

GENERAL TERMS AND CONDITIONS OF TRADE

These Terms and Conditions of Trade will apply to all Products and Services (as applicable) provided by Gratex International Aust Pty Ltd (ABN 70 090 952 113), or a Related Body Corporate of that entity (**Gratex**) to the Customer and will apply notwithstanding any other terms proposed by the Customer at any time.

1. CONTRACT AND PURCHASE ORDERS

- 1.1 Gratex may issue the Customer a Quote for Products and/or Services.
- 1.2 A contract is formed when the Customer accepts the Quote issued by Gratex or otherwise issues to Gratex, and Gratex accepts, a Purchase Order for the provision of Products and/or Services (the **Contract**).
- 1.3 The Contract consists of, in order of precedence and as applicable:
 - (a) the Quote;
 - (b) the Purchase Order; and
 - (c) these Terms and Conditions of Trade.
- 1.4 The Customer acknowledges and agrees that other Gratex supplied terms and conditions may be applicable to the Products and Services including in respect of maintenance and support services, software licence terms and UPM Cloud products or services. To the extent of any inconsistency between those other Gratex supplied terms and these Terms and Conditions of Trade, those other Gratex supplied terms and conditions will apply in priority over these Terms and Conditions of Trade.
- 1.5 All Purchase Orders for Products and Services placed by the Customer are subject to acceptance by Gratex. Acceptance by Gratex must be confirmed in writing by an authorised representative of Gratex to the Customer.
- 1.6 Once a Purchase Order is placed, it cannot be withdrawn without Gratex's consent.
- 1.7 The Customer agrees that the Products and Services set out in a Quote or Purchase Order may include:
 - (a) Products and Services provided by Gratex, for which Gratex is liable in accordance with these Terms and Conditions of Trade; and
 - (b) Third-party Services, for which Gratex accepts no liability and makes no warranties or representations.
- 1.8 The Customer agrees the Vendor Terms, including but not limited to the Microsoft Customer Agreement, are binding on it as a condition of its use of the Third-party Services.
- 1.9 For Self-provisioned Services the Customer agrees to use a Portal or Command-line Provisioning Tool responsibly and otherwise in accordance with all applicable requirements including these Terms and Conditions of Trade and acknowledges that by accessing Self-provisioned Services including by amending existing Products, Services or Subscriptions or by provisioning new Products, Services or Subscriptions it:
 - (a) has placed a binding order with Gratex;
 - (b) agrees with the Vendor prices and to otherwise comply with the applicable Vendor Terms; and
 - (c) is liable for payment of the Price to Gratex and any Vendor price as applicable.

2. DESCRIPTION OF THE PRODUCTS AND SERVICES

- 2.1 All Documentation and other descriptive documents and illustrations given to the Customer by Gratex are a general guide of the Products and Services only, and do not form part of this Contract nor will they be deemed to be a representation, warranty, term or condition of, or relating to, this Contract.
- 2.2 Gratex reserves the right to amend the Specifications and Documentation without notice and without affecting the validity of this Contract. The Customer will be notified of the amended

Specifications and Documentation and pricing changes (if any).

- 2.3 Any performance figures provided by Gratex are approximates only unless the figures have otherwise been guaranteed in writing and signed by an authorised representative of Gratex and include a margin or tolerance.

