

DEWTEK TERMS AND CONDITIONS

1. Definitions

1.1 “Contractor” or “us” or “we” means deWTek Pty Ltd in its capacity as trustee of the de Wet Family Trust, its successors and assigns or any person acting on behalf of and with the authority deWTek Pty Ltd.

1.2 “Client” or “you” means the person/s or any person acting on behalf of and with the authority of a Client requesting the Contractor to provide the Works as specified in or any proposal, quotation, order, invoice or other documentation, and:

- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a part of a Trust, the Client agrees to be bound in their capacity as a trustee and otherwise; and
- (c) includes the Client’s executors, administrators, successors, directors, officeholders and permitted assigns.

1.3 “Works” means all Works (including consultation, repair, calibration, supply and/or installation services) or Materials supplied by the Contractor to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).

1.4 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between the Contractor and the Client in accordance with clause 7 below.

1.5 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

1.6 “Calibration” means to check accuracy according to manufacturer specifications and industry standards, and make minor adjustments (in a timeframe within industry standards) to a calibration standard point or range. Calibration does not include large significant adjustments (which constitute Repair), repair, replacement, cleaning, modification, removal, commissioning or decommissioning.

1.7 “Repair” means to improve a damaged instrument or an instrument performing outside of manufacturer’s specifications, and to fix damage.

1.8 “Replacement” means to replace a new instrument or part thereof in lieu of a damaged one. Replacement does not include calibration, removal or decommissioning.

1.9 “Equipment clean” means to restore a working instrument to the condition that would allow proper Calibration within industry standard timeframes.

1.10 “Materials” means items materials parts or other chattels supplied to the Client by the Customer, from a third-party manufacturer. No materials are manufactured by the Client unless expressly stated.

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.

2.2 These terms and conditions once agreed may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Contractor.

2.3 None of the Contractor’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Contractor in writing nor is the Contractor bound by any such unauthorised statements.

2.4 The Client warrants that they will only acquire any Materials and any Works for purposes other than for personal, domestic or household use.

2.5 Any quote or estimate of costs by the Contractor shall be expressly based on and provided in reliance upon all information provided to the Contractor by or on behalf of the Client, including lists and specifications of equipment (including but not limited to make, model and serial numbers), and itemised calibration standards specifications and points.

2.6 Upon request, the Contractor may agree to prepare equipment lists by undertaking a site visit, at additional cost to the Client.

2.7 Where the Client does not provide full, adequate information including calibration standards, the Contractor shall act reasonably in using its discretion and appropriate industry standards to set calibration standards. In this event, the Contractor expressly disclaims any liability for any loss (including consequential loss and non-compliance on audit) as a result of the standards applied.

2.8 Any quote or estimate of costs provided by the Contractor shall be valid for 30 days or until withdrawn by the Contractor prior to acceptance, whichever shall occur first in time.

2.9 The Contractor may refuse to commence any Works until a quote, proposal or estimate of costs provided by the Contractor are accepted in writing by the Client.

2.10 A quote, proposal or estimate of costs which contains a component for ongoing maintenance are valid for the term specified therein. After that term, a new quote, proposal or estimate of costs may be provided by the Contractor which shall supersede any terms in any previous quote, proposal or estimate of costs. The Contractor may revise dates from the date of expiry.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Works.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

3.3 Notwithstanding clause 2.2 above, the Contractor may vary add to or replace a quote, proposal or estimate of costs in the event of manifest error or omission.

4. Change in Control

The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or email address/es, change of trustees or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

5. Credit Accounts

5.1 The Contractor does not provide creditor supply Materials or Works on credit unless expressly agreed in writing.

5.2 The Client acknowledges that any supply of Materials and Works on credit shall not take effect until the Client has completed a credit application with the Contractor and approved with a credit limit established for the account.

5.3 In the event that the supply of Materials and/or Works request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery and/or request an alternative payment method.

5.4 All financial institutions' duty, stamp duty and other government charges relating to the establishment and operation of the Client's account will be debited to that account.

5.5 The Client acknowledges and accepts that any credit facility extended is for the Client's use only any shall not be assigned, transferred or made available by the Client for the use by any other person or entity.

6. Purchase Orders

6.1 The Client acknowledges and agrees where the Client does not elect to control their purchases by a Purchase Order and/or a Letter of Authority, then all purchases made by Client and/or any other third party acting on behalf of the

Client to which the Materials are charged to the Client's account, shall remain at all times payable by the Client. All said notices of restrictions pertaining to purchases must be writing and will remain in place until such time as the Client revokes.

