
Mobile Electrics Pty Ltd T/A Mobile Automation – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using the Supplier’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **“Equipment”** means all Equipment including any accessories supplied on hire by the Supplier to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Supplier to the Client.
- 1.6 **“Goods”** means all Goods (including, but not limited to, robotic arms and/or tending equipment and/or accessories/parts etc.) or Services supplied by the Supplier to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other, for the purposes of this Contract where the context so permits ‘Services’ shall also include the supply of “Labour”).
- 1.7 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 **“Intended Use”** means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the development of the Goods.
- 1.9 **“Labour”** or **“Candidate”** shall mean any individual sent by the Supplier to the Client for employment by the Client on a temporary, casual, or part-time basis.
- 1.10 **“Minimum Hire Period”** means the Minimum Hire Period as described on the invoices, quotation, authority to hire, or any other forms as provided by the Supplier to the Client.
- 1.11 **“Non-Conforming Product”** means products that are regarded as Non-Conforming for an Intended Use if, when associated with the development of the Goods:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.12 **“Price”** means the Price payable (plus any GST where applicable) for the Goods and/or Equipment or Labour hire as agreed between the Supplier and the Client in accordance with clause 8 below.
- 1.13 **“Supplier”** means Mobile Electrics Pty Ltd T/A Mobile Automation, its successors and assigns or any person acting on behalf of and with the authority of Mobile Electrics Pty Ltd T/A Mobile Automation.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.
- 2.6 These terms and conditions may be meant to be read in conjunction with the Supplier’s Proposal and Service Contract, and if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Supplier as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services on the Client’s behalf and/or to request any variation to the Services on the Client’s behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Supplier in writing that said person is no longer the Client’s duly authorised representative).

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- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in providing any Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Errors and Omissions**
- 4.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.
- 4.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Client Error**"). The Client must pay for all Goods it orders from the Supplier notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. The Supplier is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.
- 5. Change in Control**
- 5.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
- 6. Finance**
- 6.1 If this Contract is conditional upon the Client obtaining capital funding from a financial institution then they shall provide the Supplier with written confirmation of the loan approval within five (5) working days of the date of signing this Contract.
- 6.2 In the event any such loan application is declined then the Client shall have the right to withdraw from this Contract subject to the Client providing the Supplier with written evidence within five (5) working days of the date of signing this Contract that the loan was declined. Upon receipt of such evidence the Supplier shall refund the Client any deposit paid less any expenses incurred by the Supplier for any Services performed to date.
- 7. Credit Card Information**
- 7.1 The Supplier will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by the Supplier;
 - (b) not disclose the Client's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 23) or where required by law.
- 7.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Client which were not known at the time of the return of the Equipment, the Supplier is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.
- 8. Price and Payment**
- 8.1 At the Supplier's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Client upon placement of an order for Goods/Equipment; or
 - (b) the Supplier's quoted Price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 8.2 The Supplier reserves the right to change the Price:
- (a) if a variation to the Goods/Equipment which are to be supplied is requested (including, but not limited to, any changes, modifications or additions to the Goods or associated materials to meet any legal requirements etc.); or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) if a variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to the Supplier in the cost of materials and Labour) which are only discovered on commencement of the Services; or
 - (d) any variation as a result of fluctuations in currency exchange rates; or
 - (e) in the event of increases to the Supplier in the cost of labour or Goods/Equipment (including, but not limited to, export customs declaration, transport and loading costs to port, carriage of the Goods either by sea and/or air, insurance and import charges etc.) which are beyond the Supplier's control.
- 8.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 8.4 At the Supplier's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods/Equipment, in accordance with any quotation provided by the Supplier or as notified to the Client prior to the placement of an order for Goods/Equipment.
- 8.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:

