

# General Terms and Conditions



The following conditions, provisions and terms (**Terms and Conditions**) govern the relationship between the Supplier and the Client in connection with any Contract or the supply of Goods or Services.

## 1. DEFINITIONS

- 1.1. **Agreement** means these Terms and Conditions, and any ancillary documentation provided to the Client by the Supplier in relation to the provision of Goods or Services, including *inter alia* an Engagement Notice.
- 1.2. **Business Day** means any day in the State of South Australia that is not:
  - 1.2.1. a Saturday or Sunday;
  - 1.2.2. a public holiday within the meaning of the *Holiday Act 1910* (SA); or
  - 1.2.3. a day between 23 December in any year and 10 January in the subsequent year.
- 1.3. **Commencement Date** means the commencement of the Services or Delivery of any Goods as set out in any Quote, or otherwise as agreed between the parties.
- 1.4. **Confidential Information** means all information (whether of a technical, industrial, engineering, scientific, business or financial nature or otherwise) whether written, oral or in electronic form which is disclosed by one party to the other in the course of this Agreement and the provision of the Goods and Services.
- 1.5. **Contract** means all contracts entered into between the Supplier and the Client concerning the provision of Goods or Services.
- 1.6. **Client** means the Client identified on any order form, quotation, work authorisation or other form as provided by the Supplier to the Client, including any person acting as agent or purporting to act as agent of the Client.
- 1.7. **Delivery** means:
  - 1.7.1. for Services the time at which the relevant invoice is issued for the Services; and
  - 1.7.2. for Goods, the time at which the Client takes possession of the Goods.
- 1.8. **Force Majeure Event** includes act of God, global pandemic, war, civil disturbance, riot, lightning, cyclone, earthquake, fire, storm, flood, explosion, governmental action and any other cause, event or circumstance which is not reasonably within the control of either the Supplier or the Client.
- 1.9. **Goods** means goods supplied by the Supplier to the Client, or ordered by the Client but not yet supplied, and includes goods described in these Terms and Conditions and on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which the Supplier may intend to register a security interest.
- 1.10. **IP Rights** includes copyrights patents, utility models, trademarks, service marks, design rights (whether registered or unregistered), design rights, proprietary information rights, scripts, tools, programs and all other similar proprietary rights that may exist anywhere in the world.
- 1.11. **Price** means:
  - 1.11.1. the cost of any Goods or Services as specifically agreed between the Supplier and the Client including, but not limited to the Price as noted in any Quote; or
  - 1.11.2. in the absence of any prior agreement, the amount set by the Supplier, which may be subject to change from time to time.
- 1.12. **Quote** means any order form, quotation, work authorisation or any another form of quotation as provided to the Client by the Supplier whether in hard copy or electronic form or other quotation as described in Clause 4.
- 1.13. **Services** means all services supplied by the Supplier to the Client and includes any advice or recommendations.
- 1.14. **Site** means any site where Goods or Services are to be provided pursuant to the terms of this Agreement, as reflected on any Quote issued by the Supplier, or otherwise as agreed upon by the parties.
- 1.15. **Supplier** means Always In It Pty Ltd T/A Riverland Tank and Drain Cleaners or any heir, executor, administrator, successor or assignee of the Supplier, or any related entity of the Supplier as defined in the *Corporations Act 2001* (Cth).
- 1.16. **Vendor** includes any individual, company or agent that provides Goods or Services to the Supplier.

## 2. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

- 2.1. The Client agrees and acknowledges that:
  - 2.1.1. these Terms and Conditions constitute a security agreement for the purposes of the PPSA;
  - 2.1.2. these Terms and Conditions create a security interest in all or any Goods supplied to the Client including all present and after-acquired Goods; and
  - 2.1.3. the Supplier may register, on the Personal Property Security Register (in any manner the Supplier considers appropriate), a Security Interest in all and any Goods supplied to the Client including all present and after-acquired Goods.
- 2.2. The Client and the Supplier agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on, the Supplier. The Client waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Supplier in respect of the Security Interest created by these Terms and Conditions.
- 2.3. The Client agrees to, at no cost to the Supplier, execute any documents, provide all relevant information and co-operate fully with the Supplier to ensure that the Supplier has a perfected Security Interest (including, if applicable, a Purchase Money Security Interest as defined in the PPSA) in any relevant Goods.
- 2.4. The Client warrants that it shall:
  - 2.4.1. not register a financing change statement in respect of a Security Interest without the prior written consent of the Supplier;
  - 2.4.2. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier; and
  - 2.4.3. immediately advise the Supplier of any material change in the Client's structure or management including any sale or disposition of any part of the business of the Client seven (7) days prior to any such change taking effect.
- 2.5. The Client agrees to indemnify, and on demand reimburse, the Supplier for all costs or expenses incurred by the Supplier in registering, maintaining or releasing any Security Interest or for any document costs in respect of any Security Interest.
- 2.6. Defined terms in this clause have the same meaning as given to them in the PPSA.

