

G F O R C E S

SaaS and Services Terms and Conditions

Australia

March 2021

These Terms and Conditions govern the provision of GForces products and services as set out in the Order Confirmation Form which references these Terms and Conditions.

## 1. Definitions and interpretation

1.1 The definitions and rules of interpretation in this clause 1 apply.

Definitions:

<b>Agreement</b>	These Terms and Conditions and the Order Confirmation Form signed by the Parties which references these Terms and Conditions
<b>Applicable Laws</b>	all applicable laws, rules, regulations, codes of practice or other requirements of regulatory authorities, as amended from time to time;
<b>Assigned Content</b>	Text, images or graphics specifically designated as Assigned Content on the Order Confirmation Form
<b>Australian Consumer Law</b>	means Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) and any equivalent State or Territory legislation
<b>Australian Privacy Laws</b>	the Privacy Act and any other applicable State, Territory or Commonwealth laws regulating the use of Personal Information
<b>Australian Privacy Principles</b>	the 13 Australian Privacy Principles set out in Schedule 1 of the Privacy Act
<b>Authorised Users</b>	those persons who are authorised by Customer to use the Services, as further described in clause 3 and the Order Confirmation Form
<b>Business Day</b>	any day which is not a Saturday, Sunday or public holiday in Victoria, Australia
<b>Browser Policy</b>	GForces' browser and device policy as updated from time to time and which is available at <a href="http://www.gforces.auto/browser-and-device-policy">www.gforces.auto/browser-and-device-policy</a>
<b>Confidential Information</b>	information that is either clearly labelled as confidential or would be regarded as confidential by a reasonable business person. Confidential Information includes information relating to the business, customers, suppliers, operations, processes, know-how, designs, trade secrets, services, software, strategy, performance metrics or market opportunities of the disclosing party
<b>Configuration Services</b>	set-up and configuration services to be provided by GForces in order to set up the Software, Authorised User logins and passwords, and to configure the Software
<b>Consumer</b>	has the meaning provided to it in section 3 of the Australian Consumer Law

<b>Consumer Guarantee</b>	means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law
<b>Content</b>	all text, information, data, software, executable code, images, audio or video material in whatever medium or form provided by GForces to Customer for incorporation in the Customer Website or otherwise for use as part of the Services, including Assigned Content where applicable
<b>Content Creation Services</b>	design and copywriting services for the creation of Content for Customer, as set out in the Order Confirmation Form (or as otherwise agreed between GForces and Customer)
<b>Customer</b>	the legal entity on whose behalf the Order Confirmation Form is signed
<b>Customer Website</b>	any website hosted, managed on behalf of or provided to Customer by GForces as part of the Services (including any e-commerce elements thereof)
<b>Data Processing Policy</b>	GForces' data processing policy at <a href="http://www.gforces.auto/data-processing-policy">www.gforces.auto/data-processing-policy</a>
<b>Distributed Code</b>	HTML tags, JavaScript code, object code, plugins, SDKs, APIs, or other code provided by GForces in connection with use of the Services
<b>Effective Date</b>	the Effective Date set out in the Order Confirmation Form
<b>Fees</b>	the fees set out in the Order Confirmation Form (including as applicable the Set-Up Fees, the Subscription Fees, the Transaction Fees, the Professional Services Fees and any other fees connected with the Services)
<b>GForces</b>	GForces Web Management Australia Pty Limited (ACN number 634 754 706)
<b>GForces Data</b>	data that is collected by GForces and then anonymised and retained for analytics purposes, including but not limited to (i) unique ids generated by GForces' systems; (ii) geographical information (IP address and area codes but not full postcodes); and (iii) anonymised enquiry data, together with all information and reports produced using such data
<b>Handover Date</b>	the date on which GForces hands over the operational Software to Customer on completion of the Configuration Services (in accordance with clause 6
<b>Initial Subscription Term</b>	the period set out in the Order Confirmation Form commencing on the Handover Date
<b>Input Material</b>	(i) all assets and data provided by or on behalf of Customer to GForces for incorporation in the Customer Website or otherwise for use in provision of the Services, including logos, brand names, trading names, images, graphics, music, text, stock data, vehicle CAD data and Legal Notices; and (ii) the data that is inputted by or collected from users of the Customer Website or other Services, including Personal Information, but excluding GForces Data

	Where GForces is given access to assets online the assets shall be deemed to be provided by Customer
<b>Intellectual Property Rights</b>	all trade marks, service marks, logos, brand names, company names, business names, domain names, copyright, patents, rights in computer software, moral rights, design rights, know how, database rights, confidential information, rights protecting goodwill, reputation and image and/or any other right of a similar nature whether registered or unregistered and any applications for registration of any of these rights and all renewals, revivals, reversions and extensions thereof throughout the world
<b>Legal Notices</b>	terms and conditions, privacy policies, cookie policies, fair processing statements and any other legal notices provided by Customer for display on the Customer Website
<b>Locations</b>	the number of franchises and physical sales and service locations designated on the Order Confirmation Form
<b>Marketing Services</b>	digital marketing services, including search engine optimisation, content marketing, paid advertising, social advertising and email marketing
<b>Order Confirmation Form</b>	the order confirmation (or other ordering document which references these Terms and Conditions) provided by GForces and signed by the parties (as may be varied pursuant to any Project Variation Notice or other written agreement)
<b>PDH Goods or Services</b>	means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption
<b>Personal Information</b>	as defined in the Privacy Act where such information is collected, used, disclosed, stored or handled by a party for the purposes of this Agreement.
<b>Privacy Act</b>	Privacy Act 1988 (Cth)
<b>Professional Services</b>	means the professional services set out in the Order Confirmation Form (or as subsequently agreed between GForces and Customer), which may consist of one or more of the following: (i) Marketing Services; (ii) Content Creation Services; and (iii) other professional services
<b>Professional Services Fees</b>	the fees payable by Customer to GForces for the Professional Services, as set out in the Order Confirmation Form (or as subsequently agreed between GForces and Customer)
<b>Project Variation Notice</b>	a notice signed by both GForces and Customer in which a variation to the Order Confirmation Form or approved configuration document is agreed
<b>Renewal Period</b>	the period described in clause 17.1
<b>Resold Services</b>	as defined in clause 8.1.1
<b>Service Data Summaries</b>	the Service-specific data summaries at <a href="http://www.gforces.auto/service-data-summaries">www.gforces.auto/service-data-summaries</a> , which set out for each of the Services offered by GForces the scope, nature and purpose of processing, the duration of the