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- (a) on or before delivery of the Goods/Equipment; or
 - (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule and such payment claims may include the reasonable value of authorised variations and the value of any Goods/Equipment delivered to the site but not yet installed; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 8.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.
- 8.7 The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.
- 8.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Supplier in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Supplier investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Supplier placing the Client's account into default and subject to default interest in accordance with clause 21.1.
- 8.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 9. Provision of Services**
- 9.1 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that the Supplier (or the Supplier's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 9.2 The cost of Delivery will be payable by the Client in accordance with the quotation provided by the Supplier to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods/Equipment.
- 9.3 Subject to clause 9.4 it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 9.4 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier's control, including, but not limited to, any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify the Supplier that the site is ready.
- 9.5 Delivery of the Goods/Equipment to a third party nominated by the Client is deemed to be Delivery to the Client for the purposes of this Contract.
- 9.6 The Supplier may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 9.7 Any time specified by the Supplier for Delivery of the Goods/Equipment is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 10. Demurrage**
- 10.1 The Client will be and shall remain responsible to the Supplier for all its proper charges incurred for any reason. A charge may be made by the Supplier in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Supplier. Such permissible delay period shall commence upon the Supplier reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or the Client's agent.
- 11. Insurance**
- 11.1 The Supplier holds the following insurances and warrants that such insurance is current, and is sufficient for the Services being carried out under this Contract:
- (a) **Public Liability Insurance** - \$20,000,000 any one occurrence, in respect of any accident arising of, or in the course of, or caused by the execution of the Services in the event of death or bodily injury to any person not being a person who at the time of the accident is engaged in or upon the service of the insured. It is the Client's responsibility to ensure that they are similarly insured.; and
 - (b) **Workers' Compensation** - Unlimited Common Law Liability.
- 12. Risk**
- 12.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 12.2 Notwithstanding the provisions of clause 12.1 if the Client specifically requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.

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- 12.3 Where the Client is to supply the Supplier with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Supplier shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client
- 12.4 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 12.5 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), the Supplier reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then the Supplier shall be entitled to delay installation of the Goods (**in accordance with the provisions of clause 9.4 above**) until the Supplier is satisfied that it is safe for the installation to proceed.
- 12.6 The Client acknowledges that the Supplier is only responsible for parts that are replaced by the Supplier, and in the event that other parts/goods, subsequently fail, the Client agrees to indemnify the Supplier against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 12.7 The Client acknowledges and accepts that:
- all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the Supplier's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information; and
 - the Supplier accepts no responsibility for any damage or performance related problems with any Goods where they have not been used and/or maintained in accordance with the Supplier's and/or the manufacturers' recommendations.
- 12.8 Where the Client has supplied products for the Supplier to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Supplier's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then the Supplier shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 8.2.
- 12.9 The Client agrees that all materials supplied by the Client or the Client's third-party sub-contractors will:
- be supplied in accordance with all legislative requirements;
 - be suitable for their inclusion into the Services.

13. Client Responsibilities

- 13.1 The Client acknowledges and agrees:
- that they shall ensure that the Goods are installed and maintained by qualified personnel as approved by the Supplier;
 - that they shall not tamper or attempt to repair the Goods unless prior approval has been received by the Supplier in writing;
 - the Goods may only be moved to another site once written approval has been received by the Supplier otherwise this may void any warranty provided;
 - to perform any responsibilities set out in the Supplier's proposal (including, but not limited to, site requirements, the safe use and operation of the Goods and to follow the maintenance schedule supplied with the Goods; and
 - operate the Goods in a safe manner and in accordance with the instruction manual provided by the Supplier.
- 13.2 The Client acknowledges and accepts that they shall:
- ensure that the site is prepared according to the requirements in the Supplier's proposal prior to the Delivery of the Goods; and
 - ensure that the Supplier has clear and free access to the site at all times to enable them to undertake the Services (including, but not limited to, the inspection of the Goods and where required the conduct trials on the Goods at the Client's site etc.). The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.