6.2 The Client agrees to notify the Contractor in writing immediately upon the departure of the Client's employee if an authorised account user. Where there is failure to notify the Contractor of such departures, then the Client acknowledges they will be bound by all purchase orders made by that account user.

6.3 A Purchase Order is to be supplied by the Client within seventy-two (72) hours from the Contractor's request whether for Works or variations. Should the Client fail to comply with this clause, the Contractor shall be entitled to raise an invoice regardless which shall become due and payable as per clause 7.

7. Price and Payment

7.1 At the Contractor's sole discretion the Price shall be either:

- (a) as indicated on the quote or invoice provided by the Contractor to the Client in respect of Works performed or Materials supplied; or
- (b) the Price as at the date of delivery of the Works according to the Contractor's current price list (if any); or
- (c) the Contractor's quoted Price which shall be binding upon the Contractor provided that the Client shall accept the Contractor's quotation in writing within the specified period.

7.2 The Client acknowledges and accepts that a quotation is not an offer, but an invitation to treat.

7.3 At the Contractor's sole discretion a non-refundable deposit may be required.

7.4 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:

- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with the Contractor's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the worksite but not yet installed; or
- (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Contractor.

7.5 Payment may be made by bank cheque, EFT, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.

7.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

7.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7.8 The Customer shall make payment of any Invoice from the Contractor in full within the payment terms specified in the quote, proposal or on the Invoice itself. If no payment terms have been specified, payment shall be made within 30 days of provision of the Invoice.

7.9 The Contractor may suspend services and stop works for a Client if an Invoice remains overdue in whole or in part outside of the requirements of 7.8 above. The Contractor will communicate the status of the suspended services and stop works to the Client, and the amount owing by the Client.

8. Variations

8.1 In the event that the Client requests a variation of quoted Works, the Contractor will give the Client a written variation document detailing the Works, the Price, the estimated time to undertake the variation, and the likely delay, if any and require written acceptance of the variation before commencing work on the variation.

8.2 In the event that the Contractor requests a variation, the Contractor will, in writing state the reason for the variation, provide a full description of the variation, state any effect the variation will have on the contract, including but not limited to, the Price and completion date, and may require written acceptance by the Client of the variation before commencing Works on the variation. Variations may be requested where:

- (a) a variation to the Materials which are to be supplied is requested; or
- (b) a variation to the Works originally scheduled is requested; or
- (c) delays in manufacture or installation as a result of instructions/action/inaction or lack thereof from the Client, or the Client's failure or inability to fulfil its obligations which result in increased costs to the Contractor; or
- (d) the Client discloses any requirements that Materials may be required to meet after the preparation of the quotation has been completed; or
- (e) additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the worksite, site specific conditions, availability of machinery, safety considerations, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Works; or
- (f) in the event of increases to the Contractor in the cost of Materials (including the increase in overseas transactions as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Contractor's control or a variation to the cost of Materials; and

(g) the Contractor shall advise the Client of any such variation arising above that may affect the value of any incomplete work to which the variation has been applied.

8.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion unless otherwise agreed to.

8.4 Notwithstanding clauses 8.2 above the Contractor may carry out any necessary additional Works without the Client's agreement in the event of:

- (i) unforeseeable problems with the worksite which are only revealed when undertaking the Works which the Contractor considers must be rectified for the safe completion of the Works, for example, where the Client provides inaccurate plans, specifications or other information; or
- (j) any Works that the Contractor considers are required to be undertaken urgently and it is not reasonably practicable to obtain written acceptance from the Client before commencing the variation; or
- (k) the Contractor being instructed to undertake extra Works by a statutory authority.

9. Provision of the Works

9.1 Subject to clause 9.2 it is the Contractor's responsibility to ensure that the Works start with reasonable promptness, or otherwise within the timeframe agreed by the Contractor and Client.

9.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to:

- (a) delay by alterations to the contract; or
- (b) delay by changes to the specifications of the Materials to be supplied; or
- (c) any force majeure event; or
- (d) any failure by the Client to:
 - (i) ensure that the Contractor has continuous unimpeded access to the worksite;
 - (ii) ensure that the Client does not impede or delay the Contractor from carrying out the Works;
 - (iii) make a selection; or
 - (iv) have the site or machinery ready for the Works; or
 - (v) notify the Contractor that the site or machinery is ready.

9.3 The Client shall provide (if requested by the Contractor) a confined space spotter, gas detectors (including for Contractor's staff), working at heights equipment, spotters and forklifts. If not provided by the Client, the Contractor may hire these and pass the cost of such hire on to the Client.