	processing, the types of Personal Data and categories of Data Subject, as updated from time to time (each being a "Service Data Summary")
<b>Services</b>	the services to be provided by GForces to Customer under this Agreement being (i) the provision of access to the Software set out in the Order Confirmation Form, together with associated Configuration Services and Support Services; (ii) the Resold Services set out in the Order Confirmation Form; and (iii) where set out in the Order Confirmation Form (or as otherwise agreed between GForces and Customer), Professional Services
<b>Service Support Guide</b>	the service support guide at <a href="http://www.gforces.auto/service-support-guide">www.gforces.auto/service-support-guide</a> as updated from time to time
<b>Set-up Fees</b>	the fees payable by Customer to GForces for the Configuration Services, as set out in the Order Confirmation Form
<b>Software</b>	any online software applications provided by GForces to Customer as part of the Services, including the object code and source code, and any Distributed Code
<b>Subscription Fees</b>	the subscription fees payable by Customer to GForces for access to Software, as set out in the Order Confirmation Form
<b>Subscription Term</b>	has the meaning given in clause 17.1
<b>Support Services</b>	the support and maintenance services described in the Service Support Guide
<b>Terms and Conditions</b>	these SaaS and Services Terms and Conditions
<b>Third Party Services</b>	as defined in clause 8.1.2
<b>Transaction Fees</b>	fees payable by Customer to GForces on a 'per transaction' basis, as set out in the Order Confirmation Form
<b>UK Data Processing Schedule</b>	the Schedule at <a href="http://www.gforces.auto/uk-data-processing-schedule">www.gforces.auto/uk-data-processing-schedule</a> as updated from time to time
<b>Virus</b>	any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

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- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written does not include e-mail (except where stated).
- 1.9 References to clauses and schedules are to the clauses and schedules of this Agreement.
- 1.10 The terms 'including', 'include', 'in particular' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## Part A: Operational terms

### 2. Terms and conditions

- 2.1 By signing the Order Confirmation Form referencing these Terms and Conditions, Customer accepts the terms of the Order Confirmation Form, as well as these Terms and Conditions.
- 2.2 GForces reserves the right to make changes to the Agreement on reasonable notice, in the event of new statutory requirements being introduced. Any changes made by GForces under this clause 2.2 will only be to the extent necessary to address such new statutory requirements as may be applicable from time to time.

### 3. Authorised users

- 3.1 Subject to the terms of this Agreement, GForces grants to Customer, during the Subscription Term, a non-transferable, non-exclusive licence to permit Authorised Users to access the Services in respect of the Locations, through the applicable interfaces.
- 3.2 Unless otherwise specifically limited in the Order Confirmation Form, Authorised User login IDs and passwords will be provided to Customer in a quantity mutually agreed upon by Customer and GForces. If no quantity is agreed, the maximum number of Authorised User login IDs and passwords provided shall be 30 (excluding any Authorised Users that are set up solely for the purposes of receiving e-mails).
- 3.3 Customer must not share its Authorised User login IDs and passwords. Customer shall take (and shall ensure that its Authorised Users take) steps to prevent unauthorised access to its login IDs and passwords. Customer must not allow the use of the same login ID simultaneously by two or more Authorised Users.
- 3.4 Customer undertakes that the maximum number of Authorised Users that it authorises to access and use the relevant Services shall not exceed the number determined pursuant to clause 3.2.
- 3.5 All Authorised Users shall be named individuals. Customer shall not allow any login ID to be used for any non-human operator (including any automated program or robot, whether attended or unattended) without GForces' prior written consent.
- 3.6 Customer shall not:

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- 3.6.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
- (a) and except to the extent expressly permitted under this Agreement, (i) copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Software (as applicable) in any form or media or by any means; (ii) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make available the Services and/or Software to any third party except the Authorised Users; or (iii) obtain, or assist third parties in obtaining, access to the Services and/or Software; or
  - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- 3.6.2 access all or any part of the Services or Software in order to build a product or service which competes with the Services or Software; or
- 3.6.3 use the Services or Software to provide services to third parties.
- 3.7 Customer shall immediately notify GForces of any Authorised User who leaves the Customer's business (or who is no longer authorised by the Customer to access the Services for any other reason) so that GForces may remove access permissions from the relevant Authorised User.
- 3.8 Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services or Software and, in the event of any such unauthorised access or use, promptly notify GForces.
- 3.9 The rights provided under this clause 3 are granted to Customer only, and shall not be considered granted to any subsidiary or holding company of Customer.

