

## TERMS AND CONDITIONS

### 1 These Terms and Conditions

1.1 These terms and conditions of sale (**Terms and Conditions**) govern the sale of goods, components and services by Australian Security Fencing Pty Ltd trading as Oztime Technologies (ABN: 39 003 934 094)] (the **Supplier**).

1.2 In these Terms and Conditions:

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

**Confidential Information** means all information and other content disclosed by a party (the **Disclosing Party**) to the other party (the **Receiving Party**) and, in the case of the Supplier as the Disclosing Party, includes these Terms and Conditions and the Prices, but excludes information that: (a) was independently generated by the Receiving Party; (b) is in the public domain other than as a result of a breach of this agreement; or (c) was legally and properly obtained by the Receiving Party.

**Confirmation Order** means a document or other communication (including an email) issued by the Supplier to the Purchaser under clause 2.4, setting out the conclusive details of the purchase.

**Consequential Loss** means: (a) any loss of revenue or profits, loss of actual or anticipated savings, and loss of opportunity; and (b) any loss that does not flow naturally and directly from the relevant breach, negligence or other act or omission.

**Consumer** has the meaning provided to it in section 3 of the Australian Consumer Law.

**Contract** means an agreement between the parties for the supply of Services, as set out in clause 2.4.

**Force Majeure Event** means any event or circumstance beyond the reasonable control of a party and includes natural disasters, 'acts of god', viruses, pandemics, epidemics, public health emergencies and governmental actions, laws and regulations taken in response to same.

**Government Authority** means any governmental, semi-governmental, municipal, statutory, judicial or quasi-judicial authority, department, agency, body, entity, organisation, commission or tribunal.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Intellectual Property Rights** means all rights conferred under statute, common law or equity in any jurisdiction, whether existing now or in the future and whether or not registered or registrable, in relation to trade marks, copyright, patents, patentable inventions, designs, trade secrets, circuit layouts, programming tools, object code, source code, methods, techniques, recipes, formulae, algorithms, modules, libraries and database rights, together with the right to apply for the registration or grant of any such intellectual property, and **Intellectual Property** has a corresponding meaning.

**Installation Services** means installation and related services which the Supplier may provide to the Purchaser, as specified in a Confirmation Order or otherwise as agreed between the parties, and as set out in Schedule 1.

**Latent Condition** means any physical conditions on the Site or its surroundings which differ from the physical conditions which would have been readily apparent to a competent contractor if that contractor had visually inspected the Site at the time of the Confirmation Order.

**PDH Products and Services** means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Price** means the price payable for the Products or Services as specified in a quotation.

**Products** means any perimeter security products, fencing products and components offered for sale by the Supplier under these Terms and Conditions.

**Purchase Order** means a document or other communication (including an email) issued by the Purchaser to the Supplier under clause 2.3 confirming the Purchaser's offer to purchase Products and/or Services in response to a Quotation.

**Purchaser** means any person/s or company that wishes to purchase Products or Services (or both) from the Supplier.

**Quotation** means a quote document or other communication (including an email) prepared by the Supplier and given to a Purchaser, containing the Supplier's Prices, specifications and related information, subject to clause 2.2.

**Repair Services** means preventative maintenance, remedial maintenance or other related services which the Supplier may provide to the Purchaser, as specified in a Confirmation Order or otherwise as agreed between the parties, and as set out in Schedule 1.

**Services** means any services to be performed by the Supplier for the Purchaser, and if specified in a Confirmation Order or otherwise agreed between the parties, includes the provision of Installation Services or Repair Services.

**Site** means the place/s of shipment of Products or performance of Services as stated in a Confirmation Order or as agreed between the parties.

**Tax** or **Taxes** means any tax, excise, levy, duty, charge, fee, or deduction which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

**Tax Invoice** means one or more invoices corresponding with a Confirmation Order issued to the Purchaser by the Supplier, and which is also a tax invoice as that term is defined in the GST Act

**Warranty Period** means, unless otherwise agreed in writing or in a particular Confirmation Order: (a) for new Products, 12 months from shipment under clause 5; (b) for Installation Services, 12 months from the completion of performance under Schedule 1; and (c) for Repair Services, six months completion of performance under Schedule 1.

