

1. Definitions.

- 1.1. **SELLER** means the person or entity to whom a Purchase Order is addressed. In the event that no purchase order is issued, **SELLER** means the person or entity which has supplied or are to supply Goods and/or Services to the Company.
- 1.2. **COMPANY** means the company (being part of the Trivantage group of companies) which is named in the Seller's invoice provided or to be provided to the Company in connection with the sale of the Goods or Services to the Company. A complete list of the Trivantage group of companies can be found at www.trivantage.com.au
- 1.3. **CONTRACT** is defined in **clause 2**
- 1.4. **GOODS** means any goods supplied or to be supplied by the Seller to the Company.
- 1.5. **INSOLVENCY EVENT**, in relation to a party, means:
 - 1.5.1. The party is (or states that it is) insolvent (as defined in the *Corporations Act 2001* (Cth)); or
 - 1.5.2. The party has a Controller (as defined in the *Corporations Act 2001* (Cth)) appointed to any part of its property; or
 - 1.5.3. The party is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, has been or is in the process of being wound up, or has had a receiver or a receiver and manager appointed to any part of its property; or
 - 1.5.4. The party is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved; or
 - 1.5.5. The party is taken to have failed to comply with a statutory demand (pursuant to section 459F(1) of the *Corporations Act 2001* (Cth)); or
 - 1.5.6. The party is the subject of an event described in section 459C(2) or section 585 of the *Corporations Act 2001* (Cth), or it makes a statement from which the other party reasonably deduces it is so subject; or
 - 1.5.7. The party is otherwise unable to pay its debts when they fall due.
- 1.6. **LOSS** means damage, loss, cost, expense, suit, charge, action, right or action, or liability (whether actual or contingent).
- 1.7. **PRICE** means the price payable for the Goods and/or Services as agreed between the Company and the Seller in accordance with **clause 8** of these Terms and Conditions.
- 1.8. **PURCHASE ORDER** means a purchase order issued by the Company to the Seller in respect to the provision of Goods and/or Services which shall be subject to the terms of the Contract
- 1.9. **RELATED BODY CORPORATE** has the same meaning as in the *Corporations Act 2001* (Cth).
- 1.10. **SERVICES** means any services supplied or to be supplied by the Seller to the Company.
- 1.11. **TERMS AND CONDITIONS** means these terms and conditions of purchase.

2. Contract

The **Contract** contains:

- 2.1. the Purchase Order;
- 2.2. these Terms and Conditions; and
- 2.3. any other document which is attached to, or incorporated by reference in the Purchase Order or these Terms and Conditions.

3. Precedence.

In the event of any conflict between these Terms and Conditions and those that may be included in or implied by any document forming part of any quotation, purchase order, tender, invoice, order acknowledgment, confirmation, acceptance, bill of lading, enquiry, specification, order or contract, then these Terms and Conditions will prevail, except in so far as they are expressly varied by the Company in writing or otherwise by law.

4. Entire Agreement

- 4.1. The Contract contains the entire agreement between the Company and the Seller and supersedes all prior negotiations between the Company and the Seller, unless it is expressly indicated in writing that they are to form part of the Contract.
- 4.2. No terms or conditions submitted by the Seller that are in addition to, different from or inconsistent with those contained in the Contract, including, without limitation, terms and conditions contained in any quotation, tender, invoice, order acknowledgment, confirmation, acceptance, bill of lading, enquiry, specification, order, contract or other instrument shall be binding upon either party unless agreed to in writing and signed by both the Company and the Seller.
- 4.3. The provisions of the Contract will prevail over any terms and conditions of trade of the Seller whether or not any inconsistency arises. For clarity, the Contract shall be deemed to exclude any terms and conditions of the Seller including but not limited to any terms and conditions which appear on the Seller's invoice(s).

5. Amendments

No amendment or variation of the Contract is to be made unless there is a written agreement signed by the Company and the Seller.

