

# Standard Terms and Conditions for the Supply of Goods and Services

## 1 Dictionary of terms

### 1.1 Words used in the Contract have the following meanings:

Authority includes any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Business Day means a day on which trading banks are open for business in the state in which the Services are to be performed excluding a Saturday, Sunday or public holiday;

Claims means any claims, demands, debts, accounts, actions, expenses, costs, liens, liabilities and proceedings of any nature whatsoever;

Customer means the person/s buying the Goods and/or receiving the Services, as specified in any Invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally;

Customer's Site means a site owned and/or occupied by and/or made available by the Customer or any of the Customer's clients, agents or contractors, which is to be attended by O'Brien's People in relation to the provision of the Goods and/or Services;

Commencement Date means the date (if any) specified in the Quotation or if no date is specified, the date which O'Brien notifies to the Customer in writing as the date for commencement of performance of the Supply;

Contract means the agreement between O'Brien and the Customer comprising, in decreasing order of priority to the extent of any inconsistency, the Special Conditions (if any) identified in the Quotation, the Quotation (including any annexures) and these Standard Terms;

Delivery has the meaning stated in clause 6.2.

Delivery Point means the address nominated by the Customer for the Delivery of the Goods;

Dispute means a dispute arising out of or relating to this Contract, including a dispute as to breach or termination of this Contract or as to any Claims;

Equipment means any of the Customer's or O'Brien's equipment used in connection with Services;

Expiry Date means (if any) the expiry date specified in the Quotation;

Force Majeure Event means any act, omission or circumstance beyond O'Brien's reasonable control including, without limitation, war, sabotage, civil commotion, national emergency, breakdown of

plant, machinery or equipment, strike or other labour difficulty (whether or not involving employees of O'Brien);

Goods means all Goods or Services supplied by O'Brien to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' and 'Services' shall be interchangeable).

GST means a tax imposed under GST Law.

GST Law has the meaning given in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Insolvency Event means:

- (a) a party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a party enters into any arrangement with creditors;
- (c) a party becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act 2001 (Cth) including having a receiver or administrator appointed over all or any part of its assets; or
- (d) anything analogous or having a substantially similar effect to the events specified in (a) to (c) above occurs in relation to a party in any jurisdiction;

Intellectual Property means trademarks, trade names, domain names, logos, get-up, patents, inventions, registered and unregistered design rights, copyrights, circuit layout rights, know-how and all similar rights in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations;

Invoice means an invoice issued by O'Brien under this Contract for the provision of the Supply;

Law includes any requirement of any statute, regulation, proclamation, ordinance, by-law or common law, present or future and whether state, federal or otherwise;

O'Brien means O'Brien Boiler Services Pty Ltd, its successors and assignees or any person acting on behalf of and with the authority of O'Brien Boiler Services Pty Ltd;

O'Brien's Representative means the person identified in the Quotation as O'Brien's contact for the purposes of the Contract, or such other person as O'Brien may notify the Customer in writing from time to time;

People include employees, agents, consultants and subcontractors, but O'Brien's People do not include the Customer or the Customer's People;

Price means the Price payable for the Goods and/or the Services as stated in the Quotation, but subject to any adjustments in accordance with the Contract;

Quotation means the Quotation or any other confirmation issued by O'Brien to the Customer from time to time for the provision of Goods and/or Services to the Customer;

Services means the services that O'Brien agrees to provide to the Customer under this Contract and may include, where applicable, the Delivery of Goods;

Site Regulations means any regulations of general application governing access to, and performance of work by contractors at the Customer's Site;

Special Conditions means the Special Conditions to which these Standard Terms are attached, or any other Special Conditions issued by O'Brien to the Customer from time to time for the supply of the Services;

Standard Terms means these Standard Terms and Conditions for the supply of Goods and/or Services;

Supply means the performance of the Services and/or the Delivery of the Goods by O'Brien under the terms of this Contract;

Tax includes any GST, sales tax, levy, charge, impost, duty, fee, deduction, customs duty or any other tax or charge or duty which is assessed by any Authority;

Term has the meaning stated in clause 4.1;

Timetable means the schedule for the Supply of the Goods and/or Services as agreed between the parties from time to time.