**WHS Law** means the *Work Health and Safety Act 2011* (Cth) and any other applicable state, territory or commonwealth work health and safety legislation or regulations (including any occupational health and safety legislation or regulations).

- 1.3 These Terms and Conditions apply to the exclusion of any terms on any order form or other document issued by the Purchaser.

## **2 Quotations and Confirmation Orders**

- 2.1 A Purchaser may at any time request that the Supplier provide a quotation for Products or Services by providing to the Supplier information and details relating to the required Products or Services, including any information reasonably requested by the Supplier.
- 2.2 On receipt of such a request, the Supplier may provide to the Purchaser a Quotation. The Purchaser acknowledges and agrees that Prices given by the Supplier as part of the Quotation are current only as at the date the Quotation is given, and the Supplier may reflect any changes to its costs in providing the Products or Services by amending the Price given in a Quotation at any time, prior to the parties entering into a Contract.
- 2.3 If the Purchase wishes to purchase Products and/or Services from the Supplier on the basis of a Quotation, the Purchase may provide to the Supplier a written Purchase Order.
- 2.4 On receipt of a Purchase Order, or otherwise on notification by the Purchaser that it wishes to purchase Products and/or Services in response to a Quotation, the Supplier will issue to the Purchaser a Confirmation Order, in which case the parties are taken to have entered into an agreement to purchase the Products or Services or both (**Contract**), comprised of:
- (a) the relevant Confirmation Order;
  - (b) these Terms and Conditions;
  - (c) any applicable Schedules to these Terms and Conditions;
  - (d) any other document the parties agree will form part of the Contract,
- and the parties agree that the order of precedence to be applied in the case of inconsistency between these documents is the order set out in this clause 2.4.
- 2.5 The Supplier has no obligation to issue a Confirmation Order, whether or not in response to a Purchase Order, and may refuse to do so without providing reasons. The Supplier may also provide additional terms or conditions in a Confirmation Order, in which case the Contract is formed from the time the Purchaser confirms its acceptance of the Confirmation Order.
- 2.6 The Purchaser is responsible for ensuring that any Products purchased under a Confirmation Order are suitable for the purpose intended by the Purchaser, including as to use or re-supply by the Purchaser or any third party. If the Supplier expressly specifies a purpose for which the Products are suitable or intended, the Supplier supplies the Products for use only as specified for that purpose.

## **3 Installation or Repair Services**

If the Supplier has agreed to provide Installation Services or Repair Services then the additional terms and conditions set out in Schedule 1 (Installation or Repair Services) shall apply.

## **4 Variations**

- 4.1 If at any time after the formation of a Contract, a party wishes to propose a variation to that Contract or Order or the relevant Confirmation (a **Variation**), that party must as soon as practicable, notify the other party in writing of the Variation and the likely impact of the Variation. If the Supplier is issuing the Variation notice, or if the Supplier receives a Variation notice, the Supplier must provide to the Purchaser an updated Quotation for the Products or Services as varied.
- 4.2 Any Variations must be agreed between the parties, including as to impacts on Prices and other amounts payable, prior to either party being bound by that Variation.

