

T E R M S & C O N D I T I O N S

IMPORTANT ACKNOWLEDGMENTS

All Goods and Services provided to you, are supplied on the terms and conditions of this document.

By signing the Quote or instructing us to proceed with the Goods and Services, you agree to be bound by the Terms.

1. Definitions

- 1.1. "Agreement" means the agreement between the Company and the Client for the supply of Goods and/or Services, consisting of the Quote and these Terms.
- 1.2. "Approvals" means the certificate issued by the relevant authority confirming the building and development provisions have been complied with.
- 1.3. "Client" referred to as you/your, means the person/s or any person acting on your behalf of and with the authority of the Client requesting the Company to provide the supply and installation of Goods and Services 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 part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4. "Company" referred to as our, means The Marina Specialist Pty Ltd ABN 32 010 633 119 and includes its successors and assigns.
- 1.5. "Completion Date" means the date the Company determines the Works have been completed.
- 1.6. "Days" means calendar days unless advised otherwise.
- 1.7. "Force Majeure" *Event* means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this Agreement (other than a payment obligation), and includes without limitation an act of God or a disaster (whether natural or man-made) including fire, flood, lightning or earthquake; riot, civil commotion, act of public enemies, national emergency (whether in fact or in Law) or government declaration or direction; epidemic, pandemic (including the Covid-19 Pandemic) or quarantine restriction; supply shortage or strike, lock out, stoppage, labour dispute or shortage including industrial disputes involving Marine Structures' suppliers.
- 1.8. "Goods" means any goods, materials, plant, item or equipment specified in the Quote and as may be varied by agreement between the parties.
- 1.9. "Guarantor" means any director of the Customer if the Customer is a corporate entity.
- 1.10. "Installation Works" means all works necessary and incidental to installing the Goods to the Specifications at the Client's premises.
- 1.11. "Insolvency Event" means any of the following:
- (a) The Client is declared insolvent or becomes bankrupt; or
 - (b) The Client is unable to pay their debts as they fall due.
- 1.12. "Intellectual Property Rights" means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, layouts, trade marks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
- 1.13. "Latent Condition" means any physical condition on, above or below the site, or areas around the site, which substantially differs

from the physical conditions which could reasonably have been expected by the Company at the time of entering into the Agreement and may include (but is not limited to);

- (a) unanticipated shore or ground conditions (including but not limited to bank erosion, siltation and sand build up or soil instability) or environmental or contamination issues that may impact the provision of the Works or the ability of the Marine Structures to procure the Approvals;
 - (b) the existence of substantial rocks or rock formations that may impact piling and require divers to investigate;
 - (c) the existence of submerged hazards;
 - (d) any obstruction, condition or other matter that prevents, hinders or delays access to the Site or the commencement of the Works (including but not limited to any obstruction (for example, a vessel) which will require removal to enable the Works to be carried out.
- 1.14. "Material Affect" means a change in circumstances which in the professional judgment of Marine Structures requires an increase in the Price over and above the Price.
- 1.15. "Price" means the amount payable to the Company as specified in the Quote or tax invoice.
- 1.16. "Property" means all rights, interests or things which are legally capable of being owned and includes but is not restricted to, physical goods, equipment and real property.
- 1.17. "Quote" means the quotation provided by the Company to the Customer in relation to the Company's provisions of the Goods and/or Services.
- 1.18. "Scope of Works" means the Works outlined in the Quote to be completed by the Company under the Agreement and as varied by the parties from time to time as the case may be.
- 1.19. "Services" means Installation Works and Works that are of and incidental to the supply and installation of Goods as specified in the Quote.
- 1.20. "Special Conditions" means the special conditions set out in Annexure 1 of these Terms and Conditions.
- 1.21. "Specifications" means any technical or other specification relating to the supply and installation of the Goods which have been supplied by the Company to the Client.
- 1.22. "Works" means the supply of Goods and Services and the Installation Works.

