WARRINGTONFIRE AUSTRALIA

TERMS AND CONDITIONS (AUS)

1. Formation of Contract
1.1 These terms and conditions ("Terms and Conditions") together with any quotation, proposal, estimate or fee quote ("Quotation") provided by or on behalf of the Company (as defined below) shall apply to all contracts for the supply of the Services (as defined in Condition 1.6), whether for the Company's purchase order or acceptance of a Quotation or specification and shall prevail over any inconsistent terms or conditions contained or referred to in the Company's confirmation of order, or implied by law (unless the law in question cannot be excluded), trade custom, practice or course of dealing. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2 These Terms and Conditions shall supersede and override any terms or conditions contained or referred to in the Customer's purchase order or acceptance of a Quotation or specification and shall prevail over any inconsistent terms or conditions contained or referred to in the Company's confirmation of order, or implied by law (unless the law in question cannot be excluded), trade custom, practice or course of dealing. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.3 Written and oral Quotations shall be valid for sixty (60) days from the date thereof and the Company may withdraw any such Quotation at any time. No Quotation given by the Company shall be an offer to contract with any person and no contract shall come into existence except in accordance with sub-condition 1.4.

1.4 The Customer's purchase order or the Customer's acceptance of a Quotation constitutes an offer by the Customer to purchase the Services specified in the Quotation upon the Terms and Conditions. No offer placed by the Customer shall be accepted by the Company other than by a written acknowledgement issued and executed by the Company or (if earlier) by the Company starting to provide the Services, when a contract for the supply and purchase of those Services on these Terms and Conditions will be established (the "Contract").

1.5 No acceptance or acknowledgement, even if in writing and signed by the Company, of the Customer's purchase order or any other document pertaining to the Services shall constitute acceptance of any provision of the Company's purchase order or any other document that conflicts with or adds to these Terms and Conditions unless the Company specifically agrees to such a variation of these Terms and Conditions pursuant to and in accordance with sub-condition 2.1.

1.6 The delivery to the Company by the Customer of any item for testing or calibration by the Company (a "Sample") or the delivery of any request by the Customer to the Company for the provision of any similar services shall, upon acceptance of that Sample or request by the Company, constitute an 'offer' (as referred to in sub-condition 1.4). If the Company begins such testing, calibration or similar services on that Sample, the offer shall be deemed to have been accepted by the Company and a Contract shall be formed. These Terms and Conditions shall apply to that Contract.

2. Variation including Cancellation, Postponement and Amendment
2.1 These Terms and Conditions may not be varied by either party unless the variation is in writing and is signed by an officer or duly authorised signatory of each of the Company and the Customer.

2.2 The Customer may cancel, postpone or amend any order (in whole or in part) at any time, provided that the Customer shall pay to the Company the full amount of the Consideration (as defined in sub-condition 3.1) relating to such order and plus all Costs (as defined in sub-condition 3.1) relating to such order incurred by the Company prior to the date of the cancellation, postponement or amendment plus any other losses, expenses and costs incurred by the Company as a result of the cancellation, postponement or amendment.

2.3 The Company reserves the right to review and amend any Quotation prices where documentation, specification or other materials relating to the Contract have materially changed since the original Quotation was given or where additional services not envisaged by the Quotation are requested, for example, producing written descriptions of detailed procedures undertaken as part of the Services. For the avoidance of doubt, approval of such additional requests shall remain at the Company's discretion.

3. Prices & Payment
3.1 The Customer shall pay to the Company the charges set out in the Quotation, if applicable, or as otherwise contemplated for the provision of the Services ("Consideration") and shall pay to the Company on demand for any expenses incurred or shall pay to the Company upon completion of the Services ("Costs"), unless expressly agreed otherwise in writing. In addition to the Consideration and Costs, the Customer shall pay to the Company any GST (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) payable in respect of any taxable supply made by the Company pursuant to the Contract, subject to provision of a tax invoice by the Company. In respect of other services ("Services") carried out by the Warringtonfire Australia Pty Ltd ACN 050 241 524 ("Company") providing the services contemplated therein on behalf of a customer ("Customer").

3.2 The Company may issue invoices in respect of Services:
3.2.1 upon completion of the Services; or
3.2.2 upon completion to the Company's reasonable satisfaction of separate parts of the Services, in which case, the Company will invoice for that proportion of the total Consideration for the Services performed under the Contract; or
3.2.3 in a manner otherwise specified in the Quotation, including individual lines on the Quotation, or order confirmation.

The Customer shall pay all amounts payable to the Company under the Contract ("Amount Due"), as stated in any invoice provided by the Company, in full, without deduction or set-off, within thirty (30) days of the date stated on that invoice. The Amount Due shall be paid free and clear of, and without deduction for and on account of, tax unless the Customer is required by law to make such payment subject to the deduction of withholding tax, in which case the sum paid by the Customer shall be increased to the extent necessary to ensure that after such deduction or withholding the Company receives an amount equal to the Amount Due it would have received had no such deduction or withholding been required.

