

# Vemco Group

## Terms & Conditions of Trade



### 1. DEFINITIONS

- 1.1 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.2 "Company" shall mean Vemco Group which is a licensed trademark for VEMTEC Pty Ltd. and its successors, assigns and subsidiaries.
- 1.3 "Goods" shall mean goods supplied by the Company to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.4 "Guarantor" means that person (or persons), or entity who agrees herein to be liable of the debts of the Client on a principal debtor basis.
- 1.5 "Price" shall mean the cost of the Goods as agreed between the Company and the Client subject to clause 4 of this contract.
- 1.6 "Services" shall mean all services supplied by the Company to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Works or Goods as defined).
- 1.7 "Taken Over" shall mean the act taken by the Client in assuming responsibility for the Works in accordance with Clause 8.
- 1.8 "Works" shall mean the whole or any part of the work to be executed by the Company in accordance with the Contract, including any variations (and where the context so permits shall include any supply of Goods or Services as hereinafter defined).

### 2. ACCEPTANCE

- 2.1 Any instructions received by the Company from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions, or with a written consent of the Manager, or the duly authorised representative of the Company.
- 2.4 None of the Company's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Manager, or the duly authorised representative, of the Company in writing nor is the Company bound by any such unauthorised statements.
- 2.5 The Client undertakes to give the Company not less the fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business telephone number).

### 3. GOODS

- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Company to the Client.

### 4. PRICE AND PAYMENT

- 4.1 At the Company's sole discretion:
  - (a) The Price shall be as indicated on invoices provided by the Company to the Client in respect of Goods supplied; or
  - (b) The Price of the Goods shall (subject to clause 4.2 and 4.3) be the Company's quoted Price which shall be binding upon the Company provided that the Client shall accept in writing the Company's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications available at the time of the Company issuing the quoted Price will be charged in accordance with the Company's standard terms of payment on the basis of the Company's quotation and will be invoiced separately.
- 4.3 The Company may, by giving seven (7) days notice to the Client, increase the Price of the Goods to reflect any increase in the cost to the Company beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, taxes and duties, provisions of any Acts, By-Law, Order or Regulation of any parliament, municipality or local authority enacted after the date of contract between the Client and the Company).

- 4.4 At the Company's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due thirty (14) days following the date of the invoice.
- 4.6 The Company may submit a detailed payment claim at intervals as per the contract agreement for work performed up to the end of each interval. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered but not installed. Should the contract agreement for work not nominate any specific interval, monthly payment claims shall be issued.
- 4.7 Payment will be made by E.F.T., or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed between the Client and the Company.
- 4.8 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Company.
- 4.9 Should any errors and/or omissions be discovered during validity period, the Company reserves the right to adjust the tender price.

### 5. DELIVERY

- 5.1 Unless otherwise agreed in writing, delivery of the Goods shall be made to the Client's site address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Company for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.
- 5.3 The costs of carriage and any insurance which the Client reasonably directs the Company to incur shall be reimbursed by the Client (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Client's agent.
- 5.4 The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
- 5.5 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:
  - (a) such discrepancy in quantity shall not exceed 5%; and
  - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.6 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any part thereof) promptly or at all.
- 5.8 In the event that anything which the Company is obliged to do or provide under this contract may be delayed and such delay becomes apparent, the Company will give notice in writing to the Client of the extent of the likely delay. If the delay is caused by any of the following then the Company shall be entitled to an extension of time for completion:
  - (a) events occurring on or before the completion of the Works which are beyond the reasonable control of the Company (including, but not limited to, industrial conditions and inclement weather); or
  - (b) delays caused by the Client or the Client's employees, consultants and other contractors or agents; or
  - (c) delays by municipal, public or statutory authorities; or
  - (d) any breach of the Contract by the Client; or
  - (e) changes in the law; or
  - (f) any variations.