## **5 Payment Terms**

- 5.1 At the time of issuing a Confirmation Order, or shortly thereafter, the Supplier will provide to the Purchaser a Tax Invoice for the payment of 50% of the Confirmation Order (the **Deposit**). Unless otherwise agreed between the parties, the Supplier has no obligation to perform or fulfil a Confirmation Order prior to the Purchaser paying the Deposit.
- 5.2 The Supplier will provide the Purchaser with a Tax Invoice for the balance of the amounts owing under a Confirmation Order:
- (a) for Products, at the time the Products are ready for shipment or collection (in accordance with clause 6), provided that such shipment or collection will not occur until payment of the balance of the amounts owing under a Confirmation Order are made in full; or
  - (b) for Services, at the time the Supplier has completed performance of the Services in question.
- 5.3 The Purchaser must pay the amount specified in a Tax Invoice to the Supplier in accordance with the payment terms stated in that Tax Invoice or otherwise in the Confirmation Order, or if none are stated or otherwise agreed, payment is due within 30 days from the date of the Tax Invoice.
- 5.4 Subject to clause 14, unless otherwise specified in a Confirmation Order, all Prices are stated exclusive of Taxes and the Purchaser is solely responsible for the payment of all Taxes levied or payable in respect of the Products and the Services and must immediately on request by the Supplier provide evidence of payment of any Taxes.
- 5.5 If the Purchaser fails to make any payment due under a Confirmation Order by the due date for payment, then, without prejudice to any other right or remedy available to the Supplier and to the extent permitted by law, the Supplier may charge the Purchaser interests (both before and after any judgment) on the unpaid amount at the lesser of the rate of:
- (a) the bank bill swap rate determined by the Reserve Bank of Australia plus 3%; or
  - (b) the maximum amount permitted by law, which interest shall accrue and be chargeable from the first date on which such amount becomes overdue until the Supplier received payment of all such amounts (including interest) by way of cleared funds.
- 5.6 Unless otherwise agreed, where there is more than one Contract in existence with outstanding payment amounts between the Purchaser and the Supplier, all payments made by the Purchaser to the Supplier shall be applied to the payment of the Contract with the first issued Confirmation Order with an outstanding payment amount, including any interest applicable under that Contract. For the avoidance of doubt, a Contract will be considered to have an outstanding payment amount until:

- (a) the Price applicable to a Confirmation Order under that Contract as stated in a Tax Invoice has been paid in full; and
- (b) all interest accrued on that Contract has been paid in full.

## **6 Shipment**

- 6.1 The parties acknowledge and agree that:
- (a) this clause 6 does not apply to the supply of Installation Services or Repair Services; and
  - (b) unless stated otherwise in a Confirmation Order or agreed between the parties, the Purchaser is responsible for collection and transport of Products.
- 6.2 The parties will agree whether the Products are to be collected or shipped. As so agreed, the Supplier will use its best endeavours to:
- (a) make the Products and Services available to the Purchaser for collection at the date, time and location stated in a Confirmation Order; or
  - (b) arrange shipment of the Products to the Site and on the date stated in a Confirmation Order, however if this is not possible for any reason, the Supplier will contact the Purchaser as soon as practicable and agree an adjusted shipment or collection arrangement (as applicable).
- 6.3 If the parties agree that the Supplier will provide shipment of Products, the Purchaser must do all things reasonably necessary to accept shipment of any Products and Services on the agreed date and at the Site for shipment, including ensuring that:
- (a) a representative of the Purchaser with authority to accept shipment is present at the Site at the time shipment is made;
  - (b) it provides to the Supplier any information, details or instructions necessary to allow the Supplier (or any person nominated by the Supplier) to make safe shipment of the Products and Services at the Site; and
  - (c) shipment at the Site on the agreed date is able to be completed in a safe manner, including by managing or coordinating any other parties or activities at the Site.
- 6.4 If the Purchaser fails to accept any shipment of the Products or Services or fails to comply with clause 6.3, or fails to collect the Products at the date and time agreed, the Supplier may, without liability and without limiting any other rights the Supplier may have:
- (a) organise for re-shipment or re-collection (as appropriate) at a renegotiated date and time; and/or
  - (b) store any Products which the Purchaser failed to collect or take shipment of at the Purchaser's risk. The Supplier will store such Products at the Supplier's premises at its own cost for up to five days, after which the costs of such storage will become an amount due and payable from the Purchaser to the Supplier, calculated at a weekly rate of 2.5% of the total amount payable under the Contract for those Services.

