

1. Definitions

- 1.1 “Business Days” means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Brisbane.
- 1.2 “Change in Control” means for a company, a change in:
- (a) control of the composition of the board of directors of the company;
 - (b) control of more than half the voting rights attaching to shares in the company; or
 - (c) control of more than half the issued shares of the company.
- 1.3 “Claim” means a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a person, however arising and whether:
- (a) ascertained or unascertained;
 - (b) immediate, future or contingent; and
 - (c) subject of a dispute, litigation, arbitration, mediation, conciliation or administrative proceedings.
- 1.4 “Collateral” takes its meaning from section 10 of the PPS Act.
- 1.5 “Communication” means any written communication (including each notice, consent, approval, request and demand) under or in connection with this agreement.
- 1.6 “Confidential Information” means information that is by its nature confidential, including but not limited to information relating to the:
- (a) the Client or the Client’s clientele;
 - (b) personnel, policies, practices, clientele or business strategies of the Contractor; and
 - (c) intellectual property rights of a party;
 - (d) terms of this agreement,
 - (e) but does not include information:
 - (i) already rightfully known to the receiving party at the time of disclosure by the other party; or
 - (ii) in the public domain other than as a result of disclosure by a party in breach of its obligations of confidentiality under this agreement.
- 1.7 “Consequential Loss” means loss of revenue, loss of profits, loss of anticipated savings or business, pure economic loss, loss of data, loss of value of Goods (other than the cost of repair), loss of value of Services, loss of opportunity or expectation loss, and any other form of consequential, special, indirect, punitive or exemplary loss or damages.
- 1.8 “Consumer Law” means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
- 1.9 “Credit Account” means an account with the Contractor in which the Contractor allows the Client to accrue debt to the Contractor for Services rendered or Goods provided under this agreement without the need for immediate payment of those debts.
- 1.10 “Credit Agreement” means a contract or form which details specific terms for a Credit Account and falls under the terms of this agreement, generally by way of a credit application form.
- 1.11 “Credit Application” means an application by the Client for the Contractor to issue them with credit.
- 1.12 “Creditworthiness” means the valuation process performed by the Contractor to determine the likelihood of the Client defaulting on its debt obligations.
- 1.13 “Contractor” shall mean Trend Shield Australia Pty Ltd ACN 120 815 376 trading as “Fire Defender” and its successors and assigns or any person acting on behalf of and with the authority of Trend Shield Australia Pty Ltd ACN 120 815 376 trading as Fire Defender.
- 1.14 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by the Contractor to the Client.
- 1.15 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.16 “Goods” shall mean Goods supplied by the Contractor to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Contractor to the Client.
- 1.17 “Insolvency Event” means in respect of a party (the Insolvent), the appointment of an administrator, a receiver or receiver and manager in respect of the Insolvent, an application to a court or an order for the winding up of the Insolvent, or where anything analogous or having a substantially similar effect to any of the preceding events occurs.
- 1.18 “Intellectual Property” means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain names, licences, know-how, trade secrets, and includes the right to register any intellectual property rights.
- 1.19 “Services” shall mean all Services supplied by the Contractor to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.20 “PPS Act” means the Personal Property Securities Act 2009 (Cth)
- 1.21 “PPSR” means the Personal Property Securities Register established under the PPS Act.
- 1.22 “Price” shall mean the price payable for the Goods as agreed between the Contractor and the Client in accordance with clause 3 of this agreement.
- 1.23 “Privacy Law” means:
- (a) the *Privacy Act 1988* (Cth); and

(b) any other law that governs the use, disclosure or management of data or information relating to persons.

1.24 "Purchase Money Security Interest" has the meaning defined under the PPS Act.

1.25 "Security Interest" has the meaning defined under the PPS Act.

2. Acceptance

2.1 Any instructions received by the Contractor from the Client for the supply of Goods and/or Services, and/or the Client's of any quotation or work authorisation shall constitute acceptance of the terms and conditions contained herein.

2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

2.3 Upon acceptance of these terms and conditions by the Client, the terms and conditions are binding and can only be amended with the written consent of the Contractor.