## 3. CHARGING RIGHTS

- 3.1. The Client hereby charges in favour of the Supplier the whole of its estate and interest in any lands and in any other assets, whether tangible or intangible, freehold or leasehold, in which it has any legal or beneficial interest, or in which it later acquires any such interest.
- 3.2. The Client consents to the lodging by the Supplier of any caveats or liens which note the Supplier's interest in or over any such land or other chargeable property.

## 4. TAXATION AND RELATED MATTERS

- 4.1. If any supply by the Supplier is subject to Goods and Services Tax (GST), the Client must, unless the

price expressly states that GST is included, pay the relevant GST amount in addition to the specified price.

- 4.2. The Client shall reimburse the Supplier for all taxes, excises, duties or other charges that the Supplier may be required to pay to any Government or Statutory authority (Local, State or Federal) upon Goods or Services or related to the sale, production, transportation or delivery of Goods or Services.

## 5. QUOTE

- 5.1. All Quotes are to be treated as estimates only and in accordance with clause 5.6 of these terms are subject to withdrawal, correction or alteration at any time before acceptance by the Client unless stated otherwise.
- 5.2. Subject to Clause 5.1 all Quotes supplied by the Supplier are valid for 30 days from the date the Quote is provided. If a Quote is not accepted by the Client within 30 days from the date that it is issued, it shall be withdrawn without further notice unless contrary intention is confirmed in writing by the Supplier, or unless otherwise stipulated on the Quote.
- 5.3. Any estimate or Quote does not constitute an offer by the Supplier and may be altered or withdrawn without notice until such time that the Quote becomes binding on the Supplier in accordance with clause 5.4 below.
- 5.4. A Quote will only become binding on the Supplier once the Client has notified the Supplier, in writing and subject to the Agreement, of its intention to accept the Quote.
- 5.5. The Supplier shall be provided with full access to any Site or any other access, information or material it requires in order to carry out a Quote (if required).
- 5.6. The Supplier shall be entitled to vary or withdraw any Quote previously provided to the Client if:
  - 5.6.1. the Client provides incomplete or inaccurate information preventing the Supplier from providing an accurate Quote;
  - 5.6.2. the Client varies the order in any way;
  - 5.6.3. the Supplier experiences delays in providing the Goods or Services by virtue of any action or inaction on the part of the Client where such delay is in excess of seven (7) days from the commencement date specified in the Quote or if no such date is specified, then seven (7) days from the date on which the Client accepts the Quote;
  - 5.6.4. at the Client's request, the Supplier agrees to provide additional Goods or Services at any time after acceptance of the Quote by the Client;
  - 5.6.5. subject to clause 7.5, the Supplier experiences price increases from any suppliers in acquiring any Goods or Services required in respect of providing the Goods or Services to the Client after the date on which the Quote is accepted by the Client;
  - 5.6.6. in such case that the Quote has been accepted by each of the Supplier and Client pursuant to this Agreement, with the consent of the Client, or otherwise in accordance with the Agreement; and
  - 5.6.7. in such case that the Quote has not been accepted by each of the Supplier and Client pursuant to this Agreement, where any cause beyond the Supplier's control necessitates withdrawal or variation thereof.

## 6. ACCEPTANCE OF ORDERS

- 6.1. All orders are accepted, and the Goods or Services will be supplied, only upon and subject to these Terms and Conditions.
- 6.2. Any order placed by the Client, whether orally or in writing, shall constitute an offer to contract upon these Terms and Conditions and no variation, whether contained in the Client's order or otherwise shall apply unless the same is accepted and agreed to in writing by an officer of the Supplier authorised to sign on its behalf.

## 7. PRICING

- 7.1. The Price charged shall be in accordance with the Supplier Schedule of Costs at the date the Services or Goods are supplied unless otherwise agreed in writing.
- 7.2. Pricing provided by the Supplier to the Client does not include GST. GST will be charged at the rate current at the time the service or goods are supplied and in accordance with clause 4.
- 7.3. Should there be any variation in details, sizes and quantities, delivery instructions or any other item or matter on which the Quote or invoice is based, the Supplier reserves the right to revise and amend the Price, and reissue the Client with a Quote accordingly.
- 7.4. Clerical errors in computations, typing or otherwise of catalogue, quotation, acceptance, offer, invoice, delivery docket, credit note of the Supplier shall be subject to correction.
- 7.5. In such case that, pursuant to clause 5.6.5, the Supplier experiences price increases from any Vendor in acquiring any Goods or Services, the parties acknowledge and agree that the corresponding Quote shall be increased by the actual variance, and the Client shall be solely responsible for payment of the same.