### 6. SITE

- 6.1 Where the Company will require access to the Client's premises to perform its obligations under the contract, the Client shall give reasonable, continuous and safe access to the Site. If reasonable, continuous and safe access to the Site is not provided, the Company may elect to terminate the Contract.
- 6.2 If the conditions at the Site differ from what the Company ought to have reasonably anticipated, the parties are to agree the costs incurred by the Company because of the different conditions.
- 6.3 The Client warrants that it has in place and will keep current and will not vitiate or render void or voidable a public liability insurance policy. At the request of the Company, the Client must produce evidence of the insurance affected and maintained.
- 6.4 Unless otherwise specified, the scope of works does not cover the removal by mechanical means or blasting of Rock and Reef or Hazardous or Contaminated Materials which may be encountered in the course of excavation. Should this eventuate an additional charge (per cubic metre actually removed) shall be made.
- 6.5 Unless specifically noted in our letter of offer, no allowance has been made within our tender for any site allowance or over award payments that may have been agreed by others to form specific site agreements.
- 6.6 We wish to advise that unless noted in writing, no allowance has been made within our tender for the costs of preliminary items as detailed below and will require these items to be supplied and maintained by others at no cost to Vemco Group.
- Electricity to the work site
  - Water
  - Scaffolding
  - Toilet amenities
  - Shower facilities
  - Temporary safety barriers
  - Traffic management
  - Cranage
  - Dewatering
  - Telephone line to site
  - Road access to site
  - Vegetation removal
  - Cleaning and rubbish removal
- 6.7 Our tender is based upon the Client obtaining Environmental Protection Authority, Department of Natural Resources and local Council approval (if applicable).

### 7. RISK

- 7.1 All risk for the Goods passes to the Client on delivery, irrespective of whether the Company retains ownership of the Goods.
- 7.2 If any of the Goods are damaged or destroyed prior to property in them passing to the Client, the Company is entitled, without prejudice to any of its other rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

### 8. TIME OF TAKING OVER

- 8.1 Where erection, installation, or similar is included in the Works or Services purchased from the Company, the Works shall be deemed to be Taken Over by the Client when the Works have been physically completed or installation is ready to be put in service, or site tests completed when these are included or one calendar month after the Works shall have been put into commercial use (whichever may be the earlier).
- 8.2 The time of Taking Over shall not be delayed due to minor omissions, or defects or additions to the scope of works, which do not materially affect the commercial use of the plant as intended in the scope of works.

### 9. DEFECT / RETURNS

- 9.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 9.2 For defective Goods, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods provided that:
- (a) the Client has complied with the provisions of Clause 7.1;
  - (b) the Goods are returned at the Client's cost within seven (7) days of the delivery date;
  - (c) the Company will not be liable for Goods which have not been stored or used in a proper manner.

### 10. WARRANTY

- 10.1 Unless otherwise stipulated in a separate warranty certificate, subject to the conditions of warranty set out in Clause 9.2 the Company warrants that if any defect in any workmanship manufactured by the Company becomes apparent and is reported to the Company within twelve (12) months of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) repair the defect or replace the workmanship.
- 10.2 The conditions applicable to the warranty given by Clause 9.1 are:
- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - i. Failure on the part of the Client to properly maintain any Goods; or
    - ii. Failure on the part of the Client to follow any instructions or guidelines provided by the Company; or
    - iii. Any use of any Goods otherwise than for any application specified on a quote or order form; or
    - iv. The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - v. Fair wear and tear, any accident or act of God.
  - (b) The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.
  - (c) In respect of all claims the Company shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.
- 10.3 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall be under no liability whatsoever, except for the express conditions as detailed and stipulated in the manufacturers warranty.
- 10.4 In the case of second-hand Goods, the Client acknowledges that it has had full opportunity to inspect the same and that it accepts the same with all faults and that no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however so arising.

### 11. THE COMMONWEALTH TRADE PRACTICES ACT 1974 AND FAIR TRADING ACTS

- 11.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts.

## 12. LIMITATION OF LIABILITY

12.1 Subject to Clause 11 of these items, but notwithstanding anything else express or implied in these terms, the Company shall not be liable to the Client or the Client's servants, employees, agents and/or contractors for any injury to persons or damage to property or for any special, indirect or consequential, incidental, punitive or exemplary loss or damage whatsoever including but not limited to loss of profits, loss of use, loss of power, costs of capital or costs of replacement power arising in any way, whether directly or indirectly and whether as a result of negligence on the part of the Company or its servants, employees, agents and contractors or otherwise arising out of or resulting from, whether directly or indirectly, the use of the Goods or Services except in the case where the Client is a "consumer" for the purposes of the Trade Practices Act 1974, in which case the Company's liability shall be limited to and may be fully discharged by, at the Company's sole discretion, the replacement of Goods, rectification of Works or a refund of all payments made under the relevant contact.