## 4. Locations

- 4.1 The Services shall be provided only in respect of the number of Locations set out in the Order Confirmation Form. Subject to clause 4.2 and clause 4.3, Customer may, from time to time during any Subscription Term, request the purchase of Services for additional Locations in excess of the number set out in the Order Confirmation Form, and if agreed pursuant to the below, GForces shall provide the relevant Services in respect of such additional Locations in accordance with the provisions of this Agreement.
- 4.2 If Customer wishes to purchase Services for additional Locations, Customer shall notify GForces in writing. GForces shall evaluate the request and respond to Customer with approval or disapproval of it (such approval not to be unreasonably withheld).
- 4.3 If GForces approves Customer's request, the parties shall sign an updated or new Order Confirmation Form and Customer shall pay to GForces the relevant Fees set out therein. If the additional Locations are added part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable). If there is less than 12 months to run on the Initial Subscription Term, or if Customer is in the Renewal Period, GForces may in its discretion decline to approve the additional Locations unless Customer enters into a new agreement with a further Initial Subscription Term to be determined by GForces.

## 5. Services

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- 5.1 GForces shall, during the Subscription Term, provide the Services to Customer on and subject to the terms of this Agreement.
- 5.2 GForces reserves the right to disable and/or suspend some or all of Customer's Authorised User Logins and access to all or part of the Services, without liability to Customer, for any breach by Customer or Authorised Users of this Agreement.
- 5.3 GForces shall make the Software available in accordance with the Service Support Guide.
- 5.4 GForces will, as part of the Services, provide Customer with the Support Services.
- 5.5 GForces shall provide its standard training on the Software at GForces' head office, subject to payment of any agreed fees. If the Customer requests additional training, GForces may provide this at its discretion, subject to payment of any agreed fees and/or applicable travel and accommodation expenses.
- 5.6 Customer shall if applicable:
  - 5.6.1 ensure that GForces has access to the Locations for carrying out the purposes of the Agreement at such times as the parties may agree, providing in any event that reasonable notice has been given by GForces to Customer of any such access requirements;
  - 5.6.2 provide GForces such facilities and assistance at the Locations as GForces reasonably needs to perform its responsibilities under the Agreement; and
  - 5.6.3 keep GForces advised of any relevant health and safety at work rules and regulations and reasonable security arrangements applicable at the Locations.
- 5.7 Subject to GForces agreement, Customer may purchase additional Professional Services at GForces' applicable hourly rate as notified to Customer from time to time. The purchase and supply of such services shall be governed by these Terms and Conditions.

## 6. Configuration Services

- 6.1 GForces shall provide the Configuration Services after signature of this Agreement. If Customer has purchased NetDirector® Auto-e, Customer shall first complete GForces' configuration document. Once the configuration document has been approved by GForces, GForces shall provide the Configuration Services in accordance with that document. Once approved, the configuration document may not be amended except through a Project Variation Notice.
- 6.2 When the Configuration Services are complete, GForces shall hand over the Software to Customer.
- 6.3 Customer acknowledges that GForces' ability to provide the Configuration Services is dependent upon Customer's full and timely co-operation, as well as the accuracy and completeness of any information and data Customer provides to GForces. Accordingly, Customer shall provide GForces with access to, and use of, all Input Material and other information, data and documentation reasonably required by GForces for the performance by GForces of its obligations under this clause 6, including any Legal Notices.

## 7. Personal Information and Privacy Laws

### 7.1 *Australian Privacy Laws*

Each party must comply with all Australian Privacy Laws in relation to Personal Information it collects, uses and handles in connection with this Agreement, including ensuring that it:

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- 7.1.1 implements appropriate practices, procedures, and systems required to comply with the Australian Privacy Principles;
- 7.1.2 only collects Personal Information as reasonably necessary for one or more of its functions or activities, or as otherwise permitted by law;
- 7.1.3 refrains from using or disclosing any Personal Information obtained from the other party, except for the purposes of this Agreement, or as otherwise permitted by law;
- 7.1.4 only provides access to Personal Information to those of its employees and contractors who reasonably require access for the purpose of it carrying out its obligations under this Agreement; and
- 7.1.5 provides all reasonable cooperation to the other party to rectify or minimise any breach of Australian Privacy Laws, any notifiable data breach, or any privacy complaint, including the provision of any information or assistance reasonably requested for the purposes of investigating and responding to such breach or complaint.

*7.2 Customer specific obligations*

Without limiting any other provision in this Agreement, the Customer must:

- 7.2.1 ensure it obtains the express consent of its customers and end users (**End Users**) prior to:
  - (a) the disclosure of any End User sensitive information (as that term is defined in the Privacy Act) to GForces; and
  - (b) the disclosure of any End User Personal Information to GForces, where such Personal Information is being disclosed for the purposes of direct marketing conducted by GForces or any third party;
- 7.2.2 notify End Users as soon as practicable that:
  - (a) GForces may collect End User Personal Information (including through online platforms operated by GForces) for the purposes of providing certain services to the Customer; and
  - (b) further information regarding the collection, use, and disclosure of End User Personal Information by GForces is set out in the GForces privacy policy, available through the GForces website; and
- 7.2.3 to the extent End User Personal Information has previously been disclosed to GForces, notify GForces as soon as practicable:
  - (a) after becoming aware of any End User Personal Information being inaccurate, incorrect, or out of date; and
  - (b) after being requested by any End User to update or correct their Personal Information.

*7.3 UK Data Protection Legislation*

- 7.3.1 The parties acknowledge that GForces UK parent company, G Forces Web Management Limited, shall be processing personal data in the performance of the Services. and that such processing may fall within the scope of the UK Data Protection Legislation (as defined in the UK Data Processing Schedule). Accordingly, to the extent that the UK Data

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Protection Legislation is applicable, the parties agree to comply with the provisions of the UK Data Processing Schedule in addition to their obligations under clause 7.1 above.