2. General Conditions

- 2.1. These Terms and Conditions, Special Conditions, plans and specifications set out the entire Agreement between the Company and the Client. The Client may not rely on an earlier agreement, or anything else said or done, by the Company and/or the Company's representatives prior to this Agreement being entered into, unless expressly agreed by way of a written variation pursuant to clause 13 of these Terms and Conditions.
- 2.2. The law of Queensland applies to any Agreement made between the parties. The parties submit to the exclusive jurisdiction of Queensland for the commencement of any claim, cause of action or proceeding in relation to any matter or dispute that arises from or is incidental to any Agreement made between the parties.
- 2.3. Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.
- 2.4. 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.
- 2.5. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and

- enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 2.6. The Client agrees that the Company may amend these Terms and Conditions by notifying 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 you make a further request for the Company to provide Services to you.
- 2.7. The Client acknowledges that it has no right to set-off or deduct from the Price, any sums owed or claimed to be owed to it by the Company nor to withhold payment of an invoice because part of that invoice is in dispute.
- 2.8. During the term of the Agreement, the Client must keep and maintain adequate insurance to cover any loss or damage to the Site from any cause.

3. Quotations

- 3.1. A Quote remains valid from the date of the Quote for 30 days, unless otherwise specified in the Quote or otherwise withdrawn from the Company.
- 3.2. The Company may specify in the Quote that the Price quoted is an estimate only, due to the nature of the Goods and/or Services required. Where the Quote states the Price is an estimate only, the Company will provide updates of the Price as the Price changes, and the Customer must pay the Price as updated by the Company in accordance with these Terms.
- 3.3. Prices quoted by the Company are applicable to that Quote only.
- 3.4. Any time or date given by the Company to the Customer in respect of delivery of the Works is an estimate only. The Company is not liable for any loss or damage whatsoever arising due to failure by the Company to deliver the Works (or any part of them) promptly or at all, due to circumstances beyond the reasonable control of the company.
- 3.5. The Customer is taken to have expressly accepted and is immediately bound, jointly and severally, by these Terms if the Customer places an order or accepts the Quote for any Works.
- 3.6. The Company may, in its discretion, substitute the Goods outlined in any Quote provided the substitute goods and services are of similar quality and style.
- 6.4. The payment terms may vary on each project. Unless otherwise noted in this Agreement, the payments will be made in 3 parts:
- (a) **30% of the Price on acceptance of the order;**
- (b) **50% of the Price which is payable on the completion of fabrication or the installation of piles (as applicable and whichever occurs first); and**
- (c) **20% being the remainder of the outstanding amount which is payable on the Completion Date.**
- (d) The Company may claim for partial progress payments at its discretion.
- 6.5. All invoices issued by the Company are payable on the due date for payment stated on the invoice or failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to you by the Company.
- 6.6. If an invoice is not paid in full by the due date, interest shall accrue daily from the date when payment becomes due, until date of payment, at a rate of 12% per annum.
- 6.7. If the Client does not pay a progress instalment as and when it is due in accordance with the Payment Terms, then without limiting any other remedies available to the Company, the Company may suspend performance of the Works until the outstanding Progress Instalment is paid.
- 6.8. If the Client owes money to the Company, the Client shall indemnify the Company from and against all costs and expenses incurred by the Company in recovering the debt including but not limited to:
- (a) internal administration fees;
- (b) legal costs on an indemnity basis;
- (c) debt collection agency costs on an indemnity basis; and
- (d) bank dishonour fees.
- 6.9. The client acknowledges that the price provided is fixed for a period of 12 months. The Company may claim for additional costs associated with delays caused by the client that extend the project timeframe in excess of this period in accordance with clause 14.
- 6.10. The client acknowledges that any price breakdown provided, either at time of sale or thereafter, is for information only and the pricing provided is contingent on the Company undertaking the entirety of the scope of works under contract. The client cannot reduce the scope of works without the approval of the company, and the company (should it agree) reserves the right to adjust pricing accordingly for profit, overheads, management, and other direct and indirect costs

4. Assignment

- 4.1. The Client may not assign its interest in this Agreement or any part of it without the prior written consent of the Company.
- 4.2. The Company may assign any of its rights or obligations under this Agreement.

5. GST

- 5.1. Unless otherwise specified in this Agreement, the Price of the Goods and/or Services is exclusive of GST.
- 5.2. The Company will charge GST at the rate set by the Australian Government in respect of any supply made to the Client.

6. Price and Payment

- 6.1. The Client must pay the Price to the Company for the supply of Goods, Services and/or Installation Works as set out in the Quote.
- 6.2. Payment milestones set out in the Quote supersede payment terms set out in Clause 6.4(a),(b) and (c) only.
- 6.3. The Company reserves the right to vary the Price if:
- (a) The Client requests a variation, and parties agree to the variation to the Goods and Services in accordance with clause 13 of this Agreement;
- (b) The Price is varied as a result of a request by the Client or any delay by the Client; and
- (c) Any other additional fees, charges or taxes that are applicable to the Goods and/or Services.

