

### Introduction

"Qvest" means Qvest Australia Pty Ltd. "Customer" means the person, persons, firm, or company purchasing Products from Qvest and includes their legal representatives, administrators, successors and or permitted assignees.

### Definitions

"Australian Consumer Law" means the Competition and Consumer Act 2010 (Cth).

"Business Day" means a day that is not a Saturday, Sunday, or public holiday in New South Wales.

"Change of Control" means in relation to a body corporate, the occurrence of an event or circumstance where a person who is not presently able to do one of the following things directly or indirectly becomes able to do so:

- Control the composition of more than one half of the body's board of directors;
- Be in a position to cast or control the casting of more than one half of the maximum number of votes that might be cast at a general meeting of the body; or
- Hold or have a beneficial interest in more than one half of the issued capital of the body.

"Contract" means any agreement between Qvest and a Customer for the purchase of, licence or other right to use, the Products of Qvest and as evidenced by documents such as but not limited to Purchase Order forms, Invoices, Statements of Account and other such documents and which agreements are deemed to include these Terms and Conditions.

"Corporations Act" means the Corporations Act 2001 (Cth).

"Products" means the Goods and/or Services as the case may be which are the subject of a Contract including but not limited to hardware and software supplied whether under license or otherwise and including the provision of Services by way of installation and support relating to the Products.

### Terms and Conditions

The following are the terms and conditions of sale for the Products unless the written quotation, written offer or tender (together called the offer) relevant to any sale includes terms and conditions inconsistent with these terms and conditions in which case the terms and conditions appearing on Qvests' offer shall be considered as a variation of these terms and conditions and shall prevail over these terms and conditions.

If any of these terms and conditions contravenes or are prohibited by any international or Commonwealth or State law or statute for the time being in force (or which may come into force), those terms or conditions shall not apply to the Contract but the remaining terms and conditions shall continue in full force.

### General

1. (a) Acceptance by a Customer of a quotation or proposal made by Qvest staff shall not be legally binding on Qvest until such time as an Order Confirmation Letter has been forwarded to the Customer or a legal contract has been signed by the Customer.  
(b) If an Order Confirmation Letter is not received but the Customer expressly or impliedly otherwise indicates that it wishes to proceed Qvest may elect to accept the Order and upon Qvest giving the Customer written notice of that election the Order becomes binding.  
(c) Until the contract becomes binding as provided for in this clause Qvest may revise or withdraw in whole or part the offer.  
(d) Placement of an order by the Purchaser and/or receipt of the Products by the Purchaser shall be an acceptance of these terms and conditions subject to any variation in the offer.  
(e) Qvests' offer will remain open for acceptance for the period stated in such offer, or if no period is stated, a period of thirty days from the date that the offer was delivered to the Customer.

### Description of Goods

2. If any description of Products is contained in any other document that description is provided by way of identification only and the use of that description shall not constitute a contract of sale by description. Any description of any Products in any brochure, document or other sales literature used by Qvest may be approximate and is for general information only and shall not form part of any agreement between Qvest and the Purchaser. Any performance figures given by Qvest are based on its experience but Qvest shall have no liability if those figures are not obtained, unless they are specifically guaranteed in writing by Qvest.

### Risk

3. All Products sold by Qvest are sold on an ex- warehouse basis and shall be at the Purchaser's risk from that point being the commencement of shipping. For the avoidance of doubt the Purchaser shall be responsible for all transport and insurance costs as well as the value of Products lost or damage to the Products until title passes.
4. At the Purchaser's request, Qvest will without varying the responsibility of the Purchaser as above pack and ship the Products and on-charge the relevant cost for transport and insurance.
5. Should the Purchaser so request Qvest then the Purchaser shall nominate the point of delivery, ensure that

reasonable access is provided, and ensure that at the nominated point of delivery there is in place the necessary facilities for safe and efficient offloading of the Products.

6. Delivery times or completion estimates stated by Qvest are estimates only based on information available at the relevant time to Qvest. Such statement of delivery times or completion estimates do not involve any contractual obligation and in no circumstances will Qvest be liable for any loss or damage claimed by the Customer to result from any delay.