## 8. PROVISION OF GOODS AND SERVICES

- 8.1. The Supplier, and its employees, servants, agents and subcontractors shall be provided with full, complete and uninterrupted access, free from all obstructions to any Site, information or material it requires in order to carry out all works necessary to provide the Goods or Services. If Goods are kept at a premises not under the control of the Client, then the Client must obtain permission from the controller of the premises to comply with this clause 8.1. If the Supplier is unable to access the Site and complete the Services, the Supplier is entitled to charge the Client the relevant costs incurred in connection to the attempted Services. The Client warrants the Supplier that the ground surfaces traversed by the Supplier's vehicles or machines in order to perform the Services are suitable construction to prevent damage.
- 8.2. The Client will provide at its own expense, connection for electricity, internet and any other similar services required by the Supplier for installation of the Goods or provision of the Services.
- 8.3. Where the Supplier is directed by the Client to install Goods or perform Services at any Site, the Supplier will be under no liability or responsibility for any loss, damage or expense howsoever incurred by the Client as the result of:
  - 8.3.1. any failure or delay by the Supplier in performing any of its obligations under the contract due to any reason beyond the control of the Supplier; or
  - 8.3.2. any prohibitions or restrictions under any applicable statutes, by-laws or regulations.
- 8.4. The Supplier's obligation to supply the Goods or Services is subject always to the availability of labour, supply, materials, plant, equipment and services making up, or necessary for, the supply of the Goods or Services.
- 8.5. Dates specified in any Quote for delivery or completion of the Goods or Services are estimates only. The Supplier will use all reasonable endeavours to deliver the Goods or Services by dates specified in the Quote but does not warrant that such delivery date will be met where delivery is adversely impacted by matters outside of the Supplier's control.
- 8.6. The Client may not reject the Goods or Services on account of the Supplier's inability to comply with dates specified in any Quote.
- 8.7. At the conclusion or termination of the Agreement, or otherwise where the Supplier and the Client agree in writing that the Supplier will cease provision of the Goods or Services, the parties