## **7 Shipment defects**

- 7.1 The Purchaser must inspect each Product and notify the Supplier in writing within 7 days of shipment of any damage or defects arising from shipment or incorrectly supplied Products (**Defect Claim**).
- 7.2 The Supplier may, and the Purchaser must do all things reasonably necessary to allow the Supplier to, inspect the Products (including at any Site) within a reasonable time of the making of a Warranty claim in order to determine the veracity and extent of the Defect Claim.
- 7.3 If the Purchaser fails to report a Defect Claim within 7 days of shipment, or fails to allow the Supplier to inspect the relevant Products within a reasonable time under clause 7.2, the Supplier shall be deemed to have accepted the Products as shipped free from defects including as to quality, quantity and condition.
- 7.4 If the Supplier validates a Defect Claim, the Supplier will remedy the defect by, at its discretion, repairing or replacing the Products or if this is not possible, offering the Purchaser to return the Products in exchange for a refund or reasonable replacement Products. All Products must be returned to the Supplier in the same condition in which they were shipped.

## **8 Title and risk**

- 8.1 Unless otherwise agreed, title to and ownership in all Products supplied under a Contract shall remain with the Supplier and will only pass to the Purchaser on the occurrence of both:
- (a) payment in full of all amounts owing for those Products; and
  - (b) shipment of the Products under clause 6.
- 8.2 Risk in a Product passes to the Purchaser:
- (a) upon the collection of the Products by the Purchaser or its agent from the Supplier; or
  - (b) if the Supplier has agreed to provide shipment, upon the Products being loaded for shipment to the Site.
- 8.3 The Purchaser is responsible for obtaining at its own cost, insurance for the Products from the time risk passes to the Purchaser (including shipment), and the Purchaser indemnifies and holds the Supplier harmless from and against any loss or damage to the Products occurring after risk passes to the Purchaser.
- 8.4 Until such time as full title to and ownership of the Products passes to the Purchaser, and while the Products remain in the Purchaser's possession and control:
- (a) the Purchaser must not sell, lease, dispose of, grant any security interest in or otherwise deal with the Products in any way without the Supplier's written consent;
  - (b) the Purchaser must keep and store the Products in a manner that allows them to be identified as Products supplied by the Supplier and ensures the Products remain in good condition and are not damaged, harmed, injured, defaced or otherwise spoilt;
  - (c) the Purchaser must take out and maintain appropriate insurances for the Products; and

- (d) the Supplier may at any time after any payment is overdue require the Purchaser to deliver up the Products to the Supplier and, if the Purchaser fails to deliver up the Products immediately, the Supplier may enter the Site or other location where the Products are stored and repossess them.

## **9 PPSA**

- 9.1 In this clause, words and expressions which are defined in the PPSA have the same meaning given to them by the PPSA.
- 9.2 Unless the Purchaser has paid for Products under a Contract before they are shipped, the Purchaser acknowledges that:
  - (a) the Contract for the supply of Products created under each Contract is a security agreement for the purposes of the PPSA, under which the Purchaser grants the Supplier a security interest in the Products and over any amount owed to the Purchaser in respect of the Products (**Account**) to secure all monies owing by the Purchaser to the Supplier;
  - (b) where the Supplier has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
  - (c) the Supplier is not obliged to act in any way to dispose of or to retain any Products which have been seized by the Supplier (or its nominee) under its rights under the PPSA.
- 9.3 Without limiting anything else in these Terms and Conditions or a Contract, the Purchaser consents to the Supplier effecting a registration on the register in relation to any security interest created by or arising in connection with, or contemplated by a Contract or these Terms and Conditions, including in relation to the Products and any Account. The Purchaser agrees to promptly do all things necessary to ensure that any security interest created under these Terms is perfected and remains continuously perfected, the Supplier's priority position is preserved or secured and any defect in any security interest, including registration, is overcome.
- 9.4 The Purchaser must promptly take all reasonable steps which are prudent for its business under or in relation to the PPSA (including doing anything reasonably requested by the Supplier for that purpose in relation to the Products or the Account). Without limiting the foregoing, the Purchaser must:
  - (a) register a security interest in relation to the Products where the Purchaser sells the Products to a third party or incorporates the Products into another good or product;
  - (b) where appropriate, take reasonable steps to identify security interests in relation to the Products in the Purchaser's favour and to perfect and protect them, with the highest priority reasonably available; and
  - (c) not register a financing change statement in relation to any registration made under clauses 9.4(a) or 9.4(b) without the Supplier's prior written consent.
- 9.5 The Purchaser must indemnify, and on demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the register, and for the enforcement of any rights arising out of any of the Supplier's security interests.
- 9.6 The Purchaser must not change its name, address or contact details without providing prior written notice to the Supplier.
- 9.7 To the extent that the PPSA permits, the Purchaser waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 9.8 The Purchaser may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if the Supplier has given prior written consent.