### Payment

7. The Purchaser shall make payment in full, without any deduction or withholding whatsoever, within the period shown on Qvest's invoice or at some other date which must be clearly evidenced in writing as having been agreed to between Qvest and the Purchaser.
8. If payment is not received in full upon the due date, the Purchaser may be required (at Qvest's discretion) to pay interest on the unpaid amount at 15% (fifteen per cent) per annum.
9. If a specific arrangement has been agreed for payment to be made via an irrevocable letter of credit, it is required that the issuing bank of the irrevocable letter of credit be a reputable international or domestic bank. All terms and conditions of the irrevocable letter of credit have to be agreed by Qvest prior to the application.
10. The Customer's credit facility with Qvest, if applicable, will remain in the name of the Customer until the Customer seeks any variation and if any variation is sought Qvest may in its absolute unfettered discretion refuse to consent to any change.
11. The Customer shall as soon as reasonably practicable notify Qvest of any Change of Control of the Customer and in those circumstances Qvest may forthwith withdraw any credit facilities or consent to such or terminate any other credit arrangement entered into.
12. Qvest reserves the right to defer, without penalty, delivery of any Products which have been ordered by the Purchaser so long as any amounts remain overdue for payment.
13. All losses, expenses, interest and costs including, but not limited to, legal fees on a solicitor client basis subsequent to the Purchaser's failure to pay, shall be recoverable from the Purchaser by Qvest as liquidated damages.
14. Deposits and advance payments received from the Purchaser will be banked to Qvest's principal trading bank account.

### Pricing

15. All Products will be priced subject to the following unless otherwise specified in writing by the company;
  - (a) Qvest's offer is based upon prices current at the date of the offer
  - (b) the quantity and specifications stated for the Product is subject to variation if the quantity or specifications are altered in any way;
  - (c) the Customer has to bear any variations from time to time in rates of freight, insurance costs, customs duties, exchange rates, costs of materials, and other costs, which variations are likely to have the effect of increasing the costs of the delivered Product;
16. The Customers orders are on the basis that all prices are strictly net and that prices charged shall be those ruling on the day of dispatch or date of invoice if Products are held awaiting shipment.

### Cancellation or Deferral

17. Should an Order be placed it cannot be cancelled or delivery deferred unless prior written notice is given to Qvest and then only on terms which will fully indemnify Qvest against loss charges and expenses.

### Title

18. Notwithstanding the above, both legal and equitable title to the Products remains with Qvest until Qvest has received payment of the total invoice value in addition to any interest rate charges or other costs incurred by Qvest. If specifically agreed in writing that payment is to be made by instalments, the property title in respect of the Products supplied under the contract, shall not pass to the Purchaser until such time as all instalment payments have been made. Until payment in full has been made, the Purchaser may hold the Products in a fiduciary capacity for Qvest, separate from any other assets and clearly marked as Qvest's property. Qvest shall be entitled to require the Purchaser to deliver the Products or any part of them, on demand.
19. Qvest shall be entitled to enter the Purchaser's premises for the purpose of collecting the Products or any of them and shall have the right to dismantle any furniture, equipment, product items or goods into which the Products or any of them have been incorporated and the Purchaser shall be responsible for all of Qvest's costs and expenses in connection with doing so. Furthermore, where the Purchaser defaults in its obligations, Qvest shall have the right via its employees, servants or agents, to enter the Purchaser's premises without notice or any premises occupied by the Purchaser or any other place where Qvest's Products may be, and remove the said Products. Such entry shall not give rise to any action of trespass or similar on the part of the Purchaser against Qvest its employees, servants or agents.
20. If this clause applies the Customer indemnifies and must keep indemnified Qvest against all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a solicitor client

basis) that may be brought against Qvest or which Qvest may pay sustain or incur as a direct or indirect result of the exercise by the company of its rights under this clause.