- 7.3.2 Notwithstanding a party's obligation to comply with the UK Data Protection Legislation generally or under the UK Data Processing Schedule, such obligations:
- (a) are in addition to any obligations each party has under Australian Privacy Laws; and
  - (b) do not have the effect of restricting, modifying, or excluding the application of Australian Privacy Laws as those laws apply to each party under this Agreement.

#### 7.4 *Data Processing Policy and Service Data Summaries*

The parties agree that Personal Information shall be processed in accordance with the Data Processing Policy and the Service Data Summaries. GForces may, at any time on not less than 30 days' notice, revise the provisions of the Data Processing Policy and the Service Data Summaries if GForces, in its reasonable discretion, determines that changes are required in order to comply with applicable data protection legislation; or (ii) to reflect changes in Services or the way they are provided.

#### 7.5 *Liability*

- 7.5.1 In the event of any loss of or damage to Customer's data, Customer's sole and exclusive remedy shall be for GForces to use reasonable commercial endeavours to restore the lost or damaged data from the latest back-up maintained by GForces as part of the Support Services. GForces excludes all other liabilities and remedies in respect of loss or damage to Customer's data, to the fullest extent permissible under applicable law.
- 7.5.2 GForces shall not be liable for any loss, destruction, alteration, disclosure of or access to data caused by any third party.

## 8. Third party providers

- 8.1 Customer acknowledges that the Services may enable or assist it to access, integrate with, or purchase services from third party providers. These third party services fall into two categories:
- 8.1.1 services of certain approved third party providers purchased direct from GForces which are designated as "Resold Services" in the Order Confirmation Form ("Resold Services").
  - 8.1.2 any other third party software, applications, products, services or website links (including social media platforms) that are not Resold Services ("Third Party Services").
- 8.2 In addition to these Terms Customer agrees to be bound by the additional terms applicable to any Resold Services as set out in the Order Confirmation Form.
- 8.3 Any access to, integration with or purchase of Third Party Services shall be at Customer's own risk. GForces gives no warranty, representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or integration with, any Third Party Services, or any transactions completed, or any Third Party Services contract entered into by Customer. If Customer uses any part of the Services in conjunction with Third Party Services, it is Customer's responsibility to comply with the terms and conditions for those Third Party Services, and to ensure that those Third Party Services comply with Applicable Laws.
- 8.4 GForces does not guarantee the availability of Third Party Services and Customer acknowledges that GForces may disable access to any Third Party Services at any time in its sole discretion and

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without notice. GForces shall not be liable to Customer for discontinuation or suspension of access to, or disablement of, any Third Party Service.

## 9. Customer obligations

9.1 Customer shall:

9.1.1 provide GForces with all necessary

- (a) co-operation;
- (b) Input Material and other information; and
- (c) access to premises

as may be required by GForces in order to render the Services or otherwise carry out this Agreement;

9.1.2 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in Customer providing any required assistance as agreed by the parties, GForces may adjust any agreed timetable or delivery schedule as reasonably necessary;

9.1.3 ensure that the Authorised Users use the Services and the Software in accordance with the terms and conditions of this Agreement, and be liable for any Authorised User's breach of this Agreement;

9.1.4 obtain and maintain all licences, consents, and permissions necessary for GForces, its contractors and agents to perform their obligations under this Agreement;

9.1.5 ensure that its networks and systems comply with the relevant specifications provided by GForces from time to time;

9.1.6 maintain compliance with the Browser Policy;

9.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to GForces data centres, and for all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the internet; and

9.1.8 put in place any contracts with payment service providers which may be required for the operation of the Services.

9.2 Customer shall ensure that Input Material (and any other material accessed, stored, distributed or transmitted during the course of its use of the Services): is accurate, reliable and of an acceptable quality; is not harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; does not facilitate illegal activity; does not depict sexually explicit images; does not promote or incite violence or religious or racial hatred; is not discriminatory based on race, gender, colour, religious belief, sexual orientation or disability; complies with all Applicable Laws; does not cause damage or injury to any person or property; and does not cause increased internet load to the Software.

9.3 Without prejudice to the generality of clause 9.2 above, where Input Material consists of data relating to stock (including descriptions, images, availability and/or pricing) Customer shall ensure that such data is accurate and complies with all Applicable Laws. The Customer acknowledges that

where stock data is submitted to GForces systems (manually or via a feed), there is a delay in such information going live. GForces shall not be liable to the Customer in respect of any loss suffered as a result of such delay (including in relation to any vehicles sold at an incorrect price).

- 9.4 Customer shall not introduce, distribute, transmit, code, store or otherwise enable any Viruses during the course of its use of the Services. Customer shall not without the prior written consent of GForces use (or authorise any third party to use) automated programs, robots or software to extract or record any data stored on the Software, or to access the Software or Services.
- 9.5 Customer agrees not to use GForces' servers to send unsolicited or spam e-mail to other internet users. GForces will, at its sole discretion, decide what constitutes spam e-mails for the purposes of this agreement.

