



**MECHANICAL EQUIPMENT GROUP OF COMPANIES  
GENERAL TERMS & CONDITIONS OF TRADE**

Version 2019/2

**1. DEFINITIONS**

**“Account”** means your account with Us and if an Account is held by You, You are the **Account Holder**;

**“ACL”** means the Australian Consumer Law;

**“Administration Costs”** means costs incurred by us as a result of your Account being unpaid by the due date and include the Default Fee;

**“Agreement”** means these terms and conditions as amended from time to time;

**“All Monies”** means all monies payable by You in accordance with this Agreement, including the monies due in accordance with Quotes and Purchase Orders, Interest, Costs, Administration Costs, legal costs on an indemnity basis and any other monies due by You;

**“Australian Standards”** means the standards applicable to the Products and / or Services, as well as any other standards noted in the Quote;

**“Authorised Persons”** means You and any persons authorised by You to liaise with Us on Your behalf and includes your employees, contractors, sub-contractors, executors and / or administrators;

**“Collateral”** means collateral as defined in the PPS Act and includes, but is not limited to, any Products supplied by Us to You and any deposits held by Us;

**“Commencement Date”** means the date of this Agreement or the date any Product, Service or Quote is provided to You, whichever is earlier;

**“Company”** shall mean the company of the Group to which these conditions relate and shall mean and include any and all companies within the Group that the Customer contracts with from time to time;

**“Consequential Damage”** includes loss of use, lost production, lost income or profits (or anticipated income or profits), loss of opportunity, lost savings, loss of business, increased or wasted expenses, delay or lost time, loss of or damage to goodwill, increased operating costs, wasted or increased financing costs, loss of or damage to data or records, loss of or unavailability of or damage to tangible or intangible property, claims made against you by others, losses or costs or expenses associated with identification, investigation, assessment, repair, replacement or servicing and any other economic loss or damage and any other special, indirect or consequential loss or damage;

**“Corporate Profile”** means the profile of each Company of the Group, found at [www.meggroup.com.au/profile](http://www.meggroup.com.au/profile);

**“Costs”** means any costs associated with this Agreement and Your use of the Services;

**“Credit Application”** means a credit application completed by You and accepted by Us (the terms of which do not form part of this Agreement);

**“Custom Products”** means Products manufactured by Us, or manufactured by a third party arranged by or in conjunction with Us, to Your specific requirements or specifications;

**“Customer”** means the customer detailed herein, the ultimate recipient of the Products and / or Services and / or includes the Third Party Customer as the context requires;

**“Customer Agent”** shall mean any person acting on behalf of and with the authority of the Customer, or purporting to act with authority of the Customer, such as employees, contractors, agents and / or assigns;

**“Default Fee”** means the sum of \$55.00 (inc GST) being the fee payable if your Account shall be in arrears for greater than 14 days and we issue any reminder notices to You;

**“Default Rate”** means 10% per annum simple interest, calculated monthly in arrears and compounded;

**“Delivery”** means the delivery of the Products, whether by delivery to the Worksite or collection from Us;

**“Demand Costs”** means the legal costs incurred by Us to issue a letter of demand to You if your Account remains unpaid for a period of 28 days from the due date, being \$150.00 plus GST as at the date of this Agreement;

**“Deposit”** means any deposit payable by You as noted in the Quote and / or in accordance with this Agreement;

**“Force Majeure”** means any event outside of Our control which will have an impact on Our ability to provide the Services to You including acts of terrorism, acts of war, acts of God, tempest, heavy rain, equipment issues, strike or other industrial action and such other events reasonably determined by Us as being outside of Our control;

**“Group”** means the Mechanical Equipment Group of companies and includes Mechanical Equipment Group Pty Ltd (ACN 617 309 896) and its related entities and subsidiaries, being:

- (a) Mechanical Equipment Group Pty Ltd ACN 617 309 896;
- (b) Inquip Pty Ltd ACN 130 794 151;
- (c) Automation & Control NSW Pty Ltd ACN 645 267 116;
- (d) Automation & Control Pty Ltd ACN 619 578 595;
- (e) Techquip Pty Ltd ACN 617 270 354;
- (f) Chain & Drives Australia Pty Ltd ACN 121 105 173;
- (g) Chain & Drives NSW Pty Ltd ACN 167 147 882;
- (h) Tank Environmental Systems Pty Ltd ACN 608 685 703;
- (i) Parts Book Pty Ltd ACN 163 940 243; and
- (j) Any other company noted on Our Corporate Profile.

