

TERMS AND CONDITIONS OF SUPPLY

The following Terms and Conditions govern all Orders placed by the Buyer and will be incorporated into each contract entered into between the Buyer and the Company.

1. Definitions.

In these Terms and Conditions:-

- 1.1. **BUYER** means the person or entity to whom a quotation issued by the Company is addressed including that person's successors and assigns. In the event that no quotation is issued, **BUYER** means the person or entity (including that person's or entity's successors and assigns) to whom Goods and/or Services are supplied or are to be supplied by the Company.
- 1.2. **COMPANY** means the company (being part of the **Trivantage Group** of companies) which is named in the invoice provided or to be provided to the Buyer in connection with the sale of the Goods or Services by the Company to the Buyer. A complete list of the Trivantage group of companies can be found at www.trivantage.com.au
- 1.3. **FORCE MAJEURE EVENT** means any event or circumstance which is beyond the reasonable control of the affected party and which results in or causes the failure of that party to perform any of its obligations under these Terms and Conditions.
- 1.4. **GOODS** means any goods supplied or to be supplied by the Company to the Buyer pursuant to these Terms and Conditions and/or any contract, including, but not limited to, goods hired.
- 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. **ORDER** means an order placed by the Buyer with the Company for the purchase of Goods or Services.
- 1.8. **PRICE** means the price payable for the Goods and/or Services as agreed between the Company and the Buyer in accordance with **clause 6** of these Terms and Conditions.
- 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 Company to the Buyer pursuant to these Terms and Conditions.
- 1.11. **TERMS AND CONDITIONS** means these terms and conditions of supply.

2. 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 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.

3. Quotations and Orders.

- 3.1. A written quotation issued by the Company to the Buyer is an offer of Goods and/or Services for purchase by the Buyer and will not create any contract for the supply of Goods and/or Services except in accordance with **clause 3.2**.
- 3.2. A contract for the supply of Goods and/or Services is made when the Buyer places an Order and/or communicates to the Company its acceptance of the quotation, or in the absence of either of these when the Company is requested by the Buyer (or a party that the Company can reasonably assume to be acting as the Buyer's agent) to provide Goods and/or Services.
- 3.3. The Company may withdraw, revoke or vary a quotation at any time prior to its acceptance.
- 3.4. Unless otherwise indicated in writing by the Company, all quotations will lapse thirty (30) days after the date of the quotation, unless otherwise indicated in writing by the Company.
- 3.5. A contract made pursuant to clause 3.2 is deemed to be a contract incorporating these Terms and Conditions, notwithstanding any inconsistencies that may be introduced in the Buyer's Order and/or acceptance of the quotation, unless expressly agreed to in writing by the Company.
- 3.6. The provisions of these Terms and Conditions will prevail over any terms and conditions of the Buyer whether or not any inconsistency arises.
- 3.7. The Buyer may not cancel an Order after it has been acknowledged by the Company without the Company's consent in writing. This may be refused or given at the Company's sole discretion and, when given, will be on condition that the Buyer will compensate the Company for all Loss that it may suffer directly as a result of the cancellation as determined by the Company in its sole discretion with supporting evidence of the Loss.
- 3.8. Any purported cancellation by the Buyer, to which the Company has not consented, may be treated by the Company as a repudiation of the contract by the Buyer.
- 3.9. The Company may, at its discretion, reject any Order.
- 3.10. The Company may change the Price for the Goods or Services at any time on giving prior notice to the Buyer. Any change to the Price will apply to all Goods or Services delivered on or after the date specified by the Company in the notice to the Buyer. If no date is specified in the notice, the change will be effective immediately for all Goods or Services delivered after the date of notification, and whether or not an Order for the Goods or Services had already been received and accepted prior to the change.
- 3.11. There is no obligation on the Company to enquire as to the authority of any person placing an Order on behalf of the Buyer.
- 3.12. The Company may terminate a Contract in its sole discretion at any time by giving 7 days notice in writing to the Buyer. In those circumstances the Company's liability to the Buyer shall be strictly limited to the return of any unexpended deposit and the delivery of any goods and materials paid for by the Buyer.