2.4 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, email address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.

3. Price And Payment

3.1 At the Contractor's sole discretion the Price shall be either:

(a) as indicated on invoices provided by the Contractor to the Client in respect of Goods supplied; or

(b) the Contractor's quoted Price (subject to clause 3.2) which shall be binding upon the Contractor upon acceptance by the Client.

3.2 The Contractor reserves the right to change the Price in the event of a variation to the Contractor's quotation. Any additional Goods and/or Services are to be treated as a variation. However if a Price is not agreed upon then the Client will be charged at the Contractor's sole discretion for the Goods and/or Services and must pay that Price.

3.3 The Contractor shall require a deposit of forty percent (40%) of the Price for any project ten thousand (10,000) dollars or over (excluding GST) before installation will commence.

3.4 The Contractor may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of materials delivered to the site but not installed.

3.5 At the Contractor's sole discretion:

(a) payment shall be due on delivery of the Goods; or

(b) payment shall be due before delivery of the Goods.

3.6 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.

3.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of ten dollars (\$10), or up to two percent (2%) of the Price, whichever is the greater), or by direct credit, or by any other method as agreed by the Contractor.

3.8 The Client must not set off any money owing to the Contractor against any liability owing to the Client.

3.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. Delivery Of Goods

4.1 At the Contractor's sole discretion, delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by the Contractor or the Contractor's nominated carrier).

4.2 At the Contractor's sole discretion the costs of delivery are:

(a) included in the Price; or

(b) in addition to the Price; or

(c) for the Client's account.

4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Contractor shall be entitled to charge a reasonable fee for redelivery.

4.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

4.5 Delivery of the Goods will be deemed to have taken place when the Goods arrive at the Client's nominated address, including that of a third party nominated by the Client.

4.6 The Contractor may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

4.7 The Contractor will use reasonable endeavours to deliver the Goods at a time agreed to by the parties. The failure of the Contractor to deliver shall not entitle either party to treat this contract as repudiated.

4.8 The Contractor shall not be liable for any loss or damage whatever due to failure by the Contractor to deliver the Goods (or any of them) promptly.

5. Risk

- 5.1 If the Contractor retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.

6. Title

- 6.1 The Contractor and Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Contractor all amounts owing for the particular Goods; and
 - (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.
- 6.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Goods shall continue.
- 6.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Client are met; and
 - (b) until such time as ownership of the Goods shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Goods or any of them to the Contractor. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
 - (c) the Contractor shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - (d) if the Client fails to return the Goods to the Contractor then the Contractor or the Contractor's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
 - (e) the Client is only a bailee of the Goods and until such time as the Contractor has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Contractor; and
 - (f) the Client shall not deal with the money of the Contractor in any way which may be adverse to the Contractor; and
 - (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Contractor; and
 - (h) the Contractor can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
 - (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Contractor will be the owner of the end products.

7. Client's Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel any contract with the Contractor or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by the Contractor and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

8. Defects

- 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Contractor of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Contractor an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. Small deviations from the Goods description will not entitle the Client to reject the Goods. However, if any such fault is caused by the Client's direction to change the Goods, the rectification shall be at the Client's expense. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

9. Returns

- 9.1 Returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 8.1; and
 - (b) the Contractor has agreed in writing to accept the return of the Goods; and
 - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date; and
 - (d) the Contractor will not be liable for Goods which have not been stored or used in a proper manner; and
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 Returned goods may (at the Contractors sole discretion), incur restocking and handling fees.

10. Liability

- 10.1 The Client acknowledges and agrees that it is acquiring the Goods and otherwise entering into and acquiring goods under this agreement for commercial purposes and not for domestic, personal or household use..