## 2 Interpretation

### 2.1 In this Contract, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes any gender;
- (d) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (e) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day;
- (f) an agreement on the part of two or more persons binds them jointly and severally;
- (g) a reference to "dollars" or "\$" is to Australian currency;
- (h) reference to "writing" includes email and facsimile transmission;
- (i) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (j) the word "include" in all its grammatical forms is not a word of limitation; and
- (k) a reference to one or more things includes each part and all parts of that thing or group of things.

### 3 The Contract

3.1 The terms and conditions of this Contract prevail over all the Customer's terms and conditions and can only be varied by written agreement between O'Brien and the Customer.

#### 3.2 Without limiting clause 3.1

(a) where the relevant purchase order issued by the Customer for the Goods or Services attaches or incorporates the Customer's own terms and conditions, the terms and conditions of this Contract will prevail and the Customer's terms and conditions will be void and of no effect, irrespective of whether they were issued first in time or later in time to this Contract; and

(b) any order or request by the Customer for the provision of the Supply by O'Brien which purports to include terms not expressly included in the Contract is of no effect and the Customer's request is deemed to be exclusively on the basis of this Contract.

3.3 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Standard Terms if the Customer places an order for or accepts Delivery of the Goods.

3.4 These Standard Terms may only be amended with O'Brien's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and O'Brien.

### 4 Term

4.1 The term for the Contract (Term) commences on the date of execution of the Contract and, unless otherwise terminated, continues until:

(a) the Expiry Date; or

(b) if performance of any part of the Supply remains incomplete at the Expiry Date, the Contract will remain in force until performance of the incomplete part of the Supply has been completed.

4.2 O'Brien will use reasonable endeavours to ensure that the Supply is available from the Commencement Date.

### 5 Services

5.1 O'Brien will provide Services to the Customer subject to and in accordance with the Contract.

5.2 O'Brien may refuse to provide any part or all of the Services if, in its reasonable opinion, providing the relevant part or all of the Services may present a safety hazard for any person involved in providing the Services.

5.3 Any times for the performance of Services made known to, or requested by, the Customer (whether by way of the Quotation, in the Timetable or otherwise) are estimates only and O'Brien will not be liable for any Claim for late or non-performance. If:

(a) O'Brien's People are ready to perform the Services in accordance with the Timetable, but the Customer is unable or unwilling to allow those members of O'Brien People to commence performance of the Services; or

(b) the performance of the Services is delayed or suspended for any reason other than the default of O'Brien or any of O'Brien's People,

O'Brien may invoice the Customer for the reasonable costs and expenses of the delay or suspension.

5.4 The Customer must not, during the Term, engage any third party to perform services equivalent to the Services (or any part of the Services) nor perform those services itself except:

(a) with O'Brien's prior written consent; or

(b) subject to clause 5.5, when the Customer is satisfied, having acted reasonably and after consulting with O'Brien that O'Brien is unable to perform the relevant Services in accordance with the Contract.

5.5 If clause 5.4 applies, the Customer may perform, or engage a third party to perform, such services only to the extent that O'Brien is unable to perform the relevant Services in accordance with the Contract.

5.6 O'Brien skilled labour will and must stay onsite until they are satisfied the equipment is started and is deemed satisfactory to put the asset back into service.

## 6 Goods and Delivery

6.1 O'Brien will supply the Goods to the Customer as described in the Quotation subject to and in accordance with the Contract.

6.2 Delivery (Delivery) will be taken to have occurred at the time that:

(a) O'Brien (or the O'Brien's nominated carrier) delivers the Goods to the Delivery Point, even if the Customer is not present at the address;

(b) O'Brien (or the O'Brien's nominated carrier) delivers the Goods to a third party nominated by the Customer; or

(c) the Customer or the Customer's nominated carrier takes possession of the Goods at O'Brien's request.

