

AGD Systems Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 **"Acknowledgment Document"** means the document signed by the Client in conjunction with these Terms and Conditions of Trade and applicable if AGD elects, whereby the Client acknowledges the extent and effect of the provision of security the Client provides to AGD in consideration of the provision of Goods or Services.
- 1.2 **"AGD"** means AGD Systems Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of AGD Systems Pty Ltd.
- 1.3 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting AGD to provide the Services as specified in 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 partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors, and permitted assigns.
- 1.4 **"Confidential Information"** means:
- (a) the terms of the Quotation, this Contract and their subject matter; or
 - (b) any information, statements, Contracts, agreements, specifications, drawings, reports, accounts, knowledge, information concerning the affairs of AGD; or
 - (c) information which by its nature or by the circumstances of its disclosure, is or would reasonably be expected to be regarded as Confidential Information at any time disclosed (whether in writing or orally), but does not include information that is in the public domain otherwise than as a result other than by a breach of the Quotation or this Agreement by the Client or their agents' and
 - (d) information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.5 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.6 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using AGD's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 **"Goods"** means all Goods or Services (including any incidental items, such as documentation, etc.) supplied by AGD to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.8 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.9 **"Intellectual Property"** means all intellectual property rights, including without limitation:
- (a) patents, copyright, registered designs, trademarks and the right to have confidential information kept confidential; and
 - (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).
- 1.10 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between AGD and the Client in accordance with clause 7 below.
- 1.11 **"Relevant Legislation"** means:
- (a) any Act, regulation, rule, ordinance, proclamation, by-law or similar statutory instrument, whether of the Commonwealth, State, local or other duly constituted authority; and
 - (b) the rules and regulations of any relevant authority and all public bodies and companies whose property or rights are or may be affected in any way by the Goods.
- 1.12 **"Warranties"** means those warranties as set out in clauses 19.1 and 19.2.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties and where there is a variation or inconsistency between provisions of the quotation, this Contract, any annexure or schedule or additional terms, the documents shall have precedence in the following order, to the extent of any inconsistency:
- (a) the provisions of this Contract;
 - (b) any annexure or schedule (including any payment schedule) to this Agreement, signed by both parties;
 - (c) the quotation; and
 - (d) any additional terms.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with AGD and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, AGD reserves the right to refuse delivery.
- 2.6 The employee or agents of AGD are not authorised to make any representations concerning the Goods supplied by AGD unless confirmed by AGD in writing. The Client acknowledges that upon acceptance of this Contract they do not rely on (and waive any claim for breach of) any such representations which are not so confirmed.

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- 2.7 In the event that the Client requests AGD to provide the Services urgently, that may require AGD's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then AGD reserves the right to charge the Client additional labour costs (penalty rates will apply at time and a half normal rates), unless otherwise agreed between AGD and the Client.
- 2.8 All literature, specifications, dimensions, weights, descriptions, illustrations and performances contained in catalogues, other advertising material and price lists, which may also be submitted with the quotation, do not form part of the contract of sale of the Goods, are approximate only, and whilst being as accurate as possible may not necessarily be identical with Goods supplied. AGD reserves the right to supply Goods that have minor modifications in specifications as AGD sees fit.
- 2.9 AGD is engaged as an independent contractor and nothing in this Contract shall be deemed to constitute AGD as an agent or employee of the Client.

3. Electronic Transactions Act

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), Section 9 of the Electronic Communications Act 2000 (SA), Section 9 of the Electronic Transactions Act 2001 (ACT), Section 9 of the Electronic Transactions (Victoria) Act 2000, Section 9 of the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA) or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that AGD 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 AGD 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 AGD in respect of the Services.
- 4.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Client Error**"). The Client must pay for all Goods it orders from AGD notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. AGD is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

5. Change in Control

- 5.1 The Client shall give AGD 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 fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by AGD as a result of the Client's failure to comply with this clause.

6. Exclusions from Quote

- 6.1 Unless otherwise agreed, the following are excluded from the quote:
- (a) connection into any access controls (Roller Doors, Boom Gates, Fire Systems, Security etc);
 - (b) high-risk work. (EWP hire will be fully charged as a variation);
 - (c) weekend or night work;
 - (d) 240Vac power provisioning to controller enclosures and boom gates;
 - (e) concrete slab penetrations (coring or drilling);
 - (f) any line markings;
 - (g) any delays or wait time by third parties. (Chargeable by the hour or part of);
 - (h) any "On Road" traffic management services;
 - (i) any trenchwork or deck work for conduits or ducts;
 - (j) any civil works;
 - (k) firestopping, caulking of penetrations or access coring/holes; or
 - (l) any work not stated in the above.