## **10 Liability and Australian Consumer Law**

- 10.1 If the Purchaser is a Consumer and the Supplier provides PDH Products and Services to the Purchaser:
  - (a) those goods and services come with guarantees that cannot be excluded under the Australian Consumer Law, and:
    - (i) for major failures with the services, the Purchaser is entitled to cancel the services and to a refund of the unused portion of those services (or compensation for their reduced value);
    - (ii) the Purchaser is entitled to a replacement or refund for a major failure in relation to goods, or to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure; and
    - (iii) the Purchaser is entitled to compensation for any other reasonably foreseeable loss or damage from a failure in the goods or services; and
  - (b) nothing in these Terms and Conditions should be interpreted as attempting to exclude, restrict or modify such guarantees or the rights referred to in clause 10.1(a)
- 10.2 If the Purchaser is a Consumer and the Supplier provides non PDH Products and Services to the Purchaser, the Supplier's liability to the Purchaser in connection with any breach of the Consumer Guarantees in respect of those non PDH Products and Services is limited (at the Supplier's discretion) to:
  - (a) in the case of goods:
    - (i) the replacement of the goods or the supply of equivalent goods;
    - (ii) the repair of the goods;
    - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (iv) the payment of the cost of having the goods repaired; and
  - (b) in the case of services:
    - (i) the supplying of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

- 10.3 If the Purchaser makes a claim against the Supplier which includes a cause of action, other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee, and to the maximum extent permitted by law:
- (a) subject to clause 10.3(b), the Supplier's total aggregate liability arising in connection with all such claims will be limited to an amount equal to the total amount actually paid by the Purchaser under the applicable Contract relating to the Products and/or Services that are the subject of the claim; and
  - (b) neither party will be liable to the other party for any Consequential Loss, provided that this does not exclude any liability of the Purchaser for payment of the Price.
- 10.4 In relation to the supply of any goods which are non PDH Products and Services, if the Supplier is liable to indemnify the Purchaser under section 274 of the Australian Consumer Law, the Supplier's liability to the Purchaser under such indemnity is limited to an amount equal to the lower of:
- (a) the cost of replacing the goods;
  - (b) the cost of obtaining equivalent goods; or
  - (c) the cost of having the goods repaired.

## 11 Warranty

- 11.1 Subject to clause 10 and the requirements under this clause 11, the Supplier warrants that during the Warranty Period, the Products will be free from material defects in material and workmanship under normal use and conditions (the **Warranty**).
- 11.2 The Purchaser acknowledges and agrees that the Supplier shall not be liable under the Warranty for any loss or damage caused, directly or indirectly, by:
- (a) any defects or issues attributable to shipment of Products, which must be reported as Defect Claims under clause 7;
  - (b) operation of any Products using third party devices, components or parts that are not provided by the Supplier;
  - (c) any weakening or collapse of the structure to which Products are affixed, unless resulting from a defect reasonably apparent to the Supplier at the time of performance;
  - (d) any damage or deterioration caused by installation of Products where installation is not performed by the Supplier;
  - (e) any damage to or deterioration in the condition of the Products occurring after shipment and prior to performance of Installation Services or Repair Services; and
  - (f) the affixing of the Products to steel columns (which requires particular specifications), and the Purchaser acknowledges and agrees that it is solely responsible for any special platework for fixing support and the welding of platework in the correct positions, unless specifically agreed in a Confirmation Order.
- 11.3 Claims under the Warranty must be brought to the attention of the Supplier as soon as practicable after the issue giving rise to the claim arises. The Supplier reserves the right to, and the Purchaser must do all things reasonably necessary to allow the Supplier to, inspect the Products (including at any Site) within a reasonable time of the making of a Warranty claim in order to determine the veracity and extent of the claim. If the Supplier validates the Warranty claim, the Supplier will remedy the defect by, at its discretion, repairing or replacing the Products or if this is not possible, offering reasonable replacement Products (if available).
- 11.4 Subject to clause 10 and applicable laws, the Supplier expressly disclaims all other conditions or warranties (express or implied) relating to the Products and the Services and as relating to the quality or fitness for any purpose of the Products, the Installation Services or the Repair Services.