6.3 O'Brien may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Standard Terms and conditions. Failure of O'Brien to deliver any instalment will not entitle the Customer to cancel the remainder of the instalments. If the Customer defaults in payment of any instalment, O'Brien may elect to treat the default as a breach of this Contract relating to each other instalment.

6.4 O'Brien will not be liable for any Claims arising as a result of or in connection with the Goods being left at the Delivery Point under clause 6.2.

6.5 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery of the Goods as arranged then O'Brien shall be entitled to charge a reasonable fee for re-Delivery.

6.6 Any time or date for Delivery given by O'Brien is an estimate only and O'Brien will not be liable to the Customer for any Claim arising from late or non-Delivery of the Goods. Without limiting the foregoing, any date for Delivery requested by the Customer must not be earlier than any Delivery lead time made known by O'Brien to the Customer.

The Customer shall ensure that:

- (a) the Goods are used in accordance with good engineering practice;
- (b) the Goods are set up, operated or maintained in accordance with any applicable operating instructions and comply with the lay-out and operating conditions set out in any applicable technical specifications;
- (c) where Goods are supplied but not installed by O'Brien, the Goods are installed correctly by the Customer upon Delivery or within such other period as O'Brien agrees to in writing (acting reasonably);
- (d) where applicable, the Goods are used within the limits of their capacity as set out in any applicable technical specifications;
- (e) O'Brien is advised, in writing, of the date on which the Goods are to commence operation;
- (f) where applicable, proper records are maintained of all maintenance carried out on the Goods;
- (g) O'Brien is given reasonable access to the plant in which the Goods are installed for the purpose of inspection;
- (h) O'Brien is notified, in writing in accordance with any notice requirements in the Contract, within 5 days of the discovery of any defect in, or failure of, the Goods; and
- (i) in the circumstances outlined in clause 6.7(h), O'Brien is given a reasonable period of time during which to inspect the Goods on site.

6.7 The Customer warrants that the Customer provided O'Brien with full and accurate details of the intended use of the Goods before the Contract was signed, and that any specifications provided by the Customer are suitable for the intended use of the Goods.

## 7 Risk and Title

7.1 Risk in the Goods passes to the Customer on Delivery of the Goods, and the Customer must insure the Goods on or before Delivery.

7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, O'Brien is entitled to receive any insurance proceeds payable for the Goods, to the extent that O'Brien has not already received payment for those Goods which have been damaged or destroyed. The production of these Standard Terms by O'Brien is sufficient evidence of O'Brien's rights to receive the insurance proceeds without the need for any person dealing with O'Brien to make further enquiries.

7.3 If the Customer requests O'Brien to leave Goods outside O'Brien's premises for collection or to Deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

7.4 Title in the Goods does not pass to the Customer until:

- (a) the Customer has paid for the Goods in full in accordance with the Contract; and
- (b) the Customer has met all of its other obligations to O'Brien.

7.5 Receipt by O'Brien 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.

7.6 O'Brien and the Customer agree that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 7.4 that the Customer is only a bailee of the Goods and must return the Goods to O'Brien on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the O'Brien and must pay to O'Brien the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for O'Brien and must pay or deliver the proceeds to the O'Brien on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of O'Brien and must sell, dispose of or return the resulting product to O'Brien as it so directs;
- (e) the Customer irrevocably authorises O'Brien to enter any premises where O'Brien believes the Goods are kept and recover possession of the Goods;
- (f) O'Brien may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property O'Brien; and
- (h) O'Brien may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

## 8 Storage

8.1 At the request of O'Brien, the Customer must pay storage charges to O'Brien at commercial rates reasonably determined by O'Brien for the period of time during which any Goods are stored at O'Brien's premises after Delivery.