7. Price and Payment

- 7.1 At AGD's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by AGD to the Client upon placement of an order for Goods; or
 - (b) AGD's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 AGD reserves the right to change the Price:
- (a) if a variation to the Goods (including, but not limited to, any change to the design, specification, scope of Services, etc.) is requested or required as per clause 6; or
 - (b) where additional costs are incurred by AGD due to unexpected delays, or receipt of approvals or permits, access to an assessment area not being available as was agreed or when pre-arranged;
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface or iron reinforcing rods in concrete, poor weather conditions, limitations to accessing the site, availability of machinery, hire of specialised equipment, safety considerations, prerequisite work by any third party not being completed, or obscured site defects, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to AGD in the cost of labour or materials, including but not limited to, overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges, which are beyond AGD's control.

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- 7.3 Variations will be charged for on the basis of AGD's quotation, and will be detailed in writing, and shown as variations on AGD's invoice. The Client shall be required to respond to any variation submitted by AGD within ten (10) working days. Failure to do so will entitle AGD 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.
- 7.4 At AGD's sole discretion, a reasonable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by AGD or as notified to the Client prior to the placement of an order for Goods.
- 7.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by AGD, which may be:
- (a) by way of instalments/progress payments in accordance with AGD's payment schedule;
 - (b) the date which shall be either fourteen (14) or thirty (30) days following the date of any invoice given to the Client by AGD;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by AGD.
- 7.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and AGD.
- 7.7 AGD may in its discretion allocate any payment received from the Client towards any invoice that AGD determines and may do so at the time of receipt or at any time afterwards. On any default by the Client AGD may re-allocate any payments previously received and allocated. In the absence of any payment allocation by AGD, payment will be deemed to be allocated in such manner as preserves the maximum value of AGD's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.8 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 AGD nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify AGD in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as AGD investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in AGD placing the Client's account into default and subject to default interest in accordance with clause 20.1.
- 7.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to AGD an amount equal to any GST AGD must pay for any supply by AGD under this or any other agreement for the sale of the Goods. 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.
- 7.10 Receipt by AGD 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 and until then AGD's ownership or rights in respect of the Goods, and this Contract, shall continue.

8. Supply of Goods

- 8.1 Supply ("Supply") of the Goods is taken to occur at the time that AGD (or AGD's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.2 At AGD's sole discretion, the cost of Delivery and packing will be payable by the Client in accordance with the quotation provided by AGD to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods.
- 8.3 AGD may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.4 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 8.5 Any time specified by AGD for Delivery of the Goods is an estimate only and AGD will not be liable for any loss or damage incurred by the Client because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If AGD is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then AGD shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8.6 Supply of the Goods will be put back and/or any completion of Services extended by whatever time is reasonable in the event that AGD claims an extension of time (by giving the Client written notice as per clause 8.7) where such is delayed by an event beyond AGD's control, including but not limited to any Force Majeure event, or any failure by the Client to:
- (a) provide clear and adequate specifications and/or instructions to AGD; or
 - (b) have the site ready (including any delay caused by the non-completion of prerequisite work performed by third parties); or
 - (c) notify AGD that the site is ready.
- 8.7 Notwithstanding clause 8.6, if AGD becomes aware that they will be delayed in supplying the Goods and/or completing the Services in accordance with this Contract, AGD must immediately notify the Client in writing of the cause and nature of the delay. AGD is to detail in the notice the steps they will take to contain the delay and the anticipated duration of the delay.

9. Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, AGD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AGD is sufficient evidence of AGD's rights to receive the insurance proceeds without the need for any person dealing with AGD to make further enquiries.
- 9.3 If the Client requests AGD to leave Goods outside AGD's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 9.4 At AGD's sole discretion, any existing wiring, equipment, and light fixtures are subject to testing and an earthing inspection by AGD prior to supply of the Goods. Any faults which require rectifying, and/or any additional earthing which AGD deems to be necessary, will incur additional charges and will be treated as a variation in accordance with clause 5.2.
- 9.5 The Client acknowledges and accepts that electricity may need to be disconnected from time to time in order to allow AGD to supply the Goods and any such disconnection will be in consultation with the Client where possible.
- 9.6 Any advice, recommendation, information, assistance, or service provided by AGD in relation to the Goods or Services supplied (including, but not limited to, specific instructions in regard to storage, application or use of the Goods) is given in good faith to the Client, or the Client's agent and is based on AGD's own knowledge and experience and shall be accepted without liability on the part of AGD. Where such advice

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- or recommendations are not acted upon then AGD shall require the Client or their agent to authorise commencement of the Services in writing. AGD shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 9.7 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), AGD reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then AGD shall be entitled to delay installation of the Goods until AGD is satisfied that it is safe for the installation to proceed.
- 9.8 The Client acknowledges that AGD is only responsible for parts that are replaced by AGD, and in the event that other parts, subsequently fail, the Client agrees to indemnify AGD against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 10. Site Access and Condition**
- 10.1 AGD is not responsible for the removal of rubbish from or clean-up of the building/construction site/s. All rubbish generated by AGD will be placed in a designated area appointed by the Client but the responsibility of removal of same is the Client or the Client's agent, unless otherwise agreed.
- 10.2 It shall be the Client's responsibility to:
- (a) have all areas clean and clear to enable scheduled Services to be completed in accordance with the schedule of installation;
 - (b) arrange for any traffic management that may be required during the course of the Services;
 - (c) ensure that:
 - (i) AGD has clear and free access to the site at all times to enable them to undertake the Services. AGD shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of AGD; and
 - (ii) such access (including, but not limited to, any driveways and/or ramps etc) is suitable to accept the weight of laden trucks, front end loaders or other equipment as may be deemed necessary by AGD.
 - (d) provide AGD, while at the site, with adequate access to available water, electricity, toilet and washing facilities as required and
 - (e) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between AGD and the Client, any additional costs will be invoiced to the Client as an extra.
- 10.3 Where AGD requires that Goods, tools etc. required for the Services be stored at the site, the Client shall supply AGD a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 11. Dial Before You Dig**
- Location of underground services by a licensed service locator is mandatory prior to commencement of any Services. "Dial Before You Dig" must be consulted and any potential underground services marked on the site. Whilst AGD will take all care to avoid damage to any underground services the Client agrees to indemnify AGD in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified. If the Client requests AGD to engage the service locator then this shall be in addition to the Price.
- 12. Compliance with Laws**
- 12.1 The Client and AGD shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Services.
- 12.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Building Products (Safety) Act 2017, in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 12.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 12.4 Where the Client has supplied materials for AGD to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their materials and the intended use and any faults inherent in those materials. However, if in AGD's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then AGD shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 7.2.
- 12.5 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
- 13. Title**
- 13.1 AGD and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid AGD all amounts owing to AGD; and
 - (b) the Client has met all of its other obligations to AGD.
- 13.2 Receipt by AGD 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.
- 13.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to AGD on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for AGD and must pay to AGD the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;

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- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for AGD and must pay or deliver the proceeds to AGD on demand;
- (d) the Client should not convert or process the Goods 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 AGD and must sell, dispose of or return the resulting product to AGD as it so directs;
- (e) the Client irrevocably authorises AGD to enter any premises where AGD believes the Goods are kept and recover possession of the Goods;
- (f) AGD may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of AGD; and
- (h) AGD may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 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 Goods that have previously been supplied and that will be supplied in the future by AGD to the Client, and the proceeds from such Goods.
- 14.3 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 AGD 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 14.3(a)(i) or 14.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, AGD 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 Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of AGD;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of AGD;
 - (e) immediately advise AGD of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 14.4 AGD 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.
- 14.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by AGD, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client must unconditionally ratify any actions taken by AGD under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15. Security and Charge

- 15.1 In consideration of AGD agreeing to supply the Goods and/or provide its Services and as acknowledged by AGD in accordance with any Acknowledgment Document the Client grants AGD a security interest by way of a floating charge (registerable by AGD pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, including but not limited to those set out in any Acknowledgment Document, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit AGD to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 15.2 The Client indemnifies AGD from and against all AGD's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AGD's rights under this clause.
- 15.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 13.1, 14.2 and 15.1 as applicable, is deemed insufficient by AGD to secure the repayment of monies owed by the Client to AGD, the Client hereby grants AGD a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money), in accordance with the Acknowledgement Document.