**“Guarantor”** means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis and / or the guarantor noted on any Credit Application;

**“Interest”** means interest payable on any overdue amounts owed by You to the Company, charged at the Default Rate;

**“Invoice”** means a tax invoice issued by Us to You for the supply of the Services, as required from time to time;

**“IP”** means intellectual property of the Group and each Company and includes, but is not limited to, reports, test certificates and / or electrical or other drawings and / or designs created by a Company;

**“Job”** means any individual Service or Custom Products provided by Us to You pursuant to each Quote or purchase order raised by You;

**“Manufacturer’s Specifications”** means the information provided with each Product and Quote detailing technical and other information regarding the relevant Product, noting its authorized uses, limits and specifications;

**“Order”** means an order for Products placed at Your request, including, but not limited to, Special Orders;

**“Owner”** means the owner of the Worksite where the Services will be provided;

**“PPS Act”** means the Personal Property Securities Act 2009 (Cth), as amended from time to time;

**“Price”** shall mean the cost of the Job as agreed between the Company and the Customer subject to this agreement;

**“Privacy Policy”** means the Group’s privacy policy, located at [www.meggroup.com.au/privacy](http://www.meggroup.com.au/privacy)

**“Products”** shall mean Products supplied by the Company to the Customer

**“Purchase Order”** means a valid purchase order issued to the Company by You;

**“Quote”** means a quote provided by Us to You for the Products and / or Services, which is a preliminary, non-binding costs estimate based on information provided by Us to You;

**“Reports”** means any reports issued by Us to You following the completion of the Services as may be required by You;

**“Security Interest”** means an interest in personal property as defined in

the PPS Act;

“**Service**” means any service utilised or requested by You in accordance with this Agreement, including but not limited to delivery of the Products, advice, reports, servicing, commissioning of equipment, training, inspections or other services as provided by the Group from time to time in accordance with this Agreement and as may be noted in the Corporate Profile;

“**Special Orders**” are Orders for Products that are Custom Products, imported orders, or for Products that are not in Our usual range;

“**Standards**” means any applicable Australian Standards that may apply to the manufacture or installations of Products and / or the provision of Services;

“**Sub-Contractors**” means any person contracted by Us to provide the Services to You;

“**Term**” means the term of this Agreement, commencing upon acceptance of this Agreement per clause 2.1 and expiring upon termination of this Agreement by either party;

“**Third Party Customer**” means the ultimate recipient of the Products or Services, who does not contract directly with Us and includes, but is not limited to, any head contractors, Your related entities or Owners;

“**Us**” / “**Our**” / “**We**” means the Company and / or the Group and its employees, authorized representatives and assigns;

“**Utilities**” means utilities and services (including fixtures and fittings) within the Worksite;

“**Variation**” means a change of instructions to Us and / or a requirement that Products or Services be varied due to changes in the Worksite or Your instructions to Us, or otherwise as noted in this Agreement;

“**Worksite**” means the location where the Services will be provided and / or Products will be delivered, as the case may be;

“**You**” means the person who contracts with Us or engages Us to quote or provide any Services.

## **2. ACCEPTANCE TERM / TERMINATION**

2.1 This Agreement will commence once accepted by You.

2.2 You will be deemed to have accepted the terms and conditions of this Agreement if You:

- (a) request or accept a Quote from Us;
- (b) Pay a Deposit to Us; and / or
- (c) You request the supply of Products and Custom Products and/or the Customer’s acceptance of Products and/or Custom Products supplied by the Company
- (d) In any other way communicate with us in relation to the Products or Services after You have been provided with a copy of this Agreement.