The Customer shall pay the Amount Due to the Company by electronic bank transfer in cleared funds in the currency specified in the Company's Quotation, proposal or order confirmation. All payments due to the Company shall be payable within the specified time irrespective of whether or not the Customer has recovered payment from a third party and, for the avoidance of doubt, but without prejudice to the generality of the foregoing, this includes payments of fees due to the Company acting as experts or as expert witnesses when instructed by solicitors acting for a party to a dispute.

In default of payment within the thirty (30) day period specified in condition 3.3, the Company may: suspend any further Services being carried out for the Customer; withhold the provision of Reports (as defined in sub-condition 4.2); alter or withdraw credit terms; and amend terms, prices or service levels. The amount outstanding from time to time shall bear interest, calculated from the due date of the invoice to the date of receipt of the amount in full at a rate equivalent to 4% per annum above the Reserve Bank of Australia target cash rate from time to time.

The Company may retain or set off any sums owed to it by the Customer which have fallen due and payable against any sums due to the Customer under this Contract or any other agreement between the parties or any of their Group Companies. "Group Company" means, in relation to a party to a dispute, any company controlled or subsidiaries or holding company of that company, and any subsidiary of a holding company of that company.

The Customer undertakes that during the provision of the Services and for 6 months following completion thereof, the Customer shall not:
3.7.1 solicit or entice away (or assist anyone else in soliciting or enticing away) any member of the Company's staff with whom the Customer has had dealings in connection with the Contract and/or the provision of the Services during the 12 months immediately prior to the earlier of the date of the Customer's purchase order or the date of the Quotation; or
3.7.2 employ (directly or through a third party) any person as referred to in sub-condition 3.7.1 or engage them in any way to provide services to the Customer.

This undertaking shall not apply in respect of any member of the Company's staff who without having been previously approached directly or indirectly by the Customer responds to an advertisement placed by the Customer or on the Customer's behalf.

In the event of a breach of this undertaking, which leads to the departure of any person as referred to in sub-condition 3.7.1, the Company will pay to the Company, on demand, a sum equivalent to 50% of the total annual remuneration package paid by the Company to the individual prior to his or her departure. The Customer acknowledges that this provision is a fair and reasonable term intended to be a genuine assessment of the likely loss to the Company.

4. Services
4.1 Subject to the remaining sub-conditions of this condition 4, the Company warrants that it will complete the Services in a satisfactory manner.
and workmanlike manner, consistent with industry standards. The Customer expressly acknowledges and agrees that the Company gives no warranty, except to the extent required by law, that any result or objective can be achieved through the Services and that, where results are based on smaller scale tests and theoretical studies, results may require careful validation in order to be extrapolated to a production scale.

4.2 The Company will use its reasonable endeavours to complete Services and provide written information, results, technical reports, certificates, test or inspection records, and Comptrol reports. Results shall be provided to the Customer by any date reasonably requested in writing by the Customer, but the Company shall not be liable to the Customer for: (i) any delay in the performance of any obligation under the Contract; or (ii) damages suffered by the Customer by reason of such delay.

4.3 The Company’s obligation to complete Services under the Contract shall be subject to any obligation it may have to comply with any law or other regulation binding on it which may be in force from time to time.

4.4 No employee, agent or other person is authorised to give any warranty or make any representation on behalf of the Company in relation to the Contract, or to assume for the Company any other liability in connection with the Services, unless such warranty, representation or assumption of liability is expressly given to the Customer under these Terms and Conditions, including under any variation in accordance with sub-condition 2.1.

4.5 In relation to radiography reports and film delivered or interpreted as part of the performance of the Services, the Customer shall notify the Company, within fourteen (14) days from date of issue of such radiography reports and film, of any Customer or third party dispute concerning either the radiographic quality or interpretation of results. If the Customer does not notify the Company of any such dispute within this fourteen (14) day period, the Customer will be deemed to have accepted the radiography reports and film, together with any interpretation of these, provided by the Company.

4.6 The Customer represents and warrants to the Company the completeness and accuracy of all documents and information supplied to the Company for the purposes of the Company fulfilling the Services, both at the time of supply and subsequently.