7. Installation

- 7.1. Where the Company agrees to install the Goods at any premises nominated by the Client, then the following conditions shall apply:-
- (a) The Company shall undertake the Installation Works in a proper and workmanlike manner;
- (b) The Client will provide reasonable access for the Company, its servants, agents and subcontractors to the premises during the period of installation as agreed by parties to enable the Company to carry out its obligations;
- (c) The Client must provide at its own expense, connection for electricity and other similar services if required by the Company.
- (d) The Company will not be liable or responsible for any loss, damage or expense howsoever incurred by the Client as a result of:
- i. any failure or delay by the Company in performing any of its obligations under this Agreement due to a reason beyond the control of the Company;
- ii. any prohibitions or restrictions under any statute, bylaw or regulation;

- (e) The Client cannot object to the installation of the Goods, to the extent that the Goods have been installed in accordance with the manufacturer's specifications.
 - (f) Notwithstanding the above conditions, the Company shall be excluded from all liability occurring as a result of any errors in the designs or Specifications which were not created by the Company, or during the course of any Services which were not caused by the Company or which it was not responsible for.
- 7.2. Where the Client has supplied any items whatsoever to the Company to complete the Installations Works the Client accepts responsibility for those supplied items.
- 7.3. The Company is under no obligation to commence the Works or install the Goods until the Approvals have been granted.
- 7.4. Without limiting clause 7.3 above, if:
- (a) The Client requests the Company to commence with Works or install the Goods before all necessary Approvals are granted; and
 - (b) The Company agrees (in its sole discretion) to that request, then the Client:
 - (c) releases the Company from all Claims arising from or in connection with the Goods being installed and the Works being undertaken notwithstanding the Approvals have not been granted;
 - (d) releases the Company from all Liability suffered by the Client or any third party as a result of, arising from or in connection with the lack of the Approvals; and
 - (e) indemnifies, and will keep indemnified, the Company from all Claims suffered or incurred by the Company as a result of, arising from or in connection with the Goods or the Works in the absence of the Approvals.
- (b) "Minor Defect" means an external defect that otherwise does not affect the structural integrity of the Works or the Client's premises.
- 9.2. If at any time the Client identifies a defect in the Works ("Defective Works"), the Client must notify the Company within 24 hours of the Defective Works becoming identifiable.
- 9.3. The Company will make all reasonable efforts to rectify the defect within the following timeframes:
- (a) 48 hours, if the defect is considered a Major Defect; or
 - (b) 7 days, if the defect is considered a Minor Defect; however, if rectification materials are unavailable to the Company within the above timeframes, the Company will complete all rectification work within a reasonable time period.
- 9.4. The Company will, at its own cost, rectify any Defective Works as required by legislation.
- 9.5. The Client must not engage another person and or contractor to rectify the Defective Works, without first notifying the Company that a defect exists in accordance with clause 9.2 of this Agreement.
- 9.6. If the Client fails to comply with clause 9.2 of this Agreement, the Client will be barred from bringing a claim against the Company seeking to recover any costs associated with rectification works.
- 9.7. The Client cannot withhold payment pursuant to clause 6.3(c) due to the identification of any Minor Defect.
- 9.8. To the extent permitted by Law, the Company is not liable for any Claim, damage or failure in respect of the Works and/or Goods to the extent such Claim, damage or failure is due to:
- (a) fair wear and tear;
 - (b) the reckless or negligent act or omission of the Client;
 - (c) improper or unauthorised installation, maintenance and service compliance, use, repairs or adjustments to the Site by any person other than the Company or the Personnel;
 - (d) failure of the Client to maintain regular service and maintenance of the Goods as specified in the maintenance schedule or (where service or maintenance requirements are not so specified) such servicing and maintenance as is reasonably required;

8. Unforeseen Site Conditions & Force Majeure

- 8.1. The Client acknowledges that:
- (a) seabed levels may change as a result of varying natural and manmade processes which includes but is not limited to canal dredging, river siltation and estuarine processes;
 - (b) site conditions may vary from the day of the initial site consultation conducted by the Company. Consequently, the Price may vary; and
 - (c) the Company is not liable for any additional costs incurred as a result of pontoon grounding.
- 8.2. Additional charges may apply in circumstances where the Company encounters Latent or unforeseen site conditions during the Installation Works. This includes but is not limited to submerged rocks, objects or obstacles.
- 8.3. Agreements and deliveries may be suspended by the Company in the event of any strike, lockout, trade dispute, tempest, breakdown, theft, crime, force majeure, the inability of the Company to procure the necessary materials or anything that prevents or inhibits the performance of this Agreement by the Company.
- 8.4. No responsibility is accepted by the Company for any default, delay, loss or damage due to any of the events contained in clause 8.3 above or any other unforeseen cause or any cause outside of the Company's control.