2.3 This Agreement will continue in full force and effect until terminated by either party.

2.4 This Agreement may be terminated by either party with 2 business days written notice to the other PROVIDED THAT such notice may not be provided by You prior to a Job being finalised, unless We have breached this Agreement.

2.5 Your obligation to pay All Monies to Us in accordance with this Agreement will survive the termination of this Agreement.

2.6 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for All Monies.

2.7 Any Jobs that remain unfulfilled at the date of any termination of this Agreement shall be paid in full by You and We will complete any Jobs paid in full.

2.8 If You terminate this Agreement and / or cancel a Job before completion, with unpaid Jobs awaiting finalization and do not pay All Monies as required to finalise those Jobs, You agree any Deposit paid is non-refundable. You may also be liable for re-stocking fees in accordance with this Agreement.

## **3. PRODUCTS AND SERVICES**

- 3.1 The Company will provide the Products and Services to the Customer in accordance with the Quote and these conditions.
  - 3.2 The Company, only when required, will supply general arrangement drawings. Detailed manufacturer drawings will not under any circumstances be provided to You. All designs offered by the Company must be approved by the Customer’s certified engineer before manufacture and / or use.
  - 3.3 Any Special Orders will only be ordered or scheduled for manufacturing once any Deposits have been paid as required. We accept no liability for any delays in the provision of any Products or Services arising from your failure to pay the Deposit in a timely manner.
  - 3.4 It is the Customers responsibility to provide the Company with relevant information on products, their characteristics, uses, process requirements and the local environment for use. Failure to do so may result in a Variation and You will be liable for any Variation costs in full.
  - 3.5 If any of our Services include advice, such advice will be of a general nature only, in accordance with the Manufacturer’s Specifications. The advice provided by Us (if any) does not substitute certified structural, electrical or mechanical advice. Any such advice would not take into account Your project needs or the use of the Products and You should consider the appropriateness of any information provided by Us and the Manufacturer’s Specifications before acting on the same and purchasing any products from Us. The Customer should ensure any Products are signed off by certified structural, electrical or mechanical engineers as being suitable for the Customer’s proposed application and use.
  - 3.6 None of the Company’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Company in writing nor is the Company bound by any such unauthorised statements. If You wish to ensure the Company statements are binding, they must be made by and signed by a director of the Company.
  - 3.7 Any Products provided by Us will be provided with Manufacturer’s Specifications and You agree and acknowledge that You should obtain Your own independent technical advice regarding whether the Product is suitable for the purpose for which You intend to Use it. We do not give any warranty that the Products are fit for Your specific purpose at any time.
- ## **4. PRICE AND PAYMENT**
- 4.1 At the Company’s sole discretion the Price shall be either;
    - (a) as indicated on invoices provided by the Company to the Customer in respect of Products or Services supplied; or
    - (b) the Company’s current Price, at the date of delivery of the Products, according to the Company’s current Price list; or
    - (c) be the Company’s quoted Price.
  - 4.2 The actual Costs may not be known until We or the Sub-Contractors have an opportunity to view the Worksite or make further enquiries about the Job. We also reserve the right to amend our Costs if You vary Your requirements, whether intentionally or through the conducts or request of You or Your agents and / or as a result of the Worksite or requirements of the Job not being as anticipated or as described by You.
  - 4.3 A non-refundable deposit will be required for all Custom Orders and Imported Products, or as otherwise noted on the Quote.
  - 4.4 Time for payment for the Job shall be of the essence and will be stated on the Quote. If no time is stated then payment shall be prior to delivery of the Products or Services.