21. The Purchaser may sell the Products by way of bona fide sale in the ordinary course of business on its standard terms and conditions but may not otherwise deal with, sell, part with possession of, change the character of, convert or otherwise dispose of or handle any of the Products sold hereunder until title has passed to the Purchaser in accordance with the above conditions. Where any of the Products are sold to a third party before title has been passed to the Purchaser, that sale will constitute a sale by the Purchaser of Qvest's property and accordingly the Purchaser will hold the proceeds of that sale in a separate bank account on trust for Qvest.
22. Any claim against Qvest must be made within 7 days of delivery of the Products with the exception of a claim arising from non-delivery, which must be made in writing within 14 days from the date of the invoice. All claims must refer to the invoice number and date and state the reason for the claim.
23. All freight charges for the return of Products by the Purchaser shall be paid by the Purchaser unless Qvest expressly agrees in writing, to accept liability for such charges.

#### Claims

24. Except only to the extent that the Purchaser has rights and remedies in respect of the goods under applicable International or domestic laws which cannot be modified by agreement, Qvest shall accept no claim in respect of the Products, shall not be liable to the Purchaser and the Products shall be deemed to comply with the agreement between Qvest and the Purchaser unless a claim in writing is received by Qvest within 14 days after date of arrival of the Products at the point of delivery.

#### Liability

25. Save to the extent provided in clause 26 below, Qvest shall not be liable to the Purchaser or any other person for any loss or damage whatsoever or howsoever caused, arising directly or indirectly in connection with the Products (or any of them), parts of the Products, or otherwise, other than as expressly imposed by international or domestic statute in terms of which it is not possible to limit or exclude liability.
26. Notwithstanding the generality of clause 24 above, Qvest expressly excludes liability for consequential loss or damage including but not limited to loss of profit, business, revenue, good will or anticipated savings.
27. The sole liability of Qvest for any loss as is contemplated by clause 24 above, shall be limited to the price or license fee or other sum paid by the Purchaser to Qvest for the product, license or service from which such loss or damage directly arose.
28. Contracts and deliveries may be suspended in the event of any strike, lockout, trade dispute, fire, tempest, breakdown, riot, theft, crime, civic disturbance, war, force majeure, legislation, the inability to procure necessary materials or articles due to any of the foregoing causes or any other occurrence preventing or retarding the contract or delivery of work and no responsibility shall be attached to Qvest for any delay, default, loss or damage due to any of the above causes or to any other cause beyond the control of Qvest.

#### Patents, Trademarks, Copyrights and Intellectual Property Rights

29. The Purchaser acknowledges that any and all of the trademarks, trade names, patents, copyright and other intellectual property rights embodied in or in connection with the Products and any information, documentation, parts or software relating thereto are the property of Qvest or such other manufacturer/supplier of any such rights and further acknowledges that Qvest has the sole and exclusive right to, as is relevant to any of the Products, import and distribute, manufacture sell and support the Products.
30. The Purchaser also acknowledges that such copyright and intellectual property rights and other rights belonging to Qvest or any other manufacturer/supplier as the case may be, are only used by the Purchaser in trust for Qvest. The consent of Qvest or any other manufacturer/supplier exists only during the continuation of this agreement and such consent extends only to uses essential for the direct purposes of the property implications of this agreement. Upon expiry or termination hereof, the Purchaser shall forthwith discontinue such use, without receipt of compensation for such discontinuation. The Purchaser acknowledges that upon expiry or termination hereof, any license of intellectual property rights in software created or implied hereby, will immediately cease.
31. The Purchaser shall not during or after the expiry or termination of the agreement, without the prior written consent of Qvest or any other manufacturer/supplier, use or adopt any name, trade name, trading style or commercial designation or design used by Qvest or any other manufacturer/supplier as the case may be nor shall the Purchaser repackage any products, reproduce any artwork appearing on the package of any products or copy, sell or hire or offer for sale or hire, a copy of the Products.
32. The Purchaser shall indemnify Qvest against all liabilities, costs and expenses which Qvest may incur as a result of work done in accordance with the Purchaser's specifications or as a result of the combination or use of the Products with other equipment, parts or software by Qvest, involving infringement of any patent, copyright or other proprietary right.