14. Equipment Hire

- 14.1 Equipment shall at all times remain the property of the Supplier and is returnable on demand by the Supplier. In the event that Equipment is not returned to the Supplier in the condition in which it was delivered the Supplier retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Supplier shall have right to charge the Client the full cost of replacing the Equipment.
- 14.2 The Client shall:
- keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
 - not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
 - keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Supplier to the Client.
- 14.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self-insure, the Supplier's interest in the Equipment and agrees to indemnify the Supplier against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 14.4 Notwithstanding the above clause, immediately on request by the Supplier the Client will pay:
- any lost hire charges the Supplier would have otherwise been entitled to for the Equipment, under this, or any other hire agreement;
 - any insurance excess payable in relation to a claim made by either the Client or the Supplier in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Client and irrespective of whether charged by the Client's insurers or the Supplier's.
- 14.5 Return of the Equipment ("**Return**") will be completed when the:
- Equipment is returned by the Client to the Supplier's place of business; or

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(b) Supplier takes back possession of the Equipment once collection by the Supplier is affected.

15. Underground Locations

- 15.1 Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 15.2 Whilst the Supplier will take all care to avoid damage to any underground services the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 15.1.

16. Title to Goods

- 16.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Supplier all amounts owing to the Supplier; and
 - (b) the Client has met all of its other obligations to the Supplier.
- 16.2 Receipt by the Supplier 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.
- 16.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 16.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;
 - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
 - (f) the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier; and
 - (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 17.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 17.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 17.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of the Supplier;
 - (e) immediately advise the Supplier of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 17.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 17.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 17.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 17.3 to 17.5.
- 17.9 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 17 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 17 will apply generally for the purposes of the PPSA.

18. Security and Charge

- 18.1 In consideration of the Supplier agreeing to supply the Goods/Equipment, the Client grants the Supplier a security interest by way of a floating charge (registerable by the Supplier pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods/Equipment under this Contract and/or permit the Supplier to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 18.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 18.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 16.1, 17.2 and 18.1 as applicable, is deemed insufficient by the Supplier to secure the repayment of monies owed by the Client to the Supplier, the Client hereby grants the Supplier a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

- 19.1 The Client must inspect the Goods/Equipment on Delivery and must within seven (7) days of Delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Goods/Equipment.
- 19.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 19.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 19.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 19.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 19.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.
- 19.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 19.8 Subject to this clause 19, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 19.1; and
 - (b) the Supplier has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 19.9 Notwithstanding clauses 19.1 to 19.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods/Equipment;
 - (b) the Client using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by the Supplier;
 - (e) fair wear and tear, any accident, or act of God.
- 19.10 The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 19.11 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

20. Confidentiality and Intellectual Property

- 20.1 The Supplier and the Client agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).
- 20.2 Exceptions to clause 20.1 will be disclosures to legal advisers, disclosures required by law, and disclosures necessary for the proper performance of the Services.
- 20.3 Where the Supplier has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 20.4 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 20.5 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.

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21. Default and Consequences of Default

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes the Supplier any money, the Client shall indemnify the Supplier from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under these terms and conditions, internal administration fees, the Supplier's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 21.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Supplier;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Cancellation

- 22.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply or purchase of Goods/Equipment to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party shall be liable for any costs associated with a party suspending/cancelling the Contract under this clause 17.1.
- 22.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Goods/Equipment or the supply of Labour to the Client, the Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods/Equipment or the supply of Labour. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 The Client may cancel Delivery of the Goods/Equipment or the supply of Labour by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 22.3, the Client will not be liable for the payment of any costs of the Supplier, except where a deposit is payable in accordance with clause 8.4. Failure by the Client to otherwise accept Delivery of the Goods/Equipment shall place the Client in breach of this Contract.
- 22.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

23. Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")
- If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 23.3 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.
- 23.4 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