- 4.5 The Company may withhold delivery of the Products or Services until the Customer has paid All Monies.
  - 4.6 If payment on delivery is agreed prior and payment of All Monies is not made on delivery, We may (in our discretion) refuse delivery and return the Products to Our premises at Your expense. In this instance, payment of All Monies will be required before any further delivery attempt will be made and You must pay the additional delivery costs.
  - 4.7 Payment will be made by cash on delivery, cheque, credit card, or by direct credit, or by any other method as agreed to between the Customer and the Company. The Company accepting one method of payment on one instance does not guarantee the Company will continue to accept such payment types for future dealings.
  - 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 the Quote.
  - 4.9 Price does not include air freight and installation unless agreed in writing by Us or noted on the Quote.
  - 4.10 You may be liable for credit card fees, as charged by our bankers from time to time, if you choose to pay by credit card.
  - 4.11 All Costs and charges are exclusive of GST and are in Australian dollars unless otherwise stated.
  - 4.12 You agree and acknowledge you have no right to set off any payments due to Us, should You have any dispute relating to any matters the subject of this Agreement and / or any Products or Services.
- 5. QUOTES AND ESTIMATIONS**
- 5.1 We will provide a Quote for the provision of the Products or Services on request and such quotes shall remain valid for 30 days from the date of the Quote, errors and omissions excepted.
  - 5.2 Our Quote will detail the Products and / or Services that will be provided by Us and will detail assumptions made for the purposes of the Quote and items that are not included in the Quote.
  - 5.3 If the Customer requires Australian Standards to apply to a Job, You must ensure at the time of requesting a Quote that the said standards are brought to Our attention so We can quote accordingly. If You do not disclose that Australian Standards are to be adhered to, we cannot warrant that the Product or Service complies with those standards. If We become aware of an Australian Standard You require after the date of the Quote, this will be deemed a Variation.
  - 5.4 Quotes will not include GST, credit card fees, delivery costs, insurances, installation or removal fees or any other costs unless specified in the Quote.
  - 5.5 Worksite access confirmation and full Job particulars must be supplied by You by the date specified in the Quote.
  - 5.6 We may estimate locations for us to provide the Services based on reasonable queries (such as Google Maps), however these are indicative only and may change upon measurement or review of the Worksite or confirmation of delivery points.
  - 5.7 Any changes to the scope of works provided to Us as part of the quoting process (including any shortened time frames) will be a Variation and will require an amended Quote to be accepted by You or an Authorised Person.
  - 5.8 We may vary our Quote at any time prior to an Invoice being raised for the required Job for reasons where further charges are justified. Such additional costs shall be reasonable and be as determined in our absolute discretion.
  - 5.9 If a cost is not specified in the Quote, they are not included in the Quote and You agree You will be liable for any other costs incurred that were not contemplated in the Quote.
- 6. DELIVERY OF PRODUCTS / SERVICES**
- 6.1 Delivery of the Products shall be made to the Customer's nominated address, if delivery is included in any Quote.
  - 6.2 The Customer shall make all arrangements necessary to take delivery of the Products whenever they are tendered for delivery, or delivery of the Products shall be made to the Customer at the Company's address.
  - 6.3 The failure or delay of the Company to deliver shall not entitle either party to treat this agreement as repudiated.
  - 6.4 The Company shall not be liable for any loss or damage whatever due to the failure by the Company to deliver the Products promptly or at all.
  - 6.5 The Company will ensure that any Products in transit from the Company's address to the Customer, will be insured for any damage that may be caused in transit and the Customer must advise the Company within 48 hours of receipt of the Products if there is any damage that is apparent on delivery.
  - 6.6 If the Customer arranges their own transport of the Products, The Company does not accept any responsibility for loss or breakage of Goods in transit.
  - 6.7 Unless otherwise agreed in writing by Company, any equipment that needs to be removed to make way for delivery shall be at the cost and responsibility of the Customer.
- 7. RISK AND TITLE**
- 7.1. The Company retains property and title in the Products until it has received payment of All Monies, but regardless, all risk for the Products passes to the Customer on delivery.
  - 7.2. The Customer acknowledges that they are liable for any loss or damage to the Products from the time of delivery.
  - 7.3. The Customer shall keep the Company indemnified against all liability in respect of all actions, proceedings, claims, damages, costs and expenses insofar as the Company is able to contract out of any obligations for the same.
  - 7.4. If the Customer sells or otherwise disposes of the goods before payment in full has been made, the Customer will hold all monies received for the goods by it from such sale or disposal in trust for the Company and will on request furnish the Company with the names and addresses of the persons to whom such disposals have been made together with all necessary particulars to enable the Company to recover any outstanding sum due from such person.
  - 7.5. So long as the property in the Products remains with the Company, the Customer will hold the Products as bailee for the Company and will store the Products so as to clearly show them to be goods of the Company and the Company will have the right, without prejudice to the obligations of the Customer to purchase the Products, to retake possession of the Products (and for that purpose to go upon any premises occupied by You or the Customer).
  - 7.6. The Company may maintain an action for the price of the Products notwithstanding that property in the Products has not vested in the Customer.
  - 7.7 You grant the Company a Security Interest in the Collateral, as well as a right to secure an interest in any profits obtained by the Customer as a result of the sale of the Products. You agree, should You sell any Products to third parties before All Monies are paid in full, that You hold the proceeds of such sale on trust for the Company.
- 8. ONLINE SALES**
- 8.1 If You purchase Products via a website for any Company or the Group, You acknowledge that Manufacturer's Specifications are made available online and you must review the same before purchasing any Products.