## 10. Compliance with law and regulation

- 10.1 Customer shall be solely responsible for the use and/or operation of the Customer Website. In particular, Customer shall:
- 10.1.1 ensure that, at all times, the use and/or operation of the Customer Website is in compliance with all Applicable Laws, including laws and regulations applicable to financial services, the sale of goods and services online and consumer protection;
  - 10.1.2 obtain and maintain all necessary licences, consents and authorisations (including authorisation from the Australian Securities and Investments Commission if applicable) which may be required in respect of the use or operation of the Customer Website, before any such use or operation commences; and
  - 10.1.3 display on the Customer Website all notices, disclaimers and other information that are required pursuant to Applicable Laws.
- 10.2 GForces shall not be liable to Customer or any end user for any failure of the Customer Website to comply with Applicable Laws (save that the foregoing shall not affect any specific contractual obligation GForces may have under this Agreement or apply to the extent GForces breaches any Consumer Guarantee applicable to the Customer, in which case GForces liability is limited in respect of any such breach accordance with clause 16.5).
- 10.3 Customer shall comply with all the applicable rules and standards put in place by the payment card industry from time to time, including the PCI Security Standards Council's Data Security Standards. Customer acknowledges that in providing the Services, GForces is not processing, transmitting or storing any payment card details. GForces shall have no liability whatsoever for the acts or omissions of any payment service provider.
- 10.4 Where GForces provides Services other than a Customer Website, Customer shall ensure that the use and operation of those Services is in compliance with Applicable Laws.

## 11. Service support and updates

- 11.1 GForces shall provide the Support Services during the Subscription Term.
- 11.2 GForces shall provide the Services in accordance with the applicable service level agreements set out in the Service Support Guide.
- 11.3 GForces may release updates and new features for the Software from time to time. Updates to the Software which correct faults or add minor functionality will be deployed by GForces at no charge. However, GForces may charge additional Fees for new features which add materially improved functionality, or for updates required to be created specifically for an individual Customer using a

customised or bespoke version of the Software, subject to such features and additional Fees being agreed between GForces and the Customer in writing.

- 11.4 Customer must accept updates that are free of charge and that are deployed by GForces in order to maintain or increase the security of the Software.

## Part B: General terms

### 12. Charges and payment

- 12.1 Customer shall pay the Fees to GForces in accordance with this clause 12 and the Order Confirmation Form.
- 12.2 The Fees shall fall due as follows (unless otherwise agreed in the Order Confirmation Form or other written document):
- 12.2.1 Set-Up Fees are due from the Effective Date and shall be invoiced on or around that date;
  - 12.2.2 Subscription Fees for the Initial Subscription Term are due in full from the Handover Date, and shall be invoiced in equal monthly instalments (on or around the first day of each month) during the Initial Subscription Term. Subscription Fees for each Renewal Period are due in full from the beginning of the Renewal Period, and shall be invoiced in equal monthly instalments (on or around the first day of each month) during the Renewal Period;
  - 12.2.3 Transaction Fees are due once the relevant transaction is complete, and shall be invoiced monthly around 30 days after the end of the month in which the transaction occurred; and
  - 12.2.4 Professional Services Fees and any other Fees shall be due and payable in accordance with the Order Confirmation Form.
- 12.3 GForces shall invoice Customer in accordance with the above and Customer shall pay each invoice within 30 days of the invoice date (unless otherwise stated in the invoice).
- 12.4 If Customer fails to pay any invoice in accordance with this Agreement, GForces will send Customer a reminder notice. If Customer fails to pay within 15 days of the date of the reminder notice, and without prejudice to any other rights and remedies of GForces:
- 12.4.1 GForces may, without liability to Customer, disable Customer's password, user account and access to all or part of the Services or Software and GForces shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remains unpaid;
  - 12.4.2 interest shall accrue on the unpaid amounts at an annual rate equal to 3% over the then current base lending rate of the Commonwealth Bank of Australia at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment;
  - 12.4.3 GForces may terminate this Agreement with immediate effect by giving written notice to the Customer; and

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- 12.4.4 if GForces exercises its right of termination under clause 12.4.3, then Customer shall pay to GForces immediately all outstanding agreed sums (including all sums due but not invoiced under clause 12.2.2 and all other sums due or payable under this Agreement).
- 12.5 All amounts and fees stated or referred to in this Agreement:
- 12.5.1 shall be payable in Australian dollars or such other currency as is agreed in the Order Confirmation Form;
- 12.5.2 are non-cancellable and non-refundable agreed sums (unless the Customer is entitled to a refund under the Australian Consumer Law in respect of any relevant Consumer Guarantee);
- 12.5.3 are, except where expressly stated, exclusive of goods and services tax and all other local sales taxes, which shall be added to GForces invoice(s) at the appropriate rate; and
- 12.5.4 shall be paid in full without any deductions (including deductions in respect of income tax, corporation tax, bank charges or other taxes, charges and/or duties) except where Customer is required by law to deduct withholding tax from sums payable to GForces. If Customer is required by law to deduct withholding tax, then Customer and GForces shall co-operate in all respects and take all reasonable steps necessary to lawfully avoid making any such deductions, or to enable the payee to obtain a tax credit in respect of the amount withheld.
- 12.6 GForces shall be entitled to increase any Fees at the start of each Renewal Period upon 90 days' prior notice to Customer. In addition, GForces shall be entitled to increase any Fees relating to Resold Services at any time upon notice to Customer if the third party supplier of Resold Services increases the fees charged to GForces. In the event of increases made under this clause, the Order Confirmation Form shall be deemed to have been amended accordingly.
- 12.7 Any discounts granted on Fees during the Initial Subscription Term shall not apply during any Renewal Period.