#### Software Licence

33. By placing an order for Qvest's software and use of that software, the Purchaser is deemed to have accepted Qvest's End User Software Licence Agreement.

#### Confidential Information

34. Qvest has imparted and may from time to time impart to the Purchaser, certain confidential information and documentation relating to the Products, their design, marketing, use, maintenance, operation and software including technical specifications. The Purchaser hereby agrees that it shall use such confidential information solely for the purposes of this agreement and that during the operation of this agreement or thereafter, it shall not disclose, whether directly or indirectly, to any third party such information other than is required to carry out the purposes hereof.
35. In the event that disclosure is necessary, the Purchaser will obtain from such third parties, binding agreements to maintain in confidence the information disclosed to at least the same extent as the Purchaser is so bound to Qvest.
36. The Purchaser agrees that immediately upon expiry or termination hereof, it shall cease to use and shall return or destroy (as Qvest may instruct) such information and documentation and shall not itself or through any subsidiary, agent or other party, sell, market, distribute, manufacture or otherwise deal with the Products or have the same manufactured for it based on any technical or confidential information supplied to it by Qvest.

#### Assignment

37. This agreement shall not be assigned by the Purchaser whether voluntarily, involuntarily or by the operation of law without the prior written consent of Qvest. No such assignment by the Purchaser howsoever occurring shall relieve the assignor of its obligations hereunder.
38. A Change of Control without the consent of Qvest shall be deemed to be an assignment
39. Qvest shall be under no obligation to provide consent and can withhold consent at its absolute discretion.

#### Waiver

40. Failure or neglect by Qvest to enforce at any time the provisions hereof, shall not be construed nor shall be deemed to be a waiver of Qvest's rights hereunder nor in any way affect the validity of the whole or any part of this agreement nor prejudice Qvest's rights to take subsequent action.

#### Law

41. The Parties agree that this agreement and the provisions hereof, shall be construed in accordance with the laws of New South Wales, Australia and the Parties further submit to the exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia in respect of all matters and things arising out of this agreement.

#### Provision of Credit

42. The provision of credit and/or the continued provision of credit by Qvest to the Purchaser from time to time, shall be in the absolute discretion of Qvest. Qvest may in its absolute discretion:
- (a) extend credit to the Purchaser; or
  - (b) continue to extend credit to the Purchaser; or
  - (c) extend and/or continue to extend credit to the Purchaser subject to the provision of security in a form acceptable to Qvest; and/or
  - (d) at any time and from time to time, vary or cancel the credit facility available to the Purchaser.
43. The prices quoted by Qvest's Sales Representatives, are subject to confirmation by Qvest's General Manager or Managing Director and shall not be binding on Qvest unless so approved.

#### Pricing

The prices quoted for equipment manufactured outside and other services or products not manufactured by Qvest may be subject to variation. All increments shall be borne by the Purchaser unless otherwise agreed in writing.

#### Variation

44. Variations to contracts or purchase orders during manufacture may be necessary. Any direct or indirect expenses including the cost of additional items incurred as a result of variations, late changes or order cancellations, will be charged to the Purchaser unless previously agreed in writing.

#### Reservation of Right

45. Qvest reserves the right to vary these terms and conditions at any time upon written notice to the Purchaser.

#### Warranty

46. Qvest's Products come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
47. This warranty is in addition to the Customer's rights under the Australian Consumer Law.
48. The purchaser shall be entitled to a warranty according to the particular product or service. Third party equipment sold by Qvest will be warranted with the same warranty conditions provided by the manufacturer. For all software written by Qvest or its parent company Qvest GmbH, 12 months warranty applies. Items subject to abuse or misuse may not be covered by Qvest. Items being returned for repair must be suitably packed and clearly marked in a pre-paid freight package.

