

Terms of Supply of Goods (including third party software)

1. PURPOSE OF DOCUMENT

- 1.1 These Terms govern every Contract (from the effective date stated below) for the supply of Goods by ARKANCE Australia to the Customer including as contemplated by any Order or Quote.
- 1.2 These Terms supersede all prior versions of terms and conditions of ARKANCE Australia for the supply of Goods. These Terms were last updated on 1st of July 2024.

2. ORDERING

ORDER

- 2.1 If the Customer wishes to order any Goods, it may notify ARKANCE Australia in writing (to the contact address by letter or via an email authorised in the way set out at clause 2.2) of the particular Goods it requires (an Order) and may request that ARKANCE Australia prepares a Quote.
- 2.2 Email addresses will be authorised where they are attached to a previous order or notified by the Customer to ARKANCE Australia as an authorised email address.
- 2.3 Each Order (whether pursuant to a Quote or not) will constitute an offer by the Customer to acquire the relevant Goods from ARKANCE Australia upon and subject to these Terms and to the exclusion of all other terms and conditions and notwithstanding any qualifications unless expressly agreed by ARKANCE Australia in writing by reference to this clause 2.3.

QUOTE

- 2.4 Unless previously withdrawn or stated to the contrary, a Quote is valid for 30 days, stock availability and/or such other period as stated it. A Quote is not to be constructed as an obligation to supply but merely an invitation. No contractual relationship shall arise in respect of a Quote or Order until a Contract has been formed in accordance with clause 2.5.
- 2.5 If there is a conditional acceptance by the Customer and it is not completed on time, ARKANCE Australia is entitled to revise the Quote price accordingly to reflect any new vendor conditions.

CONTRACT

- (i) 2.6 Upon either:
 - (b) the acceptance and signing of a Quote by the Customer and ARKANCE Australia (for a bespoke arrangement);
 - (b) the issue of a written order confirmation by ARKANCE Australia following the receipt of a signed Quote or Order from a Customer (Order Confirmation); or
 - (c) the acceptance of a delivery of the Goods or making a payment for those Goods,

such Quote, Order Confirmation, or both (as the case may be), shall incorporate the terms and conditions of these Terms and together with any other documents contemplated by clause 3 forms the Contract between the parties.

- (i) 2.7 Subject to compliance by the Customer with its obligations, ARKANCE Australia shall provide the Goods in accordance with the Contract.

3. ORDER OF PRECEDENCE

- 3.1 Subject to clause 3.4, if there is any inconsistency between these Terms, Order Confirmation, the Quote, the Order and any other documents referred to in the Agreement of which these Terms forms part or any of them, that inconsistency will be resolved using the following order of precedence:
 - (a) the relevant Order Confirmation; (b) the relevant Quote; (c) these Terms; (d) the Order; and (e) any other documents referred to in the Contract of which these Terms forms part.
- 3.2 The Customer acknowledges that ARKANCE Australia may provide copies of relevant licences and rights of use documents for relevant Third Party Products (Licences). The Customer agrees to be bound by the Licences in respect of the Third Party Products whether supplied by ARKANCE Australia or not. It will contact the relevant Third Party Product provider directly (which it may do so usually online) if it does not agree to the Licences. The Customer may not rely upon documents provided by ARKANCE Australia.
- 3.3 The Customer acknowledges that Licences do not form part of this Contract (excepting the obligation of the Customer to comply with them).
- 3.4 The parties may agree to disapply or vary the above provisions with respect to precedence or any clause in a contractual document. However, in order to do so the relevant Order, Quote, Order Confirmation or other document must expressly identify the inconsistency, disapplication or variation, call it out by reference to this clause 3.4 and detail any conditionality or limitations in respect of the application of relevant contractual provisions. The purpose of this clause 3.4 is to ensure flexibility with respect to the ability of the parties to agree provisions that may differ in effect from the contemplated provisions in these Terms or as otherwise contemplated by clause.