- acknowledge and agree that the Supplier will have 30 Business Days to exit the Services.
9. **PAYMENT TERMS**
    - 9.1. If the Supplier extends credit to the Client, payment for all Goods sold or Services provided is to be within the payment terms shown on any invoice or Quote.
    - 9.2. The Supplier reserves the right to withdraw credit terms, cancel any discounted rates, apply or vary a credit limit at any time.
    - 9.3. If Delivery or collection of the Goods is delayed by the Client, the balance of the contract sum will be invoiced and payment will still be required within specified payment terms.
    - 9.4. Save as herein expressly provided above, all other invoices issued to the Client by the Supplier are payable net, not later than fourteen (14) days from the date of such invoice.
    - 9.5. A deposit (if or as specified on a Quote) may be required by the Supplier before any Goods or Services are provided or performed any such deposit may be non-refundable pursuant to the terms of these Terms and Conditions.
    - 9.6. If specified on a Quote, progress payments may be required before any Goods or Services are provided or performed. The requirement for progress payments will be in accordance with this Agreement, and any Quote.
    - 9.7. If payment is not received in accordance with these Terms and Conditions, provision of the Goods or Services will cease until such time that payment is received, and in such case that the Agreement has not been terminated pursuant to the terms herein, the date on which the provision of Goods or Services will be recommenced will be at the sole discretion of the Supplier.
    - 9.8. If payment has not been received in accordance with these terms within twenty-one (21) days from the date that the relevant invoice was due and payable, the Supplier may cease provision of the Services.
    - 9.9. Where payment by the Client to the Supplier is fully or partially overdue, the Supplier may enter the Client's property at any time and without notice to decommission the Goods, Services or any works carried out by the Supplier and the Supplier shall not be liable for any loss or damage to the Client's property, or loss of revenue in the course of such entry or decommissioning.
    - 9.10. If after commencement of the provision of Goods or Services the Supplier identifies a required variation to the scope of works reflected in any Quote or as otherwise agreed by the parties, the Supplier will provide notice to the Client accordingly as a matter of urgency (**Variation Notice**). The Variation Notice must provide, in sufficient detail so as to allow the Client to provide a considered response, the scope and estimated cost of the required variation (**Variation**).
    - 9.11. The Client must respond to a Variation Notice within no more than seven (7) Business Days from receipt of the same, advising whether it agrees to the proposed Variation. If the Client does not agree to the proposed variation within seven (7) Business Days from receipt of the Variation Notice, the Supplier or Client may suspend or terminate this Agreement.
    - 9.12. The Supplier may, its absolute discretion, seek and recover from the Client and the Client agrees to pay:
      - 9.12.1. interest on all overdue invoices at a rate of interest two percent (2%) per annum greater than the rate charged from time to time by the Commonwealth Banking Corporation on overdraft accounts, computed daily; and
      - 9.12.2. any costs, fees or expenses incurred in collecting or attempting to collect any amounts that are not paid by the Client by the due date or costs, fees or expenses incurred by the Supplier in exercising any other rights, powers or remedies, including but not limited to debt collection agency's expenses and solicitor's fees on a full indemnity basis.
    - 9.13. Amounts received by the Supplier may be applied first against interest, charges and expenses before being applied to any outstanding invoices.
    - 9.14. The Client shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Supplier) for all costs incurred as a result of any cheque or electronic banking transaction being dishonoured for whatever reason.
    - 9.15. If the Client has provided direct debit details to the Supplier, it consents and agrees to the Supplier using those direct debit details to pay any accounts including those accounts that have been outstanding for more than 14 days.
  10. **DEFECTS**
    - 10.1. The Client acknowledges and agrees that:
      - 10.1.1. if the Client fails to give the Supplier notice of any non-complying aspect of, or defects in, the Goods or Services within seven (7) Business Days of Delivery as concerns a patent defect, or 30 Business Days of Delivery as concerns a latent defect, the Supplier will be deemed to have fully discharged its obligations under these Terms and Conditions;
      - 10.1.2. the Supplier will, upon being deemed to have fully discharged its obligations under these Terms and Conditions, be and from any and all liability in respect of the Goods or Services supplied save for the continuing operation of any warranty expressly given under these Terms and Conditions;