6. Purchase Orders.

- 6.1. A written Purchase Order issued by the Company to the Seller is an offer to purchase Goods and/or Services from the Seller and will not create any contract for the supply of Goods and/or Services except in accordance with **clause 6.2**.
- 6.2. A contract for the supply of Goods and/or Services is made when the Company places an order and/or communicates to the Seller its request for Goods and/or Services and the Seller communicates in writing its acceptance of the individual purchase order or request. Any such acceptance will be subject to the terms and conditions contained in these Terms and Conditions.
- 6.3. The Company may withdraw, revoke or vary a purchase order at any time prior to its acceptance.
- 6.4. Unless otherwise indicated in writing by the Company, if not accepted in accordance with **clause 6.2** the purchase order will lapse thirty (30) days after the date of the purchase order, unless otherwise indicated in writing by the Company.

7. Delivery.

- 7.1. Delivery of Goods must be accompanied by a delivery docket/advice note quoting the Company's order number, item number(s) and giving a detailed description of the Goods.
- 7.2. Goods are to be suitably packaged for delivery, with packing becoming the property of the Company upon acceptance of the Goods.
- 7.3. Time is of the essence for the Contract. The Company reserves the right to cancel any order, or part thereof, without obligation if delivery is not made within the time specified.
- 7.4. The Goods are consigned at the Seller's risk for damage, loss or other diminution in value during the course of transit and until such Goods becomes the property of the Company.
- 7.5. Goods delivered before the specified date will be assumed to have been delivered on the specified date for the purpose of payment.

8. Price, Seller Invoice and Payment.

- 8.1. The Purchase Order is raised on a GST inclusive basis.
- 8.2. The Price includes all freight and delivery costs and all fees, duties (eg. Stamp Duty), surcharges and all other imposts of any government authority ('*governmental imposts*') unless expressly stated otherwise.
- 8.3. The Price is that indicated in the written Purchase Order issued by the Company to the Seller. If price is omitted from the order, it is agreed that the Seller's price will be the lowest prevailing market price, including GST, and in no event is the order to be filled at a higher price than the last previously quoted or charged without the written consent of the Company.
- 8.4. Unless otherwise agreed by the Company in writing, payment for Goods and/or Services supplied will be made in full by the end of the second month following the month during which the Goods are fully delivered and/or Services fully provided, on the basis that the Company receives a valid tax invoice in accordance with **clause 9.1** within 3 days from the end of the month in which the Goods were delivered and/or Services provided and on the basis that no dispute has arisen in relation to the Goods and/or Services provided.
- 8.5. The amount in an invoice referred to in **clause 8.6** and **clause 8.7** must be in Australian Dollars (AUD).
- 8.6. The Seller must render a tax invoice to the Company in relation to the provision of the Goods and/or Services at the end of each month during the period in which the Goods and/or Services are provided and calculated by reference to the Price, fees and other amounts specified in the Purchase Order.
- 8.7. Tax invoices must be in a form acceptable to the Company and include the following information:
 - 8.7.1. the number of the Purchase Order to which the invoice relates;
 - 8.7.2. a brief description of the Goods and/or Services provided in the period covered by the invoice;
 - 8.7.3. the GST exclusive price;
 - 8.7.4. the GST amount; and
 - 8.7.5. any further verification or documentation in relation to the invoice and reasonably required by the company.
- 8.8. If the invoice is not in a form specified in **clause 8.7** it may delay payment
- 8.9. If the invoice is not in a form specified in **clause 8.7** the Company will return the invoice to the Seller and no liability shall be recognized until such time as an acceptable invoice is provided to the Company.
- 8.10. Invoices may be:
 - 8.10.1. Posted to the Company at the address of their place of business; or
 - 8.10.2. Sent via email.This will be sufficient notice of the amount due under the invoice.
- 8.11. If the Company disputes any amount shown on an invoice, it must notify the Seller within 21 days of receipt of the invoice and must pay any amounts not in dispute, provided that the payment by the Company of any amount the subject to a disputed invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.
- 8.12. If there are errors with the invoice the Seller and the Company must jointly review the nature of the errors or exceptions and the Seller must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund of overpayments.