4. PRICE

- 4.1 Subject to the Customer's rights under law (including the ACL) ARKANCE Australia may increase (with effect from, subject as follows, a date reasonably specified by ARKANCE Australia) the amount payable for supplying or the disbursement costs of Third Party Products. This may arise, without limitation, because a Third Party Product vendor or licensor increases a licence fee or other amount payable for relevant deliverables. These changes will take effect with 30 days' notice.
- 4.1 The Customer agrees to maintain in confidence all pricing in a Quote or Order Confirmation and will abide by restrictions of use and disclosure of ARKANCE Australia's Confidential Information. ARKANCE Australia reserves its rights to render a Quote as void (by either withdrawing a Quote before a Contract is entered into or terminating the Contract if a Contract has been entered into in accordance with clause 16) if confidentiality regarding pricing is disclosed to a third party.
- 4.2 Unless otherwise stipulated, all Quotes and Order Confirmations are in Australian Dollars (AUD).

5. PAYMENT TERMS

- 5.1 Unless otherwise agreed to in writing by ARKANCE Australia, the Customer agrees to pay ARKANCE Australia the Price and all other amounts due in full for the Goods (without set off or deduction whether in law or in equity) within 7 days of the date of the invoice issued by ARKANCE Australia.
- 5.2 All tangible Goods and Goods being financed through a third party will not be delivered to the Customer until as such time full payment has been received by ARKANCE Australia.
- 5.3 A remittance advice must be sent to the ARKANCE Australia Accounts Department to ensure correct and timely allocation of funds, by email to the following email address: ar@a2ktechnologies.com.au.
- 5.4 All subscriptions for Goods are to be paid to ARKANCE Australia by direct credit to the bank account nominated by it (including by EFT or BPay), or as otherwise agreed by the parties in writing.
- 5.5 Subject to clause 5.4, payments are to be made via cash, cheque, bank cheque, EFTPOS or Credit Card.
- 5.6 Where tangible Goods are purchased the Price excludes:
- (a) freight /delivery charges; and
 - (b) the cost of any special packing and packing materials required by the Customer, unless stated otherwise.
- 5.7 The Price is GST exclusive. The Customer must pay to ARKANCE Australia any GST which ARKANCE Australia is liable to pay in respect of supplies made by ARKANCE Australia or a Third Party Product vendor or supplier under these Terms.
- 5.8 All financial institutions duty, stamp duty, government charges and direct costs of any kind associated with the operation of the Customer's account will be charged to the Customer.

6. INTEREST + CHARGES

- 6.1 Interest will be charged on all overdue accounts, commencing on the date the amount became overdue, at a rate per annum of 2% above the RBA Cash Rate from time to time to the date that the account is paid in full and should the account be referred to a collection agency the Customer shall pay a 15% collection fee plus all legal costs and Losses on an indemnity basis.

7. TITLE + RISK

- 7.1 The Customer acknowledges and agrees that no title to Goods shall pass to the Customer until payment in full of all monies owed to ARKANCE Australia has been received provided always that title to Goods comprising software or Third Party Products in the nature of software, intellectual property or other intangible rights are subject to relevant Licences.
- 7.2 The Customer will acquire no title to Third Party Products except a relevant right of use for a relevant period as may be applicable in accordance with the terms of use and Licences.
- 7.3 The Customer indemnifies and shall keep indemnified ARKANCE Australia from any Loss suffered or incurred by it due to a breach of any relevant Licences by the Customer or on its behalf.

- 7.4 For tangible Goods, the risk of Loss or damage to the Goods will pass to the Customer at the time of dispatch from ARKANCE Australia's nominated warehouse. ARKANCE Australia shall not be responsible for any loss or damage of Goods in transit. Insurance for Goods in transit to the Customer will not be arranged by ARKANCE Australia. The Customer shall be responsible for the insurance of Goods in transit, which insurance shall take these Terms into account.