3. PRICING

- 3.1 In consideration for the Products and/or Services, the Customer must pay to Gratex the Price in accordance with the Contract.
- 3.2 Unless expressly stated otherwise, the Price is Ex Works from Gratex's designated branch and does not include freight, postage, packaging charges, installation, configuration or commissioning or any applicable taxes, levies, duties and tariffs. If the Customer requests Gratex to deliver the Products, Gratex may charge a fee for delivery.
- 3.3 If Gratex is liable to pay any taxes, levies, duties or tariffs howsoever described, levied by a competent taxing authority, in respect of Products or Services properly supplied by Gratex under this Contract, the Customer will pay Gratex the amount for which it is liable.
- 3.4 The Price for a Product or Service is Gratex's quoted Price and is subject to change by Gratex at any time prior to acceptance of the Customer's Purchase Order.
- 3.5 The Price for Online Services is:
 - (a) Gratex's quoted Price; or
 - (b) in case of Self-provisioned Services, Gratex's quoted Price or the Price is as per a Vendor pricing calculator including Azure Pricing Calculator or as published elsewhere.
- 3.6 The Price may be affected by foreign exchange rate variations. Gratex may adjust the Price at any time if any applicable currency pairings fluctuate by more than 2% to the then current currency exchange rate.
- 3.7 For some Products and Online Services including Azure resources, and MS362 Products, the Price is calculated using USD to local currency exchange rates determined monthly at the beginning of the month. Vendors will determine the exchange rate used to determine the invoice.
- 3.8 The Customer authorises Gratex to set-off without notice any amount held by Gratex against any amount owing by the Customer to Gratex.
- 3.9 If the Customer places an order for a Product or a Service that was incorrectly priced, Gratex will cancel the order and credit the Customer for any incorrectly rendered charges.
- 3.10 If Gratex inadvertently ships an order based on a pricing error, Gratex will issue a revised invoice to the Customer at the correct Price and contact the Customer to obtain its authorisation for the additional charge or assist the Customer with return of a Product or a Service.
- 3.11 If any pricing error results in an overcharge to the Customer, Gratex will credit the Customer's account for the amount overcharged.
- 3.12 For MS365 Subscriptions:
 - (a) the Price is fixed for the Term;
 - (b) if a pricing error results in an overcharge to the Customer, Gratex will credit the Customer's account for the amount overcharged;
 - (c) if a pricing error results in an undercharge to the Customer, Gratex will issue an invoice for the amount undercharged and the Customer is liable for the payment; and
 - (d) a MS365 Subscription may not be returned or cancelled solely as a result of a pricing error.
- 3.13 The Price for all Subscription renewals may change at the time of renewal and for any renewed term will be at the then current Price.

3.14 Gratex shall be under no obligation to accept the return of any Product or Service, but if it does so in its absolute discretion, the Customer shall pay a restocking fee of 15% of the Price.

3.15 The parties agree that all amounts payable under this Contract are expressed on a GST exclusive basis. If GST is payable in relation to a Taxable Supply, the amount payable for that Taxable Supply is the amount for that Taxable Supply specified in this Contract plus GST. The parties must provide each other with all documentation required to claim any Input Tax Credit, set off, rebate or refund for or in relation to any GST included in any payment made under this Contract. In this clause, the terms "GST", "Taxable Supply" and "Input Tax Credit" have the meaning given in the GST Law.

4 BILLING

4.1 Billing for Online Services may be one or a combination of the following:

- (a) Commitment Offering; or
- (b) Consumption Offering; or
- (c) Limited Offering.

4.2 For Commitment Offering billing, the Customer commits in advance to purchase a specific quantity of Online Services for use during the Term and to pay upfront or on a periodic basis in advance of use. With respect to Microsoft Azure Services and UPM Cloud, additional or other usage (for example, usage beyond the Customer's commitment quantity) may be treated as a Consumption Offering. Committed quantities not used during the Term will expire at the end of the Term.

4.3 For Consumption Offering or pay-as-you-go billing, the Customer pays based on actual usage in the preceding month with no upfront commitment. Payment is monthly in arrears.

4.4 For Limited Offering billing, the Customer may receive a limited quantity of Online Services for a limited term without charge (for example, as a trial Subscription or free account).

MS365 Subscriptions Billing

4.5 Fees for the MS365 Subscriptions with monthly billing frequency will be billed in 12 monthly instalments. The instalment usage period is from the 1st day of the month to the last day of the month (for example, 1 March 2022 – 31 March 2022). The Customer will be billed in arrears on the 1st of every month for all user licenses provisioned from the 1st day to the last day of previous month.