8.2 Storage of Goods at O'Brien's premises after the Delivery Date will be at the Customer's risk.

## 9 Price

9.1 The Customer must pay the Price for the Supply in accordance with the Contract.

9.2 Unless, otherwise specified, the Price under the Contract does not include GST. The Customer will pay to O'Brien the amount of GST for which O'Brien becomes liable for the Supply and such payment must be made at the time when the Customer is required to pay any amount relating

to the Supply or on demand by O'Brien.

9.3 Any other Tax or Duty imposed in relation to the Supply must be paid by the Customer in addition to and with the Price payable for the relevant Supply.

9.4 Unless the Contract states otherwise and without prejudice to O'Brien's rights under clause 17.7, if:

- (a) O'Brien does not receive an unqualified signed acceptance of its Quotation from the Customer within 30 days of the Quotation being issued to the Customer; or
- (b) the performance of the Supply is not commenced within 30 days after the Commencement Date (other than due to the fault of O'Brien),

O'Brien may revise its Price for the Supply.

9.5 Unless the Contract states otherwise, O'Brien may charge the Customer for all reasonable travel, accommodation and meal costs of O'Brien's People related to or in connection with the provision of Services.

9.6 O'Brien may charge the Customer, at the rates set out in the Quotation or at the rates provided by O'Brien to the Customer, for the provision of any additional Supply by O'Brien which is due to any interruption, delay or the provision of incorrect or insufficient information by the Customer or the Customer's People or compliance with any direction issued by any of the Customer's People.

9.7 Any Price quoted applies only if all of the Supply is purchased. Should the Customer require part only, O'Brien reserves the right to vary the Price.

9.8 O'Brien will notify the Customer in writing of any adjustment to the Price.

## 10 Payment

10.1 O'Brien may submit detailed progress payment claims in accordance with O'Brien's specified payment schedule. Such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.

10.2 O'Brien may set a minimum charge at the time of agreement.

10.3 At O'Brien's sole discretion a deposit may be required.

10.4 Time for payment for the Goods or Services being of the essence, the Price will be payable by the Customer on the date/s determined by O'Brien, which may be:

- (a) the date specified on any Invoice or other form as being the date for payment; or
- (b) failing any notice to the contrary, the date which is fourteen (14) days following the receipt by the Customer of an Invoice in respect of the Goods or Services.

10.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the O'Brien.

10.6 Payment made by credit card will attract a surcharge of up to two and a half percent (2.5%)

of the Price, and payments made by American Express will attract a surcharge of up to four percent (4%) of the Price.

10.7 O'Brien may demand immediate payment in cash of all amounts outstanding (whether then due and payable or not):

- (a) upon the happening of any one or more of the events specified in clause 17 which entitle O'Brien to cancel the Contract; or
- (b) if O'Brien considers that the Customer's creditworthiness has become unsatisfactory.

10.8 Without prejudice to any other right or remedy available to O'Brien, O'Brien may charge the Customer for interest on any overdue amounts that have not been paid in accordance with this clause 10 at a rate of 2.5% per calendar month (and at the O'Brien's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

## 11 Work Health and Safety

11.1 Each party must at all times comply with its own work health and safety obligations under all applicable Laws.

11.2 Without limiting the Customer's obligations under clause 11.1, the Customer must:

- (a) notify O'Brien immediately of any change to the Customer's policies in relation to work health, safety and environment including the Site Regulations (if any);
- (b) provide O'Brien's People with such access to the Customer's Site and information as O'Brien reasonably requests in relation to O'Brien's compliance with its work health and safety obligations in relation to the Contract; and
- (c) where applicable, provide site inductions for all O'Brien's People.

## 12 Intellectual Property

12.1 Nothing in the Contract affects the ownership of any Intellectual Property owned by a party before execution of the Contract.

12.2 The Customer must indemnify O'Brien and its People from and against any Claims arising as a result of or in connection with O'Brien or the Customer infringing or having infringed the Intellectual Property rights of any person by using or dealing with any Intellectual Property provided by the Customer to O'Brien in relation to the Services.

12.3 All Intellectual Property rights arising out of or in connection with the provision of Services by O'Brien to the Customer and any documentation provided by O'Brien pursuant to the Contract vest in O'Brien on their creation absolutely.