8. SECURITY + CHARGE

- 8.1 In consideration of ARKANCE Australia entering into the Terms the guarantor unconditionally and irrevocably agrees to guarantee to ARKANCE Australia the prompt performance and observance by the Customer of its obligations under the Terms.
- 8.2 Despite anything to the contrary contained in these Terms or any other rights which ARKANCE Australia may have howsoever if the Customer and/or a guarantor named in the Quote or Order Confirmation (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the guarantor (for valuable consideration) agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to ARKANCE Australia or ARKANCE Australia's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the guarantor acknowledge and agree that ARKANCE Australia (or ARKANCE Australia's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- 8.3 If ARKANCE Australia elects to proceed in any manner in accordance with this clause and/or its sub-clause, the Customer and/or guarantor shall indemnify ARKANCE Australia and keep it indemnified from and against all ARKANCE Australia's costs, Losses and disbursements including legal costs on an indemnity basis. The Customer and/or the guarantor (if any) agree to irrevocably nominate, constitute and appoint ARKANCE Australia or the ARKANCE Australia's nominee as the Customer's and/or guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

9. DELIVERY

- 9.1 This clause applies to tangible Goods only.
- 9.2 Any timeframes quoted by ARKANCE Australia for the delivery of Goods are estimates only.
- 9.3 ARKANCE Australia shall not be liable, to the extent lawful, for delay or any failure or inability to deliver. ARKANCE Australia shall not be liable for any loss or damage whatever due to failure by ARKANCE Australia to deliver the Goods (or any of them) promptly or at all.
- 9.4 Where Goods remain in the possession of ARKANCE Australia after the Delivery Time (including where the Customer fails for whatever reason to take delivery of or accept the Goods), ARKANCE Australia is entitled to charge the Customer for all Loss occasioned by the Customer not accepting delivery together with any costs and Loss in respect of the carriage, care and custody of the Goods.
- 9.5 Unless otherwise agreed by ARKANCE Australia, all Goods will be delivered to the Delivery Address.

9.6 The Customer must ensure that it or its employees or agents are in attendance at the Delivery Address at the agreed time or period for delivery to accept the Goods and to acknowledge receipt upon the consignment note or invoice accompanying the Goods.

9.7 ARKANCE Australia may arrange for the storage and carriage of Goods by carriers, contractors or sub-contractors. Notwithstanding any specific instructions given by the Customer as to the mode of carriage of Goods, in the exercise of its absolute discretion ARKANCE Australia may have any Goods carried or forwarded by any method which it deems fit.

10. INSPECTION, ACCEPTANCE OF GOODS AND CUSTOMER'S OBLIGATIONS

10.1 This clause applies to tangible Goods only.

10.2 The Customer must inspect the Goods within 30 days of the Delivery Time. Goods are accepted when the Customer intimates to ARKANCE Australia that it has accepted them, or, subject to section 37 of the Sale of Goods Act 1923 (NSW), when the Goods have been delivered to the Customer and the Customer does any act in relation to them which is inconsistent with the ownership of ARKANCE Australia or a relevant Third Party Product vendor (as the case may be), or when after the lapse of a reasonable time the Customer retains the Goods without intimating to ARKANCE Australia that the Customer has rejected them. The Customer agrees that 30 days is a reasonable period.

10.3 To the extent lawful, the Customer has no claim for shortages, defects, incorrect orders or any Loss in respect of Goods apparent on inspection unless:

(a) a complaint is made to ARKANCE Australia within 30 days of the Delivery Time specifying the shortage or defect; and

(b) ARKANCE Australia is, after receipt of the complaint, permitted to inspect the Goods, have Goods inspected by the manufacturer or Third Party Product vendor, and/or investigate the complaint.

10.4 If a complaint is not made to ARKANCE Australia in accordance with this clause or clause 11, the Goods delivered will be (to the extent lawful) deemed to be in accordance with the Contract and ARKANCE Australia will not be held liable for any future Losses regarding the use or application of the Goods. The Customer must pay for them in full.

10.5 ARKANCE Australia shall not be under any obligation to accept Goods returned by the Customer, subject to the statutory rights of the Customer. Subject to any applicable statutory rights to return Goods, ARKANCE Australia will only accept a return of Goods from the Customer if:

(a) the Customer has complied with this clause or clause 11 and ARKANCE Australia is satisfied as to the claim by the Customer; and

(b) the Goods are returned to ARKANCE Australia in the same unopened condition as when first delivered to the Customer.