## 12 Confidentiality

- 12.1 A party which receives Confidential Information (**Receiving Party**) from the other party (**Disclosing Party**) must:
- (a) maintain the confidential nature of the Confidential Information;
  - (b) not use the Confidential Information for the Receiving Party's own or another's advantage, or to the competitive disadvantage of the Disclosing Party; and
  - (c) not disclose that Confidential Information except:
    - (i) with the consent of the Disclosing Party;
    - (ii) to any of its company officers, employees, legal or financial advisors who have a need to know; and
    - (iii) where required by law, provided that the Receiving Party first notifies the Disclosing Party of this requirement and what Confidential Information it is required to disclose.

## 13 Intellectual Property

- 13.1 Notwithstanding anything else in a Contract and unless expressly agreed in writing between the parties, the Supplier:
- (a) owns and will retain ownership of all Intellectual Property Rights in Products, excluding any materials provided by the Purchaser; and
  - (b) grants to the Purchaser a limited, non-exclusive, royalty-free licence to use the Supplier's Intellectual Property solely in connection with Purchaser's use of the Products.
- 13.2 If in the course of supplying Products to the Purchaser under a Contract, the Supplier has developed or created any Intellectual Property (**Developed IP**):
- (a) unless otherwise agreed between the parties in writing, the Supplier shall own the Developed IP, including any Intellectual Property Rights in Developed IP, on and from the date they are created; and
  - (b) the Supplier grants to the Purchaser a limited, non-exclusive, royalty-free, irrevocable, licence to use the Developed IP solely in connection with Purchaser's use of the Products.

## 14 GST

Unless otherwise expressly stated in writing in a Confirmation Order, all amounts payable by the Purchaser in connection with a Confirmation Order do not include an amount for GST. If GST is payable then it will be included as a separate line item on a Confirmation Order, and the Purchaser must pay to the Supplier, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Purchaser is required to reimburse or indemnify the Supplier for any loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Supplier will be entitled to claim for the loss or amount incurred and increased by the amount of any GST payable by the Supplier in respect of the reimbursement or payment. This clause does not merge on completion or termination of a Contract. In this clause, words and expressions which are defined in the GST Act have the same meaning given to them by the GST Act.

## 15 Default

- 15.1 Either party may terminate a Contract with immediate effect by written notice to the other party:
- (a) subject to applicable laws, if the other party is the subject of an event of insolvency, bankruptcy, administration or similar type event; or
  - (b) if the other party has breached a term of the Contract and, if the breach is capable of remedy, has not remedied the breach within 21 days or receiving notice requiring the breach to be remedied.
- 15.2 Neither party will be liable for any failure to perform, or delay in performing, its obligations under a Contract if that failure or delay is due to a Force Majeure Event. If a Force Majeure Event exceeds 45 days, the other party may terminate that Contract without liability by written notice to the effected party.
- 15.3 On termination of a Contract for any reason all monies owed by the Purchaser to the Supplier will become immediately due and payable, including all amounts for Products supplied and Services completed or partially completed as at the date of termination.
- 15.4 The termination or expiry of a Contract does not operate to terminate any rights or obligations that by their nature are intended to survive termination or expiration.