- 10.2 If the Client is a consumer within the meaning of the Consumer Law, there are certain rights (such as the consumer guarantees implied by the Consumer Law), which cannot by law be excluded (**Non-Excludable Condition**). This clause is subject to those Non-Excludable Conditions.
- 10.3 Subject to the application of any applicable Non-Excludable Condition and to the maximum extent permitted by law, the Contractor:
- (a) excludes from this agreement all guarantees, conditions and warranties that might but for this clause be implied into this agreement;
 - (b) exclude all liability to the Client for any costs, expenses, losses and damages suffered or incurred directly or indirectly by the Client in connection with this agreement, whether that liability arises in contract, tort or under statute; and
 - (c) will not, under any circumstances, be liable to you for any consequential loss,
- and the Client warrants to the Contractor, as a condition of engaging the Contractor for the Goods and/or Services, that it acknowledges, understands and agrees to the above terms
- 10.4 If the Contractor's liability under this agreement cannot be lawfully excluded, to the maximum extent permitted by law, the Contractor's liability for breach of any Non-Excludable Condition is limited:
- (a) in the case of goods, to (at the Contractor's sole option) the replacement of the Goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired;
 - (b) in the case of Services, to (at the Contractor's sole option) the supplying of the Services again; or the payment of the cost of having the services supplied again.

11. Indemnity

- 11.1 The Client indemnifies the Contractor and its representatives against any liability arising from Claims for:
- (a) any harm to, claim or action by a third party arising directly or indirectly from the Client's use of the Goods, designs for the Goods or any other material supplied by the Client and used by Contractor in Works;
 - (b) any personal injury or death arising directly or indirectly out of the Client's conduct;
 - (c) any damage to property arising directly or indirectly out of the Client's conduct;
 - (d) any negligent or unlawful act or omission by the Client in connection with the Goods;
 - (e) Contractor or a third party's reliance on a misleading representation made by the Client;
 - (f) a contract in force between the Client and a third party connected with the Goods;
 - (g) Contractor being obligated to correct data upon request by a person in accordance with Privacy Law;
 - (h) any complaints process initiated by a person under Privacy Law; or
 - (i) any other cost incurred by the Contractor as a result of a person pursuing rights conferred upon them by Privacy Law.
- 11.2 Contractor may make a claim under indemnities in this agreement in relation to a cost before having incurred the cost, or before making a payment in relation to the cost.
- 11.3 The indemnities in this agreement shall be in addition to any damages for breach of contract to which Contractor may be entitled. Nothing in the indemnities in this agreement will be construed so as to prevent Contractor from claiming damages in relation to the Client's breach of any term of this agreement.
- 11.4 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement for whatever reason.

12. Warranty

- 12.1 For Goods not manufactured by the Contractor, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Contractor shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

13. Intellectual Property

- 13.1 Where the Contractor has designed, drawn or written Goods for the Client, then the Intellectual Property in those designs and drawings and documents shall remain vested in the Contractor (**Work IP**).
- 13.2 Without limiting the Client's rights at law, and subject to any conflicting rights granted by this agreement, the Client must not, without the Contractor's written consent:
- (a) sell, sublicense, rent, lease, lend, modify, alter, translate, reproduce, transmit, distribute, publicly display, publicly perform, publish, adapt, or edit any part of the Work IP;
 - (b) combine or incorporate the Work IP in any aspect of the Client's business without the Contractor's consent in writing;
 - (c) copy the Work IP, in whole or in part, except to incorporate the Work IP into hard or soft copy documents for training or internal communication purposes;
 - (d) use the Work IP in any way which is not in accordance with the specifications and this agreement;
 - (e) use the Work IP for any unlawful purpose; or
 - (f) authorise any other party to do any of the acts listed above.
- 13.3 The Client warrants that all designs or instructions to the Contractor will not cause the Contractor to infringe any Intellectual Property in the execution of the Client's order and the Client agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.

- 13.4 The Contractor may use third party materials where needed to provide the Goods and/or Services. Use of third party materials may be subject to creative commons or open source licensing terms, or any third party licensing terms as notified by the Contractor to the Client.