      - 10.1.3. the Supplier shall not be liable to compensate the Client for any delay in rectifying any fault in the Goods or Services or in properly assessing the Client's claim; and
      - 10.1.4. the Supplier is not liable to compensate the Client where the defect or damage is caused by or arises through:
        - 10.1.4.1. a failure on the part of the Client to follow any instructions or guidelines provided by the Supplier or a third party; or
        - 10.1.4.2. the continued use of any Goods or Services after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user.
    - 10.2. The Client may not assert any right of set off, counterclaim or abatement in respect of alleged defects concerning the Goods or Services.
    - 10.3. If the Client notifies the Supplier of any defect within the time specified in clause 10.1 then, all goods must be returned to the Supplier or its authorised representative for inspection or testing to assess if a defect exists and a claim is justified. It is the responsibility of the Client to return any Goods for inspection and all freight costs are the responsibility of the Client.
    - 10.4. Goods returned under warranty for repair or testing will incur a charge to be fixed by the Supplier if no fault is found.
    - 10.5. The Client shall bear freight charges for returning the Goods for inspection and for the delivery of any replacement or repaired product from a justified warranty claim.
  11. **GENERAL WARRANTIES, PRODUCT WARRANTIES, INDEMNITIES & LIMITATION OF LIABILITY**
    - 11.1. The Supplier warrants that Goods or Services supplied will be of acceptable quality and that the Services shall be performed with due care and skill, however makes no warranty that the Goods or Services are fit for a particular purpose.
    - 11.2. The Goods and Services are provided with consumer guarantees as set out in the Australian Consumer Law.
    - 11.3. For goods not manufactured by the Supplier, the Client shall have only the benefit of the Manufacturer's warranty.
    - 11.4. The Supplier is not responsible for changes, repairs or alterations made to any Goods or Services by any other parties which may have an adverse effect to any of the Goods or Services provided by the Supplier. The Client must strictly not perform or allow other parties to perform any alterations (including the affixing of any signs) to the Goods without express authorisation to do so from the Supplier, and in such case subject to any conditions or requirements as may be imposed by the Supplier at its sole discretion.
    - 11.5. The Supplier shall not be liable for any failure of the Client to fix, install, erect, or maintain the Goods in accordance with any advice, recommendation, specification, information, assistance or service provided by the Supplier in relation to the Goods.
  - 11.6. All other warranties, liabilities and obligations imposed under statute are expressly excluded but only to the extent that this exclusion does not contravene the Australian Consumer Law or cause any part of these Terms and Conditions to be void.
  - 11.7. Subject to the terms of this Agreement, and applicable Australian legislation, the Supplier's liability in respect of Goods or Services is limited to:
    - 11.7.1. supplying the Goods or Services again;
    - 11.7.2. the cost of having the Goods or Services supplied again, whichever the Supplier elects to do in its absolute discretion; or
    - 11.7.3. where the defect relates to Goods not manufactured by the Supplier, in accordance with Clause 11.3 above.
  - 11.8. To the maximum extent permitted by law:
    - 11.8.1. the Supplier will not be liable to the Client or any other person or third party in respect of any consequential or other loss or damage (including loss of profit, loss of income, loss of rental, loss of production, loss of actual or potential business opportunity or loss to reputation or any penalty that may be imposed on the Client) arising directly or indirectly from the performance or non-performance of the Goods or Services, their use or misuse, or provision of the Goods or Services under these Terms and Conditions;
    - 11.8.2. subject to the provisions of this Agreement, the Client is responsible for any loss or damage to the Goods including but not limited to:
      - 11.8.2.1. theft of the Goods or any part of them;
      - 11.8.2.2. during transportation (unless the transport is provided by the Supplier at the request of and paid for by the Client);
      - 11.8.2.3. resulting from overloading, exceeding rate capacity, misuse, graffiti, vandalism or abuse;
      - 11.8.2.4. resulting from improper or insufficient installation including failure to properly secure the Goods to the ground;
      - 11.8.2.5. malicious or wilful damage;
      - 11.8.2.6. any loss or disappearance without evidence of theft;
      - 11.8.2.7. any loss or damage resulting directly or indirectly by water from action of the sea, tidal wave or high water such as flooding or any significant spillage;
      - 11.8.2.8. any loss or damage caused by erosion, subsidence, landslide or any other movement of the earth;