9. Termination

- 9.1. A Contract may, in the sole discretion of the Company, be terminated in the following circumstances:
 - 9.1.1. The Seller has not complied with the obligations of the Contract; or
 - 9.1.2. In the opinion of the Company, any change of circumstances, including without limitation, changes in the Seller's constitution, composition, ownership, membership, control status or ability to provide security for payments of amounts which have been or are likely to be payable by the Company, makes the continued operation of the contract undesirable or unsatisfactory; or
 - 9.1.3. The Seller is subject to an Insolvency Event;
 - 9.1.4. The Seller, being a partnership, dissolves, threatens or resolves to dissolve, or is in jeopardy of dissolving; or
 - 9.1.5. The Seller, being a natural person, dies; or
 - 9.1.6. The Seller is otherwise in breach of its obligations under these Terms and Conditions and/or any other Contract that the Seller has with the Company.

10. Claims.

- 10.1. The Company reserves the right to inspect all shipments after delivery and reject those items found to be defective or not in accordance with the specifications provided.
- 10.2. The Company will, within thirty (30) business days (or such longer period as may reasonably be required by the Company) of the supply of any Goods and/or Services, notify the Seller of any alleged defect, error, omission, shortage in quantity, damage or failure to comply with the Purchase Order, description or quotation.
- 10.3. The Company will if requested in writing by the Seller allow the Seller to inspect the alleged defect, error, omission, shortage in quantity, damage or failure to comply within a reasonable time of receiving notification.
- 10.4. Upon receipt of a notification of defect, error, omission, shortage in quantity, damage or failure to comply with the description or quotation the affect items or parts must be redesigned, repaired or replaced as appropriate by the Seller at no cost to the Company prior to the expiration of time specified in the notice, usually not less than 30 days after service.