14. Where a Client is in Default

- 14.1 The Client will be in default if the Client:
- (a) fails to pay any amount on time;
 - (b) gives Contractor incorrect or misleading information in relation to the Credit Application;
 - (c) commits an act of bankruptcy;
 - (d) undergoes an Insolvency Event; or
 - (e) breaches any term of this agreement, and fails to remedy that breach within 10 Business Days;
- 14.2 If the Client is in default, then subject to law (including requirements as to notice), the Contractor will have the right to:
- (a) demand immediate payment of all moneys owed by the Client to Contractor whether due for payment or not;
 - (b) recover from the Client all Goods it has supplied to the Client whether paid for or not;
 - (c) re-sell or otherwise dispose of the Goods so recovered without reference to the Client and apply the net proceeds to the Client's debt to Contractor;
 - (d) immediately cancel any agreement, including any Order in effect with the Client without any obligation to refund the Client any money in respect of the cancellation; and
 - (e) enforce any Security Interests against the Client.
- 14.3 In order to effect recover of the Goods in accordance with this clause, the servants or agents of the Contractor may:
- (a) enter any location under the control of the Client or the Client's agent where the Goods; and
 - (b) use any reasonable force to effect recovery without liability for trespass or any resulting damage.
- 14.4 Contractor, after having demanded payment of any amount overdue in accordance with this clause 16, may apply any payment paid by the Client, against:
- (a) Contractor's costs and disbursements in recovering the amount due;
 - (b) any interest accrued calculated at 2.5% per calendar month compounding monthly at such a rate after as well as before any judgement; or
 - (c) the amount overdue.
- 14.5 Contractor may at any time set off any amount the Client owes to Contractor against any amount Contractor may then owe to the Client.

15. Security Interest

- 15.1 In contemplation of the risk involved in providing the Client a Credit Account or other Goods and/or Services, the Contractor may require that the Client offer up Collateral for the Contractor to secure an interest over.
- 15.2 The Client acknowledge that, where Contractor requires Collateral, this agreement will be considered a Security agreement for the purposes of the PPS Act and irrevocably consents to Contractor registering a Security Interest on the PPSR.
- 15.3 In order to secure the Client's obligations under this agreement, including any obligation to pay any amount to Contractor (including in relation to a Credit Account), the Client:
- (a) grants to Contractor a Security Interest in respect of all goods sold, supplied, leased, bailed or otherwise provided or made available to the Client by Contractor and any proceeds thereof;
 - (b) consents to Contractor perfecting such Security Interest by registration on the PPSR, including as a Purchase Money Security Interest; and
 - (c) undertakes to Contractor to do all things reasonably necessary or required by Contractor to assist Contractor in perfecting the registration of the Security Interest on the PPSR; and
 - (d) waives, to the extent permitted by the PPS Act, its right to receive any notice of a verification statement or any other notice Contractor would otherwise be required to give under the PPS Act.
- 15.4 In relation to any Collateral for which Contractor has a Security Interest under this agreement, the Client agrees and warrants that the Client that it:
- (a) has full right and title in any Collateral;
 - (b) will disclose any and all encumbrances over Collateral as soon as possible;
 - (c) will not allow any other encumbrances over the Collateral without Contractor's express permission; and
 - (d) will not sell, dispose of, grant a license or lease, give control to another, part with possession, allow the value to be reduced, commingle, or deal with the Collateral in any way which could be harmful to Contractor's interests in the Collateral without Contractor's express permission.
- 15.5 If Chapter 4 of the PPS Act would otherwise apply to the enforcement of this agreement, the Client agrees that the following provisions of the PPS Act will not apply to the enforcement of this agreement:
- (a) section 95 (notice of removal of accession), to the extent that it requires Contractor to give a notice to the Client;
 - (b) subsection 121(4) (enforcement of liquid assets — notice to grantor);
 - (c) section 130 (notice of disposal), to the extent that it requires the Client to give a notice to the Client;
 - (d) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (e) subsection 132(4) (statement of account if no disposal);
 - (f) section 135 (notice of retention);
 - (g) section 142 (redemption of collateral); and

(h) section 143 (reinstatement of security agreement).