4. Services.

- 4.1. The Company will:
 - 4.1.1. Perform the Services to the standard of reasonable care and skill to be expected of consultants who regularly act in the capacity in which the Company is engaged and who possess the knowledge, skill and experience of a consultant to act in that capacity.
 - 4.1.2. Carry out the Services on the basis of information available to the Company at the time when the Services are carried out. The Company will not take any responsibility, nor accept any liability, for Loss arising out of matters relevant to the

Services that arise due to circumstances that are revealed after completion of the commission.

- 4.1.3. Not be responsible for Loss (including but not limited to consequential Loss) resulting from any Goods or Services supplied to the Buyer including but not limited to any damage to any utility or service that was not identified to the Company prior to its undertaking any work.

5. Delivery.

- 5.1. Times quoted for delivery and/or installation by the Company are given in good faith and are estimates only.
- 5.2. The Company will not be liable for failure to deliver or install, or for delay in delivery or installation arising from any cause beyond the Company's control. The Buyer will not be relieved of any obligation to accept or pay for Goods and/or Services by reason of any delay in delivery or installation.
- 5.3. The Company reserves the right to effect delivery by installments, and each installment is deemed to be sold under a separate contract with these Terms and Conditions being applicable.
- 5.4. A delivery charge, freight and/or insurance may be charged to the Buyer and added to each invoice. Alternatively, Goods are offered ex the Company's store.
- 5.5. If the Buyer fails to accept delivery of the Goods or give proper instructions to the Company for their delivery within fourteen (14) days after notification in writing that the Goods are ready for delivery, the Buyer may be liable to pay to the Company all reasonable costs for storage, protection and insurance of the Goods after expiration of such fourteen (14) day period. The Company reserves the right to store such Goods at a location of its choosing.
- 5.6. No defect or claim in respect of Goods delivered will entitle the Buyer to reject delivery of other Goods, which are not subject to any defect or claim, delivered as part of the Order.

6. Price.

- 6.1. The Price is that indicated in the written quotation issued by the Company to the Buyer or where a written quotation has not been issued, the Price advised by the Company to the Buyer.
- 6.2. Unless expressly stated otherwise the Price excludes:-
 - 6.2.1 Fees, duties (eg. Stamp Duty), taxes (eg. GST), surcharges and all other imposts of any government authority (*'governmental imposts'*).
 - 6.2.2 Sea freight, duty, customs clearance which will all be charged at cost plus 5% handling charge if applicable.
- 6.3. The Company reserves the right to change the Price:
 - 6.3.1. In the event of a variation to the Company's written quotation in accordance with **clause 3.3**;
 - 6.3.2. In the event of a variation in the amount of governmental imposts payable including, but not limited to, those arising from the price on carbon and the Commonwealth Government's Clean Energy Legislative Package;
 - 6.3.3. Where the Goods include cable, the Price may be subject to variation in accordance with base metal prices and AEEMA indices; and
 - 6.3.4. Where the Goods include imported items, the Price may be subject to variation in accordance with the exchange rate.
- 6.4. At the Company's sole discretion, a deposit may be required.
- 6.5. Where the Goods are to be supplied "Free into the Buyer's Store", the Company will deliver, or arrange delivery of, the Goods to the agreed destination on the delivery date advised to the Buyer and the Company will pay any storage, transportation and insurance costs incurred as a result up to the time of delivery.
- 6.6. Where the Goods are to be supplied "Ex-Works the Company", the Buyer will take delivery of the Goods as soon as the Goods are made available for collection at the Company's premises, as advised to the Buyer.

- 6.7. Where Goods are to be supplied “Free on Wharf”:
- (a) the Company is responsible for all expenses arising from the importation of the Goods, to the time that the Goods are available for collection by the Buyer, and the Company agrees to provide all of the documentation necessary to enable the Buyer to take delivery of the Goods and remove them from the agreed location; and
 - (b) the Buyer will take delivery of the Goods as soon as the Goods are made available for collection, as advised to the Buyer.
- 6.8. In the absence of any specific agreement to the contrary, Goods are supplied “Ex-Works the Company” and clause 6.6 will apply.
- 6.9. Unless specified to the contrary in a Quote, the Goods or Services do not include and no allowance has been made by the Company in the Price for:
- (a) any physical conditions on site which differ from the physical conditions which could reasonably have been anticipated by the Company, including hidden services or ground conditions;
 - (b) fixed scaffolding over 3.0m in height;
 - (c) building works, including demolition and removal;
 - (d) changes in the cost of materials, including the price of copper;
 - (e) changes to the applicable EBA, award or other labour costs;
 - (f) changes in law, statutory requirements, regulations or associated fees and charges;
 - (g) obtaining permits or approvals; or
 - (h) overtime labour.