11. CANCELLATIONS + RETURNS

11.1 This clause applies to tangible Goods only.

11.2 The Customer may at no time cancel or withdraw the whole or part of any Order placed and confirmed in respect of which a Contract is formed without ARKANCE Australia's prior written approval which it is not obliged to give. The Customer shall not return any Goods (subject to statutory rights of return) without first providing to ARKANCE Australia an original proof of purchase or other reasonable acceptable evidence.

11.3 If ARKANCE Australia accepts the return of Goods when it is not obliged to do so it may issue a credit note in respect of any amounts paid by the Customer in respect of those Goods. This does not affect statutory rights.

12. RISKS ASSUMED

12.1 The Customer shall rely on its own knowledge and expertise in selecting Goods for any purpose and any advice given by, or on behalf of, ARKANCE Australia is at the Customer's risk.

12.2 ARKANCE Australia shall not be liable nor responsible for any failure to comply with any requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of Goods) which are not precisely and accurately communicated in writing to ARKANCE Australia prior to the Customer entering into a Contract.

13. STATUTORY RIGHTS

13.1 Certain provisions of the Competition and Consumer Act 2010 (Cth) (including, without limitation, the ACL) provide consumers (as that expression is used in the ACL) and others with certain rights (collectively, the consumer guarantees) in relation to goods or services purchased by consumers.

13.2 Nothing in the Contract excludes, restricts or modifies any condition, warranty, consumer guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

13.3 If section 23 of the ACL applies to any provisions in the Contract, any such provision(s) shall be void to the extent they are unfair within the meaning of section 24 of the ACL.

14. LIMITATION OF LIABILITY

14.1 ARKANCE Australia does not (to the extent lawful and subject to this clause) give any guarantee, indemnity or warranty or make any representation of any kind, express or implied, written or oral, arising by statute, operation of law, course of dealing, usage or trade or otherwise with respect to the supply by ARKANCE Australia of any Goods in connection with the Contract, except as expressly stated in it or any collateral pertinent document concerning warranties against defects (as may be relevant).

14.2 Subject to clauses 13 the aggregate liability of ARKANCE Australia for breach of and all liabilities under, in respect of and in connection with the Contract, as well as its duties at law and in equity (however arising) and whether in contract, tort (including without limitation negligence), under statute, under indemnities or on any other basis concerning the same is limited to an amount equivalent to the Price paid by the Customer in the last 12 months under the Contract (calculated by reference to the date when the cause of action first arose or in the case of multiple causes of action with respect to related facts or claims then the first such date).

14.3 To the extent that ARKANCE Australia has failed to comply with a consumer guarantee under the ACL which cannot be excluded, the liability of ARKANCE Australia is limited (to the extent lawful) to, at ARKANCE Australia's option:

(a) in the case of goods – the replacement of the goods, the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired;

(b) in the case of services - the supply of the services again or the payment of the cost of having the services supplied again.

14.4 To the extent lawful, ARKANCE Australia shall have no liability to the Customer for, or concerning, any Third Party Products (including, without limitation, Autodesk® Software) in respect of which the applicable terms and conditions of the Third Party Product supplier shall apply.

14.5 To the extent lawful, ARKANCE Australia shall have no liability to the Customer for, or concerning, any Customer-induced Issue.

14.6 In no circumstances will either party be liable to the other or its successors in title or permitted assignees for Consequential Loss arising out of, in connection with or relating to the performance, breach, termination or non-observance of the Contract.

14.7 Nothing in the Contract shall exclude or limit the liability of a party for:

(a) death or personal injury caused by its negligence;

(b) fraud, deceit or fraudulent misrepresentation; or

(c) any breach by the Customer of any applicable licence terms or provisions regarding ownership or licensing of IPRs.

14.8 Nothing in the Contract shall be construed as an agreement to be bound by or submit to any laws or jurisdiction not mentioned in clause 20.

14.9 No person other than a named party may enforce the Contract.

15. FORCE MAJEURE

15.1 In this clause, a Force Majeure Event means a strike, lock-out or other labour dispute, riot, civil disturbance, action or inaction of governmental authority, epidemic, war, loss of power or electricity, power surge or spike, embargo, storm, lightning, computer downtime, failure of a network, flood, fire, earthquake, act of God or the public enemy, nuclear or radioactive event, default of a carrier, or any event which is not within the relevant party's reasonable control.