4.7 Reports are issued on the basis of information known to the Company at the time that the Services are carried out. Although the Company will use all reasonable endeavours to ensure accuracy, the Services depend, inter alia, on the effective co-operation of the Customer, its staff and on the information submitted to the Company. All Reports are prepared on the basis that:

4.7.1 there is no responsibility to any person or body other than the Customer;

4.7.2 they are not produced for any particular purpose and no statement is to be deemed, in any circumstances to be or give rise to a representation, undertaking, warranty or contractual condition unless specifically stated;

4.7.3 the Report is determined solely by the professional analysis undertaken by the Company’s staff on each individual Contract and any forecasts by the Company of the results is an estimate only;

4.7.4 the Company is entitled to the Consideration irrespective of the results or conclusions reached in the Report;

4.7.5 the results and Services shall address the items and the information submitted only and are not to be regarded as representative of any larger population from which the Sample was taken; and

4.7.6 the results are final and approved by the Company. The Company shall be under no liability where the Customer has acted on preliminary, unapproved results or advice.

5. Customers’ Property

5.1 The Customer shall supply as much information as possible, including a unique purchase order number, reference or authorization, about any Customer’s Property delivered to the Company for the purposes of the Company fulfilling the Services, whether in respect of any Customer’s Property belonging to the Customer, unless the Customer notifies the Company in writing before delivery to the Company and the property itself delivered to the Company is clearly marked “Do Not Destroy or Damage”. If such notice is given and the Customer’s property is so marked, the Company’s liability for damage to or destruction of the Customer’s property is limited to the lesser of:

5.1.1 the value of Customer’s property; or

5.1.2 the cost of the Services performed on the damaged property pursuant to the Contract.

6. Re-Delivery

6.1 The Company will at the Customer’s reasonable written request, deliver the Customer’s property (other than that which is destroyed as part of the Services) back to the Customer after performing Services relating to that property. The Company may use any method of delivery that it reasonably decides and will do so as the agent of the Customer and will not have any liability in respect of any such item so delivered. The Company may at its discretion instruct any person delivering such property to the Customer to take any action in respect of that delivery and the Customer shall make any and all claims for property damaged in transit directly and solely against such delivery company or other person.

6.2 Unless specifically instructed to the contrary in writing by the Customer, the Company reserves the right to properly dispose of Customer’s property after three (3) months from completion of the Services. The Company reserves the right to invoice the Customer for any costs of disposal. Where property of the Customer is, in the sole opinion of the Company, too bulky or too unstable to allow storage time of more than one month, it will be at the absolute discretion of the Company as to the length of time such property is kept before being destroyed.

7. Title & Security

7.1 Title to the Customer’s property which is delivered to the Company and all risk as to such property (except for loss or damage caused by the Company and for which and to the extent that the Customer accepts liability under these Terms and Conditions) shall remain with the Customer at all times, who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Customer that the charges of the Company do not include insurance. The Company may retain all property delivered to it until all sums due and owing to the Company have been paid.

8. Liability and Indemnity

8.1 This condition sets out the entire financial liability of the Company, its employees, agents and sub-contractors to the Customer in respect of any breach of the Contract, any use made of Samples or any part of them on which Services are carried out and any representation, statement or tortious act or omission (including negligence or breach of statutory duty) arising under or in connection with the Contract.

8.2 Other than as provided for under these Terms and Conditions, including under any variation in accordance with sub-condition 2.1, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.3 SUBJECT TO CONDITION 8.9 THE COMPANY SHALL NOT BE LIABLE, WHETHER IN TORT (INCLUDING FOR NEGLIGENCE OR BREACH OF STATUTORY DUTY), CONTRACT, MISREPRESENTATION OR OTHERWISE FOR:

8.3.1 LOSS OF PROFITS; LOSS OF BUSINESS, LOSS OF CUSTOMERS, LOSS OF REVENUE, LOSS OF GOODWILL, LOSS OF OPPORTUNITY, LOSS OF INCOME, LOSS OF DATA, LOSS INCURRED AS A RESULT OF A THIRD PARTY CLAIM; DEPLETION OF GOODWILL AND/OR SIMILAR LOSSES; LOSS OF ANTICIPATED SAVINGS; LOSS OF GOODS; LOSS OF CONTRACT; LOSS OF USE; LOSS OR CORRUPTION OF DATA; LOSS OR DAMAGE TO INFORMATION; ANY SPECIFIC INDIRECT, CONSEQUENTIAL, LOSS, COSTS, DAMAGES, CHARGES, FINES, PENALTIES OR EXPENSES; OR PURE ECONOMIC LOSS.

8.4 WITHOUT LIMITING CONDITIONS 8.3 BUT SUBJECT TO 8.9, THE COMPANY’S TOTAL LIABILITY TO THE CUSTOMER IN CONTRACT, TORT (INCLUDING FOR NEGLIGENCE), BREACH OF STATUTORY DUTY, MISREPRESENTATION, RESTITUTION OR OTHERWISE ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THE CONTRACT SHALL IN ALL CIRCUMSTANCES BE LIMITED TO THE
8.1 the Customer notifies the Company in detail and in writing of the alleged basis for the claim within two (2) months of the Customer becoming aware thereof and within one year after the completion of the Services to which the claim relates; and
8.2 the Company is permitted to inspect any and all property with respect to which the Services are claimed to have been defective or to which Customer’s claim otherwise relates.