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- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 23.5 The Client consents to the Supplier being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 23.6 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 23.7 The Supplier may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 23.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 23.3 above;
 - (b) name of the credit provider and that the Supplier is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided the Supplier is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 23.9 The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and
 - (b) that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 23.10 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.11 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 24. Unpaid Seller's Rights**
- 24.1 Where the Client has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Client, the Supplier shall have, until all moneys owing to the Supplier are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 24.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Client.
- 25. Compliance with Laws**
- 25.1 The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any occupational health and safety laws (OHS) relating or any other relevant safety standards or legislation pertaining to the Services.
- 25.2 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC) and the Building Act 1993, in respect of all workmanship and building products to be supplied during the course of the Services;
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 25.3 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services (including, but not limited to, taxes, duties, levies, customs and import duties etc.).
- 25.4 *Site Inductions*
- (a) in the event the Client requires an employee or sub-contractor of the Supplier to undertake a site induction during working hours, the Client will be liable to pay the hourly charges for that period. If any induction is needed to be undertaken prior to the commencement date then the Client shall be liable to pay the Supplier's standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where the Supplier is in control of the site, the Client and/or the Client's third party contractors must initially carry out the Supplier's Health & Safety induction course before access to the site will be granted. Inspection of the site during the course of the Services will be by

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appointment only and unless otherwise agreed, in such an event the Client and/or third party acting on behalf of the Client must at all times be accompanied by the Supplier.

26. Building and Construction Industry Security of Payment Act 2002

- 26.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods/Equipment and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 26.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.

27. Service of Notices

- 27.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 27.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

28. Trusts

- 28.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

29. General

- 29.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 29.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 29.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 29.5 The Client cannot licence or assign without the written approval of the Supplier.
- 29.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 29.7 The Client agrees that the Supplier may amend their general terms and conditions for subsequent future Contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods/Equipment to the Client.
- 29.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Supplier, once the parties agree that the Force Majeure event has ceased.
- 29.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 29.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 29.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.

30. Labour Hire Services

- 30.1 The Supplier undertakes to:
- (a) use its best endeavours to provide suitably qualified Candidates to undertake work duties in compliance with the Client's requirements; and
 - (b) make the payment of all amounts due to the Candidate under the terms of any relevant industrial instrument or Contract; and
 - (c) make the payment of all leave entitlements (including, but not limited to, annual leave, sick leave, parental leave and long service leave) if the Candidate is a fulltime employee; and
 - (d) deduct the requisite amounts of income tax, fringe benefits tax, pay roll tax and all other applicable deductions as required by Australian law; and
 - (e) ensure payment of any other statutory taxes, superannuation contributions and/or levies as required by Australian law; and
 - (f) maintain workers compensation insurance for all Candidates, except where state laws specify otherwise.
- 30.2 The Supplier's quotation shall specify:
- (a) the Services to be provided by each Candidate;
 - (b) the job description of each Candidate;
 - (c) the commencement and termination dates of the Services;
 - (d) the location where Services shall be performed;
 - (e) the Price payable by the Client for the Services.
- 30.3 The Supplier must be advised by the Client of any specific site or project allowances which may be applicable. All such allowances (including, but not limited to, meal, travel or tool allowances) shall be on-charged to the Client accordingly.
- 30.4 The Client acknowledges that only lunch breaks shall be deducted from total hours charged by the Supplier to the Client.
- 30.5 The Client acknowledges and agrees that the Client's obligations to the Supplier for the supply of Services shall not cease until:
- (a) the Client has paid the Supplier all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Supplier in respect of all Contracts between the Supplier and the Client.