      - 11.8.2.9. misappropriation or wrongful conversion of the Goods by any person;
      - 11.8.2.10. any loss or damage resulting from any act or omission of the Client, or the Client's employees or agents; and
      - 11.8.2.11. use or operation of Goods or Services in violation of this Agreement.
    - 11.8.3. the Supplier's liability arising out of or in connection with these Terms and Conditions whether under the law of contract, in tort, in equity under statute or otherwise shall be limited in aggregate to an amount equal to the Price of the Goods or Services payable by the Client;
    - 11.8.4. the Supplier shall strictly not be liable for any loss or damage, including any consequential loss or damage, arising from any environmental issues caused by any waste treatment or spillage or from the weights and nature of operating heavy machinery and vehicles required to provide Goods and Services;
    - 11.8.5. the Supplier shall not be liable to the Client for any statements, representations, guarantees, conditions or warranties not expressly contained in these Terms and Conditions; and
    - 11.8.6. the Client warrants that all Goods or Services supplied to the Client are for commercial purposes only and, accordingly, the provisions of the National Credit Code will not apply.
  - 11.9. The Client agrees to indemnify and forever hold harmless the Supplier, its employees, directors, heirs and assigns against all liability, loss, damage, harm and expense of any nature, including legal fees, arising directly or indirectly in connection with the Goods or Services, subject to the terms of the Agreement or as otherwise agreed upon by the parties in writing.
  - 11.10. The Client warrants that it will not solicit work from, or otherwise consult with, any the Supplier employee, agent or personnel independently of the Supplier unless otherwise agreed upon by the parties in writing.
  - 11.11. For the avoidance of doubt any warranty whether arising pursuant to these Term and Conditions or any statute will not apply in the following circumstances:
    - 11.11.1. if the Goods or any product provided by the Supplier has been used in a manner beyond its design parameters;
    - 11.11.2. if any Good or product is altered, tampered with or repaired by personnel not authorised by the Supplier;
    - 11.11.3. if loss or damage is caused by rough treatment; or
    - 11.11.4. if the Goods, Services or any product provided by the Supplier is not used and maintained in accordance with the Supplier's or the Manufacturer's instructions.
12. **INTELLECTUAL PROPERTY RIGHTS**
  - 12.1. Unless disclosure is required by law, the parties agree to keep confidential, the Confidential Information of the other.
  - 12.2. The parties acknowledge and agree that each of the Supplier and the Client shall retain title and all IP Rights in any pre-existing intellectual property which is submitted to the other party for the performance of the Services, or otherwise in connection with the terms of this Agreement.
  - 12.3. Nothing in this Agreement will transfer ownership to the Client of any intellectual property, confidential information or IP Rights.
  - 12.4. For all Intellectual Property provided to the Supplier in the provision of Services, the Client hereby warrants:
    - 12.4.1. they own the intellectual property rights in that content;
    - 12.4.2. that content does not infringe the intellectual property rights of a third party;
    - 12.4.3. that content is not fraudulent, stolen, or otherwise unlawful; and
    - 12.4.4. that content does not violate any applicable law, statute, ordinance or regulation (including but not limited to, those governing export control, consumer protection, unfair competition, or criminal law).
13. **RETENTION OF TITLE**
  - 13.1. The Supplier and the Client agree that title to the Goods remain vested in the Supplier and shall not pass to the Client until the Client has paid all monies owing to the Supplier by the Client for the particular Goods and the cost of installation in addition to any interest, fees, collection, repossession or legal costs incurred.
  - 13.2. The Supplier shall retain an equitable interest in the Goods, whether separate or co-mingled or accessioned, which shall be stored in such a manner as to be clearly identifiable as the property of the Supplier, until title has passed to the Client and further, upon re-sale of the Goods by the Client, the Supplier shall have the right to trace any proceeds of sale to the extent that they relate to its Goods.
  - 13.3. If payment has not been received, the Client will transfer to the Supplier all of its rights in respect of the sale price.
  - 13.4. The Supplier may demand at any time until title has passed to the Client that the Client, at the Client's cost, return the Goods or any part of them.
  - 13.5. In the event that the Client defaults in the payment of money owing, the Supplier and its employees or agents shall have the right to enter, upon the provision of reasonable notice, the Client's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Client shall grant reasonable access rights and the Supplier, its employees or agents shall