The Company reserves the right to increase the Price as a result of any of the matters referred to in clauses (a) to (h) above.

7. Payment.

- 7.1. Payment of the amount set out in an invoice is due not later than thirty (30) days following the date of the invoice unless otherwise nominated or agreed by the Company.
- 7.2. Payment of the amount referred to in **clause 7.1** must be in Australian Dollars (AUD).
- 7.3. Invoices may be:
- 7.3.1. Posted to the Buyer at the address of their place of business; or
 - 7.3.2. Sent via email or other electronic or facsimile means.
- This will be sufficient notice of the amount due under the invoice.
- 7.4. Time for payment is of the essence.
- 7.5. The Company may render interim invoices.
- 7.6. The amounts of invoices not paid in accordance with clause 7.1 will incur interest, the amount of which will be determined by the Company.
- 7.7. Where the Buyer has defaulted in its payment obligations under these Terms and Conditions, any amounts owing by the Buyer to the Company for any Goods and/or Services supplied pursuant to these Terms and Conditions may be deducted by the Company from any amount payable by the Company to the Buyer under any other contract.
- 7.8. **Clause 7.6** does not preclude or otherwise limit the rights of the Company to pursue legal remedies in the event of default by the Buyer.
- 7.9. Payments made by credit card may be subject to a surcharge.
- 7.10. The Buyer will be liable for all costs incurred with the recovery of any unpaid invoiced amounts, including without limitation legal and collection agents fees, court costs, interest and the Company’s fees for time incurred with the recovery process.
- 7.11. The Buyer is not entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Company, nor is the Buyer entitled to withhold payment of any invoice because part of that invoice is in dispute.

- 7.12. If the Buyer does not pay any amount owing to the Company by the due date for payment, the Company may charge default interest on the unpaid amount at three percent above the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*, calculated on a daily basis from the due date until payment is received in full (after as well as before judgment).

8. Termination.

- 8.1. The Company has the right to cancel any contract made pursuant to **clause 3.2** including the cancellation of the supply of Goods and/or Services in respect of the same, at any time before the supply of the Goods and/or Services by giving written notice to the Buyer. The Company will not be liable for any Loss whatsoever arising from such cancellation.
- 8.2. A contract may, in the sole discretion of the Company, also be terminated in the following circumstances:
- 8.2.1. The Buyer has not complied with the terms of payment pursuant to **clause 7**; or
- 8.2.2. In the opinion of the Company, any change of circumstances, including without limitation, changes in the Buyer'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 Buyer, makes the continued operation of the contract undesirable or unsatisfactory; or
- 8.2.3. The Buyer is subject to an Insolvency Event;
- 8.2.4. The Buyer, being a partnership, dissolves, threatens or resolves to dissolve, or is in jeopardy of dissolving; or
- 8.2.5. The Buyer, being a natural person, dies; or
- 8.2.6. The Buyer is otherwise in breach of its obligations under these Terms and Conditions and/or any other contract that the Buyer has with the Company.
- 8.3. If the contract is terminated pursuant to **clause 8.2** and the Company agrees to the return of the Goods, the Buyer may be liable to pay a restocking fee in the amount of 20% of the Price upon request (via invoice) from the Company.

9. Claims.

- 9.1. The Buyer will inspect the Goods upon delivery.
- 9.2. The Buyer will, within two (2) business days of the supply of any Goods and/or Services (time being of the essence), notify the Company of any alleged defect, error, omission, shortage in quantity, damage or failure to comply with the description or quotation.
- 9.3. The Buyer will allow the Company to inspect the alleged defect, error, omission, shortage in quantity, damage or failure to comply within a reasonable time of receiving notification.
- 9.4. If the Buyer fails to give notice in accordance with **clause 9.2**, the Company will be deemed to have fulfilled the contract and no claim by the Buyer need be recognised by the Company.