8.2 We cannot provide any warranty as the security of our websites and You must ensure you have up to date virus scanners.

8.3 We accept no liability for third party links on our websites.

## 9. INTELLECTUAL PROPERTY (IP)

Any IP in any Reports, Plans and / or other documents prepared by Us (whether or not in conjunction with You or a Customer) shall vest in the Group, with the Customer authorised, by way of a limited and informal license to use the said IP within their business in accordance with the intended purpose of the said IP. You must not reproduce the IP without the express written consent of the Company.

## 10. CUSTOMER'S DISCLAIMER

10.1 The Customer hereby disclaims any right to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by any servant or agent of the Company.

10.2 The Customer agrees and acknowledges they purchase the Products as a result of their own enquiries and the Company and / or Group give no undertaking or make any representations that the Products are fit for purpose. The Company will provide Manufacturer's Specifications to the Customer as noted in this Agreement for the Customer to complete their own due diligence regarding the Products and the Customer should seek independent engineer's advice prior to purchasing the Products.

10.3 The Customer agrees and acknowledges that any advice provided by Us is general in nature and You should seek your own expert advice on the suitability of any Products provided to by Us to You.

## 11. WARRANTY

11.1 Where the Company is the manufacturer of Products, the Company warrants that the Products supplied shall be of merchantable quality, free from defects in workmanship and materials. This warranty is valid for 12 months from the date the Products are received by the Customer. This warranty is personal to You and is not transferable to a subsequent buyer of the Products from You, unless expressly agreed in writing.

11.2 During the warranty period the Company guarantees that the repair or replacement will be made from its Company address or from another address indicated by it. Repairs or replacements of faulty components are authorised at the Company's discretion. The warranty covers the Company's labour costs and the material used in order to repair the Products. The warranty does not cover other expenses such as transport costs of the Products, travel and accommodation costs of the Company's personnel when carrying out repairs on site or the cost of the Customer's employees.

11.3 The warranty does not cover Products which have been damaged due to the following: negligence or improper use, misuse or abuse; damage caused by water; damage caused in transit; damage caused by an unsuitable application; damage caused by repairs carried out by the Customer; damage caused by unsuitable environmental conditions; damage caused by components subject to standard wear and tear; modifications to the Products not approved by the Company; damage or defects caused by incorrect cleaning or maintenance; specifications and regulations relating to the machine on which the Company's Products are installed are not respected, and / or the uses are outside of the Manufacturer's Specifications.

11.4 Unauthorised and unspecified uses will void all warranties.

11.5 We are not liable for and You do not rely on being able to claim against us for, any loss or damage or Consequential Damage under or in relation to this Agreement or anything done or omitted in that regard or for that purpose, or in relation to any representation or conduct before, under or in respect of any Job, and whether or not the possibility or potential extent of the loss or damage or Consequential Damage was known or foreseeable and whether in contract or for negligence or any other tort or for breach of

statutory, fiduciary or other duty (if any) and whether or not the act or conduct was authorized or required.