## 16 Compliance with law

- 16.1 The Purchaser acknowledges and agrees that
- (a) it must comply with all applicable WHS Laws in relation to the use or operation of any Products;
  - (b) it must ensure that Products are only utilised for their intended purpose as notified by the Supplier; and
  - (c) it is solely responsible for, and the Supplier accepts no responsibility or liability for, compliance with any directions, requirements or regulations relating to the supply of Products which may include those issued by a Government Authority or special site allowances applicable to a Site.
- 16.2 Subject to clause 10, the Supplier disclaims any express or implied warranty and any other liability for the use of Products contrary to applicable WHS Laws or any safety documentation provided by the Supplier.

## 17 Miscellaneous provisions

- 17.1 The Supplier may set off any amount owing by the Purchaser to the Supplier and due for payment under a Contract against any money due for payment by the Supplier to the Purchaser under that Contract
- 17.2 Each Contract may only be amended or varied by a document in writing signed by each party.
- 17.3 Neither party may assign, subcontract or otherwise deal with any of its rights or obligations under a Contract without the written consent of the other party.
- 17.4 Each Contract is governed by the laws in force in the Australian state or territory where the Products are being supplied, and the parties submit to the non-exclusive jurisdiction of the courts of that Australian state or territory.
- 17.5 Notices by a party must be delivered by hand, prepaid post or email and sent to the address of the receiving party specified in the Invoice (as applicable) or as otherwise notified by the relevant party to the other party. Notices will be deemed to have been received by hand on delivery, by post within two business days of sending and by email one hour after the email (unless the sender knows that email has failed to send).

## Schedule 1 - Installation or Repair Services

---

### 1 This Schedule

- 1.1 This Schedule 1 sets out the terms and conditions for the provision of Installation Services or Repair Services from the Supplier to the Purchaser. This Schedule 1 will apply where specified in a Confirmation Order or where otherwise agreed between the parties, provided however that the Supplier does not provide Installation Services or Repair Services at residential sites or for residential purposes.

### 2 Performance of the Installation or Repair Services

- 2.1 The Supplier shall provide the Installation Services or Repair Services to the Purchaser at the Site and at the specified location within the Site as agreed between the parties, and shall take reasonable steps to meet the timeframe (if any) set out in a Confirmation Order or otherwise agreed.
- 2.2 The Purchaser must provide the Supplier with such access to the Site as is reasonably necessary to undertake and complete the Installation Services or Repair Services.
- 2.3 The Purchaser must, at its cost, obtain all licenses and approvals required to enable the Installation Services or Repair Services to be lawfully performed.
- 2.4 The Purchaser must do all things necessary to assist the Supplier in the performance of the Installation Services or Repair Services, including providing clear vehicle and personnel access to the Site, and providing any instructions or directions requested or reasonably necessary to ensure the safe performance of the Installation Services or Repair Services within the applicable timeframe. Without limiting clause 6.4 of the Terms and Conditions, if the performance of the Installation Services or Repair Services is delayed by the Purchaser's breach of this clause, the Purchaser must pay

the Supplier an amount reasonably determined by the Supplier having regard to the extra costs and expenses incurred by the Supplier by reason of the delay.

2.5 Unless expressly stated otherwise in a Confirmation Order, Installation Services and Repair Services do not include:

- (a) surveying or pegging of fence line;
- (b) levelling of a Site or other location;
- (c) preparation of engineering reports;
- (d) locating underground services;
- (e) demolition of existing structures or obstructions (including vegetation);
- (f) obtaining any construction or work permits related to a Site;
- (g) rock drilling, or breaking / removing rocks, concrete, trees or tree roots;
- (h) hydro excavation or non-invasive drilling;
- (i) concrete pumping;
- (j) removal of any soil or spoil, rocks or debris;
- (k) excess rainwater pumping; or
- (l) dust suppression watering,

if any of the services or works listed above are required to be carried out by the Supplier in order for the Supplier to carry out and complete the Installation Services or Repair Services, the Purchaser must pay the Supplier an amount reasonably determined by the Supplier having regard to the costs incurred by the Supplier in carrying out those works and services, and the Purchaser acknowledges that the Supplier will be delayed in completing the Installation Services.