4.6 Fees for the MS365 Subscriptions with annual billing frequency will be billed in 1 instalment for the 12- or 36-month term, prior to the provisioning of the Subscription. The instalment usage period is from the provisioning request date to the last day of the term (for example, 10th March 2022 to 9th March 2023).

4.7 Fees for Subscriptions with annual billing frequency will be billed immediately after the Subscriptions are provisioned. The Customer will be billed in advanced for all user licenses provisioned for the next 12 months. All licenses added during the Subscription term to the annual billing Subscriptions will be prorated until the end of the Subscription term.

4.8 All MS365 products are non-cancellable.

Monthly billing

4.9 For Subscriptions with a 1-month Term with monthly billing, product quantities subscribed to may vary within the Term but may not be less than one (1).

4.10 The Customer:

- (a) may not suspend or cancel a Subscription before the end of the Term;
- (b) may change the Subscription billing from monthly billing to annual billing by starting a new annual billing Subscription and suspending the existing monthly billing Subscription at any other time.

4.11 For 1-month Subscription/s auto-renewal will be enabled to allow the Subscription to renew at the end of the monthly period.

Annual in advance billing

4.12 For Subscriptions with annual in advance billing, product quantities subscribed to can only be increased but not decreased within the Term of the Subscription.

4.13 The Customer:

- (a) may not suspend or cancel a Subscription before the end of the Term.
- (b) may not change the Subscription billing from annual billing to monthly billing before the end of the Term.

4.14 For Subscriptions with annual in advance billing, Subscriptions auto-renewal will be disabled. 90 days before the expiration date of the Subscription, the Customer will be directed to renew the Subscription which will trigger an in advance invoice prior to the renewal date. Payment of the invoice is required for the renewal to take effect. If payment is not paid or renewal not selected, at the end of the annual period the Subscription will move into a 'Disabled' status.

Azure Subscriptions Billing

4.15 For Microsoft Azure Subscriptions, the Customer will be billed on the 1st day of every month in arrears, for actual usage incurred from the 1st to the last day of the previous month.

5 PAYMENT

5.1 The Customer agrees to make payment without set off or deduction within 14 days of the date of invoice, unless agreed otherwise in writing by an authorised representative of Gratex.

5.2 If the Customer fails to pay any amount to Gratex when it is due:

- (a) all amounts owing by the Customer to Gratex on any account will immediately become due and payable;
- (b) Gratex shall be entitled to cancel or suspend supply of any further Products or Services to Customer;
- (c) Customer shall indemnify and hold Gratex harmless from any claims of whatever nature including but not limited to any claims for loss, compensation or damage that may be made by Customer arising from or relating to such cancellation or suspension of the supply of Products and Services by Gratex; and
- (d) Gratex shall be entitled to immediately commence legal proceedings for the recovery of the unpaid amount of the invoice.

5.3 The Customer will be liable to pay interest on any overdue amount at the annual rate of 2% above the prevailing base lending rate quoted by the Commonwealth Bank of Australia. Interest will accrue daily from the date payment became overdue until Gratex has received payment of the overdue amount, together with any interest accrued.

5.4 Payments via any agreed funds transfer mechanism are only received when Gratex's financial service provider has provided written confirmation of receipt to Gratex.

6 VENDOR TERMS

6.1 The Customer acknowledges that any Third-party Services supplied by Gratex are provided subject to any applicable Vendor Terms associated with those Third-party Services and may be subject to separate fees.

6.2 The Customer agrees that it shall at all times comply with any applicable Vendor Terms which will form a separate agreement between the Customer and the Vendor. The Customer may request a copy of any applicable terms from Gratex in writing.

6.3 Gratex makes no representations or warranties in relation to the Third-party Services and does not accept any liability for any Third-party Services.

6.4 The Customer indemnifies and holds Gratex harmless from and against all claims, loss, damage, cost or expense suffered or incurred by Gratex arising out of or in connection with:

- (a) any breach by the Customer of Vendor Terms; and

- (b) any improper, unlawful or unauthorised use or dealing by the Customer with the Third-party Services.