10. Installation.

- 10.1. Where used throughout this clause, **PREMISES** means the premises upon which the Company will carry out an installation of Goods for the Buyer.
- 10.2. Where installation of Goods is included in the Price, the following will apply unless specifically excluded in writing by the Company:
- 10.2.1. Installation is to be carried out on the ground floor of the Premises. Easy access must be provided to the Company by the Buyer, and such access will not require the Goods or any part of them to be dismantled.
- 10.2.2. The structural soundness of the Buyer's equipment, services and buildings, and the suitability of any structural alterations or additions to the Buyer's equipment, services and buildings necessary for the installation of the Goods, is the Buyer's responsibility
- 10.2.3. All services necessary for the installation of the Goods, including water, electricity, compressed air, gas, drainage and sanitation, will be provided to the Company by the Buyer at no cost.

- 10.2.4. Installation work is to proceed continuously; otherwise, standby rates may be added to the Buyer's account.
- 10.3. Any time advised for delivery of Goods or Services is an estimate only. The Company has the right to nominate a suitable time for loading the Goods onto a delivery vehicle, taking into account weather conditions and safety matters, and the Company is not liable for any delay in delivery.
- 10.4. In all circumstances whatever the agreed method of delivery, the Buyer will be responsible at its own cost for unloading the Goods, or for arranging for a suitable means of unloading the Goods, from the relevant delivery vehicle. The Buyer will indemnify the Company against any loss, liability, costs or expenses incurred by the Company in unloading the Goods.
- 10.5. The Company may deliver the Goods or Services by instalments. Each instalment will be treated as a separate contract under these Terms.
- 10.6. The Buyer must indemnify the Company against any loss, liability, costs or expenses incurred by the Company if, after the time for Delivery of the Goods or Services, the Company subsequently arranges storage or transportation of, or insurance for, the Goods or Services (whether due to any failure or refusal of the Buyer to take delivery or following agreement with the Buyer).

11. Property.

- 11.1. Property and ownership (including legal and equitable title) in any Goods sold by the Company to the Buyer remains with the Company until the Buyer meets all of its obligations pursuant to these Terms and Conditions, including without limitation payment in full of the Price and all other amounts owing to the Company by the Buyer.
- 11.2. The Goods are at the Buyer's risk from the time at which they are dispatched to the Buyer or its nominee. The Buyer must insure (and keep insured) the Goods on the following conditions until such time as property and ownership (including legal and equitable title) pass to the Buyer:
- 11.2.1. The Goods must be insured for their full insurable or replacement value (whichever is higher); and
- 11.2.2. 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.
- All insurances which the Buyer effects or causes to be effected under these Terms and Conditions must:
- 11.2.3 Name the Company as a named insured; and
- 11.2.4 Be construed to provide that insurers shall have no right of subrogation against the Company.
- 11.3. If the Buyer fails to pay for the Goods in accordance with **clause 7.1**:
- 11.3.1. The Buyer must deliver the Goods to the Company, where demanded by the Company or its Agent; or
- 11.3.2. The Company may recover possession of the Goods by any necessary means at any site owned, possessed or controlled by the Buyer; and
- 11.3.3. The Buyer agrees that the Company has an irrevocable licence to exercise its rights under this clause; and
- 11.3.4. The Buyer is liable for all costs associated with the exercise of the Company's rights under this clause, and this liability will be payable on demand.
- 11.4. The Company and the Buyer agree that, until property and ownership (including legal and equitable title) of the Goods has passed to the Buyer:
- 11.4.1. The Buyer will not supply any of the Goods to any person outside of its ordinary or usual course of business;
- 11.4.2. The Buyer will not allow any person to have or acquire any security interest in the Goods;
- 11.4.3. The Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Company;