Goods and Services Tax (GST) and Other Charges

49. All Items may be subject to additional charges on the basis of the following provisions:
- (a) Prices quoted exclude GST unless otherwise specified by Qvest. Qvest reserves the right to recover GST from the Customer for any taxable supply to the Customer delivered in Australia. Any existing or new taxes or Government charges (other than income tax payable by Qvest) from time to time imposed on or in respect of an Item will be to the Customer's account.
  - (b) Where Items are cut to length because the length ordered is a non-standard packaged length, the cutting charge will be no less than Qvest's currently prevailing minimum cutting charge, unless otherwise specified by Qvest.
  - (c) Drums, cases, packages, reels and any other similar Items specified by Qvest from time to time will be supplied in accordance with the standard price lists from time to time issued by Qvest or its suppliers unless otherwise stated by Qvest. Where a Customer requests goods to be packed in a manner other than normally observed by Qvest or where special packaging for intrastate, interstate or overseas delivery is required, the Customer will be responsible for all relevant charges.
  - (d) The supply of certificates of testing, inspection or compliance with national and international standards at the request of the Customer in accordance with clause 4 will be subject to an additional charge of not less than Qvest's currently prevailing minimum charge unless otherwise specified by Qvest.
  - (e) Unless otherwise specified, all Items are delivered Free in Store ("FIS") by Qvest. Where the Customer nominates any alternative method of carriage the Customer will be responsible for all charges associated with such carriage.
  - (f) Where the Customer nominates the arrangements for insurance of the Items the Customer will be responsible for any costs and all relevant charges associated with any insurance policy obtained by the Customer.
  - (g) Qvest may charge a service fee associated with the cost of equipment hire and delivery as agreed between Qvest and the Customer from time to time ("Service Fee"). The Service Fee will be at Qvest's rate currently in effect on the date the order is dispatched and will be applied to each invoice below the total net value determined by Qvest from time to time.
  - (h) If there is a deferred delivery which is specifically requested by the Customer or due to the inability of the Customer to accept the Items for any reason on or after the due date for delivery or due to some other cause beyond the reasonable control of Qvest in circumstances where Qvest is ready to deliver and/or install the Items, then the Customer shall be liable for any extra charges, losses or expense incurred by Qvest.

PPS Law

50. If in the opinion of Qvest:
- (a) Any:
    - (i) of the Contract contains; or
    - (ii) any of the transactions contemplated by the Contract is, a Security Interest for the purposes of the PPS Act; or
  - (b) the PPS Law:
    - (i) does or could adversely affect its rights or obligations under or in connection with the Contract or any of the transactions contemplated by them ("Transactions"); or
    - (ii) enables or could enable its rights to be improved, Qvest may give notice to the Customer requiring it to do anything (including amending any of the Contract or executing any new document or agreement) that:
  - (c) Qvest requires to:
    - (i) ensure that any Security Interest is enforceable, perfected and otherwise effective;
    - (ii) register, or give any notification in connection with, any Security Interest in order to confer the priority Qvest requires; or
    - (iii) exercise rights in connection with the Security Interest; or
  - (d) Qvest considers necessary to ensure that its rights and obligations are not adversely affected, or that its position is improved.
51. The Customer must comply with any notice received pursuant to clause 13A(a) within the time stipulated in the notice.
52. If:
- (a) clauses 51(a)(i) and 51(a)(ii) apply; and
  - (b) Qvest determines that (after doing all things reasonably practicable under clause 51(a) to avoid or overcome the adverse effect referred to in clause 13 that Qvest's rights or obligations under or in connection with the Agreement or any other document in connection with the Transactions have been or will be materially adversely affected, Qvest may give notice to the Customer cancelling the Agreement or any other document in connection with the Transactions and requiring full repayment of all outstanding monies in full within thirty days after the date of notification.
53. If:
- (a) the Customer holds any Security Interest; and
  - (b) failure to perfect any such Security Interest would materially adversely affect its business, the Customer must:
    - (i) Perfect and register all such Security Interests;

