assist Trescal perform the Services or provide the Work Product.

Trescal Personnel means employees, and individual contractors engaged by Trescal, or a Subcontractor, to assist Trescal to perform the Services or provide the Work Product.

Trescal Premises means a location at which Trescal ordinarily conducts its business or operations.

Work means the performance of the Services and the supply of Work Product.

Work Product means all Materials and Improvements developed by Trescal in the course of providing the Services, in which the rights, including Intellectual Property Rights, subsist in Trescal, including:

- (a) any documents, articles or other Materials; and
- (b) data or other information which:
 - (i) is stated in the Agreement as to be provided by Trescal to the Customer; or
 - (ii) in the absence of such a statement in the Agreement, a final report from Trescal which will include relevant information arising from the performance of the Services

35.2 Unless expressed to the contrary, in these Terms and a Quotation:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) “includes” means includes without limitation;
- (d) no rule of construction will apply to a clause to the disadvantage of a Party merely because that Party put forward the clause or would otherwise benefit from it;
- (e) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Melbourne, Victoria;
 - (vii) “\$” or “dollars” is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced despite any change in the identity of the Parties; and
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form;
- (f) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded; and
- (g) headings do not affect the interpretation of these Terms.