9. Defects in Installation

- 9.1. In this clause:
- (a) "Major Defect" means a defect that affects or causes damage to the internal or structural integrity of the Works or the Client's premises.

10. Warranty

- 10.1. The Company shall comply with all statutory warranties as set out in the National Construction Code or any other applicable piece of legislation in respect to the Works.
- 10.2. Any Goods designed, constructed, supplied and installed by the Company are warranted for a period of twelve (12) months from the date of installation against any faulty workmanship or material. This excludes any timber, electrical and galvanized products.
- 10.3. Any timber and galvanized products are warranted for a period of twelve (12) months from the date of installation against any faulty workmanship or material.
- 10.4. Warranty for electrical or proprietary items supplied by third parties is limited to the warranty provided by the sub-supplier. A copy of the supplier warranties can be passed on to the client on request.
- 10.5. The Client agrees that the Company shall not be liable for any:
- (a) Representation, promise or undertaking regarding the fitness or otherwise of Goods supplied by the Company unless it is made in writing or implied by the law;
 - (b) Failure by the Client to maintain Goods in accordance with any advice, recommendation, specification, information, assistance or service provided by the Company in relation to Goods sold or manufactured by it.
- 10.6. In the case of second hand Goods (including goods supplied by the Client), the Client acknowledges that it has had full opportunity to inspect the Goods and that they accept the Goods will all faults and that no warranty is given by the Company as to the quality or

suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company will not be responsible for any loss to the Goods or Claim caused or arising in connection with the Goods.

11. Delivery

- 11.1. Where the company agrees to deliver the Goods, the Company shall deliver the Goods to the premises nominated by the Client.
- 11.2. Any time or date quoted by the Company for the delivery and/or installation of the Goods is an estimate only. The Company shall not be liable for any loss or damage, including any consequential loss or damage, resulting either directly or indirectly from the delay in delivery and/or installation or failure to deliver Goods, either in whole or part.
- 11.3. The Client shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery or dispatch.
- 11.4. The Company's obligations to deliver shall be discharged on arrival of the Goods at the Client's nominated delivery destination.
- 11.5. The Company reserves the right to deliver by portion and each portion shall not entitle the Client to repudiate this Agreement.

12. Risk

- 12.1. Subject to any legislative requirements, the risk in the Goods will pass to the Client upon delivery of the Goods to the Client's nominated premises.
- 12.2. The Client indemnifies the Company against any theft, loss and/or damage to the Goods from the date the Goods were delivered to the Client's nominated premises.

13. Title to Goods

- 13.1. Notwithstanding that the Client has possession of the Goods, the legal and equitable title to the Goods supplied by the Company, will not pass to the Client until the Client has paid all monies claimed by the Company to the Company.
- 13.2. Payment shall not be deemed to occur until payment of monies owing to the Company have been presented and cleared in full by the Company.
- 13.3. Until the Goods are paid for in full, the relationship of the Client and Company shall be as a fiduciary in respect of the Goods. Accordingly, the Client must:
- (a) Refrain from encumbering the Goods;
 - (b) Not dispose of the Goods; and
 - (c) Store, mark and keep appropriate records for the Goods in a way that they can, at all times, be recognised and identified as the property of the Company.
- 13.4. The Company reserves its rights to enter upon any premises for the purpose of repossessing the Goods if the Client has breached any of these conditions. The right to repossess is without any prejudice to any other rights of recovery otherwise available.
- 13.5. The Client indemnifies the Company against any claim, action, damage, loss, liability, cost, expense or payment which the Company suffers as a result of exercising their rights under this clause.