7 DELIVERY

- 7.1 Delivery times advised to the Customer are estimates only and Gratex will not be liable for any loss, damage or delay suffered or incurred by the Customer arising from delays or non- delivery of a Product or Service.
- 7.2 Gratex reserves the right to supply the Products and/or Services in parts. The Customer agrees that each part delivery constitutes a separate supply and Gratex may issue invoices in respect of each separate part.

8 TERM, RENEWAL, TERMINATION AND SUSPENSION

- 8.1 Unless otherwise agreed in writing, Gratex will provide Third-party Services for a minimum Term of one month.
- 8.2 The commencement date of the Term of any MS365 Subscription is the date the Customer orders a Subscription from Gratex.
- 8.3 Unless otherwise specified and subject to clause 8.5 below, the Term will automatically renew on expiry for a further and equivalent Term until terminated in writing.
- 8.4 After the Term for:
- (a) Committed Offering, the Customer may choose to have a Subscription automatically renew or terminate upon expiration of the Term. Automatic renewal is pre-selected. The Customer may change the renewal option at any time during the Term;
 - (b) Consumption Offering, the Subscription will renew automatically for additional one-month term until terminated;
 - (c) Services, this agreement will renew automatically for additional one-month term until terminated.
- 8.5 The Customer:
- (a) may not cancel a Subscription before the end of the Term;
 - (b) may terminate a Service with 30 days written notice;
 - (c) may terminate a Third-Party Service with a written notice at any time during its Term; however, the Customer must pay all amounts due and owing before the termination is effective in accordance with any applicable Vendor Terms.
- 8.6 A Subscription having a one-month Term may be terminated after the Term anytime without any cancellation fee.
- 8.7 A Subscription having more than one-month Term, can be terminated anytime during the term, but the Customer must pay for the remainder of the Term, and no refunds will be provided.
- 8.8 Cancellation of any MS365 Term is not permitted after 7 days of commencing the Term per Subscription. The Customer will still be liable for the full cost of the Term unless cancelled within the first 7 days. Any refund for cancellations within the permitted window of 7 days from commencement of the Term will be prorated.
- 8.9 The Customer may not suspend a Subscription before the end of the Term. Gratex may suspend the Customer's use of Services or Third-party Services if:
- (a) it is reasonably needed to prevent unauthorized access to the Customer's data;
 - (b) the Customer fails to respond to a claim of alleged infringement within 5 working days;
 - (c) the Customer does not pay amounts due under this Contract;
 - (d) the Customer does not abide by any applicable Vendor policies, Vendor Terms or violates other terms of this Contract.
- 8.10 If one or more of the conditions set out under clause 8.9 occurs, then a suspension will apply to the minimum necessary part of the Online Services and will be in effect only while the condition or need exists.
- 8.11 Gratex will give notice before it suspends provision of the Services, except where it reasonably believes the Services must be suspended immediately.

- 8.12 Gratex may also terminate the Customer's Subscription if use of the Online Service is suspended more than twice in any 12-month period.

9 INSPECTION AND ACCEPTANCE

- 9.1 The Customer must:
- (a) in the case of Products ordered, inspect such Products upon delivery to the Customer's premises and confirm that goods are supplied as per the Purchase Order; and
 - (b) in the case of Products and Services that are software products developed by Gratex for the Customer, follow the acceptance procedures agreed in the relevant Software Development Agreement or any other agreement between Gratex and the Customer.