- 11. Installation.**
- 11.1. Where used throughout this clause, **PREMISES** means the premises upon which the Seller will carry out an installation of Goods and/or provision of Services for the Company.
- 11.2. Where the Contract requires that the whole or part of the Goods are to be executed or installed and/or Services provided on premises owned by the Company, the Seller shall, at the Seller's own cost, cover by appropriate insurance in which the Company's interest is disclosed and is directly insured, the liability of the Seller and the Company under the Workers' Compensation Act of NSW for any worker employed in the execution of the work to be done on the Premises.
- 11.3. No part of the Contract shall be subcontracted by the Seller without the prior approval of the Company.
- 12. Property.**
- 12.1. Property and ownership (including legal and equitable title) in any Goods sold by the Seller to the Company will pass to the Company upon delivery, subject to their compliance with the terms of the Contract.
- 12.2. The Seller must insure (and keep insured) the Goods on the following conditions for the duration of the order until such time as the Goods have been properly delivered and accepted to the Company:
- 12.2.1. The Goods must be insured for their full insurable or replacement value (whichever is higher); and
- 12.2.2. The Goods must be insured by an insurer licensed or authorised to conduct the business of insurance in the place where the Goods will be stored.
- 12.3. Proof of these insurances shall be produced upon demand by the Company
- 12.4. The Company and the Seller agree that, until property and ownership (including legal and equitable title) of the Goods has passed to the Company:
- 12.4.1. The Company will not supply any of the Goods to any person outside of its ordinary or usual course of business;
- 12.4.2. The Company will not allow any person to have or acquire any security interest in the Goods;
- 12.4.3. The Company will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Seller.
- 13. Limitation of Liability.**
- 13.1. Notwithstanding any other provision of these Terms and Conditions:
- 13.1.1. In no circumstances will the Company be liable to the Seller, or any assigned party in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise (whatsoever the cause) to compensate the Seller or any assigned party for any special, indirect or consequential loss, including without limitation loss of production, loss of revenue, loss of profit or anticipated profit, or business interruption.
- 13.1.2. The total liability of the Company in relation to these Terms and Conditions or otherwise is limited to the amount of the Price.
- 13.2. **Clause 13.1.3** will not apply for:
- 13.2.1. Liability out of which by law the Company cannot contract;
- 13.2.2. Liability for fraud or malicious or deliberate criminal acts or omissions on the part of the Company.
- 14. Release and Acknowledgement.**
- 14.1. The Seller releases the Company from any liability or obligation to the Seller or any assigned party arising out of the Company's performance or non-performance of any obligation under these Terms and Conditions or otherwise in respect of:
- 14.1.1. Loss (including consequential Loss) in relation to property;
- 14.1.2. Personal injury, disease or illness to, or death of, persons;
- 14.1.3. Economic Loss; and
- 14.1.4. Loss in relation to the environment.
- 14.2. The Seller acknowledges and accepts that some of the locations where Services are performed are in flood and/or storm-prone areas.
- 15. Indemnity.**
- 15.1. The Seller at all times indemnifies and holds harmless the Company, its officers, employees and agents and any Related Body Corporate of the Company from and against any Loss (including without limitation actions, proceedings, judgments, legal fees and charges) that may be incurred by, billed, made or recovered against the Company in connection with the performance or non-performance of the Seller's obligations under these Terms and Conditions or otherwise, including without limitation:
- 15.1.1. Loss (including consequential Loss) in relation to property, including without limitation the Company's property;
- 15.1.2. Loss in respect of personal injury, disease, illness or death;
- 15.1.3. Economic Loss; and
- 15.1.4. Loss in relation to the environment.
- 15.2. The indemnity in **clause 15.1** applies to the extent that any claims, damages, expenses, losses or liabilities are caused by:
- 15.2.1. Any negligent act or omission or wilful misconduct of the Seller or the Seller's employees, agents or Companies, as the case may be; or
- 15.2.2. A breach by the Seller of any of the Seller's obligations under the Contract.
- 15.3. The Seller acknowledges that if it enters on to the Premises of the Company it does so at its own risk.
- 16. Seller's Liability.**
- 16.1. The Seller's liability for the performance of obligations under these Terms and Conditions or otherwise is not released, discharged or relieved by anything that but for this clause might have that effect, including without limitation:
- 16.1.1. The grant of a waiver or other indulgence to the Seller or any assigned party by the Company;