15.2 Notwithstanding any other provision in the Contract, no default, delay or failure to perform (excepting an obligation of payment) on the part of either party will be considered a breach if such default, delay or failure to perform is shown to be due to a Force Majeure Event.

15.3 If a Force Majeure Event arises, the time for performance required of the party subject to the Force Majeure Event will be extended for any period during which performance is prevented by the Force Majeure Event.

15.4 Nothing in this clause entitles a party to any relief from its obligations which are not affected by the Force Majeure Event.

16. TERMINATION

16.1 ARKANCE Australia may by a notice in writing terminate the Contract (in whole or in part) if:

(a) ARKANCE Australia's relationship with a Third Party Product vendor or licensor who provides software or other technology that ARKANCE Australia uses or relies upon to provide a relevant Good expires, terminates or requires ARKANCE Australia to change the way it provides the software or other technology;

(b) required in order to comply with relevant laws or requests of governmental entities;

(c) any fees or amounts are not paid when due by the Customer (excepting any bona fide good faith dispute); or

(d) the Customer breaches a licence or the terms of use of any software or an obligation of confidence (in each case, relevant to the Contract).

16.2 In addition to any other express termination rights specified in the Contract, a party may by notice in writing terminate the Contract if the other party:

(a) commits a material breach of the Contract (as the case may be):

(i) that cannot be remedied; or

(ii) if capable of being remedied, it has not been remedied within 20 Business Days after a notice from the non-defaulting party requiring the defaulting party to do so; or

(b) suffers an Insolvency Event.

16.3 A termination under this clause will take effect on the date when the notice is deemed to have been given under this clause.

16.4 Termination or expiry of the Contract will not prejudice any right of action or remedy which may have accrued to either party prior to that termination or expiry (including the right to seek injunctive relief or any other remedy).

16.5 On termination or expiry of the Contract, the Customer must immediately pay all fees and pay all amounts that have accrued due prior to the termination or are otherwise due to ARKANCE Australia. This includes any recurring fees and any amount payable in respect of the standard 12 month minimum period or duration that may otherwise extend beyond termination or which is payable on deferred terms.

16.6 Subject to any applicable laws, the Customer shall not be entitled to any refund of fees or amounts paid prior to termination of the Contract.

16.7 Any indemnity or any obligation of confidence is independent and survives termination.

- 16.8 Termination or expiry of the Contract shall not affect the continuance of any Licence or perpetual licence of software that is fully paid up for the duration of such licence unless the relevant licence provides to the contrary.
- 16.9 In the event of termination or expiry of any Licence or a right of use of or access to any software, goods, services, hardware, documentation, materials or thing the Customer must immediately cease using the same and likewise any confidential information of ARKANCE Australia.
- 16.10 The Customer must in such circumstances, at its own cost and expense, to the extent relevant and as may be directed by ARKANCE Australia, return, erase or destroy all copies of such any software, documentation, materials or thing and (as may be demanded by ARKANCE Australia) confidential information of ARKANCE Australia. It must also certify to ARKANCE Australia within 10 Business Days following termination that it has done so.

17. INFORMATION SECURITY

- 17.1 ARKANCE Australia adopts information security controls which it considers appropriate to its business and relevant Goods and services.
- 17.2 The Customer acknowledges and understands that any such controls are not a guarantee of information or data security and may be impacted by the activities of third persons (including of a foreign person, state or country) and the conduct of the Customer and its personnel. To the extent lawful, ARKANCE Australia accepts no liability with respect to information security other than to implement (insofar as it is within its control) the above security controls.