## 13 Liability

13.1 The Customer is solely responsible for any Claims arising as a result of or in connection with the Customer's use of the Goods other than in accordance with any specification or instruction provided by O'Brien to the Customer in relation to those Goods.

13.2 The parties' rights, obligations, liabilities and remedies arising out of, under or in connection

with the Contract shall be exclusively those expressly set out in this Contract. To the extent permitted by law, any covenants, warranties, remedies or guarantees not expressly set out in this Contract, including but not limited to implied warranties of suitability, merchantability or fitness for purpose, are specifically excluded.

13.3 Despite any other provision of this Contract, the Customer agrees that O'Brien's liability to the Customer (including any party claiming through the Customer) for any Claim for loss or damages incurred in connection with this Contract for breach of contract (including under any indemnity), tort (including negligence) and for any other Claim whether under statute, in equity, at law or otherwise will be limited strictly as follows:

- (a) if O'Brien is in breach of this Contract, O'Brien's liability is strictly limited to:
  - (i) for Goods, the replacement of the defective Goods or the repair of the defective Goods or the repayment (or allowance) of the invoice price of the defective Goods, at O'Brien's option;
  - (ii) for Services, the supply of the Services again or the payment of the costs of having the Services supplied again, at O'Brien's option; or
- (b) where the loss or damage is not covered by clause 13.3(a), O'Brien's maximum liability to the Customer (or any party claiming through the Customer) will be an amount equivalent to the proceeds actually recovered by O'Brien under any policy of insurance held by O'Brien in relation to the loss or damage; and
- (c) O'Brien's liability will in any event be capped at the Price under the Contract.

13.4 O'Brien will not be liable to the Customer for any indirect or consequential loss including but not limited to loss of actual or anticipated profits or revenues, loss by reason of shut down or non-operation, loss of opportunity or productivity, increased capital or financing, increased operational costs, increased costs of borrowing, or exemplary or punitive damage (all of these whether direct or indirect) or any other indirect or consequential loss, damage or expense of any kind whether caused by or in relation to breach of contract, warranty, tort (including but not limited to negligence or for breach of statutory duty), equitable remedy, product liability, strict liability or other legal theory (even if advised of the possibility of such loss or damage).

13.5 The provision to O'Brien of any documents evidencing or relating to any relationship, arrangement, contract or understanding between the Customer and any third party is for information purposes only and does not affect, and must not be used to interpret, the scope of O'Brien's engagement to perform the Supply.

13.6 O'Brien shall not be liable to the Customer to the extent that any loss, damage, failure or defect is caused or contributed to, whether directly or indirectly by any:

- (a) breach, default or negligence of the Customer.
- (b) external causes including, but not restricted to, inadequate maintenance, negligence, collision, sabotage, fire, storm, floods, earthquakes, tidal waves or acts of god.

13.7 Any Claim made by the Customer under or in connection with the Contract must be notified to O'Brien in writing as soon as is reasonably practicable, and in any event within 21 days of when the Customer first became aware or ought reasonably have become aware of the matter or events giving rise to the Claim. The Customer agrees that failure by the Customer to provide O'Brien with written notice within such 21 day period shall mean that the Customer's Claim is absolutely barred,

and that the Customer shall have no entitlement in relation thereto.

## 14 Indemnities and Insurance

14.1 The Customer must indemnify O'Brien against all Claims for:

- (a) injury to or death of any person (including O'Brien's People or the Customer's People) or damage to or destruction of any property caused by any negligent acts or omission by the Customer or the Customer's People or a breach of the Contract by the Customer;
- (b) failure by the Customer or the Customer's People or O'Brien's People under direction of the Customer or the Customer's People to comply with any Law; and
- (c) without limiting clauses 14.1(a) and (b), breach by the Customer or the Customer's People, of any of the Customer's obligations under the Contract, or any negligent act or omission by the Customer or the Customer's People relating to the performance of the Contract.