## 13. Intellectual Property Rights

- 13.1 Customer acknowledges and agrees that GForces and/or its licensors own all Intellectual Property Rights in the Services, the Software, the GForces Data and the Content (excluding Assigned Content). Except as expressly stated herein, this Agreement does not grant Customer any rights to, or in, any Intellectual Property Rights in respect of the Services, Software, GForces Data or Content.
- 13.2 GForces acknowledges and agrees that Customer and/or its licensors own all Intellectual Property Rights in the Input Material. Except as expressly stated herein, this Agreement does not grant GForces any rights to, or in, any Intellectual Property Rights in respect of the Input Material.
- 13.3 Subject to Customer complying with the terms of this Agreement, GForces hereby grants to Customer for the Subscription Term a non-exclusive, non-transferable, non-sublicensable right:
- 13.3.1 in accordance with clause 3, to permit Authorised Users to use the Services, the Software, the Content and the GForces Data solely for the purposes of receiving the Services; and
- 13.3.2 to install, implement, and use the Distributed Code on the Customer Website.
- 13.4 Customer hereby grants to GForces a non-exclusive, non-transferable, non-sublicensable right to use the Input Material and the Assigned Content for the Subscription Term (plus a further period of

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45 days in respect of back-ups) solely for the purposes of providing the Services. The licence shall be sublicensable to GForces group companies and subcontractors only.

- 13.5 Customer warrants, represents and undertakes that neither the Input Material nor its use in connection with the Services shall breach any third party's Intellectual Property Rights or any Applicable Laws.
- 13.6 Without prejudice to the generality of clause 13.5 above, where Customer orders 3D car modelling and visualisation services as part of the Services, Customer shall obtain all necessary approvals and consents from relevant third party rights owners (including in relation to Intellectual Property Rights) to allow GForces to provide those services and to enable the rendered 3D model(s) to be uploaded to and publicly accessible from the Customer Website (or any other website on which they are made available).
- 13.7 GForces hereby assigns (including by way of present assignment of future copyright if applicable) to Customer the copyright in the Assigned Content throughout the world for the whole term including any renewals, reversions, revivals and extensions thereof.
- 13.8 The Client shall notify GForces immediately if it becomes aware of any unauthorised use of the whole or part of the Services, Software, GForces Data or Content by any person. Customer permits GForces to check the use of the Services, Software, GForces Data or Content by it at reasonable times for that purpose and GForces, its employees and agents may enter Customer's premises.

## 14. Confidentiality

- 14.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that is or becomes publicly known other than through any act or omission of the receiving party; was in the other party's lawful possession before the disclosure; is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or is independently developed by the receiving party, which independent development can be shown by written evidence.
- 14.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, by regulation, by any court of competent jurisdiction or by any regulatory or administrative body, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the performance of this Agreement.
- 14.3 Each party may disclose the other's Confidential Information to its employees, agents, or subcontractors (and, in the case of Customer, Authorised Users) who need to receive it for the purposes of exercising a party's rights or performing a party's obligations pursuant to this Agreement. Each party shall take all reasonable steps to ensure that those permitted recipients do not disclose or distribute the other party's Confidential Information in violation of the terms of this Agreement.
- 14.4 Customer hereby consents to the inclusion of Customer's name in GForces' published customer list for publicity purposes. Save the foregoing, neither party may make any public statement regarding the relationship contemplated by this Agreement, without the other party's prior written consent.
- 14.5 Except where there is a breach of the obligation to take reasonable steps in clause 14.3, neither party shall be liable for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 14.6 The provisions of this clause 14 shall survive termination or expiry of this Agreement.

## 15. Warranties and indemnities

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- 15.1 If the Customer is a Consumer and GForces supplies PDH Goods or Services to the Customer, GForces acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by GForces and nothing in this Agreement should be interpreted as attempting to exclude, restrict or modify the application of those rights.
- 15.2 GForces undertakes that the Services will be performed with reasonable skill and care.
- 15.3 Subject to any rights the Customer may have under the Australian Consumer Law, including as described in clause 15.1, and save as otherwise expressly set out in this Agreement, the Services are provided "as is" without any warranty of any kind either express or implied, including (i) any implied warranties of satisfactory quality, fitness for a particular purpose, title and non-infringement, or (ii) any warranty that the Services will be uninterrupted or error-free or that errors will be corrected. To the extent permitted by applicable law Customer is solely liable for all costs and expenses associated with rectification, repair or damage to Customer's property or data caused by any errors in connection with the Services.
- 15.4 Customer acknowledges that the Services have not been developed to meet Customer's individual requirements and that it is therefore Customer's responsibility to ensure that the facilities and functions of the Services meet Customer's requirements prior to entering into this Agreement.
- 15.5 Whilst GForces shall use reasonable endeavours to register (if requested) any domain names for the Customer Website in the name of Customer, GForces does not warrant or commit that such registration will be successful and GForces shall not be liable for any losses suffered by Customer if the domain is registered by a third party, other than for a refund of any fees paid by Customer in connection with such registration.
- 15.6 Customer shall indemnify GForces against any and all losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) incurred by GForces arising out of or in connection with
- 15.6.1 (any breach of the terms of this Agreement (including breach of any warranty);
  - 15.6.2 Customer's (or its Authorised Users') use of the Services, Software and/or Content, otherwise than in accordance with the terms of this Agreement;
  - 15.6.3 Customer's use of any Third Party Services;
  - 15.6.4 any third party claim relating to any transaction conducted through the Customer Website, including any claims resulting from the sale (or purported sale) of any vehicle; and
  - 15.6.5 any claim that any of the Input Material infringes the Intellectual Property Rights of any third party
- provided that:
- (a) Customer is given prompt notice of any such claim;
  - (b) GForces provides reasonable co-operation to Customer in the defence and settlement of such claim, at Customer's expense; and
  - (c) Customer is given sole authority to defend or settle the claim.
- 15.7 GForces shall, subject to clauses 16.4 and 16.6, indemnify Customer (and its officers, directors and employees) against any and all amounts awarded against Customer (including court costs and reasonable legal fees) in judgment or settlement of any claim that the Software or Content infringes