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

- 16.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify AGD in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow AGD to inspect the Goods.
- 16.2 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**).
- 16.3 AGD acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AGD makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. AGD's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Client is a consumer within the meaning of the CCA, AGD's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If AGD is required to replace the Goods under this clause or the CCA, but is unable to do so, AGD may refund any money the Client has paid for the Goods.
- 16.7 If the Client is not a consumer within the meaning of the CCA, AGD's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by AGD at AGD's sole discretion;
 - (b) limited to any warranty to which AGD is entitled, if AGD did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
 - (b) AGD has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, AGD 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 Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by AGD;
 - (e) fair wear and tear, any accident, or act of God.
- 16.10 AGD may in its absolute discretion accept non-defective Goods for return in which case AGD may require the Client to pay restocking and handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 16.11 Notwithstanding anything contained in this clause if AGD is required by a law to accept a return, then AGD will only accept a return on the conditions imposed by that law.
- 16.12 Subject to clause 16.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

17. Exclusions and Limitations

- 17.1 AGD relies on information provided by the Client, and information from regulatory agencies (if applicable). While an assessment of data reliability is made, AGD shall not be responsible or liable for errors in any data obtained from the Client or regulatory agencies, statements from the Client or third parties, or any matter outside the scope of this Contract to be provided by AGD.
- 17.2 AGD makes no representation that the site is suitable, or unsuitable, for any particular use, and make no representation that the site may be so lawfully used under planning law.
- 17.3 The Client acknowledges and accepts that the reports and/or drawings supplied by AGD shall be valid in their entirety for the period of this Contract. The Client agrees to indemnify AGD against any further costs incurred outside of this time frame (including but not limited to amendments to designs, and costs in Goods, materials and/or labour, etc.) in the event that there are any changes to provisions by statute, regulations and bylaws of government, local and other public authorities.

18. Confidentiality

- 18.1 The Client will treat as confidential all information provided to them in the quotation and this Contract, any schedules and/or annexures, or any additional terms.
- 18.2 The Client agrees that it or its employees, agents, directors, partners, shareholders or consultants shall not disclose to any person, any Confidential Information or documentation relating to AGD or the affairs of others which may have come to their knowledge as a result of this Contract or supply of the Goods and shall take all necessary precautions to prevent unauthorised access to such information or documentation.
- 18.3 All Confidential Information shall remain the property of AGD and shall be returned thereto upon the expiration or termination of this Contract.
- 18.4 The Client shall not divulge any information regarding the nature or progress of this Contract or give any publicity concerning the Goods except with the written consent of AGD.
- 18.5 The Client acknowledges that AGD shall be entitled (in addition to any entitlement to damages) to an injunction or other equitable relief with respect to any actual or threatened breach by the Client of this clause 18 and without the need on the part of AGD to prove any special damage.
- 18.6 The Client's obligations under this clause 18 shall not extend to:
- (a) information already in the public domain other than due to a breach of this Contract; or
 - (b) any disclosure required by law.

19. Intellectual Property

19.1 Warranties by the Client

- (a) The Client hereby acknowledges and accepts AGD's right, title and interest in and to AGD's Intellectual Property and the Client hereby agrees to take all reasonable steps to ensure the protection and continuance of that right, title and interest in or to the Intellectual Property and, without limiting the generality of the foregoing, the Client agrees as follows:
 - (i) not to represent itself as the owner or having any right, title or interest in AGD's Intellectual Property or any part thereof except as otherwise agreed to in writing by AGD;
 - (ii) not to use or allow the use of the Intellectual Property or any part thereof in a manner which is likely to lead to confusion or is contrary to or conflicts with or in any way damages the right, title or interest of AGD in the Intellectual Property;
 - (iii) to obtain AGD's prior written consent to any use of AGD's Intellectual Property other than for use under this Contract.

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19.2 *Indemnity by Client*

- (a) The Client indemnifies and will at all times keep AGD indemnified against any claim for or liability to pay compensation or damages and costs or expenses arising out of or in respect of any breach of any third party's Intellectual Property rights relating to the supply of Goods under this Contract.
- (b) The Client must immediately notify AGD of any claim, action, demand, liability, obligation, threat or notice of proceedings against the Client, relating to any Intellectual Property.