- be entitled to do all things required to secure repossession.
- 13.6. The Client agrees and acknowledges that it is only a bailee of the Goods and until such time as the Supplier has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount owed to the Supplier for the Goods, on trust for the Supplier.
  - 13.7. Until title passes to the Client, the Client will not encumber, transfer, assign or otherwise deal with the Goods in any way, without the Supplier's express consent.
  - 13.8. Until title passes to the Client, the Client acknowledges that these conditions create, in the Supplier's favour, a Purchase Money Security Interest in the Goods and any proceeds of their sale which the Supplier may register on the Personal Property Security Register.
  - 13.9. The provisions of this clause 13 which relate to the transfer of title of any Goods apply only insofar as the provision of Goods is for the sale, rather than hire, rental or licence.
- 14. DELIVERY AND RISK**
- 14.1. Notwithstanding clause 13 above, the risk for the Goods supplied shall pass to the Client upon Delivery unless otherwise agreed in writing by the Supplier.
  - 14.2. If any of the Goods are damaged or destroyed prior to the title in them passing to the Client, the Supplier is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable to the Client for the Goods. The production of these Terms and Conditions by the Supplier will be sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any insurer or other third party acting on behalf of the insurer to make further enquiries.
  - 14.3. Where the Client has requested special delivery arrangements or that the Supplier arrange the carrier and prepay and charge freight, risk in respect of Goods shall pass to the Client upon the goods leaving the premises of the Supplier. The Supplier will not in any circumstances accept liability for damage, shortage or loss during transit.
  - 14.4. In the circumstances described above in clause 14.3 the Client is to insure the Goods or Service and where possible note the Supplier as an interested party.
- 15. CANCELLATION, CANCELLATION DUE TO CLIENT'S DEFAULT, RETURNS AND REFUNDS**
- 15.1. The Supplier may cancel the delivery of Goods or Services at any time before Delivery by giving notice to the Client by any means where delivery of Goods or Services is prevented, or substantially inhibited, by any event outside of the Supplier's control, including *inter alia* any Force Majeure Event.
  - 15.2. The Supplier shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation referred to above in Clause 15.1.
  - 15.3. In the event that the Client cancels delivery of Goods or Services, the Client shall be liable for any costs incurred by the Supplier up to the time of the cancellation including, but not limited to, any costs incurred by the Supplier.
  - 15.4. Any request by the Client for cancellation of an order or Quote must be in writing by facsimile, e-mail or post.
  - 15.5. Where the Supplier agrees in writing to accept Goods for return, the Supplier may at its sole discretion charge (or retain, as concerns any funds already paid to the Supplier by the Client pursuant to the terms of this Agreement) actual costs incurred in the cancellation of the Goods or Services, and return of the same to the Supplier.
  - 15.6. Non-stock and specially manufactured items are non-returnable, and any amount paid for any such items is non-refundable.
  - 15.7. The Supplier shall also have, without prejudice to any further or other claims or rights which the Supplier may have, the right to immediately cancel any uncompleted order or to cancel or suspend provision of Goods or Services, immediately demand payment for any Goods or Services already provided already upon any of the following events taking place:
    - 15.7.1. if the Client is an individual or a sole trader, the Client commits an act of bankruptcy, insolvency, goes into administration, has a liquidator, manager or receiver appointed, or the Client has judgment signed against them (a **default event**);
    - 15.7.2. a default event occurs in respect of any director of a Client that is trading as a company or any resolution or petition to wind up the Client is passed or presented, other than for the purposes of a scheme of reconstruction or amalgamation (previously approved in writing by the Supplier);
    - 15.7.3. a default event occurs in respect of any Client which is an incorporated body or any resolution or petition to wind up the Client is passed or presented, other than for the purposes of a scheme of reconstruction or amalgamation (previously approved in writing by the Supplier);
    - 15.7.4. a default event occurs in respect of any partner of a Client that is trading as a partnership; or
    - 15.7.5. if prior to the delivery of the Goods or commencement of the Services, it becomes apparent to the Supplier acting reasonably that the Client does not meet the credit worthiness requirements.
- 16. CLIENT OBLIGATIONS, ACKNOWLEDGEMENTS AND AUTHORISATIONS**
- 16.1. The Client will provide the Supplier with reasonable direct access to the any Site, and to any Goods, and shall provide such other reasonable assistance as the Supplier may request, to enable the Supplier to comply with its obligations under these Terms and Conditions and in relation to the provision of Goods or Services.
  - 16.2. The Client shall, at its own expense maintain the Goods in good and reasonable condition (fair wear and tear excepted) and where applicable return the Goods in good order and repair to the Supplier depot on termination of this Agreement. If the Goods are not returned in the condition described, the Client shall pay the Supplier reasonable costs of rectification.
  - 16.3. The Client will ensure that all Sites onto which Goods are to be placed or installed:
    - 16.3.1. are free from all obstructions for both delivery and pickup;
    - 16.3.2. are prepared, level, compacted and accessible;
    - 16.3.3. are clearly pegged or marked as to the proposed position of the Goods;
    - 16.3.4. have all necessary services available for connection, including power service from main board to load centre within the Goods, water supply service from main supply to connection point on the Goods, and sewer and waste service from mains or septic system to under-floor outlets.
  - 16.4. The Client acknowledges and agrees to:
    - 16.4.1. obtain all necessary local government or statutory body approvals and ensure that all relevant fees are paid including for any permits, engineering services, drawings or other documents;
    - 16.4.2. take all reasonable steps to ensure the relevant forms and declarations required under environmental laws are completed to allow the Supplier to comply with those requirements and where the Client has not completed all necessary forms and declarations, the Supplier may complete these for the Client for an agreed fee;
    - 16.4.3. allow the Supplier to sub-contract all or part of the Services or the performance of Supplier's obligations under these terms and conditions at any time;
    - 16.4.4. warrant the Supplier that the waste materials to be handled by the Supplier corresponds to the description set out and is compliant with all transport regulations and guidelines including applicable Australia Dangerous Goods Codes;