11.6 The payment of compensation for any failure or abnormal operation of a Product is excluded unless payable at law.

11.7 You and the Customer agree and acknowledge that any losses suffered by the Customer, being direct losses, shall include the costs to repair or replace the Product warranted under this clause 11 and other direct losses arising from the usual course of use of the Product and such costs and / or losses shall be capped at any amount the Company is insured for at the relevant time of a claim being made by the Customer.

11.8 The Company does not warrant that the Products are fit for a particular purpose and, except or unless otherwise stated in these terms and conditions, warranties relating to title, defects or conformity of the Products are expressly excluded. Any costs associated with the return of the Products for the purpose of a warranty claim shall be the responsibility of the Customer.

11.9 This warranty does not affect Your consumer rights pursuant to the ACL, if any.

## 12. DEFECTS

12.1 The Customer shall inspect the Products upon delivery and notify the Company in writing within 24 hours of any defects, short deliveries or any failure to fulfill any quotation or order. Where goods have been manufactured to specific Customer requirements on drawings approved by the Customer, the Customer shall have 14 days to notify the Company in writing of any defects, faults or performance issues.

12.2 In the event that no written notification is received by the Company from the Customer within 24 hours of delivery of the Products, the Products are taken to be fit for their purpose and accepted by the Customer. Where no notification is received by the Company from the Customer for Custom Products within 14 days of completion of it will be considered fit for purpose and accepted by the Customer.

12.3 Where it may be alleged a Product or Service is defective, the Company may engage a party to test the Product or provide independent advice or review relating to the same. Such evidence shall be prima facie evidence as to the defects (if any) in relation to the Products.

12.4 Where a Third Party Customer alleges a Product is defective or not fit for purpose, You indemnify Us from any action from the said customer provided that We have not acted negligently.

## 13. MEDIATION

13.1 If any dispute arises out of or relates to this agreement, neither party may commence any court or arbitration proceedings relating to the dispute unless they have complied with this clause 13 except where they seek urgent interlocutory relief.

13.2 Notice specifying the nature of the dispute

(a) The party to this agreement claiming that a dispute has arisen under or in relation to this agreement must give written notice to the other party to this agreement specifying the nature of the dispute.

(b) On receipt of the notice referred to in this clause by that party, both parties must endeavour to resolve the dispute expeditiously using mediation, unless an alternative dispute resolution procedure is agreed in writing within 7 days of the notice.

13.3 Mediation

(a) If the dispute is to be mediated, then the parties must mediate the dispute in accordance with the mediation rules of the recognised professional association for solicitors in the State of the location of the Company's registered office.

(b) The president of this professional association or the president's nominee will select the mediator and determine the mediator's remuneration.

#### 13.4 Proceedings

If the mediation referred to above is not completed within four weeks of reference to a mediator either party may commence any court or arbitration proceedings relating to the dispute as they see fit.

#### 14. QUALITY AND TIMING OF THE PRODUCT OR SERVICE

We will endeavour to notify You as soon as possible if We expect that the Job may be delayed for any period of time, in so far as we are able to monitor the same and if such delays are not caused through any fault of Yours (such as if You are in default of this Agreement).

#### 15. FAIR TRADING ACTS AND ACL

15.1 Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth *Trade Practices Act 1974*, the *Competition and Consumer Act 2010* (Cth), the ACL or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

15.2 This Agreement shall be varied so far as is necessary to comply with any relevant legislation, to the extent required to comply with the law only and the remainder of this Agreement shall remain.

#### 16. DEFAULT & CONSEQUENCES OF DEFAULT

16.1 Interest on overdue invoices shall accrue from the date when payment becomes due, daily until the date of payment, at the Default Rate. The Customer agrees that that this is a fair and reasonable charge and is directly relevant to the likely damage that the Company might suffer as a result of non payment by the Customer. Interest will be calculated on all outstanding amounts from the date of issue of the invoice and will continue to accrue on All Monies until paid in full (including post judgement interest at the Default Rate).