- 11.4.4. The Buyer must not remove, deface or obliterate any identifying place, mark or number on any of the Goods;
- 11.4.5. Where the Buyer is in actual or constructive possession of the Goods:
- (a) The Buyer holds the Goods as fiduciary bailee and agent for the Company;
 - (b) After giving forty-eight (48) hours notice to the Buyer, the Company will be entitled to enter upon the Buyer's premises between 9am and 5pm to inspect the Goods;
 - (c) The Buyer will not deliver the Goods, or any document of title to the Goods, to any person except as directed by the Company;
 - (d) The Buyer must store the Goods separately and in a manner that enables the Goods to be identified and cross-referenced to particular invoices issued to the Buyer by the Company;
 - (e) The proceeds of any Goods sold must be kept in a separate account by the Buyer and must not be mixed with any other moneys, including funds of the Buyer.
- 11.4.6. The Buyer acknowledges that if it should mix the Goods with other products or items such that the Goods are no longer separately identifiable, then the Buyer and the Company will be owners in common of the new product;
- 11.4.7. The Buyer has no right to claim any interest in the Goods to secure any liquidated debt or obligation the Company owes to the Buyer; and
- 11.4.8. The Buyer cannot claim any lien over the Goods.
- 11.4.9. The Company may bring an action for any amount owing to the Company in respect of Goods even where ownership of the Goods has not passed to the Buyer.

12. **Personal Property Securities Act 2009 (Cth) ('PPSA').**

- 12.1. The Buyer acknowledges that these Terms and Conditions constitute a security agreement that creates a security interest in favour of the Company in all Goods supplied by the Company to the Buyer to secure payment from time to time, including future advances. The Buyer agrees to grant to the Company a 'Purchase Money Security Interest'.
- 12.2. The Buyer acknowledges that by assenting to these Terms and Conditions, the Buyer grants a security interest (as that term is defined in the PPSA) to the Company.
- 12.3. The Buyer undertakes to:
- 12.3.1. Sign any further documents and/or provide any further information (which information the Buyer warrants to be complete, accurate and up-to-date in all respects) that the Company may reasonably require to enable registration of a financing statement or financing change statement (as defined in section 10 of the PPSA) on the Personal Property Securities Register ('PPSR');
 - 12.3.2. Not register a financing change statement or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior consent of the Company;
 - 12.3.3. Pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions including executing subordination agreements; and
 - 12.3.4. Be responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA.
- 12.4. The Buyer waives any right it may have under section 115 of PPSA upon enforcement.
- 12.5. Unless otherwise agreed to in writing by the Company, the Buyer waives any right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest under section 157 of the PPSA.

- 12.6. The Buyer agrees that immediately on request by the Company the Buyer will procure from any person(s) considered by the Company to be relevant to its security position such agreement and waivers as the Company may at any time require.
- 12.7. The Buyer agrees to promptly do anything the Company requests (such as obtaining consents, providing information and signing and producing documents) in order to perfect, preserve, maintain, protect, or otherwise give full effect, under the PPSA and related regulations, to these Terms and Securities and the Security Interest created by these Terms and Conditions.

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 Buyer, or any assigned party in contract, tort (including without limitation negligence or breach of statutory duty) or otherwise (whatsoever the cause) to compensate the Buyer 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 Company, its servants, agents and sub-consultants will be deemed to have been discharged from all liability whatsoever in respect of the Goods and/or Services, whether under the law of contract, tort or otherwise, at the expiration of one year from the later of the completion of the Services or the receipt of the Goods.
 - 13.1.3. The total liability of the Company in relation to these Terms and Conditions or to the Buyer for any reason is limited to 10% of 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;
 - 13.2.3. Liability for any act or failure to act by the Company which was intended to cause, or which was in reckless disregard of, or wanton indifference to, the harmful consequences that the Company knew, or ought reasonably to have known, that act or failure to act would have on the safety, property or interests of the Buyer.
- 13.3. Despite any other document (including but limited to any head contract) or communication between the Buyer and the Company to the contrary, under no circumstances will the Company be liable to the Buyer for liquidated damages.

14. **Release and Acknowledgement.**

- 14.1. To the full extent permitted by law, the Buyer releases the Company from any liability or obligation to the Buyer or any assigned party arising out of the Company's performance or non-performance of any obligation under these Terms and Conditions and/or any Goods or Services supplied to the Buyer 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 Buyer acknowledges and accepts that some of the locations where Services are performed or Goods may be located are in flood and/or storm-prone areas.
- 14.3. Despite anything else contained in these Terms and Conditions, the Buyer at all times indemnifies and releases the Company, its employees and agents and any Related Body Corporate of the Company from and against any loss or damage to Goods or any goods of the Buyer being held by the Company arising from or as a result of flood, storm or water damage.