- (ii) take all steps under the PPS Act to continuously perfect all such Security Interests;
  - (iii) obtain, the highest-ranking priority possible for all such Security Interests (such as perfecting a Purchase Money Security Interest or perfecting a Security Interest by Control); and
  - (iv) take all necessary action to reduce the risk that a third party acquires an interest free of the Security Interest (such as by including the Serial Number in a Financing Statement for Personal Property that may or must be described by a Serial Number).
54. If Qvest reasonably suspects that the Customer is not complying with clauses 51-58 and requests an audit of the PPS Act procedures, the Customer must arrange such audit at its expense.
55. The Customer agrees to pay or reimburse the costs of Qvest in connection with anything the Customer is required to do under clauses 51-58.
56. Qvest need not give any notice under the PPS Act (including notice of a Verification Statement) unless required by the PPS Act and if the notice cannot be excluded.
57. In clauses 51-58:
- (a) Unless defined in clauses 51-58 or otherwise in these Terms and Conditions, terms used in clauses 51-58 have the meaning given to them in the PPS Act;
  - (b) "Government Agency" means any government or any public, statutory, governmental, semi-governmental, administrative, public, regulatory or judicial body, entity, department, commission, agency or authority;
  - (c) "Law" includes:
    - (i) principles of law or equity established by decisions of courts;
    - (ii) statutes, regulations or by-laws of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia, or a Government Agency; and
    - (iii) requirements and approvals (including conditions) of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia, or a Government Agency that have the force of law; and
  - (d) "PPS Law" means the Personal Property Securities Act 2009 (Cth) (including any amendments to that Act) ("PPS Act") and any amendment made at any time to any other Law as a consequence of the PPS Act.

Return of Items Supplied

58. Subject to clauses 47-49 and the Australian Consumer Law, Items returned for credit will only be accepted subject to the following conditions:
- (a) Items returned must have been approved by Qvest as goods authorised for return.
  - (b) Qvest will approve the return of any Items where Qvest is required to refund, repair or replace the Items under the Australian Consumer Law.
  - (c) In the event that clause 59(a) applies and the Item constitutes a Major Failure (as defined in the Australian Consumer Law) then the Customer may, at its discretion, receive a refund, replacement or recover compensation for the reduction of value in the Item caused by the Major Failure.
  - (d) If an Item returned by the Customer is not the subject of a Major Failure under clause 59(b), then Qvest must in its absolute discretion, repair, replace or refund the price paid for the Item.
  - (e) Items returned must not be incomplete, damaged or otherwise imperfect because of an action taken by the Customer or another person after the purchase of the Items or returned because they are no longer required by the Customer.
  - (f) Items specially produced or procured to the Customer's order cannot be returned as being unsuitable, unless the Items do not comply with the specifications provided by the Customer.
  - (g) Items must be returned to Qvest's receiving point by the Customer (or by freight prepaid by the Customer) and no responsibility is accepted by Qvest for Items lost or damaged in transit during return to Qvest.
  - (h) Any claims for credit must be made within 30 days after delivery of the relevant Items, unless otherwise specified by Qvest from time to time.

Termination

59. Qvest may terminate the Agreement with immediate effect by giving written notice to the Customer if:
- (a) the Customer breaches any of its obligations under any agreement with Qvest (including this Agreement) and does not rectify the failure (where the failure is rectifiable) within 14 days of notice;
  - (b) a Change of Control occurs with respect to the Customer for which Qvest has not given its prior written consent; or
  - (c) the Customer or (if applicable) the Guarantor suffers an Insolvency Event.
60. Qvest may terminate the Agreement without liability to the Customer, by providing [60] days written notice to the Customer.
61. Termination will not affect any rights or obligations which may have accrued prior to termination.
62. In clause 60 "Insolvency Event" means any one or more of the following events or circumstances occurring in relation to a party (or any person comprising the party):
- (a) being in liquidation or provisional liquidation or under administration;
  - (b) having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;
  - (c) being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;

- (d) being unable to pay its debts or being otherwise insolvent;
- (e) becoming an insolvent under administration, as defined in section 9 of the Corporations Act;
- (f) entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; and
- (g) any analogous event or circumstance under the laws of any jurisdiction.