    - 16.4.5. warrant to the Supplier that any waste materials to be collected and/or disposed of by the Supplier as part of the Services corresponds to the waste type and/or description set out in the Quote; is waste generated by the Client; is what the client discloses to the Supplier it is; where the waste is packaged waste, is in appropriately labelled sealed containers;
    - 16.4.6. warrant and accept that any waste which is not compliant with these terms and conditions is to remain the property of the Client and the Client is to retain all liability for waste materials excluded from or not compliant with this Agreement and indemnify, defend and hold the Supplier harmless against all liabilities, loss, damage and claims arising out of the breach of this clause. The Client agrees that any waste that does not comply with this clause or these terms and conditions may incur additional fees and the Supplier may refuse to handle, collect or remove the materials at their discretion; and
  - 16.4.7. accept that all waste which is compliant with these terms and conditions will at the absolute discretion of the Supplier becomes the property of the Supplier.
- 16.5. The Client acknowledges that subject to any contrary term of the Agreement, no refunds are available once Goods have been Delivered or work has commenced on the Services. Requests for refunds will require management review and be at the sole discretion of the Supplier.
  - 16.6. The Client acknowledges that excepting as provided by law this agreement does not entitle the Client to demand any Site inspection or Service of the Goods supplied, delivered and installed (if applicable) by the Supplier.
  - 16.7. Unless otherwise agreed to in writing by the Supplier and notwithstanding any terms appearing in documentation provided by or on behalf of the Client these Terms and Conditions shall be incorporated as express terms and conditions into all Contracts by the Supplier to supply the Client with Goods or Services.
  - 16.8. The Client authorises the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Client. If asked to provide personal credit, to use a credit report containing information about the Client's commercial activities or commercial creditworthiness from a business which provides information about the commercial creditworthiness of a person. The Client authorises the Supplier to give to and receive from any credit providers named overleaf or that may be named in a credit report issued by a credit reporting agency, information in the Supplier's possession or other credit provider's possession about the Client's creditworthiness, credit standing, credit history and credit capacity. The Client understands the information may be used to: (a) assess an application for credit by the Client; (b) assist the Supplier in avoiding default on the Client's credit obligations; (c) notify other credit providers of a default by the Client; and (d) assess the Client's credit worthiness.
  - 16.9. The Client understands that *Privacy Act 1988* (Cth) (as amended from time to time) may allow the Supplier to give a credit reporting agency certain personal information about the Client. The information which may be given to an agency includes particulars to identify the Client; the fact that the Client has applied for credit and the amount; the fact that the Supplier is a credit provider to the Client; payments which become overdue more than 60 days; advice that payments are no longer overdue; cheques of \$100.00 or more drawn by the Client which a bank has dishonoured more than once in specified circumstances; that in the opinion of the Supplier the Client has committed a serious credit infringement; that the credit provided to the Client by the Supplier has been discharged.
  - 16.10. The Client is solely responsible for advising the Supplier of any authority, access, clearance or licence which the Supplier is required to maintain for the provision of Goods or Services pursuant to any rule, regulation or internal policy of the Client.
  - 16.11. If the Agreement is terminated early for any reason, then the Client acknowledges and agrees that it is responsible for payment all costs and expenses reasonably incurred by the Supplier in "making safe" any Site where Goods or Services were provided pursuant to the Agreement. For the purposes of the Agreement, making safe includes:
    - 16.11.1. removing any plant and equipment utilised by the Supplier in the provision of Goods and Services;
    - 16.11.2. filling any holes or trenches; or
    - 16.11.3. removal of salvageable items, objects or materials for which ownership has passed to the Supplier pursuant to the terms of the Agreement.
- 17. ENFORCEMENT**
- 17.1. Where the Client fails to comply with the terms of this Agreement, or otherwise where the Client notifies the Supplier by way of writing that it wishes to cease the provision of Goods or Services, the Client provides and enduring and irrevocable authority for the Supplier, or any agent or nominee of the Supplier, to enter onto any premises where the Goods are located, or where the Services are being provided, to reclaim all Goods, plant and equipment owned by the Supplier.
- 18. THIRD-PARTY PRODUCTS**
- 18.1. Where the Client has requested that third-party goods be included in the sale, the Supplier takes no responsibility for the warranty and on-going support of those products unless otherwise agreed upon in writing. Such ongoing support and warranty provision is wholly between the Client and the nominated product supplier.
  - 18.2. The Supplier, at its sole discretion, may provide technical assistance to the Client. Such assistance would be chargeable at the Supplier's standard hourly rate for technical services.
- 19. NORMAL WORKING HOURS**
- 19.1. The Price is based on the work being carried out between 7:30 am to 4:30 pm on Mondays to Fridays, excluding days off provided for by any relevant Industrial Award or Agreement including Public Holidays, Picnic Days, Site Allowances and Rostered Days Off. Any work required by the Client to be carried out outside those ordinary business hours may be charged for applicable penalty rates.
- 20. SUB-CONTRACTING**
- 20.1. The Supplier reserves the right to sub-contract the manufacture or supply of any part of the Goods quoted or of any materials or Services to be supplied.
- 21. SEVERABILITY**
- 21.1. If any provision of these Terms and Conditions is held to be unenforceable, or invalid, for any reason, then that provision is deemed to be modified to the extent required to remedy the unenforceability or invalidity or if it is not possible to remedy the unenforceability or invalidity, that provision is to be severed from these Terms and Conditions and these Terms and Conditions will otherwise remain in full force.
- 22. JURISDICTION**
- 22.1. Any Contract, Goods or Services, the provision of which is subject to these Terms and Conditions, shall be subject to the exclusive Jurisdiction of the laws of the State of South Australia, Australia. The parties submit all disputes arising between them to the courts in the State of South Australia and in any court in the said state competent to hear appeals from those courts of first instance.
- 23. ENTIRE CONTRACT**
- 23.1. These Terms and Conditions and the Engagement Notice completed by the Client together constitute the entire agreement between the parties regarding the use of or purchase of any Goods or Services and supersedes all previous negotiations, commitments and agreements about Goods or Services.