19.3 *Intellectual Property Rights and Ownership*

- (a) The Client acknowledges that all output produced directly or indirectly from the Goods, the subject of this Contract, including any pre-existing Intellectual Property rights required to complete and commission the Goods, shall become and remain the sole property and Intellectual Property of AGD and shall be freely available for AGD to use in its absolute discretion in any of its decision making processes or any of its subsequent projects or approvals or work, reporting requirements and/or as the basis for follow-on consultancies.
- (b) All such output shall be provided to AGD by the Client in such forms or formats as AGD shall reasonably require and without fetter or restriction by password or code or otherwise.
- (c) Each of the parties grants to the other party a non-exclusive, royalty free, non-transferrable licence to use pre-existing Intellectual Property for the sole purpose of supplying the Goods pursuant to this Contract ("Licence"). The parties agree and acknowledge that this Licence shall be revoked immediately upon the expiry of this Contract, or in the event that the Contract is otherwise terminated.

20. **Default and Consequences of Default**

20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at AGD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2 If the Client owes AGD any money, the Client shall indemnify AGD from and against all costs and disbursements:

- (a) incurred; and/or
- (b) which would be incurred and/or
- (c) for which by the Client would be liable;

in regard to legal costs on a solicitor and own client basis incurred in exercising AGD's rights under these terms and conditions, internal administration fees, AGD's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.

20.3 Further to any other rights or remedies AGD may have under this Contract, if a Client has made payment to AGD, 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 AGD under this clause 20 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.

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

- (a) any money payable to AGD becomes overdue, or in AGD'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 AGD;
- (c) the Client becomes insolvent, 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.

21. **Cancellation**

21.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("the Breaching Party") the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

21.2 If AGD, due to reasons beyond AGD's reasonable control, is unable to deliver any Goods and/or Services to the Client, AGD may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice AGD shall repay to the Client any money paid by the Client for the Goods and/or Services. AGD shall not be liable for any loss or damage whatsoever arising from such cancellation.

21.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 21.3, the Client will not be liable for the payment of any costs of AGD, except where a deposit is payable in accordance with clause 7.4. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.

21.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

22. **Termination**

22.1 Notwithstanding the provisions of clause 21.1 either party may terminate this Contract without penalty and with immediate effect by written notice to the other party if the other party:

- (a) commits a material breach of any of its obligations under this Contract, and if such breach is capable of remedy, defaulting party does not remedy the breach;
- (b) within five (5) business days after the date on which written notice of the breach is provided by the other party (or such other period as is agreed between the parties);
- (c) commits a fraudulent act or omission;
- (d) is the subject of any act under clause 20.4;
- (e) undergoes a Change in Control without other party's prior written approval; or
- (f) breaches the Warranties contained in clauses 19.1 and 19.2 of this Contract.