#### Consequences of Termination

63. On termination of the Agreement, the Agreement is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before the termination.
64. Despite any other provision of the Agreement, on termination of the Agreement:
- (a) all orders (whether or not accepted by Qvest at the time of termination) will be automatically cancelled, except to the extent otherwise directed in writing by Qvest; and
  - (b) the Customer must within 5 Business Days, pay Qvest all amounts owing by the Customer to Qvest, whether otherwise due at that time or not, and otherwise clauses 64,65,47-49, 66 and 67 survive termination of the Agreement.

#### Indemnity

65. The customer must indemnify and keep indemnified Qvest and each of its directors, officers, servants, agents and contractors from and against all claims, actions, demands, liabilities, loss, damage, costs, charges and expenses of whatsoever nature which may be brought against Qvest or any of its directors, officers, servants, agents or contractors or which Qvest or any of its directors, officers, servants, agents or contractors may pay, sustain or incur by reason of or in any way connected with any one or more of the following:
- (a) Any breach by the Customer of any of its warranties or obligations set out in these Terms and Conditions;
  - (b) Any willful, unlawful or negligent act or omission of the Customer or any of its servants, agents or contractors; and
  - (c) The presence of the Customer's servants, agents or contractors on Qvest's premises and any injury or death occurring to those persons or loss or damage to their personal effects.

#### Disclaimers and Liability

66. Subject to a failure to meet any consumer guarantees which may apply under the Australian Consumer Law:
- (a) Product data, specifications, drawings, design details and performance figures contained in Qvest's published literature and advice given by Qvest is provided only as a guide and to the fullest extent permitted by law, Qvest does not accept any liability whatsoever (including arising from negligence) for its accuracy and for injuries, expense or loss or for the results obtained by the Customer or any of its servants, agents or contractors. If the Customer relies upon such information or advice it is entirely at the Customer's own risk.
  - (b) All orders are accepted on the understanding that the Customer will be responsible for determining that the Items sold or manufactured by Qvest are suitable for a particular application.
  - (c) Customer's items are accepted for processing by Qvest or by the supplier Qvest represents, at the Customer's own risk. Whilst Qvest will use its endeavours to carry out the instructions of the Customer, all items are accepted, treated, processed and stored entirely at the risk of the Customer and to the fullest extent permitted by law, no liability whatsoever (including arising from negligence) is accepted by Qvest.
  - (d) Owing to the obligations placed upon it, Qvest reserves the right not to accept liability for deficiencies, damaged or faulty Items (except within the terms of the warranty against defects in clauses 47-49, or errors in dispatch, unless notice in writing is given to the carrier and Qvest within seven days from receipt of the consignment. Neither can it accept any claim for loss of Items advised but not delivered unless notice is given in writing to Qvest and the carrier within twenty-one days of the date of the advice note, or in the case of exported Items, within a reasonable time from date of shipment.
  - (e) To the fullest extent permitted by law, no liability will be accepted by Qvest or the supplier Qvest represents nor is any guarantee or other undertaking given or implied in respect of any act or omission by Qvest in respect of the following:
    - (i) if performance figures are not obtained unless the specification to which Qvest is working lays down such figures or unless Qvest has made a specific guarantee in writing;
    - (ii) for any injury, loss or damage suffered by the Customer or any of its servants, agents or contractors, which may in any degree be attributed to the use of items or installation supplied by the Customer or to the adoption of data, design materials or advice given by Qvest as to the use of such items or installation notwithstanding any want of care on the part of Qvest in compiling or giving any advice or information;
    - (iii) for liquidated damages suffered by the Customer or others consequent to the supply of Items later than the date of dispatch confirmed by Qvest, unless expressly confirmed in writing by Qvest;
    - (iv) for loss, damage, or delay caused by government order, war, civil commotion, force majeure, accidents, fires, strikes, lockouts, or delay in obtaining raw materials through shortage or advantage in price thereof or any other cause beyond the reasonable control of Qvest; or
    - (v) for any loss or damage, direct or consequential, or for any accident, or the effects of any accident or other expenses sustained by the Customer or any other person, arising from any defect or failure in Items supplied by Qvest.