18. SEVERABILITY

- 18.1 Any part of these Terms being whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

19. DISPUTES

- 19.1 All Disputes must be resolved as set out in this clause.
- 19.2 Subject to clause 19.3, a party must not commence any court proceedings unless it has first complied with this clause 19.
- 19.3 Nothing in this clause 19:
- (a) prevents a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief; or
 - (b) affects a party's right to terminate the Contract (including a licence or right of use).
- 19.4 A party claiming that a Dispute has arisen must notify the other party in writing giving details of the Dispute and stating that the notification is given pursuant to this clause 19.4 (Dispute Notice).
- 19.5 The parties must attempt to resolve all Disputes which are the subject of a Dispute Notice by negotiations using the following escalation procedure:
- (a) the Dispute must first be referred to the NSW Bar Dispute Resolution Centre for the purposes of this clause 19 who must attempt to resolve the Dispute within 20 Business Days; and

- (b) if the Dispute is not resolved within 20 Business Days of an escalation under clause 19.5(a) then either party may refer the Dispute to the CEO (or equivalent senior management) of each of the parties.

- 19.6 If the parties cannot resolve a Dispute in accordance with the escalation procedure in clause 19.5 within 20 Business Days of the Dispute Notice being given, then either party may commence legal proceedings to have the Dispute resolved in a court of competent jurisdiction.
- 19.7 The parties in writing may agree to the extension of any of the time periods set out in this clause 19 for the sending of any notice or the doing of any act, subject to the maximum extension permitted being equal to the original time period as set out in this clause 19 in respect of each such notice or act.
- 19.8 Each person involved in the escalation process described in clause 19 must use their reasonable endeavours to seek to resolve all issues escalated to them, in a way that attempts to preserve the relationship between the Customer and ARKANCE Australia. 19.9 Nothing in this clause 19 requires a party to act contrary to its interests.
- 19.9 If, in relation to a Dispute, a party breaches any provision of this clause 19, the other party need not comply with this clause 19 in relation to that Dispute.
- 19.10 Unless expressly agreed in writing to the contrary, each party will continue to perform its obligations during the attempted resolution of any Dispute unless such obligations are terminated or cease to apply (as relevant).
- 19.11 Each party must bear its own costs of complying with this clause 19.

20. GENERAL

- 20.1 These Terms and each Contract are governed by the laws of New South Wales, Australia.
- 20.2 The parties agree that any action arising out of, or relating to these terms may only be brought by a court of competent jurisdiction in the New South Wales, Australia.
- 20.3 If ARKANCE Australia does not act in relation to a breach by the Customer of these Terms, this does not waive ARKANCE Australia's right to act with respect to subsequent or similar breaches.
- 20.4 The Customer may not assign or transfer any rights or benefits you may receive under these Terms to any other person or entity without the prior written consent of ARKANCE Australia.
- 20.5 In reselling, maintaining or installing Goods, the Customer is not ARKANCE Australia's agent or the agent of the manufacturer of Goods.

21. DEFINED TERMS

- 21.1 In these Terms, unless the context otherwise requires the singular includes the plural and vice versa and each gender includes each other gender.
- 21.2 Headings are included for convenience only and do not affect the interpretation of these Terms and Conditions.
- 21.3 In these Terms and Conditions:

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

Autodesk® Software is a Third Party Product.

Business Day means a day which is not a Saturday, Sunday or public or statutory holiday in Sydney, Australia.

Contract means the contract formed in accordance with clause 2.5.

Consequential Loss means any Losses suffered by a party that cannot reasonably be considered to arise naturally, or in the ordinary course of things, from any act or omission (including a breach of contract) in connection with a Contract even if the other Party has been advised of the possibility or likelihood of such damage, cost or loss. Each party agrees that, in any event, loss of profits, loss of revenue (in each case excepting Fees payable to ARKANCE Australia), loss or corruption of data (including any corruption, loss or recovery of content or data, costs of reprogramming, repairing, correcting or reproducing any content or data stored in or used in conjunction with any Deliverable, operational disruption or errors that impede data traffic and any Losses otherwise caused by corrupt or inadequate content or data arising out of or in connection with the use of any Deliverable), loss of goodwill, bargain opportunity and loss of anticipated savings or use however and whenever occurring, will all constitute Consequential Loss.

Customer means any person who enters into a Contract with ARKANCE Australia for the sale and purchase of Goods.