14. Variations

- 14.1. Either party may request a variation to this Agreement, by providing the other party with written notice ("Variation Notice").
- 14.2. The documentation requirements for submitting a variation by either party is as follows:
- (a) the document must be in writing and be in readily legible English;
 - (b) the document must describe the variation requested;
 - (c) the document must state the date of the request for the variation;
 - (d) if the variation will cause a delay to the Works, the Company must state a reasonable estimate for the period of delay;
 - (e) if the variation will change the Price, the document must specify the method for calculating the change to the Price, when the increase is due to be paid.
- 14.3. The Company must within 14 days of receiving the Variation Notice, advise the Client in writing if it accepts the variation.
- 14.4. The Company is not obliged to approve any variation requested by the Client.
- 14.5. All approved variations must be in writing and expressly accepted by both parties.
- 14.6. If the Client issues the Company with a Variation Notice, the Company reserves its rights to charge the Client an administration fee (plus GST), reflecting the reasonable costs (including but not limited to direct and indirect costs) incurred by the Company in preparing the paperwork to properly document the requested variation.
- 14.7. Latent Conditions treated as variations
- (a) If the Company encounter unforeseen events or Latent Conditions during the course of undertaking the Works which may have a Material Affect on the work required, the Company will provide the Client:
 - i. With full particulars of the unforeseen event and/or Latent Conditions along with details of the additional work required;
 - ii. Written details of the additional costs and expenses associated with the additional works ("Variation Notice")
- 14.8. Changes to the cost of materials
- if the cost of the raw materials ("Materials") required to complete the Works increase as a direct consequence of changes in economic or market conditions outside the control of the Company, the Company may pass that additional cost on to the Client (in addition to the Purchase Price) and the Client must pay those additional costs, provided the Company first provides the Client with:
- (a) an itemized list of the additional costs;
 - (b) reasonable evidence that the Company has necessarily and unavoidably suffered increased costs of the Materials greater than that which it allowed for in the Purchase Price.

15. Cancellation of Order

- 15.1. The Client agrees all amounts paid to the Company in accordance with this Agreement are non-refundable once paid.
- 15.2. Once an order has been placed, the order cannot be cancelled by the Client, without the Company's written acceptance of the cancellation, irrespective of whether or not it has advised the Client of the acceptance of the order. Charges will apply.
- 15.3. If the Client cancels an order, the Client will be required to pay for all costs incurred to date, including but not limited to materials, parts, draftsperson time, engineering and administrative costs that the Company has incurred on behalf of the order.
- 15.4. The Company may cancel an order at their sole discretion and convenience provided that the Customer is given written notice

15.5. If the Company cancels an order in accordance with clause 15.4, then any money paid to the Company by the Customer is to be refunded in full.

16. Termination

16.1. The Client may terminate this Agreement in the event of a substantial breach by the Company if:

- (a) The Client has notified the Company, in writing that it has breached its obligations under this Agreement; and
- (b) The breach has not been remedied within 30 days of the Company receiving the notice.

16.2. The Company may suspend or terminate this Agreement, or any part of it in the Client commits or suffers any of the following events:

- (a) The Client fails to comply with any of their obligations under this Agreement;
- (b) The Client fails to remedy any breach of this Agreement within 30 days of being requested to do so by the Company;
- (c) The Client has not paid any amount it owes to the Company on time, whether or not the Company has issued a written demand; or
- (d) An Insolvency Event occurs.

16.3. The Company may terminate this Agreement at any time for any other reason by giving 2 weeks notice in writing to the Client. In the event the Company exercises its rights under this clause, its liability is limited in accordance with the provision of clause 17 of this Agreement

17. Limited Liability

17.1. In the event the Company breaches this Agreement, The Company's liability shall be limited to the cost of rectification only, and only in respect of the Scope of Works the Company was obligated to perform under the Agreement.

17.2. The Company shall, in no event, be liable to the Client by reason of any breach of this Agreement, or in tort, equity or otherwise, for loss of use of the services or any part thereof, loss of profit or loss of any contract, or for any indirect, special or consequential loss or damage that may be suffered by the Client or any third party in connection with this Agreement.

17.3. Any failure by the Company to enforce any terms and conditions, or breaches of such, will not be taken as a waiver of that condition, nor will it affect our rights in relation to that condition.

18. Security and Charge

18.1. Despite anything to the contrary contained herein or any other rights which the Company may have howsoever where the Client and/or the Guarantor (if any) is the owner of land, realty, personal or business records, Company / Trusts / SMSF registers, or any other asset including those capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all or their joint and/or several interest in the said land, realty, personal or business records or Company / Trusts / SMSF registers, or any other asset to the Company to secure any and all amounts and other monetary obligations that are or become payable to the Company. The Client and/or the Guarantor acknowledge and agree that the Company shall be entitled to lodge where appropriate a caveat or register a security interest or take a lien or take possession of any such property mentioned in this section. Such a caveat, security interest, charge, lien or possession shall be withdrawn once all payments and other monetary obligations payable have been met

18.2. Should the Company elect to proceed in any manner in accordance with this clause and/or its subclauses, the Client and/or the Guarantor shall indemnify the Company from and

against all of its costs and disbursements including legal costs on a solicitor and own client basis.