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any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, provided that:

- 15.7.1 GForces is given prompt notice of any such claim;
  - 15.7.2 Customer provides reasonable co-operation to GForces in the defence and settlement of such claim, at GForces' expense; and
  - 15.7.3 GForces is given sole authority to defend or settle the claim.
- 15.8 In the defence or settlement of any claim, GForces may procure the right for Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 5 Business Days' notice to Customer without any additional liability to Customer.
- 15.9 Subject to any rights the Customer may have under the Australian Consumer Law, including as described in clause 15.1, the foregoing states Customer's sole and exclusive rights and remedies, and GForces (including GForces employees', agents' and subcontractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality or other Intellectual Property Rights.
- 15.10 The provisions of this clause 15 shall survive termination or expiry of the Agreement.

## 16. Limitation of liability

- 16.1 This clause 16 sets out the entire financial liability of GForces (including any liability for the acts or omissions of its employees, agents and subcontractors) to Customer in respect of:
- 16.1.1 any breach of this Agreement;
  - 16.1.2 any use made by Customer of the Services or Software or any part of them; and
  - 16.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 16.2 Subject to any rights the Customer may have under the Australian Consumer Law, including as described in clause 15.1, and except as expressly and specifically provided in this Agreement:
- 16.2.1 Customer assumes sole responsibility for results obtained from the use of the Services and the Software by Customer, and for conclusions drawn from such use. GForces shall have no liability for any damage caused by errors or omissions in any Input Material or other information, instructions or scripts provided to GForces by Customer in connection with the Services, or any actions taken by GForces at Customer's direction;
  - 16.2.2 GForces is not liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities; and
  - 16.2.3 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 16.3 Nothing in this Agreement excludes the liability of GForces:

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- 16.3.1 for death or personal injury caused by GForces' negligence;
  - 16.3.2 for fraud or fraudulent misrepresentation; or
  - 16.3.3 for any other liability which cannot be limited or excluded by applicable law, including the Australian Consumer Law.
- 16.4 Subject to clause 16.3 and clause 16.5:
- 16.4.1 GForces shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
  - 16.4.2 GForces total aggregate liability in contract, tort (including for negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement (including under any indemnity) shall be limited to the total Fees paid pursuant to this Agreement during the 12 months immediately preceding the date on which the claim arose (excluding any Fees relating to Resold Services).
- 16.5 If the Customer is a Consumer and any goods or services supplied by GForces to the Customer are non PDH Goods or Services, GForces liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at GForces' discretion) to:
- 16.5.1 in the case of goods:
    - (a) the replacement of the goods or the supply of the relevant goods;
    - (b) the repair of the goods;
    - (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (d) the payment of the costs of having the goods repaired; and
  - 16.5.2 in the case of services:
    - (a) the supplying of the services again; or
    - (b) the payment of the cost of having the services supplied again.
- 16.6 In no event shall GForces, its employees, agents and subcontractors be liable to Customer in respect of any loss damage or claim (including any third party Intellectual Property Rights claim) to the extent that the loss, damage or claim arises from:
- 16.6.1 a modification of the Services, Software or Content by anyone other than GForces or GForces' duly authorised subcontractors or agents;
  - 16.6.2 Customer's use of the Services, Software or Content in a manner contrary to the instructions given by GForces, any specific terms of use associated with those Services, or the Terms of this Agreement;
  - 16.6.3 Customer's failure to comply with any of its obligations under clause 9;

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- 16.6.4 Customer's addition (or GForces' addition at Customer's request) of any tracking code or pixels (commonly known as 'tags') to the Customer Website;
- 16.6.5 , in the case of an Intellectual Property Rights claim, Customer's use of the Services, Content or Documentation after notice of the alleged or actual infringement from GForces or any appropriate authority; or
- 16.6.6 any transactions or purported transactions concluded through the Customer Website, including any unfulfilled or unpaid orders for vehicles placed through the Customer Website, or part-exchange transactions.
- 16.7 Where the Services include the provision of end-to-end finance services as part of GForces' e-commerce solution:
- 16.7.1 GForces shall not be under any obligation to provide finance quotations or services from any particular lender. GForces shall have the right in its sole discretion to remove any lender from the solution, but shall use reasonable commercial efforts to replace such lender with a reasonable substitute; and
- 16.7.2 GForces shall not be liable to Customer in connection with any finance quotations provided by lenders that are incorrect or cannot be fulfilled.
- 16.8 Where the Services include monthly offer management, Customer acknowledges that GForces obtains the relevant information from each manufacturer's website, and accordingly timelines for completion may fluctuate dependent on when offer details are made available by the manufacturer. GForces will take all reasonable steps to ensure that that the information displayed within the offers section is correct. However as there are manual processes involved in replicating the information, GForces does not guarantee the correctness of information displayed. In the event of errors, Customer's sole and exclusive remedy shall be for GForces to correct any errors notified to it. GForces excludes all other liabilities and remedies in respect of loss or damage that may result to the Customer or any end user from such errors.
- 16.9 Where the Services include the provision of syndicated new car content, Customer acknowledges that GForces is dependent upon the availability of information and limited to imagery provided by the manufacturer. Accordingly timelines for the addition of new models, variants or any other content included in this feature may fluctuate dependent on when the necessary information is received by GForces. GForces will take all reasonable steps to ensure that that the new car information displayed is correct and up-to-date. However as this does not include an official sign-off process with the manufacturer, GForces does not guarantee the correctness of information displayed. The Customer acknowledges that any new car pages containing syndicated content are locked for editing by the Customer. Therefore in the event of errors Customer shall notify GForces and GForces shall correct them (and such correction shall be Customer's sole and exclusive remedy). GForces excludes all other liabilities and remedies in respect of loss or damage that may result to the Customer or any end user from such errors.
- 16.10 The provisions of this clause 16 shall survive termination or expiry of the Agreement.