9.4. The Client shall provide staff or contractors with appropriate qualifications and accreditation to attend to any electrical, electronic or mechanical isolations and tags on site.

- 9.5. Unless expressly provided in any quote or proposal, the Client is to provide water, pumps and tanks with appropriate capabilities for any flow calibrations.
- 9.6. If any equipment requires specific manufacturer software or calibration equipment, the Client shall notify the Contractor prior to performing works, and shall provide the same at the Client's cost.
- 9.10 The Client shall ensure that all equipment is insured to replacement value.
- 9.11 The Client shall ensure that all equipment is tested and tagged prior to the Contractor being obliged to perform work on such equipment.

10. Services and Working Hours

10.1 Unless otherwise stated:

- (a) A Calibration is undertaken at a point in time under the prevailing conditions in which the Calibration is performed. The Contractor can only guarantee calibration status at the time and in the conditions that the Calibration is undertaken and in which the calibration tests are passed;
- (b) The Contractor may sub-contract services without prior written consent of the Client, provided any sub-contractor is appropriately experienced and (if necessary) accredited and licenced; and
- (c) The Contractor does not warrant that any calibration or test is National Association of Testing Authorities (NATA) accredited.
- (d) The Contractor does not warrant that any Calibration is within the definition of a "Trade Measurement" calibration as defined by the National Measurement Institute of Australia (NMI).
- (e) Unless expressly stated in writing by the Contractor, the ability of the Contractor to calibrate an instrument does not imply any ability or willingness to provide any further services including but not limited to repair.
- (f) Unless expressly stated in writing by the Contractor, the Contractor is not obliged to return instrument settings to "as found" positions upon completion of a Calibration or other service.
- (g) A quote or proposal provided by the Contractor may specify whether services are to be performed at the Contractor's premises or on site. If services are to be provided elsewhere than on site, the Contractor may specify postage, handling, freight or insurance charges to be paid by the Client in addition.
- (h) The Contractor takes no responsibility and accepts no liability for the condition of any equipment as found. If deemed reasonably necessary by the Contractor upon inspection, cleaning charges shall be added to the quote or proposal or estimate of costs or otherwise agreed between the Customer and the Client.
- (i) If the Client declines cleaning charges under the preceding clause, otherwise terminates the Contractor's services, or if the Contractor refuses to work on equipment due to unsafe or unsuitable conditions of the equipment or the site, the Contractor shall invoice the Client pro rata for work performed and travel.
- (j) The Contractor does not warrant or guarantee the downtime of a Client's plant or operations. The Contractor does not guarantee timeframes for work unless expressly provided in writing in a quote or proposal, and shall only be obliged to perform work with reasonable promptness and diligence, and to act reasonably in limiting Client downtime.

- (k) The Contractor takes no responsibility and accepts no liability for any production errors of a Client's plant or operation as a result of incorrect calibration specifications or any other incorrect information provided by a Client.
- (l) The Client shall be responsible for the removal, restoration and programming of instruments as nominated by the Contractor.
- (m) The Contractor's usual hours of trade are 7:00am to 4:00pm on weekdays (excluding Saturdays, Sundays and Public Holidays in Adelaide).
- (n) The Contractor shall not be obliged to work longer than 12 hours in a working day, including travel to and from the place of Work.
- (o) Work outside of the Contractor's usual hours of trade shall result in:
 - After 4:00pm or before 7:00am on weekdays – 1.5 x quoted hourly rate for the first two hours, and 2 x quoted hourly rate thereafter.
 - Saturdays: minimum 4 hours at 1.5 x quoted hourly rate for the first two hours, and 2 x quoted hourly rate thereafter.
 - Sundays: minimum 4 hours at 2 x quoted hourly rate.
 - Public Holidays in Adelaide: minimum 4 hours at 2.5 x quoted hourly rate.

11. Reporting

- 11.1 The Contractor will provide calibration certificates of all calibrated equipment within 2 weeks after completion on site, unless otherwise specified in the quote or proposal.
- 11.2 The Contractor will promptly report to the Client the status of failed instruments.
- 11.3 Where requested by the Client, calibration stickers will be applied and appropriately completed by the Contractor.

11.4 Where the Client requests test instrument calibration certificates, the Contractor requires 1 week prior notice for provision and completion of certificates.