- 16.1.2. Any transaction or arrangement between the Company and the Seller or any assigned party;
- 16.1.3. The Seller being subject to an Insolvency Event;
- 16.1.4. The Company being subject to an Insolvency Event;
- 16.1.5. The Company exercising, delaying or refraining from exercising any right, power or remedy given to it by law, by the Contract, or by any other document or agreement with the Seller or any assigned party;
- 16.1.6. The Seller obtaining a judgment against the Company or any assigned party for the payment of any money; and
- 16.1.7. Any change in circumstance of the Company or the Seller or any assigned party (including a change of circumstance of a person, the members of a partnership or the composition of a company).
- 17. Warranties.**
- 17.1. The Seller warrants, in relation to all Goods supplied or to be supplied to the Company, that:
- (a) The Goods will be of merchantable quality;
- (b) The Goods will be free from defects in material and workmanship under normal use for a period of twelve (12) months; and
- (c) The Seller has and will at all times have good title to the Goods and the Company will receive title to the Goods free of any charge, lieu, encumbrance or other disability.
- (d) The Goods will be supplied in merchantable condition.
- (e) New and best quality available.
- (f) Fit for the purpose for which they are intended.
- (g) The Goods will be supplied within the time limits stipulated in the relevant Purchase Order.
- (h) The Goods will be supplied in accordance with all specifications provided by the Company to the Seller.
- 17.2. The Seller warrants, in relation to all Services to be supplied, or to be supplied to the Company that the Services will be carried out:
- (a) with due care and skill;
- (b) in a proper and workmanlike manner;
- (c) in accordance with:
- (i) the Purchase Order and these Terms and Conditions;
- (ii) the Legislative Requirements; and
- (iii) industry best practice'
- (d) such that the Services, when complete, will be fit for the stated or intended purposes and for all purposes for which could reasonably be expected that they may be used;
- (e) in a manner which causes as little disturbance or inconvenience as is commercially reasonably possible to the Company, neighbouring land owners and any other person which might reasonably be affected by the Services;
- (f) in accordance with all directions provided by the Company to the Seller from time to time;
- (g) in accordance with all time lines and schedules specified in the Purchase Order or otherwise agreed between the Seller and the Company.
- 18. Licenses.**
- All Goods and/or Services supplied are done so on the understanding that all licences, permits and the like required under relevant statutes, ordinances, rules and regulations have been obtained by the Seller.
- 19. Drawings and Information.**
- All drawings and information issued by the Company remain the property of the Company and may not be distributed or copied without the Company's permission.
- 20. Intellectual Property.**
- 20.1. The Seller warrants that there has been no violation or infringement of a trademark, registered design, copyright, patent or common law right(s) in manufacturing or production or selling the Goods shipped or ordered, and the Seller agrees to indemnify the Company from any liability, loss or expense occasioned by any such violation or infringement of intellectual property rights of any third party.
- 21. Waiver.**
- Failure by the Company to insist upon strict performance of any Term or Condition herein will not be deemed a waiver of any rights the Company may have, including without limitation those rights arising from a subsequent breach by the Seller of any Term or Condition.
- 22. Notices.**
- Any notices to be given by one party to the other must, unless otherwise agreed, be in writing and be transmitted by prepaid mail to the last known address of the recipient party. Notice will be deemed to have been delivered on the date following posting.
- 23. Law.**
- These Terms and Conditions is to be governed and interpreted in accordance with the laws of the State in which the Contract was issued.
- 24. Arbitration.**
- 24.1. All disputes arising in connection with these Terms and Conditions, including a dispute concerning rectification or frustration of these Terms and Conditions, must be referred to arbitration by a notice in writing by either party to the other party requiring that the dispute be referred to arbitration within thirty (30) days of the dispute arising.
- 24.2. Unless the parties agree upon an arbitrator, either party may request the President of the Institute of Engineers, Australia to nominate an arbitrator. The request must state that the arbitrator not be an employee of the Company or the Seller, a person who has been connected with this Contract, or a person in respect of whom there has been a failure to agree by the Company and the Seller.
- 25. Third Parties.**
- 25.1. Nothing in the Contract confers or purports to confer on any third party any benefit or rights to enforce any term of the Contract.