10 TITLE AND RISK

- 10.1 Products including software boxed products or licenses ordered by the Customer from Gratex will be at the Customer's risk immediately upon:
- (a) delivery of a product to the Customer, its agent or other nominated party; or
 - (b) collection by a transport carrier or agent.
- 10.2 Risk in the Products will remain with the Customer unless Gratex retakes possession of the Products.
- 10.3 Title in the Products supplied by Gratex to the Customer will not pass to the Customer and will remain the absolute property of Gratex until Gratex is paid all monies due and owing to it by the Customer in relation to any account. Title to Products which are software, remains with Gratex and/or the applicable third party licensor(s) or Vendor at all times.
- 10.4 If the Customer has breached this Contract the Customer authorises Gratex, at any time, to enter onto any premises where the Products are stored to enable Gratex to:
- (a) inspect the goods; and/or
 - (b) reclaim the goods.
- 10.5 The Customer acknowledges that in the case of a software product, any refusal or failure to pay may result in cancellation of the licence to use the software product.
- 10.6 The Customer is responsible for any equipment at its premises (including any that belongs to Gratex). The Customer must pay Gratex for any loss or damage to Gratex's equipment at the Customer's premises.

- 10.7 The Customer must provide safe access to its premises, whether owned by the Customer or leased, for Gratex to perform Services for the Customer.

11 FORCE MAJEURE

- 11.1 If the performance of Gratex's obligations under this Contract is prevented, restricted or affected by force majeure including strike, disturbance, riots, war, lock out, raw material shortage, breakdown of plant, transport or equipment, epidemic, pandemic, declared health emergency, any third party provider outages, cut of cable, or any other cause beyond the reasonable control of Gratex such as Denial of Service (DoS) or any other attack (**FM Event**), Gratex will give notice of such cause to the Customer and after 60 days from the receipt by the Customer of such notice, to the extent the FM Event is continuing to prevent performance of Gratex's obligations under this Contract, either party may terminate this Contract on written notice to the other without penalty.

12 CUSTOMER DEFAULT

- 12.1 Without prejudice to any of Gratex's other rights under this Contract, if the Customer fails to make any payment due to Gratex or otherwise commits a material breach of this Contract, Gratex may, in its sole discretion, and without further liability to the Customer:
- (a) refuse to make further supplies to the Customer or otherwise suspend or cancel further provision of any Products or

Services under the Contract; and/or

(b) terminate the Contract immediately on notice.

12.2 In the event of termination the Customer must cease using Products or Services and immediately pay all outstanding amounts owing to Gratex. Gratex may exercise against the Customer any rights whatsoever available to it in law or equity, including suing for damages for breach of contract, under any indemnity, or under any other clause in this Contract.

13 GRATEX OBLIGATIONS

13.1 Gratex will make reasonable commercial efforts to provide a Product or a Service as described in the Contract.

13.2 A Product or Service is provided on an as-is basis and the Customer's use of a Product or Service is at the Customer's own risk. Gratex does not make, and hereby disclaims any and all other express and/or implied warranties, including but not limited to, fitness for a particular purpose, non-infringement and title.

13.3 Gratex does not warrant that a Service will be uninterrupted, error-free or completely secure.

13.4 Notwithstanding any other clause of this Contract and to the maximum extent permitted by law, the Customer hereby acknowledges that Gratex has not made any warranties or representations of any nature to the Customer in relation to the nature or quality of a Product or Service or as to their fitness or suitability for use for any purpose whatsoever.

14 CUSTOMER OBLIGATIONS

14.1 The Customer acknowledges that it has satisfied itself that the Products, Software, and/or Services are suitable for the Customer's purpose and acknowledges that it has not relied upon any warranty or representation from Gratex in this regard.

14.2 In entering into this Contract, the Customer warrants:

- (a) it has obtained all necessary approvals for the acceptance of the Products, Software, and/or Services;
- (b) it has complied with every applicable legal or regulatory requirement of any government or other relevant authority in the Customer's place of business concerning or relating to this Contract; and
- (c) that all necessary licences or permits required in connection with this Contract have been lawfully obtained.

15 ACCESS TO ASSETS OR DATA ON EXPIRY

15.1 The Customer may only access its data for the following periods under a MS365 Subscription for:

- (a) 1-month Term: access to MS365 assets is lost immediately at the date of cancellation.
- (b) 12-month or 36-month Term: access to MS365 assets is only available for up to thirty (30) days from date of expiry of the Term.