12. Access and Insurance

- 12.1 The Client shall ensure that the Contractor has clean, safe, clear and free access to the machinery on site at all times to enable them to complete the Works. Any delays due to failure of the Client providing access as required may be subject to a standby charge being made by the Contractor.
- 12.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight and dimensions of hoists, cranes or other equipment as may be deemed necessary by the Contractor.
- 12.3 Where Works are completed by the Contractor on site, the Client shall ensure that public liability and injury insurance for not less than ten million dollars (\$10,000,000.00) per claim is in place and maintained.
- 12.4 The Contractor shall ensure that it has in place and maintains its own public liability and injury insurance for not less than ten million dollars (\$10,000,000.00) per claim.

13. Risk

13.1 Where the Contractor is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:

- (i) Materials for delivery and installation are assembled in position and are ready for connection to the power and other services specified;
- (ii) Materials for delivery, installation and commission are assembled in position, connected to the power and other services specified and are ready for commercial use by the Client;
- (iii) Materials for delivery reach the nominated destination. Unloading of the Materials shall be the Client's responsibility unless otherwise specified.

13.2 Notwithstanding the provisions of clause 13.1 if the Client specifically requests the Contractor to leave Materials outside the Contractor's premises for collection or to deliver the Materials to an unattended location then such materials shall be at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.

13.3 The Client acknowledges that the Contractor is only responsible for parts that are worked on by the Contractor (not including mere supply) and that in the event that other parts/Materials, subsequently fail, the Client agrees to indemnify the Contractor against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

13.4 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Materials supplied is given in good faith, is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.

13.5 Unless otherwise agreed to, the Contractor's responsibility to commissioning of the Works shall be limited to ensure the Works comply with any specification supplied by the Client, and liability of the Contractor limited to resupply.

13.6 The Contractor may at its discretion notify the Client that it requires to store at the worksite Materials, fittings and appliances, or plant and tools required for the Works, in which event the Client shall supply the Contractor a safe, secure area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.

13.7 The Client agrees that the Contractor shall not be liable for any damage or loss including personal injury, death, (including but not limited to the failure of the Client to follow the Contractor's safety, operation or maintenance

instructions) or property loss due to any event beyond the Contractor's control.

13.8. The Client agrees that the Contractor's liability for loss and damage shall be limited to the extent lawful to re-supply of any Works or Materials. The Client expressly releases the Contractor from any and all liabilities claims losses damages and costs in relation to any resulting or consequential loss incurred or suffered by the Client as a result of or in connection with the services provided by the Contractor.

14. Client's Responsibilities for On-Site Works

14.1 It is the Client's responsibility to:

- (a) ensure that the Contractor has continuous unimpeded access to the worksite;
- (b) ensure that the Client does not impede or delay the Contractor from carrying out the Works;
- (c) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation;
- (d) provide a clean, potable water supply for all washing, priming and testing of equipment;
- (e) supply power of a suitable rating to within eight (8) metres of the installation area;
- (f) provide temporary services including, but not limited to lighting, temporary distribution boards suitable for welding equipment and hand tools, water, compressed air and ventilation;
- (g) worksite inductions as may be required; and
- (h) provide the following during the on-site programme process unless otherwise specified:
 - (i) changing rooms for the labour force;
 - (ii) wash room and toilets;
 - (iii) canteen facilities if available; and
 - (iv) medical and first aid facilities.

15. Product Specifications

The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Contractor's or supplier's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Contractor.

16. Compliance with Laws

16.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.

16.2 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

17. Title

17.1 The Contractor and the Client agree that ownership of Materials shall not pass until:

- (a) the Client has paid the Contractor all amounts owing to the Contractor; and
- (b) the Client has met all of its other obligations to the Contractor.

17.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

17.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 17.1:

- (a) the Client is a bailee of the Materials and unless the Materials have become fixtures must return the Materials to the Contractor on request.
- (b) the Client holds the benefit of the Client's insurance of the Materials on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
- (c) the production of these terms and conditions by the Contractor shall be sufficient evidence of the Contractor's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with the Contractor to make further enquiries.
- (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand.
- (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
- (f) unless the Materials have become fixtures the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Materials are kept and recover possession of the Materials.
- (g) the Contractor may recover possession of any Materials in transit whether or not delivery has occurred.
- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of the Contractor.
- (i) the Contractor may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

18. Personal Property Securities Act 2009 ("PPSA")

18.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA

18.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Works – that have previously

been supplied and that will be supplied in the future by the Contractor to the Client.