16.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all the Company's costs and disbursements, including legal costs on an indemnity basis or on a solicitor and own client basis whichever is the higher and in addition all of the Company's nominees costs of collection inclusive of debt collection and agency fees and commissions, plus any costs associated with taking possession of any Collateral in accordance with this Agreement or the Credit Application (if applicable).

16.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Products to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercised its rights under this clause.

16.4 In the event that:

- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) the Customer 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 Customer or any asset of the Customer;

- 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 Customer which remains unperformed in addition to and without prejudice to any other remedies; and
  - (ii) All Monies shall, whether or not due for payment, immediately become payable; and
  - (iii) All Monies shall be recoverable forthwith from the Customer as a liquidated debt.

#### 17. ACCOUNT HOLDERS

17.1 We may offer You the privilege of being an Account Holder with Us, subject to a Credit Application being completed by You and accepted by Us, in accordance with our applicable terms and conditions at the time of application.

17.2 We may refuse or revoke any Account in our absolute discretion, including if the Account Holder is in breach of this Agreement and / or their Account is in arrears.

17.3 It is a condition of any Account being granted to You that any guarantees required from You are provided as required.

17.4 The terms and conditions of an Account do not form part of this Agreement, however this Agreement will remain applicable to any Account Holders.

#### 18. AUTHORISED PERSONS

18.1 An Authorised Person, may contract with Us on Your behalf and may instruct Us as to the supply of the Products and / or Services as required from time to time for a Job (whether an existing Job or a new Job including a Quote), as well as authorize Variations, subject to the provision of what the Company believes (acting reasonably) is a properly authorised purchase order from the Customer / You.

18.2 An Authorised Person may incur expenses on Your Account, bind You and liaise with Us on Your behalf which You agree and acknowledge You will be held liable for, absolutely.

18.3 In circumstances of alleged fraudulent charges to Your Account (by someone providing a purchase order and holding themselves out as an Authorised Person) You release Us absolutely for any costs and charges on your Account which have been charged by Us to You in good faith where We have acted reasonably.

#### 19. RETURN POLICY

19.1 Products may only be returned pursuant to relevant Commonwealth Legislation, including the ACL (if applicable).

19.2 The Company will in its absolute discretion (unless otherwise required by law) either:

- (a) Provide a refund;
- (b) Arrange testing or other independent review of the Product or Service to assist in determining liability for any fault;
- (c) replace the Products; or
- (d) grant You credit against future purchases in an amount equal to the purchase price of the Products.

19.3 Returned Products may be accepted within 7 days from the date of delivery on approval by the Company and the cost of the return shall be borne by the Customer. Charges may be levied by the Company to cover handling, inspection and reconditioning costs and must be paid by the Customer in accordance with this Agreement.

19.4 Special Orders will only be supplied for credit less the cost of converting them to standard units or other configuration to allow Us to sell them to a third party.

19.5 Notwithstanding all the above, Products returned for credit (due to change of mind) and approved will be subject to a 25% re-stocking fee.

#### 20. WORKSITE

20.1 You will provide Us or our agents, employees, assigns and contractors safe and prompt access to the Worksite to provide the

Services, as well as access required following termination of this Agreement to enforce any security We may have (including taking possession of the Products if you are in default of this Agreement).

20.2 If You are not the Owner of the Worksite, You agree that You have obtained the consent of the Owner to allow Us to supply the Services within the Worksite and to gain access as required in accordance with this Agreement.

20.3 You are responsible for ensuring the Worksite is safe and free of any obstacles.

20.4 When We provide You with a Quote, We make assumptions about the Worksite based on information provided by You for the Job and as detailed in the Quote. Should these assumptions be incorrect (which We only know with certainty when the Job has commenced or the Worksite has been viewed), We will contact You or an Authorised Person to obtain a verbal confirmation We are authorised to proceed with the Services for the Job and confirm any additional Costs if We proceed. We reserve Our rights to cease works if We reasonably determine authority from You or an Authorised Person or Owner is required to proceed, and cannot be obtained.

## 21. GENERAL

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

21.2 The laws of the state of Western Australia shall apply to this agreement and any disputes arising from the product or its delivery and the parties consent to the exclusive jurisdiction of the West Australian Courts & Tribunals.