2.6 At all times during the performance of the Installation Services or Repair Services, the Purchaser must provide, at no cost to the Supplier:

- (a) secure lay down areas within close proximity to the works;
- (b) adequate storage areas, working space, water and electricity and employee amenities (including toilets, shaded areas and facilities) to comply with WHS Laws and other statutory and regulatory requirements; and
- (c) labour for unloading, hoisting, lifting facilities if Installation Services are being performed above ground floor level.

2.7 The Purchaser shall be responsible for adequate protection against theft and damage to materials on Site, including water damage.

2.8 The Supplier has not made any allowance in the Price for costs associated with paying site allowances or complying with Site specific industrial agreements or instruments. If the Supplier is required to pay site allowances, any such amounts must be reimbursed to the Supplier by the Purchaser on demand. If the Supplier is required to comply with any Site specific industrial agreements or instruments and incurs costs that would not have been incurred if it was not required to so comply, any such costs must be reimbursed to the Supplier by the Purchaser on demand.

### **3 Location of the Installation or Repair Services**

It is the responsibility of the Purchaser to clearly locate the position of the work by way of survey or other appropriate manner and where applicable, the Purchaser shall furnish precise drawings setting out the position required for the work. The Purchaser is to locate all underground services within 1.5 metres of the given location, and the Supplier will accept no responsibility for, and the Purchaser must indemnify the Supplier against any loss or claim in relation to, damage done to any underground services which have not been notified in writing by the Purchaser to the Supplier prior to the commencement of the Installation Services or Repair Services.

### **4 Insurance**

The Purchaser is responsible for, at its cost, obtaining during the provision of Installation Services all appropriate contractors insurance covering the Installation Services or Repair Services to be provided, including materials and equipment incorporated or to be incorporated in the said structure, and the Purchaser indemnifies and holds harmless the Supplier against any loss or damage covered by such a policy.

### **5 Delays**

5.1 The Supplier will take all reasonable steps to comply with any timeframes for performance of the Installation Services or Repair Services (as stated in a Confirmation Order or agreed between the parties), however if this is not possible for any reason, the Supplier will contact the Purchaser as soon as practicable and agree an adjusted timeline for performance.

5.2 The parties must:

- (a) keep each other informed of anything that they become aware of which is likely to cause a delay in the performance of the Installation Services or Repair Services; and
- (b) take reasonable steps to avoid or mitigate any potential or actual delays.

5.3 The Supplier will not be liable to the Purchaser or any third party for any loss, costs or damages attributable to delay or failure in performing the Installation Services or Repair Services in accordance with any timeframes set out in a Confirmation Order or agreed between the parties, where that delay or failure is, directly or indirectly, caused or contributed to by any events or circumstances which are beyond the reasonable control of the Supplier.

5.4 If the performance of the Installation Services or Repair Services is delayed by any act, default or omission by the Purchaser or an employee, agent or other contractor of the Purchaser, the Purchaser must pay the parties must agree to a Variation in accordance with clause 4 of the Terms and Conditions.

5.5 If the Supplier is required to cease performance of the Installation Services or Repair Services at any time and leave the Site, and then re-enter and re-establish performance of the Installation Services or Repair Services at the Site at a later date, the Purchaser must pay the Supplier for the Supplier's actual and reasonable costs incurred in leaving and then re-establishing the Site for the purposes of performing the Installation Services or Repair Services.

**6 Site conditions**

- 6.1 The Supplier must promptly notify the Purchaser if it becomes aware of a Latent Condition during the performance of the Installation Services or Repair Services.
- 6.2 Without limiting paragraph 2.5 of this Schedule, if a Latent Condition causes the Supplier to carry out additional work, use additional plant or equipment or incur extra cost (including but not limited to the cost of delay or disruption), the Purchaser must pay the Supplier an amount reasonably determined by the Supplier having regard to the costs reasonably incurred by the Supplier in overcoming the Latent Condition.