15. **Indemnity.**

- 15.1. The Buyer at all times indemnifies and holds harmless the Company, its 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 Company's obligations under these Terms and Conditions and/or the supply of any Goods or Services, 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** does not apply to the extent that any claims, damages, expenses, losses or liabilities are caused by:

- 15.2.1. Any negligent act or omission of the Company or the Company's employees, agents or contractors, as the case may be; or
- 15.2.2. A breach by the Company of these Terms and Conditions.

15.3. The indemnity contained in **clause 15.1** does not in any way limit or affect any other rights that the Company may have arising out of any default by the Buyer in the performance of the Buyer's obligations under these Terms and Conditions.

16. **Buyer's Liability.**

16.1. The Buyer's liability for the performance of obligations under these Terms and Conditions 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 Buyer or any assigned party by the Company;
- 16.1.2. Any transaction or arrangement between the Company and the Buyer or any assigned party;
- 16.1.3. The Buyer 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 these Terms and Conditions, or by any other document or agreement with the Buyer or any assigned party;
- 16.1.6. The Company obtaining a judgment against the Buyer or any assigned party for the payment of any money under these Terms and Conditions and/or any other document or agreement between the Company and the Buyer or any assigned party; and
- 16.1.7. Any change in circumstance of the Company or the Buyer 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 Company warrants that Goods sold are free from defects in material and workmanship under normal use for a period of twelve (12) months.
- 17.2. Goods purchased either for incorporation into the equipment manufactured by the Company or for sale to the Buyer are subject to warranty as applicable from the supplier to the Company.
- 17.3. The Buyer will notify the Company of any Goods that it believes are faulty and allow the Company to inspect the Goods within a reasonable time after such notification. If the Company agrees that the Goods are faulty, the Buyer will return the Goods to the Company, such return being at the expense of the Buyer. Goods agreed as being faulty will be repaired or replaced at the discretion of the Company.

18. **Implied Conditions.**

Except to the extent required by law, no conditions or warranties expressed or implied by any law, ordinance rule or regulation (including those expressed or implied by statute, the common law,

equity, and trade customs or usage) are binding upon the Company unless set out in these Terms and Conditions.

19. Licenses.

All Goods are sold and Services performed on the understanding that all licences, permits and the like required under relevant statutes, ordinances, rules and regulations have been obtained by the Buyer.

20. Performance of certain Goods.

It is the responsibility of the Buyer to correctly specify the rating and performance that Goods should have, where applicable.

21. Testing.

The cost of any testing that is beyond the Company's standard tests is payable by the Buyer.

22. 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.

23. Subcontracting by the Company.

The Company reserves the right to subcontract any part of the manufacture and/or supply of the Goods and/or Services quoted for, or any materials or services to be supplied, or any other of its rights and/or obligations without the Buyer's Consent.

24. Intellectual Property.

24.1. Where the Company has followed a design or instruction furnished by the Buyer, the Buyer indemnifies the Company against all Loss to which the Company will become liable if the performance of the work in accordance with the Buyer's design or instructions involves an infringement of a trademark, registered design, copyright, patent or common law right(s).

24.2. All drawings, descriptive and shipping specifications, performance claims and capability claims given by the Company in the Quote or contained in any catalogue, website or other publication are approximations only, do not form part of the Contract and the Company does not warrant the accuracy or completeness of any such information, unless expressly guaranteed in writing.

24.3. The Buyer grants to the Company a perpetual, irrevocable, transferable and royalty free licence to use any intellectual property in any document provided to the Company for any purposes related to the Goods or Services.

24.4. All right, title and interest in any goods, design, document or other information provided by the Company to the Buyer as part of the Quote or in the supply of the Goods or Services (including any designs and cost saving initiatives) shall remain the sole property of the Company and the Buyer warrants that it will not infringe those rights. Upon the receipt of payment with respect to same, the Company grants the Buyer a licence to use any such intellectual property for the sole purpose of using and operating the Works.