14.2 The Customer's liability to indemnify O'Brien pursuant to clause 14.1 is reduced to the extent any act or omission of O'Brien caused or contributed to the injury, damage or loss.

## 15 Damage to Equipment

15.1 The Customer will indemnify O'Brien and O'Brien's People against all loss or damage to Equipment used at, or brought onto, the Customer's Site in connection with the performance of the Services at the Customer's Site, excluding damage caused by a wilful wrongful act or omission of O'Brien's People.

## 16 Confidentiality

16.1 If the Customer or the Customer's People receive any confidential information from O'Brien, the Customer and the Customer's People must not use or disclose such information unless:

- (a) O'Brien gives its written consent to disclosure of the information;
- (b) the information enters the public domain (otherwise than as a result of a breach of an obligation of confidentiality, including this clause, by the Customer or the Customer's People); or
- (c) the use or disclosure is required by Law.

16.2 The Customer consents to O'Brien obtaining a credit report containing personal credit information about the Customer and that O'Brien may use and exchange this and other credit information for the purpose of assessing the credit information and creditworthiness of the Customer.

16.3 O'Brien may use the Customer's credit information in accordance with the Privacy Act 1988.

## 17 Termination

17.1 The Customer must not terminate the Contract, except as provided under clause 17.2 and 17.6 without the prior written consent of O'Brien and any such consent may be subject to the Customer indemnifying O'Brien from and against all Claims arising as a result of or in connection with the termination of the Contract by the Customer.

17.2 If a party (the Non-Breaching Party) considers that the other party (the Breaching Party) is in breach of the Contract, the Non-Breaching Party may give the Breaching Party:

- (a) a written notice specifying the date by which the Breaching Party must rectify the breach (which date must be reasonable in the circumstances) to the extent that the breach is capable of rectification; or
- (b) if the breach is incapable of rectification, written notice specifying the Non-Breaching Party's requirements to mitigate the effects of that breach.

17.3 If the Non-Breaching Party gives the Breaching Party a written notice referred to in clause 17.2 and the Breaching Party does not dispute the definition and application of the breach, the Breaching Party must:

- (a) comply with the written notice; and
- (b) give the Non-Breaching Party a program to rectify the breach or mitigate the effects of the breach, as the case may be, in accordance with the terms of the Non-Breaching Party's written notice.

17.4 The Non-Breaching Party may terminate the Contract by giving the Breaching Party 21 days' written notice if the Breaching Party has not complied with a written notice given under clause 17.2.

17.5 Upon expiry or termination of the Contract for any reason:

- (a) O'Brien must cease performance of the Services and demobilise from the Customer's Site as soon as is reasonably practicable;
- (b) the Customer must allow or procure access to the Customer's Site by O'Brien and O'Brien's People for the purpose of removing O'Brien's Equipment, materials and other property;
- (c) O'Brien will be entitled to payment for all Services performed before termination and may invoice the Customer for those Services;
- (d) O'Brien will be entitled to payment of all reasonable costs of demobilisation; and
- (e) if the Contract has been terminated by O'Brien as a result of the Customer's default, O'Brien is entitled to recover from the Customer any direct losses, costs, damages and expenses which O'Brien suffers as a result of the termination.

17.6 Either party may terminate the Contract immediately by written notice to the other Party if the other Party is the subject of an Insolvency Event.

17.7 If O'Brien is prevented from commencing the Services for more than 30 days after the Commencement Date for any reason beyond O'Brien's reasonable control, O'Brien may terminate the provision of the Services by written notice to the Customer and:

- (a) the Customer must reimburse O'Brien for all reasonable costs and expenses incurred in preparing for the provision of the Services to the Customer; and
- (b) the Customer releases O'Brien from all Claims in connection with or arising out of the non-performance of the Services under the Contract.

## 18 Suspension

18.1 If the Customer breaches the Contract, O'Brien may suspend the Supply until the breach or default is rectified to O'Brien's Representative's satisfaction.