31. Client's Responsibilities / Agreements

- 31.1 The Client agrees that they shall supply to the Supplier (on the day specified by the Supplier) a duly authorised timesheet to enable the Supplier to pay the Candidate when due.
- 31.2 It is the responsibility of the Client to:
- (a) provide supervision of Candidates to ensure that work is carried out to a satisfactory standard; and
 - (b) provide Candidates with appropriate information, supervision and training to enable them to work safely; and
 - (c) provide Candidates with workplace specific and job specific induction if necessary. This induction is to be completed before the Candidate commences work with the Client; and
 - (d) familiarise the Candidate with the Client's operations, facilities, policies and procedures, and properly inform the Supplier of any specific requirements of the job which the Candidate will be required to undertake; and
 - (e) provide safe working conditions and to comply with all statutory and other obligations that are applicable pursuant to Australian law (including, but not limited to, Occupational Health and Safety legislation) applicable to employers and otherwise to treat Candidates as if they were employed by the Client; and
 - (f) effect and maintain insurance cover in respect of any claims which may be made against the Client by a Candidate that arises as a result of the Client's occupation of premises, and otherwise in respect of any act or omission in respect of machinery, equipment or vehicle(s) used by the Candidate, and to indemnify the Supplier against any such claims; and
 - (g) properly maintain plant and Equipment; and
 - (h) provide where a candidate may be required to 'stand down' because of adverse weather conditions a minimum 'stand down' payment of not less than four (4) hours per Candidate, unless an alternative minimum payment has been agreed between the Supplier and the Client in writing.
- 31.3 The Client agrees that:
- (a) he Client will not request a Candidate to engage in any works or use any equipment that a Candidate is unfamiliar with, or unqualified to use or perform, or have not received adequate training for;
 - (b) they will immediately notify the Supplier of any variation of duties given to a Candidate that may affect the remuneration payable to the Candidate or may involve additional risk to the Candidate;
 - (c) the Client will immediately notify the Supplier of any injury sustained by the Candidate;
 - (d) any working environment in which a Candidate is placed during the period of the engagement will comply with all applicable equal opportunity legislation or regulations. The Client agrees to immediately notify the Supplier if a Candidate is involved in a sexual harassment or discrimination claim during the performance of the Services.
- 31.4 The Client acknowledges that:
- (a) they remain responsible for controlling the manner, time and place in which the Candidate shall carry out their duties as assigned by the Client and that in doing so the Client shall be liable for all acts and omissions of the Candidate the same as they would be for any of their own employees;
 - (b) the Supplier makes no representation or guarantee that any Candidate will achieve a certain level of performance, achieve a certain outcome, solve a particular problem or attain a specific goal.
- 31.5 In no circumstances shall the Supplier be liable for any personal injury resulting in injury or death, loss and/or damage or expense arising out of, or caused by, any act or omission of a Candidate whether or not any such act or omission is negligent, and the Client acknowledges and agrees to indemnify the Supplier against all such liability whether alleged or proved. The Client is to include all Candidates in the Client's own public liability insurance cover.

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- 31.6 If any event arises which is likely to lead to any dispute or claim, the Client must notify the Supplier of the same within thirty (30) days of the event. If the Client shall fail to comply with this provision then all Services provided by the Supplier shall be deemed to have been provided in accordance with these terms and conditions, and free from any disputes or claims.
- 31.7 In the event that the Client requests that a Candidate remain posted with them for a period greater than six (6) months, then the Client agrees to provide the Supplier with three (3) months' notice of their intention to cease the Candidate's posting.
- 32. Employees of the Supplier and Non-Solicitation**
- 32.1 The Client agrees that during the term of the Contract and for a period of twelve (12) months following the termination of the Contract for any reason, the Client will not:
- (a) attempt to solicit, canvass, approach, encourage or persuade any contractor/s, employee or consultant of the Supplier to terminate their Contract or employment with the Supplier or utilise in any way an employee or past employee of the Supplier (other than through the Supplier); and
 - (b) the Client acknowledges that the restraints are fair and reasonable for the proper preservation of the goodwill of the business of the Supplier.
- 32.2 The Client agrees to ensure that their directors, employees, agents and contractors sign such covenant the Supplier may require in relation to non-solicitation of the Supplier's employees pursuant to this clause 32.
- 32.3 The Client agrees that if clause 32.1 is contravened the Client agrees to pay a placement fee equal to fifteen percent (15%) of the employee's annual salary as a fee as agreed by the parties prior to the appointment of the Candidate. The Client agrees that this placement fee is also applicable if the Client engages the Supplier's employees through a different labour hire company.