26. Quality and Packaging.

- 26.1 The Seller shall pack and supply the Goods in accordance with all generally accepted industry standards and practices that are applicable.
- 26.2 The Seller shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition.
- 26.3 The Seller shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to supply the Goods in accordance with these Terms and Conditions.
- 26.4 The Seller shall comply with, and shall ensure that the Goods comply with, all applicable laws, enactments, orders, regulations and other instruments relating to the packing, packaging, marking, storage, handling, and delivery of the Goods.
- 26.5 The Company shall have the right to enter the Seller's premises for the purpose of conducting an inspection of the Goods.
- 26.6 Inspections carried out pursuant to clause 26.5 shall be carried out during business hours on reasonable notice to the Seller.
- 26.7 If following an inspection the Company reasonably considers that the Goods are not or are not likely to be as warranted under this clause, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted.

27. PPSA

If the Seller believes that a Security Interest arises under these Terms and Conditions or otherwise, the Seller must notify the Company at least 7 days before the Seller takes steps to register such Security Interest on the PPS Register. Within 14 days of the earlier of:

- 27.1 the expiry or termination of this Contract; or
27.2 receipt of the Subcontract Sum,

the Seller will at its cost procure the removal from the PPS Register each Security Interest it has registered in respect of the Goods or Services, and must provide the Company with verification of the removal of the Security Interests pursuant to section 157 of the PPSA.

In this clause 27, "PPS Register" means the Personal Property Securities Register established under the PPSA, "PPSA" means *Personal Property Securities Act 2009* (Cth) and "Security Interest" has the meaning given to that term in the PPSA.

28. TERMINATION FOR CONVENIENCE

The Company may for its convenience, by notice to the Seller, terminate a Contract between the Company and the Seller. In the event of such termination for convenience, the Seller's entitlement arising out of or in connection with the Services or this Contract (including the termination) shall be limited to:

- 28.1 any amount then due from the Company to the Seller but unpaid;
- 28.2 an amount for the relevant Goods or Services provided in accordance with these Terms and Conditions and the Contract to the date of termination which is not included in a previous payment claim and which is properly payable; and
- 28.3 the cost of goods, materials and equipment reasonably ordered by the Seller for the Contract which is being terminated and which the Seller is liable to accept, but only if they will become the Company's property upon payment (subject to the Seller taking all reasonable steps to mitigate such costs).

29. LIQUIDATED DAMAGES

If the Seller fails to provide the Company with the Goods or Services by the date required in the relevant Purchase Order, then without limiting the other rights of the Company under these Terms and Conditions or at law, the Seller shall pay the Company liquidated damages at the higher of:-

- 29.1 the rate of 1% of the Price per day for every day until the Goods or Services are provided in full to the Company.
- 29.2 the amount of liquidated damages and/or other damages that the Company is required to pay to any party as a result of the Seller's failure to provide the Company with the Goods or Services by the date required in the relevant Purchase Order.

The Seller acknowledges that the rate of liquidated damages set out in this clause is a genuine pre-estimate of the Company's damages.

30. INSURANCES

30.1 Before delivering the Goods or providing the Services to the Company, the Seller must have in place the following insurances with an insurer approved by the Company:-

- (a) Contracts Works insurance for the Price.
- (b) Workers Compensation insurance as required by law.
- (c) Product and public liability for the amount of \$20,000,000.
- (d) Such other insurances as may be required from time to time by the Company.

30.2 The insurances other than the Workers Compensation insurance shall be in the name of the Seller with the interests of the Company noted.

30.3 The workers compensation insurance shall be extended to indemnify the Company for its liability to persons employed by the Seller, both at statute and common law, and include a waiver of underwriters' subrogation clause in favour of the Company.

30.4 Prior to providing any Goods or Services to the Company, the Seller shall provide to the Company copies of insurance policies required by this Contract (including any schedules, endorsements or certificates of currency), or other documents in relation to such insurance as required by the Company.

30.5 The Seller shall not change any term of the insurances required by this Contract without the prior written consent of the Company. The Seller shall notify the Company immediately should any insurance become ineffective for any reason.

30.6 The Seller must maintain all insurances set out in this clause 30 for a period of 3 years until the supply of the Goods or Services

has been completed. If the Seller fails to effect or maintain such insurances it must promptly notify the Company of this fact, and the Company may (but is not obliged to), in its discretion, effect and maintain the insurance policies (or any of them) and all costs and expenses incurred by the Company shall be recoverable from the Seller as a debt due.

30.7 The Seller shall ensure that any Seller engaged by the Seller complies with the insurance requirements of this Contract.

30.8 The Seller shall as soon as practicable inform the Company in writing of any occurrence that may give rise to a claim under either, a policy of insurance required by this Contract, and/or, any contract works insurance held by the the Company in connection with or related to the work under this Contract.