12.2 Where agreed to in writing the Company is prepared to accept to a maximum of five percent (5%) of the contract / sub contract sum. In no event, the Company shall be liable under this contract agreement for any injury to persons or damage to property or for any special, indirect or consequential, incidental, punitive or exemplary loss or damage whatsoever, including but not limited to loss of profit, loss of use, loss of power, cost of capital or cost of replacement power arising in any way as detailed in Clause 12.1.

## 13. INTELLECTUAL PROPERTY

13.1 Where the Company has designed or drafted Works or Goods for the Client, the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Client at the Company's discretion.

13.2 The Client warrants that it holds all necessary intellectual property rights in any document or material, (including, but not limited to, plans and drawings), that are supplied to the Company for its provision of Goods and Services and that there is or will be no infringement of any rights or entitlements held by any third party.

13.3 The Client indemnifies and holds harmless the Company for any claims made against it arising from the Company's use of any drawing, design or any other document, material or information supplied by the Client.

13.4 Information which is disclosed communicated or delivered to a party pursuant to this Contract which is marked or otherwise identified as confidential, is to be regarded as confidential and shall not be disclosed to a third party except with the prior agreement of the other party to the Contract.

13.5 The technical, pricing and other information contained in this tender submission is proprietary to the Company. (The Company which expression shall extend to include any related corporation, its contractors and agents) is confidential, trade sensitive and is submitted solely for the purposes and for the purpose of allowing the Company to participate in the assessment process of the tender. Your acceptance of this submission is an acceptance of the following:

- (a) the information shall be kept strictly confidential and shall not be photocopied or reproduced in any way and otherwise shall be used solely for the purpose;
- (b) the information shall not be disclosed, either directly or indirectly, to any third party without the prior consent of the Company, including to any competitor of the Company and in particular any competitor or their agents involved in the assessment process provided that, subject to written agreement being obtained, the information may be released to relevant consultants/principals on a need to know basis;
- (c) Where with the Company's consent, the information is disclosed to a third party for the purpose reasonably corrected with the tender assessment, it will be a condition of that consent (whether stated or not) that such third party accepts and acknowledges to be bound by these confidentiality obligations.

## 14. DEFAULT & CONSEQUENCES OF DEFAULT

14.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

14.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all the Company's costs and disbursements including on a solicitor and own client basis and in addition all of the Company's nominees costs of collection.

14.3 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Client and any of its other obligations under the Contract. The Company will not be liable to the Client for any loss or damage the Client suffers as a result of the Company exercising its rights under this clause.

14.4 If any account remains unpaid at the end of the second month after supply of the goods or services the following shall apply: - An immediate amount of the greater of \$75.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.

14.5 In the event that:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client;

then without prejudice to the Company's other remedies at law

- (i) the Company shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Company shall, whether or not due for payment, immediately become payable.

14.6 Any invoice(s) are deemed to be accepted and payable on the due date unless, within 14 days of the issue date, the Client repudiates the invoice(s) in writing and clearly states the reason(s) for such repudiation.

## 15. TITLE

15.1 It is the intention of the Company and agreed by the Client that property in the Goods shall not pass until:

- (a) the Client has paid all amounts owing for the Goods; and
- (b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client, and that the Goods shall be kept separate until the Company shall have received payment and all other obligations of the Client are met.

15.2 It is further agreed that:

- (a) until such time as ownership of the Goods shall pass from the Company to the Client, the Company may give notice in writing to the Client to return the Goods or any part thereof to the Company. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease;
- (b) if the Client fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused;
- (c) the Client is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Company;
- (d) the Client shall not deal with the money of the Company in any way which may be adverse to the Company;

- (e) receipt by the Company 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 the Company's ownership of rights in respect of the Goods shall continue;
- (f) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company;
- (g) the Company may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Company arising out of these terms and conditions, and the Company may take any lawful steps to require payment of the amounts due and the Price.
- (h) The Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
- (i) Whilst the goods remain the property of the Company, the Client is responsible for their security and safe keeping once delivered to site.

### 16. SECURITY AND CHARGE

16.1 Notwithstanding anything to the contrary contained herein or any other rights which the Company may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met;
- (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis;
- (c) to give effect to the provisions of Clause [14.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Company or the Company's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Company and/or the Company's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Company and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

16.2 Our offer is based on the use of Bank Guarantee in lieu of cash retention under any contract / agreement the Company enter.