16. Account and Credit

- 16.1 In performing Services and/or providing Goods under this agreement, the Contractor may provide the Client with access to a Credit Account. In order to provide the Client with access to a Credit Account, the Client must:
- (a) complete the Credit Account request form provided by the Contractor;
 - (b) provide Contractor with any evidence the Contractor requests which may demonstrate that the Client is able to satisfy its payment obligations to Contractor at all times; and
 - (c) comply with the terms listed on that request form and this clause 16.
- 16.2 Prior to providing the Client access to a Credit Account, and for the term of this agreement, the Contractor reserves the right to:
- (a) check the Client's credit history with institutions of the Contractor's choosing;
 - (b) enquire with the Client about confidential business matters such as cash flow, expenses and projected revenue; and
 - (c) take all other actions the Contractor deems reasonably necessary to satisfy itself that the Client will discharge its payment obligations under this agreement.
- 16.3 The Contractor may refuse to execute, suspend or terminate this agreement at its complete discretion where the Client fails to comply with Contractor's requests under this clause.
- 16.4 The Client may obtain the Services and/or Goods under this agreement up to the amount of the Client's credit limit. The credit limit is stipulated in the Credit Agreement.
- 16.5 The Client must comply with all terms, payment periods and requirements of any Credit Agreement the Client enters into with the Contractor for a Credit Account.
- 16.6 The Contractor reserves the right to suspend the provision of Services and/or Goods on credit and may (in the Contractor's absolute discretion) suspend/terminate the Credit Agreement and/or Credit Account entirely if:
- (a) the Client breaches any term of this agreement;
 - (b) the Client breaches any term of the Credit Agreement;
 - (c) the Client does not make payments on its Credit Account within the period stipulated; or
 - (d) the Client exceeds the credit limit.
- 16.7 The Client expressly releases and discharges the Contractor from any Liability to the Client for the suspension or termination of a Credit Account and/or Credit Agreement under clause 16.6.
- 16.8 The Client acknowledges that the provision of a Credit Account is a privilege provided entirely at the Contractor's discretion, and that the Client has no inherent or continuing right to such a privilege. The Client agrees that the Contractor may revoke its Credit Account at any time without the need for prior notice to the Client.
- 16.9 The Contractor may update, amend or vary any of the terms on which it provides the Client a Credit Account in its complete discretion. The Client's continued use of the Credit Account is considered acceptance of all terms and conditions which relate to the provision of that account.
- 16.10 Where the Client does not agree with any updated terms and conditions as they relate to a Credit Account, the Client's sole and exclusive remedy is to cease usage of the Credit Account altogether.
- 16.11 The Client indemnifies Contractor for any failure to comply with the Credit Agreement and/or misuse of its Credit Account, including any legal costs, Consequential Loss or other damages which flow from that breach.
- 16.12 The Client acknowledges and agrees that Contractor may charge interest and other fees on the Credit Account, fees for which will initially be set out in the relevant Credit Agreement. Contractor may update these fees at any time, and will notify the Client of changes in relation to same within a commercially reasonable timeframe.

17. Cancellation

- 17.1 The Contractor may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any sums paid in respect of the Price. The Contractor shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Contractor (including, but not limited to, any loss of profits) up to the time of cancellation.

18. Dispute Resolution

- 18.1 Subject to clause 18.6, any dispute which arises between the parties in connection with this agreement (dispute) must be dealt with in accordance with the requirements of this clause 18, before either party will be entitled to commence proceedings against the other party in respect of the dispute.
- 18.2 The party claiming that a dispute has arisen (complainant) must give the other party a written notice setting out a detailed explanation of the nature of the dispute; and what action the complainant thinks will resolve the dispute (dispute notice).
- 18.3 Within 10 Business Days of the dispute notice being received by the other party, a nominated senior executive of each party must meet in Brisbane, Queensland (unless otherwise agreed between the parties), act in good faith and use best endeavours to resolve the dispute at that meeting, or such subsequent meetings as may be reasonably required.
- 18.4 If the dispute is not resolved pursuant to clause 18.3 within 30 days of the dispute notice being received by the other party, the parties agree to attend a privately held mediation with a mediator appointed by the nominated

senior executive or both parties and in the absence of agreement within 7 days of disagreement by such mediator as appointed by the President, or person in like office of the Resolution Institute.