## 17. Term and termination

- 17.1 This Agreement shall, unless otherwise terminated as provided in this clause 17, commence on the Effective Date and shall continue until the end of the Initial Subscription Term. Thereafter, subject to 17.2 below, this Agreement shall be automatically renewed for successive periods of 12 months (each a "Renewal Period"), unless:
- 17.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which

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case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period (as applicable); or

17.1.2 otherwise terminated in accordance with the provisions of this Agreement

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the "Subscription Term".

17.2 If the Initial Subscription Term is less than 12 months, 17.1 above shall apply with the following changes:

17.2.1 each Renewal Period shall be the same length as the Initial Subscription Term; and

17.2.2 the period of notice required to be given pursuant to 17.1.1 shall be 30 days.

17.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if:

17.3.1 the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or

17.3.2 (i) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; (ii) the other party ceases, or threatens to cease, to trade; (iii) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or notice of intention to appoint an administrator is given by the other party or its directors; (iv) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party; (v) if any other person takes possession of or sells the other party's assets or the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or (vi) the other party takes or suffers any similar or analogous action as set out in this clause 17.3.2 in any jurisdiction in consequence of debt.

17.4 GForces may terminate this Agreement by giving 15 days written notice to Customer in the event that there is a change of control of the Customer. For the purposes of this clause 17.4, change of control means, in relation to the Customer, (i) the person or entity that controls (as that term is defined in section 50AA of the *Corporations Act 2001* (Cth)) the Customer at the date the Customer first became bound by this Agreement subsequently ceases to have control of the Customer, or (ii) a person who does not control the Customer at the date that the Customer first became bound by this Agreement subsequently obtains control of the Customer.

17.5 In the event that GForces decommissions or withdraws from sale any part of the Software or Services, GForces shall be entitled to terminate the part of the Agreement that relates to the decommissioned or withdrawn Software or Services by giving 3 months written notice to Customer. The remainder of the Agreement shall remain in full force and effect.

17.6 On termination of this Agreement, notwithstanding the provision of clause 12 (Charges and Payment), all Fees due to GForces shall become due for immediate payment and GForces shall be entitled to invoice Customer for any un-invoiced Fees due to the date of termination which shall be payable on receipt of the invoice by Customer.

17.7 On termination of this Agreement for any reason:

17.7.1 all licences granted under this Agreement shall immediately terminate;

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- 17.7.2 each party shall return and make no further use of any equipment, property and other items (and all copies of them) belonging to the other party;
- 17.7.3 Customer shall destroy (or, at GForces' option, return) all of GForces' Confidential Information; and
- 17.7.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination, shall not be affected or prejudiced.

## 18. Force majeure

- 18.1 GForces shall have no liability to Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, denial-of-service or other cyber attacks, failure by a third party hosting provider, failure by a third party provider of a utility service or transport or telecommunications network, strikes, lock-outs or other industrial disputes (whether involving the workforce of GForces or any other party), war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, lightning or other act of God, or default of GForces' subcontractors, provided that Customer is notified of such an event and its expected duration.

## 19. General

- 19.1 This Agreement shall not prevent GForces from entering into similar agreements with third parties, or from independently developing, using, selling or licensing software and/or services which are similar to those provided under this Agreement.
- 19.2 Customer shall not, without the prior written consent of GForces, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement. GForces may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 19.3 If GForces gives at least 5 Business Days' notice, GForces (or its professional advisers) may during business hours inspect, audit and take copies of relevant records and other documents as necessary to verify Customer's compliance with the terms and conditions of this Agreement.
- 19.4 Any notice required to be given under this Agreement shall be in writing and shall be (a) delivered by hand or sent by pre-paid first-class post or next working day delivery service to its registered office (if a company) or its principal place of business (in any other case); or (b) sent by email to, in the case of GForces, [compliance@gforces.auto](mailto:compliance@gforces.auto), and in the case of Customer, the Primary Contact Email specified in the Order Confirmation Form (unless Customer has provided GForces with an updated Primary Contact Email).
- 19.5 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in normal business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent (i) by pre-paid first-class post shall be deemed to have been received on the second Business Day after posting; and (ii) by delivery service shall be deemed to have been received at the time recorded by the delivery service. A notice delivered by email shall be deemed to have been received at the time of transmission, (or if delivery is not in business hours, at 9 am on the first Business Day following delivery).
- 19.6 The notice provisions above do not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 19.7 No waiver of any right or remedy under this Agreement shall be effective unless it is expressly stated to be a waiver and is communicated to the other party in writing. Such waiver shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 19.8 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.
- 19.9 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of this agreement is deemed deleted under this clause 19.9, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 19.10 This Agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 19.11 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.
- 19.12 Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 19.13 No variation of this agreement shall be effective unless it is in writing and signed by the parties.
- 19.14 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the laws of Victoria, Australia.
- 19.15 The parties irrevocably agree that the courts of Victoria, Australia have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).