21.3 You must not set off, deduct or reduce any amounts due by You to the Company.

21.4 The Company may license or sub-contract all or any part of its rights and obligations in this Agreement without the Customer's consent.

## 22. SUSPENSION OF SERVICES

We may suspend the Services and supply of any Reports and / or Products to You if:

- (a) required by law;
- (b) there is a Force Majeure;
- (c) there is a threat or risk to security to Us, Our employees, agents and / or Sub-Contractors;
- (d) You are in default of this Agreement;
- (e) Account held by You is in arrears;
- (f) there is suspected fraud by You or Customer (including in relation to Your Account);
- (g) You are considered by Us (in our absolute discretion) to be an unacceptably high credit risk,
- (h) An insolvency event occurs;
- (i) You die; and / or
- (j) You cease trading.

## 23. AGREEMENT PREVAILS

Should We enter into any subsequent agreement with You relating to any Job, Product or Services, this Agreement will prevail and this Agreement will be treated as being re-executed by You one day after we have signed any further Agreement with You and / or treated as being affirmed by You upon each new Job, Variation or Quote being accepted by either party.

## 24. ENFORCEMENT

Should We be required to instruct solicitors to enforce this Agreement against You, such as contacting You to demand the payment of All Monies, as well as commence any proceedings against You, You agree and acknowledge that You will be liable for

all of our legal costs and expenses, including those incurred on a solicitor-client basis, on a full indemnity basis.

## 25. INDEMNITY

25.1 We do not guarantee, represent, or warrant that the Products or Services will be uninterrupted or error-free.

25.2 You agree that, to the maximum extent permitted by law, any and all liability and responsibility of Us to You, the Third Party Customer, the Owner or any other person under or in connection with this Agreement, is excluded regardless of whether such liability arises in contract, tort (including negligence), equity, breach of statutory duty or otherwise providing that such loss or damage has not resulted from Our breach of this Agreement or Our negligent acts.

25.3 Our liability and responsibility is excluded in respect of any and all loss or damage, whether direct or indirect, including, without limitation, general and special damages and consequential and incidental loss.

## 26. PRIVACY

We may use Your address, contact and email account details as provided in this Agreement to provide You with Quotes, Invoices, reminder notices and other administrative or legal notices and receipts from Us. Otherwise, Your information will be stored and used in accordance with Our Privacy Policy.

## 27. VARIATIONS TO THIS AGREEMENT

This Agreement may be varied by Us from time to time by notice in writing to You. If You continue to engage our Services or purchase our Products after We have provided notice to You of our varied conditions, You agree the same will constitute acceptance of the amended conditions.

## 28. NOTICES

All Notices must be in writing and addressed to the party at their address nominated in this Agreement, or as amended in writing from time to time. We may provide You with service of a Notice by email to Your email address as advised to Us by You from time to time.

## 29. ASSIGNMENT OF THIS AGREEMENT

29.1 You must not assign any of Your rights or obligations under this Agreement without Our written consent, which may be arbitrarily withheld.

29.2 We may assign Our rights under this Agreement to any successors, assigns or purchasers of our business and / or to other Companies within the Group with notice to You in writing.

## 30. ELECTRONIC COMMUNICATION

We will communicate with You via electronic means to the email address provided by You from time to time. For contractual purposes, You:

- (a) Consent to receive communications from Us in an electronic form; and
- (b) agree that all terms and conditions, agreements, notices, disclosures, and other communications that We provide to You electronically satisfy any legal requirement that such communications would satisfy if it were in hardcopy writing.

## 31. WAIVER

Subject to any express consent in writing of any of the parties no waiver by any party or any default in the strict and literal performance of, or compliance with, any provision, condition, or requirement of this Agreement shall be deemed to be a waiver of strict and literal performance of, and compliance with, any other provision, condition or requirement, nor to be a waiver of, or in any manner release of, any other party from strict compliance with any provision or requirement in the future or in any manner impair the exercise of any such rights accruing to it.