Customer-induced Issue means any non-conformity or issue with respect to a Deliverable which is related to, concerns or results from:

- (a) any Deliverable supplied in accordance with instructions or specifications provided by, or on behalf of, the Customer, or under the operational authority or management of the Customer;
- (b) non-conformities or issues otherwise attributable to the Customer (including, for these purposes, any person acting on its behalf), such as, but without limitation, those resulting from:
 - (i) use of the Deliverable in combination with any equipment, software, accessory, data or business methods not provided by or expressly prescribed or permitted by ARKANCE Australia;
 - (ii) erroneous or incomplete information from, or provided by, the Customer;
 - (iii) modifications or adjustments to the Deliverable, whether or not authorised by ARKANCE Australia, or changes in the Customer's data, database or content;
 - (iv) connectivity issues or failure of a network (public and/or private);
 - (v) the handling, use or deployment of the Deliverable in a manner other than permitted in applicable documentation or otherwise in non-compliance with any applicable routine or process prescribed by ARKANCE Australia; or
 - (vi) any negligence, misuse, improper or unauthorised use, reproduction or distribution of the Deliverable which is not permitted under any applicable terms of use or licence, restrictions of use or any relevant acceptable use policy.

Deliverable means any relevant deliverable and includes Goods.

Delivery Address means the delivery address of the Customer stated in an Order, Quote or Order Confirmation.

Delivery Time means the time of delivery of the Goods either to the Delivery Address of the Customer or to the carrier of the Customer (for digital goods this includes an email address or electronic facility).

Dispute means any dispute or difference between the parties arising out of or in connection with the Contract, including any dispute or difference as to the formation, validity, existence or termination of such Contract or any relevant part.

Dispute Notice has the meaning given in clause 19.4.

Goods means the goods supplied or to be supplied by ARKANCE Australia to the Customer from time to time pursuant to the Contract and for the purpose of this document includes any software or software as a service and Third Party Products.

GST means any amount paid or payable under any GST law as that expression is defined in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means:

- (c) for a person in Australia, means any one or more of the following events occurring in respect of that person:
 - (i) a resolution is passed for the winding up of that person (other than for the purposes of reconstruction or amalgamation);
 - (ii) a liquidator, provisional liquidator or receiver or receiver and manager, voluntary administrator, or administrator of a deed of company arrangement is appointed to all of the property of that person;
 - (iii) a receiver, receiver and manager, voluntary administrator or an administrator of a deed of company arrangement, is appointed to, or a mortgagee takes possession of, all of the business or assets of that person;
 - (iv) that person makes any composition or arrangement or assignment with or for the benefit of its creditors;
 - (v) that person or any creditor appoints a voluntary administrator or a resolution is passed for that person to execute a deed of company arrangement;
 - (vi) that person ceases, or threatens to cease to carry on its business; or
 - (vii) that person becomes insolvent within the meaning of section 95A of the Corporations Act; or
- (d) for a person in any other jurisdiction, means that any event analogous or equivalent to the events described in paragraph (a) occurs in respect of that person.

Intellectual Property Rights or IPRs means all present and future (whether registered or unregistered) intellectual and industrial property rights (whether now known or created in the future), conferred by statute, at common law, in equity or by other means and wherever existing, including patents, copyright (including software), registered designs, trademarks, Know-how, inventions and the right to have confidential information kept confidential, as well as any application or right to apply for registration of any of the same.

Licenses has the meaning given in clause 3.2.

Loss means all liabilities, losses, damages, costs, claims and expenses, actual and contingent, and of whatever nature including legal costs and disbursements, whether incurred or awarded against a party, including costs of investigation, litigation, settlement and compliance with judgments; and interest, fines and penalties and loss of profits, suffered or incurred by any relevant person, whether arising in contract or tort (including negligence) or under any statute.

Order has the meaning given in clause 2.1.

Order Confirmation has the meaning given in clause 2.5(b).

Price means the applicable price and amounts payable for the Goods specified in the Quote, Order Confirmation, or both.

Quote means a document issued by ARKANCE Australia setting out the estimated costs of a particular deliverable.

Terms means these terms and conditions.

Third Party Products means any software, goods and/or services owned by or vested in a third party (including for these purposes any open source software) in circumstances where licence and/or user rights have been granted to the Customer directly by the Third Party Product vendor on terms agreed between the Customer and such vendor (including by way of end user licence agreement or open source software licence).