30.9 The Seller must:

- (a) notify the Company in writing prior to giving notice of cancellation of a policy or any other notice concerning any policy, to the insurer; and
- (b) notify the Company in writing if the Seller receives any notice of a failure to renew a policy or to pay a premium, fee, penalty or charge of any kind.

30.10 The Seller must pay the amount of any excess or deductible which is paid or becomes payable under any insurance policy, where the circumstances giving rise to the claim were caused or contributed to any extent by the Seller.

30.11 The Seller shall ensure that it:

- (a) does not do anything which prejudices any insurance;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) reinstates a policy if it lapses;
- (d) does not cancel, vary or allow an insurance policy to lapse;
- (e) immediately notifies the Company of any event which may result in an insurance policy lapsing or being cancelled; and
- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any relevant insurance policy.

In circumstances where the Seller does any act or makes any omission which causes an insurer to refuse payment of a claim, the Seller will be fully liable for the claim, which will not be subject to any limit of liability under this Contract.

31. DEFECTS

31.1 If a defect exists in any of the Goods or any of the Services at any time the Seller shall promptly rectify it unless instructed otherwise in writing by the Company.

31.2 In relation to a defect existing which becomes apparent at any time within 12 months of the date of delivery of the Goods or completion of the Services ("Defects Liability Period"), the Company may give a direction to the Seller specifying the defect and requiring the Seller to correct the Defect, or any part of it, and specifying the time within which this must occur. This direction may require the Seller to:

- (a) remove defective material;
- (b) demolish the defect;
- (c) reconstruct, replace or correct the defect; or
- (d) not to deliver materials which are defective.

32. DEFAULT

If the Seller commits an Act of Default, the Company may, in addition to its other rights at law, suspend or terminate the Contract. If the Contract is so terminated, then the Company may:-

32.1 cease any further payments which are owing to the Seller;

32.2 claim from the Seller as a debt due the costs to the Company in procuring a third party to supply any of the Services and/or Goods which have not as at the date of termination been supplied by the Seller;

32.3 retain ownership of all Goods previously supplied by the Seller.

The Seller commits an Act of Default if it becomes insolvent, goes into liquidation, receivership or administration or if there is a:-

32.3 suspension of any of the Services to be provided by the Seller or a failure to supply the Goods within the time frame required in a purchase order;

32.4 failure by the Seller to proceed with due expedition and without delay;

32.5 failure by the Seller to comply with these Terms and Conditions.

33. RETENTION AND SECURITY

The Company is entitled to retain 5% of any payment the Company is required to make to the Seller under this Contract or otherwise (Retention Amount). The Company will release half of the Retention Amount promptly after the Goods and Services to be supplied under the Contract have been supplied in full, and release the balance of the Retention Amount after the Defects Liability Period has expired.

34. **WORKPLACE HEALTH AND SAFETY & COMPLIANCE WITH DIRECTIONS**

34.1 The Seller must:

- (a) comply, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the work under this Contract comply, with this Contract and all legislative requirements including the Workplace Health and Safety Legislation;
- (b) comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while executing the work under this Contract comply with, the requirements of the Company's Policies, Procedures and Management Plans;
- (c) comply with all reasonable directions of the Company given following any potential perceived breach of any legislative requirements including the Workplace Health and Safety Legislation;
- (d) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property;
- (d) implement and comply with all necessary security requirements of the Company; and
- (e) ensure that all work performed by the Seller is executed in a manner that ensures the health and safety of persons.

- 34.2 If the Company reasonably considers that there is a risk of injury to persons or damage to property arising out of the work under this Contract the Company may direct the Seller to change its manner of working at the cost of the Seller and without entitlement to any claim against the Company or any other person.

Nothing contained in this clause or elsewhere in this Contract shall in any way reduce the Seller's responsibility to identify and control foreseeable risks arising from or in connection with the Seller or its personnel performing the Services or supplying the Goods under this Contract.