18.3. The Client and/or the Guarantor (if any) agree to irrevocably nominate, constitute and appoint the Company as your and/or the Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause.

19. Personal Property Securities Act 2009 (PPSA)

19.1. In this clause: financing statement, financing change statement, security agreement and security interest has the same meaning given to it by the Personal Property and Securities Act 2009 (Cth) ("PPSA").

19.2. The Client acknowledges and agrees that these Terms and Conditions constitute a security agreement for the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Company to the Client.

19.3. The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such as information to be complete, accurate and up to date in all respects) which the Company 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 ("PPSR");
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 18.3(a)(i) to 18.3(a)(ii);

(b) indemnify and reimburse the Company for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA releasing any charged Goods changed thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;

(d) not register or permit to be registered a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company;

(e) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change of the nature of proceeds derived from such sales.

19.4. The Company and the Client agree that section 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions.

19.5. The Client waives their rights to receive notices under section 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

19.6. The Client waives their rights as a grantor and or debtor under sections 142 and 143 of the PPSA.

19.7. Unless otherwise agreed in writing by the Company, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA

19.8. Subject to any provisions to the contrary, nothing in these Terms and Conditions is intended to have the effect of contracting out of any provisions of the PPSA.

20. Legislative and Authority Requirements

20.1. Electronic Transactions Act

- (a) By executing this Agreement, the parties reaffirm, having given their prior consents as required by the Electronic

Transactions (Queensland) Act 2001, to receiving electronic communications, including notices by email transmission.

design may get approval and provide the Client with its recommendation.

24.2. The Company will not be liable or responsible for any loss, damage or expense howsoever incurred by the Client as a result of the client's failure to obtain any Approvals required by the relevant Authority.

21. Personal Guarantee

- (a) In consideration of Company performing the Goods and Services for the Customer, the Guarantor agrees to jointly and severally guarantee to the Company the due and punctual payment of all moneys and the due and punctual performance and observance by the Customer of all the covenants, conditions and provisions in these Terms to be paid, performed and observed by the Customer (the "Guarantee").
- (b) The Guarantor covenants with the Company that the Guarantee shall be a continuing guarantee and that the liability of the Guarantor shall continue until each and every obligation of the Customer under these Terms is duly performed and completed and the liability of the Guarantor shall not be abrogated, altered, prejudiced or affected by any neglect or forbearance by the Company or by the granting by the Company to the Customer of time or by any other forbearance, act or thing permitted or omitted.
- (c) The Guarantor further covenants with the Company to hold the Company indemnified against all losses, damages, expenses and costs on an indemnity basis which the Company may incur by reason of any breach or default on the part of the Customer under the covenants and obligations on the part of the Customer to be observed and performed in these Terms.
- (d) If the Customer does not make payment of any amount due to the Company, the Company can demand that amount be immediately paid from the Guarantor.
- (e) If the Guarantor does not make payment of an amount when demanded, among other things and in any order the Company so chooses:
 - i. can sue the Guarantor for the full amount owing;
 - ii. can enforce any other security available to the Company.
- (f) The Guarantor undertakes to pay any enforcement expenses of the Company however incurred, including legal expenses on an indemnity basis, in relation to the enforcement of this guarantee.

22. Special Conditions (Annexure A)

- 22.1. The Special Conditions referred to and attached as Annexure A to these Terms form part of the Agreement between the parties.
- 22.2. If there is a provision in these general Terms which is inconsistent with any of the Special Conditions listed in Annexure A, the Special Conditions will apply to the extent necessary to remove any inconsistency.

23. Excluded Items (Annexure B)

- 23.1. The Client acknowledges that any items, materials, Goods, Services and/or Installation Works listed and attached as Annexure B to these Terms and Conditions is not included in the Quote.
 - i. For clarity, the Company shall not be responsible for any of the items or work described in Annexure B.

24. Best Endeavors

- 24.1. In instances where Approvals may be difficult to obtain, the Company will consult with the Client to determine if an amended