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- 22.2 If this Contract is terminated for any reason, then termination however caused does not affect any accrued rights or remedies in which the non-defaulting party possesses pursuant to the term of this Contract, at law or pursuant to any Relevant Legislation.
- 22.3 If a party terminates this Contract in accordance with clause 22.2 then the defaulting party is liable for and indemnifies the non-defaulting party against any loss of whatever nature incurred by the non-defaulting party.
- 23. Indemnity**
- 23.1 Both parties release and indemnify the other, and their servants and agents, from and against all claims, actions, proceedings, demands, liabilities and obligations (whether performed or unperformed), representations, acts, omissions, costs or expenses which they may incur or sustain, whatsoever which may be brought or made against them by any person in respect of or by reason of or arising out of:
- (a) any negligence or other wrongful act or omission of the other party or their employees or contractors or of any other person/s for whose acts or omissions the affected party is vicariously liable;
 - (b) any negligence or other wrongful act or omission of the other party's visitors, invitees or licensees;
 - (c) death, injury, loss of or damage to the other party, their staff or other employees, agents, contractors, sub-contractors, licensees, invitees or visitors; and
 - (d) any breach of this Contract by the other party; and
 - (e) furthermore, this indemnity extends to the supply of Goods by or on behalf of AGD.
- 23.2 These indemnities are not restricted, limited or waived by a provision of this Contract with regards to insurance or by any approval of insurance policies.
- 23.3 In so far as permitted by law, either party's liability to indemnify the other will be reduced proportionately to the extent that any negligent or reckless act or omission of that party, or the employees, agents or other contractors thereof contributed to the damages, cost, expense, loss or damage or actions, proceedings, claims or demands.
- 24. Force Majeure**
- 24.1 If a Force Majeure event affects AGD, or its employees, agents, sub-contractors, officers or such other third parties in which AGD is responsible for so as to preclude AGD partially or wholly from complying with its obligations pursuant to the terms of this Contract then:
- (a) as soon as reasonably practicable after that Force Majeure event arises, AGD must notify the Client of the Force Majeure event, stating specifically the obligations under the terms of the Contract in which AGD is precluded from performing together with the expected duration of the delay arising directly out of the Force Majeure event ("**Affected Obligation**");
 - (b) AGD's obligation to perform the obligations affected by the Force Majeure event will, be suspended for the duration of the actual delay arising out of the Force Majeure event; and
 - (c) the Client's obligation to perform any of its obligations, excluding the obligation to make payment on a particular date which are dependent on the Affected Obligation will be suspended until AGD resumes performance.
- 24.2 In the event of a Force Majeure event occurring, subject to AGD complying with its obligations as set out under this clause 24 and their obligations otherwise as set out in this Contract then this will not be treated as a breach of the Contract by AGD.
- 25. Privacy Policy**
- 25.1 All emails, documents, images, or other recorded information held or used by AGD is Personal Information, as defined and referred to in clause 25.3, and therefore considered Confidential Information. AGD acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). AGD acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by AGD that may result in serious harm to the Client, AGD will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to AGD in respect of Cookies where the Client utilises AGD's website to make enquiries. AGD agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to AGD when AGD sends an email to the Client, so AGD may collect and review that information ("collectively Personal Information")
- If the Client consents to AGD's use of Cookies on AGD's website and later wishes to withdraw that consent, the Client may manage and control AGD's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 25.3 The Client agrees that AGD may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 25.4 The Client consents to AGD being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 25.5 The Client agrees that personal credit information provided may be used and retained by AGD for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or

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- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 25.6 AGD may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 25.7 The information given to the CRB may include:
 - (a) Personal Information as outlined in 25.3 above;
 - (b) name of the credit provider and that AGD is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided AGD is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and AGD has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of AGD, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 25.8 The Client shall have the right to request (by e-mail) from AGD:
 - (a) a copy of the Personal Information about the Client retained by AGD and the right to request that AGD correct any incorrect Personal Information; and
 - (b) that AGD does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 25.9 AGD will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 25.10 The Client can make a privacy complaint by contacting AGD via e-mail. AGD will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

Other Applicable Legislation

- 25.11 At AGD's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Building and Construction Industry (Security of Payment) Act 2021 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act 2004 (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 25.12 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 25.11 (each as applicable), except to the extent permitted by the Act where applicable.

26. Service of Notices

- 26.1 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 facsimile 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.
- 26.2 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.

27. Trusts

- 27.1 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 or as an agent for a trust ("Trust") then whether or not AGD may have notice of the Trust, the Client covenants with AGD as follows:
 - (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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, the trustees and 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 during the term of the Contract without consent in writing of AGD (AGD 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 fund or trust property.

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28. General

- 28.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 28.2 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, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.3 These terms and conditions and any contract to which they apply shall be governed by the laws which state the Goods and/or Services were provided by AGD to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the Penrith Court in the state of New South Wales in which AGD has its principal place of business. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 28.4 AGD may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 28.5 The Client cannot licence or assign without the written approval of AGD.
- 28.6 AGD may elect to subcontract out any part of the Services 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 AGD's sub-contractors without the authority of AGD.
- 28.7 The Client agrees that AGD may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to 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 AGD to provide Goods to the Client.
- 28.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to AGD, once the parties agree that the Force Majeure event has ceased.
- 28.9 Both parties warrant that they have the power to enter 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.
- 28.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 28.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.
- 28.12 A provision of this Contract which can and is intended to operate after its conclusion will remain in full force and effect, which includes the obligations of the Client under clauses 18, 19 and 23 shall survive the termination or expiration of this Agreement.