15.2 It is the Customer's responsibility to ensure that it takes all the necessary steps to extract all data prior to expiry or cancellation of a Subscription.

16 LIMITATION OF WARRANTIES

16.1 Gratex will notify the Customer of any applicable manufacturers' warranty in relation to Products. To the extent permitted by law, Gratex's responsibility with respect to warranties for Products is to pass on to the Customer the benefit of any such manufacturer warranties. Software Products are not warranted under this Contract. Software Products are warranted only in accordance with the relevant Vendor licence agreements that govern their use.

16.2 To the extent permitted by law, the manufacturers' warranties referred to in clause 16.1 are in substitution for all other terms, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantability and fitness for purpose) and all such terms, conditions and warranties are expressly excluded.

16.3 If the Customer entering this Contract is incorporated in Australia,

the parties acknowledge that certain warranties cannot be excluded under the ACL.

16.4 Certain legislation may imply warranties or conditions or impose obligations upon Gratex which cannot be excluded, restricted or modified or cannot be excluded, restricted or modified except to a limited extent. This Contract must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which Gratex is able to do so, its liability will be limited, at its option, to:

- (a) in the case of Products: the replacement of the products or resupply of equivalent products; repair of the products; payment of the cost of replacing the products or acquiring equivalent products; or the payment of the cost of having the products repaired; and
- (b) in the case of Services: the supply of the services again; or the payment of the cost of having the services supplied again.

16.5 The warranties provided under this clause will not be honoured where:

- (a) any failure to conform is not notified to Gratex in writing within 14 days following supply of the Products, Software or completion of the Services;
- (b) the Products or Software are used, other than for the purpose stated in this Contract;
- (c) the Products or Software are altered or modified without Gratex's prior approval;
- (d) the Products or Software are serviced other than by Gratex's authorised personnel.

16.6 The Customer acknowledges that:

- (a) the Software has not been prepared to meet the Customer's individual requirements, and it is the Customer's responsibility to ensure that the facilities and functions of the Software meet the Customer's requirements; and
- (b) Gratex is not liable for any failure of the Software due to any:
 - (i) modification to the Software by persons other than Gratex;
 - (ii) combination of the Software with other software or equipment without Gratex's prior written consent; or
 - (iii) use of the Software by the Customer other than for the purpose stated in the software licence or Vendor Terms.

17 INDEMNITY

17.1 The Customer indemnifies Gratex its employees, officers, agents and representatives (including its Related Bodies Corporate and each of their respective employees, officers, agents and representatives) against all losses, actions, claims, costs, expenses and damages (including legal costs on a solicitor and client basis) incurred by or awarded against Gratex arising out of or in connection with:

- (a) use of the Products and Services by the Customer;
- (b) a negligent act or omission or wilful misuse of the Products and Services by the Customer;
- (c) use of the Products and Services or other equipment by the Customer otherwise than in accordance with the Contract, the Specifications, Documentation and any relevant terms or guides or any practices or procedures;
- (d) any unauthorised use of the Products or Services by the Customer or its respective customers, employees, officers or agents;
- (e) any fraudulent or negligent act or omission by the Customer in respect of the Contract;
- (f) any content or data transmitted using Products or Services by the Customer or its respective customers, employees, officers or agents;
- (g) any breach of the Contract or any other written agreement with Gratex.

18 LIMITATION OF LIABILITY

18.1 Gratex's total aggregate liability under this Contract is limited to the

maximum extent permitted by applicable law, to direct damages up to the amount the Customer has paid Gratex for Products and/or Services in the immediately preceding three (3) months.

18.2 Notwithstanding any other clause of this Contract and to the maximum extent permitted by law, Gratex shall not be liable to the Customer for any indirect damages (including without limitation, consequential, special, punitive, or incidental damages, damages for loss of profits or revenue, loss of privacy, business interruption, or loss data or other of business information), arising out of the supply of Products and/or Services.

18.3 To the maximum extent permitted by law the limitations on and exclusion of liability in this Contract shall apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict or product liability (and statute to the maximum extent permitted by law), breach of express or implied warranty.