- 18.5 If the dispute is not resolved within a further 30 days pursuant to clause 18.4 then either party may commence proceedings against the other party in respect of the dispute.
- 18.6 Nothing in this clause 18 prevents a party from seeking urgent injunctive or similar relief from a court.
- 18.7 The dispute resolution procedure set out in this clause 18 will not apply in any instance where Contractor seeks to enforce a debt in connection with this agreement.

19. Termination by Contractor

- 19.1 Notwithstanding any other provision of this agreement, Contractor may terminate this agreement immediately by written notice to the Client if the Client:
- (a) is in material breach of this agreement;
 - (b) is in default for more than 20 days;
 - (c) experiences a Change of Control;
 - (d) convicted of a criminal act; or
 - (e) experiences a change in its Creditworthiness.
- 19.2 Termination of this agreement shall not affect the Client's obligation to pay any outstanding amounts or other amounts in relation to Goods or the Services already performed.

20. Confidentiality

- (a) A party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.
- (b) A party will not be in breach of this confidentiality clause in circumstances where it is legally compelled to disclose the other party's Confidential Information.
- (c) Each party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this agreement, do not make public or disclose the other party's Confidential Information.
- (d) Notwithstanding any other provision of this clause, a party may disclose the terms of this agreement (other than confidential information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.

21. Communications

- (a) Communications must be in writing.
- (b) Either party may serve any communication on the other party by sending it to that party's email address. A communication by email will be taken to have been received by the addressee at the earlier of the time stated in a read receipt sent by the recipient's computer or when the message has been delivered to the email address of the addressee
- (c) If delivery is made after 5:00pm on a Business Day, it must be treated as received on the next Business Day.
- (d) For the purposes of the *Electronic Transactions Act 1999* (Cth) and the *Electronic Transactions (Queensland) Act 2001* (Qld), the parties agree to send, receive and execute notices and documents electronically, and agree that any document signed electronically will be binding with the same effect as a physical signature.

22. General

- 22.1 Any clause of this agreement, which is invalid or unenforceable, is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of this agreement..
- 22.2 The laws of Queensland govern this agreement. Each of the parties hereby submits to the non-exclusive jurisdiction of courts with jurisdiction there..
- 22.3 The Contractor shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions.
- 22.4 In the event of any breach of this contract by the Contractor the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 22.5 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 Contractor.
- 22.6 The Contractor may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.7 The Contractor reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Contractor notifies the Client of such change.
- 22.8 Neither party shall be liable for any default (except payment of any monies owing by the Client to the Contractor) due to any act of God, act of Government, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm, pandemic or other event beyond the reasonable control of either party.
- 22.9 The failure by the Contractor to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Contractor's right to subsequently enforce that provision.
- 22.10 If this agreement is inconsistent with any other document between the parties, this agreement prevails to the extent of the inconsistency.
- 22.11 Neither party has entered into any agreement in reliance on or as a result of any representation, promise, statement, conduct or inducement by the other otherwise than as set out in this agreement.

- 22.12 The relationship of the parties does not form a joint venture, partnership or agency, or create any form of employment relationship.
- 22.13 No part of this agreement will be deemed waived and no breach excused unless such waiver or consent is provided expressly and in writing.
- 22.14 This agreement may only be amended in writing by the Contractor.
- 22.15 The Client cannot assign, novate or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of Contractor. Contractor may assign, novate or otherwise transfer any of its rights or obligations under any contract arising from this agreement to a third party without notice to, or the prior consent of the Client, but if Contractor requires, the Client will sign any documents to give effect to an assignment, novation or transfer by Contractor under this clause.
- 22.16 These terms and conditions, together with the Credit Application and Credit agreement (if applicable) and each quote and subsequent order, whether accepted or not, create the terms and conditions of this agreement between Contractor and the Client. The provision or acceptance of an quote or order will not form a separate agreement and any additional terms contained in any document (including hand amendments) provided by the Client will not form part of this agreement, unless agreed to in writing by Contractor. This agreement applies to all Goods and Services that Contractor provides to or which are accepted by a Client (or its authorised representative). The Client is deemed to have read, understood and accepted these terms and conditions if at any time the Client requests or accepts a quote or order or pays any deposit or any other monies in relation to a quote or order.