- (f) Subject to any applicable consumer guarantees under the Australian Consumer Law, under no circumstances will Qvest be liable to the Customer for one or more of the following:
  - (i) damage caused to an Item by incorrect use or repair by the Customer or any person not authorised by Qvest;
  - (ii) damage caused to any Item by any person other than Qvest; or
  - (iii) failure by the Customer to comply with the directions of Qvest in using the Items.
- (g) To the maximum extent permitted by law, the liability of Qvest for a breach of a non-excludable condition is limited at Qvest's option, to:
  - (i) in the case of services provided to the Customer:
    - I. the re-supply of the services; or
    - II. the payment of the cost of having the services supplied again,
    - III. at the election of Qvest; and
  - (ii) in the case of goods supplied to the Customer:
    - I. the replacement of the goods or the supply of equivalent goods;
    - II. the repair of the goods;
    - III. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - IV. the payment of the cost of having the goods repaired, at the election of the Company.
- (h) No guarantee is given that Items will not be affected by attack by termites, rats or other animals or organisms, unless otherwise specified by Qvest. Where an organic repellent is incorporated in PVC sheathed cable offered for use and buried directly in the ground, Qvest advises that this protection cannot be regarded as completely effective. Where Nylon or double brass tapes are used for better protection, the Customer should note that Qvest will still not accept liability should such attack occur.
- (i) To the fullest extent permitted by law (and subject to any rights under the Australian Consumer Law), the provisions contained in this clause 67 are in lieu of and exclude all other warranties (not including the warranty against defects in clauses 47-49), conditions and liabilities, expressed or implied, whether under common law statute or otherwise and whether relating to negligence, deliberate conduct or any other cause, in relation to Items supplied by Qvest, and no variation of these provisions shall be binding on it unless expressly accepted in writing by Qvest.
- (j) Subject to this clause 67 and any rights under the Australian Consumer Law (including any consumer guarantees that may apply), Qvest is not liable to the Customer or to any other person for:
  - (i) any loss or damage of any kind caused by or resulting from any act or omission of the Customer or any of its employees, agents or contractors; or
  - (ii) any loss of profits or anticipated profits, economic loss, loss of business opportunity, loss or damage resulting from wasted management time or any special, incidental, indirect or other consequential loss or damage, even if notified of the possibility of that potential loss or damage and irrespective of whether it is due to breach of contract or any other cause.

#### Alteration of Conditions and Other Agreements

67. No employee, servant or agent of Qvest is authorised to alter, vary or waive the Agreement or any one or more of them by oral agreement. The Customer acknowledges and agrees that nothing contained in any terms and conditions of purchase or acquisition which might apart from the provision of this clause have been applicable to the purchase of Items by the Customer shall take precedence over or amend or in any way effect the Agreement. The Customer confirms its acceptance of this provision by taking delivery of the Items and agrees not to subsequently attempt to amend, add to, or override the provisions hereof. In particular, it is expressly agreed by the Customer that the contractual conditions (if any) of the Customer are excluded in their entirety. These Terms and Conditions are to be read as including any Terms and Conditions of Sale specified by Qvest's suppliers from time to time. Where such conditions conflict with these Terms and Conditions or the Agreement, these Terms and Conditions will prevail to the extent of any inconsistency.

#### Privacy

68. The Customer consents to Qvest collecting and using Personal Information (as that term is defined in the Privacy Act 1988 (Cth)) of or relating to the Customer for the purpose of:
- (a) assessing the Customer's credit application with Qvest;
  - (b) the ongoing creditworthiness of the Customer;
  - (c) to the maximum extent permitted by law, assisting Qvest in the exercise of its rights against the Customer, including the right to enforce payment of any amount payable by the Customer to Qvest whether under the Agreement or otherwise; and
  - (d) any other lawful purpose required by Qvest, and Qvest may disclose that Personal Information to any person considered reasonably appropriate by Qvest to achieve any such purpose.
69. To the extent Qvest considers it relevant to assessing the Customer's application for commercial credit at any time, the Customer agrees to Qvest obtaining from a credit reporting agency a credit report containing the Personal Information of or relating to the Customer.