19 PRIVACY

19.1 Gratex will handle personal information in accordance with relevant laws. The Customer can request a hard copy of Gratex's Privacy Policy on 1800 111 110 or by visiting Gratex's Web site www.gratex.com.au.

20 INTELLECTUAL PROPERTY

20.1 The Customer acknowledges and agrees that:

- (a) all Intellectual Property Rights in any Products or Services or any related Documentation, parts or Software are and will remain the sole property of Gratex or its suppliers, partners or Vendors at all times;
- (b) all Intellectual Property Rights of Gratex or its suppliers, partners and Vendors may only be used by the Customer with the express written consent of Gratex or its suppliers, partners, and Vendors during the Term, and such consent extends only to use essential for the purposes stated in it; and
- (c) any licensing of Intellectual Property Rights in any Software or Products supplied to the Customer will immediately cease upon expiry or termination of the relevant licence agreement that governs their use.

20.2 The Customer acknowledges that the supply of Products and Services by Gratex to the Customer does not transfer any ownership of a Product or a Service or any Intellectual Property Rights in such Products or Services to the Customer.

20.3 Licence terms and conditions may be packaged with the Products or Software, may be separately provided to the Customer for execution, may require on-screen acceptance by the Customer, or may be available for inspection by the Customer at a Vendor website. The Customer agrees to comply with any such applicable licence terms and conditions.

20.4 The Customer must not, during or after the expiry or termination of any relevant Contract, without a prior written consent of Gratex or its suppliers, register or use any trademarks, trade name, domain name, trading style or commercial designation or design used by Gratex or by its suppliers in connection with Products or Services.

20.5 The Customer indemnifies Gratex against all liabilities, claims, damages, costs and expenses which Gratex may suffer or incur as a result of infringement of any Intellectual Property Rights of any person by the Customer in connection with this Contract.

21 GENERAL

21.1 These Terms and Conditions are subject to variation by notice in writing to the Customer.

21.2 The Customer must not assign its rights, duties and obligations under this Contract without Gratex's prior written consent. Gratex may sub-contract the performance of any part of the Services to any third party or assign this Contract or any of Gratex's rights or obligations under this Contract.

21.3 This Contract contains the entire understanding between the parties concerning the subject matter of this Contract and supersedes all prior communications.

21.4 The failure of either party to enforce any provisions under this

Contract will not waive the right of such party thereafter to enforce any such provisions.

21.5 All notices and consents relating to this Contract must be in writing. Except as specified otherwise, this Contract cannot be amended or varied except in writing and signed by the parties.

21.6 If any term or provision of this Contract is held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from this Contract and the remaining terms and conditions will be unaffected.

21.7 Neither Party shall, during the Term or any extension of it, or for a period of twelve (12) months after termination or expiry, solicit or attempt to solicit any employee of the other party to leave his or her employment with that other party unless agreed in writing.

21.8 These Terms are governed by the laws of the State of New South Wales and the courts of the state of New South Wales shall have exclusive jurisdiction to hear any disputes arising from or relating to the Contract.

21.9 The Customer may ask any time for a hard copy of these Terms and Conditions by calling Gratex on 1800 111 110 or by visiting its Web site at www.gratex.com.au.

22 DEFINITIONS

In these Terms:

ACL means the Australian Consumer Law, as set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth);

Customer means the person, business or company that is the purchaser of Products or Services as specified in a Quote or Purchase Order;

Command-line Provisioning Tool means a command-line tool such as PowerShell tool that allows the Customer to directly provision and manage Online Services and Subscriptions;

Documentation means the specifications and the operating and procedural manuals with respect to the Products and Services provided by Gratex to the Customer, as amended by Gratex from time to time;

EULA means any licence which the Vendor of a product, a Service or a Third-party Service requires the Customer to enter into in order to use a product, a Service or a Third-party Service;

Gratex means Gratex International Aust Pty Ltd (ABN 70 090 952 113);