18.2 The exercise of O'Brien's right of suspension under clause 18.1 does not restrict or prevent O'Brien from exercising its rights of termination under clause 17.

## 19 Force Majeure

19.1 O'Brien:

(a) will not be liable for any delay or failure to provide the Supply which is due to a Force Majeure Event; and

(b) may terminate the Contract by written notice to the Customer if the Force Majeure Event continues for more than 30 consecutive days.

## 20 Dispute resolution

20.1 A party claiming that a Dispute has arisen under or in relation to the Contract must give written notice to the other party specifying the nature of the Dispute.

20.2 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the Dispute.

20.3 If the parties have been unable to agree the Dispute within 28 days of the written notice given under clause 20.1 then either party may commence litigation.

## 21 Joint and several liability

If the Customer comprises two or more persons, each such person is jointly and severally liable for obligations and liabilities of the Customer under the Contract.

## 22 Notices

22.1 A notice given to a party under the Contract must be addressed to the address set out in the Quotation or to the address last notified by that party to the other party.

22.2 Notices must be in writing and signed by an authorised representative of the sender. Notices are taken to have been given or made (in the case of Delivery in person, by email, fax or post) when delivered, received or left at the specified address.

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

## 23 Assignment, subcontracting

23.1 The Customer may not assign or encumber a right or interest under the Contract without the prior written consent of O'Brien.

23.2 O'Brien reserves the right to subcontract any part or all of the Supply.

## 24 Personal Property Securities Act 2009 ("PPSA")

24.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

24.2 Upon execution of this Contract by the Customer, the Customer acknowledges and agrees that this Contract:

- (a) constitutes a Security Agreement; and
- (b) creates a Security Interest in:
  - (i) all Goods previously supplied by O'Brien to the Customer (if any);
  - (ii) all goods that are supplied to the Customer in the future by O'Brien; and
  - (iii) all proceeds received by the Customer in relation to the sale of goods supplied by O'Brien.

24.3 The Customer undertakes to:

(a) promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which O'Brien may reasonably require to:

- (i) register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest over the Goods;
- (ii) register any other document on the PPS Register which is necessary to perfect O'Brien's Security Interest over the Goods; or
- (iii) correct a defect in any document referred to in clause 28.3(a)(i) and 28.3(a)(ii) above;
- (b) not register a Financing Statement or a Financing Change Statement in respect of the Goods without the prior written consent of O'Brien;
- (c) 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 O'Brien;
- (d) Immediately advise O'Brien of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

24.4 The Customer and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to this Contract.

24.5 The Customer waives its rights to as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

24.6 Unless otherwise agreed to in writing by O'Brien, the Customer waives its right to receive a Verification Statement in accordance with section 157 of the PPSA.

## 25 No waiver

25.1 Just because O'Brien does not insist on the Customer performing a term of the Contract that does not mean that O'Brien cannot later insist on the Customer performing that term or another term.

25.2 If O'Brien waives a breach of contract by the Customer, the waiver only applies to the particular breach and O'Brien can continue to insist on the Customer performing the same obligation when it has to be performed again. A waiver by O'Brien is only effective if it is in writing and signed by O'Brien

## 26 Entire Contract

The Contract constitutes the entire agreement between the Customer and O'Brien about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. The Contract may only be amended or modified by agreement in writing between the Customer and O'Brien.

## 27 Limitations Imposed by Law

The rights, duties and remedies granted or imposed under the provisions of the Contract operate to the extent not excluded by Law.

## 28 Relationship of the Parties

Nothing in the Contract constitutes or will be deemed to constitute a partnership between the parties or the appointment of one party as the agent of the other, or the employment of one party by the other. Other than as expressly provided in the Contract, no party has the authority or power to bind the other or to contract in the name of, and create a liability against, the other in any way or for any purpose.

## 29 Governing law and Jurisdiction

(a) The Contract is governed by the Law applicable in the state of Victoria, Australia.

(b) The parties submit to the exclusive jurisdiction of the courts of Victoria, Australia, and any courts competent to hear appeals from those courts.