25. 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 Buyer of any Term or Condition,.

26. 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.

27. Law.

These Terms and Conditions is to be governed and interpreted in accordance with the laws of the State in which and the Terms and Conditions or the contract were issued. Any dispute arising under the contract or these Terms and Conditions is to be heard and determined within the jurisdiction of the State from which the Goods are dispatched or the Services are performed.

28. Arbitration.

- 28.1. All disputes arising in connection with these Terms and Conditions or the supply of any Goods or Services by the Company to the Buyer 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.
- 28.2. 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 Buyer, a person who has been connected with these Terms and Conditions, or a person in respect of whom there has been a failure to agree by the Company and the Buyer.

29. Provision of Credit Facilities.

The provision of credit facilities by the Company to the Buyer is conditional upon the Buyer satisfying the Company's credit assessment protocol.

30. Third Parties.

Nothing in these Terms and Conditions confers or purports to confer on any third party any benefit or rights to enforce any term of these Terms and Conditions.

31. Security.

- 31.1. In the event that the Buyer requires the Company to provide to it security for its obligations pursuant to these Terms and Conditions, the Company, if it agrees in its discretion to do so, shall do so on the following terms:
- 31.1.1. The form of security shall be at the Company's sole discretion and may be in the form of an insurance bond;
- 31.1.2. The security amount shall be no more than 10% of the Price;
- 31.1.3. The Company has sole discretion to nominate an expiry date for the security provided; and
- 31.1.4 The Buyer shall pay any and all costs associated with and as a result of the security and such costs are in addition to the Price.

32. Force Majeure.

- 32.1. The Company will not be liable for any delay or failure in the performance of any obligation or the exercise of any right under these Terms and Conditions or for any loss or damage (including indirect or consequential loss or damage) if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event.
- 32.2. The obligations of the Company will be suspended during the continuance of the Force Majeure Event.

33. Use Of Information.

- 33.1. The Buyer agrees that the Company may obtain information about the Buyer from the Buyer or any other person (including any Person related to the Company and including any company within the wider group of companies of which the Company forms part (the "Wider Company Group") and any credit or debt collection agencies) in the course of the Company's business, including credit assessment, debt collecting and direct marketing activities, and the Buyer consents to any person providing the Company with such information.
- 33.2. The Buyer agrees that the Company may use any information it has about the Buyer relating to the Buyer's creditworthiness and, subject to any confidentiality agreement between the Buyer and the Company, give that information to any other person, including any credit or debt collection agency and other members of the Wider Company Group for credit assessment and or, debt collection purposes. The Buyer agrees that any other information collected by the Company about the Buyer is accessed or collected for the use of any member of the Wider Company Group in the course of its business, including direct marketing activities. Under the Privacy Act 1988 (Cth), the Buyer has rights of access to, and correction of, their personal information.

- 33.3. Notwithstanding any of these Terms, where the Buyer is a natural person, the Buyer specifically agrees for the purposes of privacy legislation including the Privacy Act 1988 (Cth) to the Company:
- (a) being given a credit report on him or her for the purpose of assessing an application for credit or for the purpose of the collection of payments that are overdue under these Terms;
 - (b) disclosing to or obtaining from another credit provider a credit report or personal information derived from a credit report on him or her for the purpose of assessing or exchanging information relating to his or her creditworthiness, credit history or credit capacity; and
 - (c) collecting and using personal information as may be required for the purposes of the PPSA, including but not limited to, use in financing statements registered by the Company,

and the Company advises the Buyer and the Buyer acknowledges that the Company may disclose the information it acquires about the Buyer to a credit agency, other members of the Wider Company Group or as may be required by the PPSA.

34. Additional Obligations Of The Buyer

The Buyer is responsible for:

- 34.1. Ensuring that the Company has clear and uninterrupted access to any site to enable the supply of the Goods or Services;
- 34.2. Securing any such site during the supply of the Goods or Services;
- 34.3. Obtaining all necessary insurances for the Goods or Services (including contract works and public liability insurance);
- 34.4. Promptly providing any further technical information, approval or drawings reasonably required by the Company to supply the Goods or Services; and
- 34.5. Advising the Company of the precise location of all hidden services at any site to where the Goods or Services are to be supplied.