18.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Contractor may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 20.3(a)(i) or 20.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
- (e) immediately advise the Contractor of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

18.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

18.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

18.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

18.7 Unless otherwise agreed to in writing by the Contractor, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

18.8 The Client shall unconditionally ratify any actions taken by the Contractor under clauses 18.3 to 18.5.

18.9 Subject to any express provisions to the contrary (including those contained in this clause 18) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

19. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

19.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the

Contractor to inspect the Materials or to review the Works provided. The Client shall be deemed to have waived the right to make any claim on the Contractor outside this time.

19.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

19.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

19.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.

19.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.

19.6 If the Contractor is required to replace any Materials under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Materials.

19.7 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.

19.8 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Materials is:

- (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
- (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Materials;
- (c) otherwise negated absolutely.

19.9 Subject to this clause 19, returns will only be accepted provided that:

- (a) the Client has complied with the provisions of clause 1; and
- (b) the Contractor has agreed that the Materials are defective; and
- (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.

19.10 Notwithstanding clauses 19.1 to 19.9 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (a) the Client failing to properly maintain or store any Materials;
- (b) the Client using the Materials for any purpose other than that for which they were designed;
- (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Works by the Client or any third party without the Contractor's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by the Contractor;
- (f) fair wear and tear, any accident, or act of God.

19.11 The Contractor may in its absolute discretion accept non-defective Materials for return in which case the Contractor may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Materials plus any freight costs.

19.12 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.

20. Intellectual Property

20.1 Where the Contractor has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in the Contractor, and shall only be used by the Client at the Contractor's discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.

20.2 The Client warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.

21. Default and Consequences of Default

21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at the rate specified on any quote or proposal.

21.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).

21.3 Further to any other rights or remedies the Contractor may have under this contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

21.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
- (b) the Client has exceeded any applicable credit limit provided by the Contractor;
- (c) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Cancellation

22.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Works or Materials to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause. The Client shall be liable for the Contractor's costs of any de-mobilisation or re-mobilisation of any plant, equipment or staff to or from the worksite, upon the re-commencement of the Works at the worksite if applicable.

22.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to the Contractor for Works already performed. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.

22.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

22.4 Cancellation of works will incur a handling charge and the Client will pay the Contractor upon demand pro rata for work performed.

22.5 Notwithstanding 22.4 above, where a cancellations is communicated to the Customer less than 48 hours' notice from scheduled commencement of Works, the Customer shall pay to the Client the full amount of the quote or proposal or estimate of costs.

23. Dispute Resolution

If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to

resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

24. Unpaid Seller's Rights

24.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any monies owing to it by the Client, the Contractor shall have, until all monies owing to the Contractor are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

24.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any monies owing to the Contractor having been obtained against the Client.

25. Service of Notices

25.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by email transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

26. Trusts

If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:

- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
- (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or

commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.

(c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;

- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust property.

27. Force Majeure

Where the Contractor or the Client is either wholly or in part is unable by reason of, pandemic, disease, death of a key employee or staff member, disability or disease of a key employee or staff member, Act of God, strike, lockout, interference with work, war, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental restraint or embargo, unavailability or delay in availability of necessary materials, inability or delay in obtaining government approvals, or any other cause which is not reasonably within the control of the affected party (i.e. a force majeure event), to carry out any obligation under this agreement and that party:

- (a) gives the other party prompt notice of that force majeure with full particulars of the probable extent to which it will be unable to perform, or be delayed in performing its obligations under this agreement; and
- (b) uses all possible diligence to remove that force majeure as soon as possible; then those obligations shall be suspended so far as it is affected by the force majeure event and during its continuance provided that:
- (c) an obligation to pay money is never excused by force majeure; and
- (d) the requirement that any force majeure event shall be removed with all possible diligence shall not require the settlement of strikes, lockouts, or other labour disputes, or claims or demands by any government, on terms contrary to the wishes of the party affected.

28. General

28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of Adelaide courts in South Australia.

28.3 The Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit, lost goodwill, lost resale profits, work stoppage, impairment of other goods, loss of product or raw materials) suffered by the Client arising out of

a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

28.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

28.5 The Client cannot licence or assign without the written approval of the Contractor.

28.6 The Contractor may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.

28.7 The Client agrees that the Contractor may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Works to the Client.

28.8 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

28.9 This agreement constitutes the entire agreement between the parties with respect of the subject matter and contains all of the representations, undertakings, warranties, covenants and agreements of the parties. This agreement supersedes all prior negotiations, contracts, arrangements, understandings and agreements with respect to such subject matter. There are no representations, undertakings, warranties, covenants or agreements between the parties express or implied except as contained in this agreement.