### 17. CANCELLATION

17.1 Either party shall be entitled to cancel this Contract by notice in writing to the other party given upon the occurrence of any of the following events:

- (a) if the other party shall fail to remedy any breach by it of this Agreement within fourteen (14) days after a notice from the party giving notice requiring the other party to remedy such breach; or
- (b) if an official manager, controller, administrator or liquidator (provisional or otherwise) is appointed in respect of the whole or any part of the assets and undertakings of the other party; or

- (c) if the other party enters into an arrangement or compromise with, or assignment for the benefit of, all or any class of its creditors.

17.2 If the Contract is cancelled, the Client shall pay the Company:

- (a) the amount certified by the Company as payable for Work completed prior to the date of termination; and
- (b) the cost of materials reasonably ordered by the Company for the Work under the Contract which the Company is liable to accept; and
- (c) the cost incurred in securing the site to Victorian health and safety standards; and
- (d) the costs reasonably incurred by the Company in the expectation of completing the whole of the Work under the Contract.

### 18. PRIVACY ACT 1988

18.1 The Client and/or the Guarantor/s agreed for the Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Company.

18.2 The Client and/or the Guarantor/s agree that the Company may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) to assess an application by Client;
- (b) to notify other credit providers of a default by the Client;
- (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
- (d) to assess the credit worthiness of Client and/or Guarantor/s.

18.3 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

18.4 The Client agrees that Personal Data provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Client and the Company or required by law from time to time:

- (a) provision of Services & Goods;
- (b) marketing of Services and or Goods by the Company, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.

18.5 The Company may give, information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Client; and or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

### 19. THE COMPANY'S RIGHTS TO DISPOSE OF GOODS

19.1 In the event that:

- (a) the Company retains possession or control of the Goods; and
- (b) payment of the Price is due to the Company; and
- (c) the Company has made demand in writing of the Client for payment of the Price in terms of this contract; and
- (d) the Company has not received the Price of the Goods, then, whether the property in the Goods has passed to the Client or has remained with the Company, the Company may dispose of the Goods and may claim from the Client the loss of the Company on such disposal.

## 20. LIEN

20.1 Where the Company has not received or been tendered the whole of the price, or the payment has been dishonoured, the Company shall have:

- (a) a lien on the goods;
- (b) the right to retain them for the price while the Company is in possession of them;
- (c) a right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and
- (d) a right of resale;
- (e) the foregoing right of disposal;
- (f) the right to prevent the goods from being used for their intended purpose whether third parties will be affected by such action or not, provided that the lien of the Company shall continue despite the commencement of proceedings or judgement for the price having been obtained.

## 21. DISPUTE RESOLUTION

21.1 If a dispute between the parties to this contract arises, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

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

## 22. CLIENT'S DISCLAIMER

22.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Company and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgement and that the Company shall not be bound by nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Client and shall not be transferable to any subsequent Client.

## 23. BUILDING & CONSTRUCTION INDUSTRY SECURITY OF PAYMENTS

23.1 At the Sellers sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Industry Security of Payments Act 2002 of Victoria, or the Building Work Contractors Act 1995 of South Australia, or the Building and Construction Industry Security of Payments Act 1999 of New South Wales, or any other similar laws in other States and Territories of Australia shall apply.

23.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Construction Industry Security of Payments Act 2002 of Victoria, or the Building Work Contractors Act 1995 of South Australia, or the Building and Construction Industry Security of Payments Act 1999 of New South Wales, or any other similar laws in other States and Territories of Australia except to the extent permitted by the Act where applicable.

## 24. GENERAL

24.1 The law governing the Contract, its interpretation and any agreement to arbitrate is the law of the State of Victoria.

24.2 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable, the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

24.3 All Goods supplied by the Company are subject to the laws of the State or Territories of Australia in which the Client is domiciled and the Company takes no responsibility for changes in the law which affect the Goods supplied.

24.4 The Company shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.

24.5 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Services.

24.6 The Client shall not set off against the Price amounts due from the Company.

24.7 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.

24.8 The Company reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Client of such change.

24.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action or other labour difficulty, fire, flood, drought, storm, or other adverse weather conditions, peril of the sea, accident of navigation, sabotage, action or inaction of a government or other competent authority (including a court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by a legislation, regulation, decree or other legally enforceable order or other event beyond the reasonable control of either party.