Intellectual Property Rights means all copyright and analogous rights (including moral rights), all registered or registrable rights in relation to inventions (including patent rights), trade marks, designs, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields;

MCA means the Microsoft Customer Agreement which can be found here: <https://www.microsoft.com/licensing/docs/customeragreement>;

MS365 means products of Microsoft including but not limiting to Microsoft 365 or Office 365 or Dynamics 365 Subscriptions, or per user or per device license Subscriptions;

Online Service means any of a Vendor hosted services, including Microsoft Online Services such as Microsoft 365, Office 365, Dynamics 365 and Azure, to which the Customer subscribes under these Terms and Conditions of Trade;

Portal means web-based tool that allows the Customer to directly provision and manage Online Services, Products and Subscriptions;

Price means the price set out in a Purchase Order accepted by Gratex or otherwise set out in a Quote issued by Gratex;

Product includes any goods, Software, boxed software product, hardware, equipment, or a service as set out in the Purchase Order or Quote (as applicable). Product in relation to Microsoft Online Services means the individual MS365 Online Service including but not limiting to a virtual machine, storage, networking and database;

Purchase Order means the Customer's order, in the form required by Gratex (which form may include via email, powerpoint, PDF or other written means), for Products and/or Services, or as otherwise agreed between the parties;

Quote means a written quote for Products or Services issued by Gratex

which may be in any form agreed by Gratex including via email, powerpoint, PDF or other form of written material;

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth);

Self-provisioned Service means Online Services that are provisioned by the Customer or by its associate or a party that it appoints, using a Portal or Command-line Provisioning Tools that allows the Customer to provision new or modify existing Products or Third-party Services;

Service means any service provided by Gratex to the Customer as set out in a Purchase Order or Quote (as applicable), including Third-Party Services. The Services may include design, consulting, monitoring, support and maintenance, configuration, setup, training, audit, installation or any other service;

Software means Gratex developed software and/or any third party software (as applicable);

Specifications means the Product and/or Service specifications as specified in the Purchase Order or Quote (as applicable);

Subscription means group Online Services or resources within the Customer's Tenancy;

Tenancy means a container for the Customer's Online Services, resources and Subscriptions. A Tenant has a globally unique Tenant ID that represents the Customer's Organisation;

Third-party Service means goods, products, software, Subscriptions and Online Services that are re-supplied from a Third-party supplier or a Vendor. The Third-Party Services may include resale of any Third-Party software, product or Online Service including but not limited to Microsoft Azure, Microsoft Office 365, Dynamics 365, Amazon Web Services, Infrastructure-as-a-Service, Software-as-a-Service, Platform-as-a-Service, Backup-as-a-Service, Disaster Recovery-as-a-Service, Internet Service Provider services, or telecommunication services such as data and voice connections;

Term means:

- (a) the period during which a Service will be provided as set out in a Purchase Order or Quote (as applicable);
- (a) in relation to MS365 Subscriptions, the non-cancellable period during which that MS365 Subscription is valid;

UPM Cloud means the computing environment Gratex uses to host the UPM Software as set out in the UPM Cloud Product Description;

UPM Cloud Product Description means the document setting out the features and functionalities of the UPM Cloud;

UPM Software means the software we license to you in accordance with separate software licence terms;

Vendor means Microsoft, Trend Micro, Veeam, Rhiper or any other licensor or a distributor of a product or a provider of any Third-Party Services;

Vendor Terms means terms and conditions of a Vendor applicable to any Third-party Service, including MCA, license terms, EULA, warranty terms, service levels, availability, remedies, price variations and other terms and conditions. Details about Microsoft software and license terms can be found at <https://www.microsoft.com/en-us/licensing/product-licensing/products>.

23 INTERPRETATION

In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word "including" means "including, but not limited to," and the word "includes" means "includes, without limitation";
- (c) a reference to a gender includes all genders; and
- (d) a reference to a person (including a party) includes an individual, company, other body corporate, partnership, firm, joint venture, or a trust.