8.4 Without prejudice to sub-condition 8.3 above, the Company shall have no liability whatsoever to the Customer (whether in contract, tort (including without limitation negligence or breach of statutory duty), or otherwise) arising out of or in connection with any Cladding Claim, save as may be explicitly agreed in writing between the Company and the Customer. All such agreement in writing shall, save where it explicitly provides otherwise, be taken (a) to be subject to any other provisions which operate to exclude or limit the Company’s liability, including without limitation sub-conditions 8.3 and 8.4 above, and (b) to exclude, if and to the extent not excluded in any event, any liability other than for the direct costs, incurred as a direct result of a negligent act or omission of the Company from which such Cladding Claim arises, of rectifying works. For the purposes of this sub-condition 8.4, “Cladding Claim” means any claim related to any external wall system (including without limitation (i) any aluminium composite material cladding and (ii) any external wall system designed or used for any of the purposes or similar purposes as such cladding) or any product or material used or intended for use in or in connection with any such system (including without limitation any associated core, filler, insulation, or cavity barrier).

8.6 Except where the Services are provided to a person who deals as a consumer (within the meaning of the Australian Consumer Law, being Schedule 2 to the Competition and Consumer Act 2010 (Cth)), all warranties, conditions or other terms express or implied, statutory, customary or otherwise are excluded to the fullest extent permitted by law.

8.7 The Customer acknowledges that the above provisions of this condition 8 are reasonable and reflected in the price which would be higher without those provisions and the Customer will accept such risk and/or insure accordingly.

8.8 The Customer agrees to indemnify, keep indemnified and hold harmless the Company from and against all losses which the Company may suffer or incur arising out of or as a result of:

8.8.1 breach of any law by the Customer in connection with the performance of the Services;
8.8.2 any claim threatened or made against the Company by any third party arising out of the Services or out of any delay in performing or failure to perform the Services (even if such claim is solely or partly attributable to the fault or negligence of the Company) to the extent such claim is in excess of the Consideration paid for the Services under the Contract that are subject to the claim; or
8.8.3 any claims, arising as a result of any misuse or unauthorized use of any Reports issued by the Company or any Intellectual Property Rights belonging to the Company (including trade marks) pursuant to this Contract; Notwithstanding any other provision of these Terms and Conditions, the Customer’s liability under this indemnity shall be unlimited.

8.9 Nothing in these Terms and Conditions limits or excludes the liability of the Company for:
8.9.1 death or personal injury resulting from negligence; or
8.9.2 liability incurred by the Customer as a result of fraud or fraudulent misrepresentation.

8.10 This condition 8 shall survive termination of the Contract.

9. Intellectual Property Rights

9.1 In this condition 9, the following definitions apply:

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, databases rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (not existing or hereafter created), in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
lighting etc.) relevant to any Customer supplied premises; and (iv) provide the Company with any permits required for the performance of the Service.

12. CUB and Other Proceedings

12.1 In the event that the Customer requires the Company to present the results or findings of Services carried out by the Company in witness statements, court hearings or other legal proceedings, the Customer shall pay to the Company such costs and fees for such presentations and the preparation thereof as the Company may charge to customers generally for the time to time for such services and the Customer shall be liable for such costs in addition to the Consideration.

12.2 In the event that the Company is required by a party other than the Customer for the Company to present the results or findings of Services carried out by the Company for the Customer in any legal proceedings relating to the Customer, the Customer shall pay all costs and fees arising from any services which the Company is required to do as a result, including the preparation of any witness statement and the preparation for and appearance at any court hearing. The Customer shall pay all such costs, whether or not the Customer has paid all outstanding Consideration under the Contract and whether or not the Company has closed the Customer’s file in respect of the matter.

12.3 If any aspect or element of the Services (including any Sample) is, or is likely to be, the subject of or relevant to legal proceedings, this fact must be notified to the Company in writing before the Services are carried out. If that fact is not disclosed to the Company at that stage, the Company may not, in its absolute discretion, be prepared to provide expert testimony.

12.4 This condition 12 shall survive termination of the Contract.

13. Termination

13.1 For the purposes of this condition 13, “Sanctions Rules” shall mean any applicable trade or economic sanctions, export control, embargo or similar laws, regulations, rules, measures, restrictions, restricted or designated party lists, licences, orders, or requirements, in force from time to time, including without limit those of Australia, the European Union, the United Kingdom, the United States and the United Nations.

13.2 If a party (“Defaulting Party”) becomes subject to any of the events listed in sub-condition 13.3, the other party may terminate the Contract with immediate effect by giving written notice to the Defaulting Party.

13.3 For the purposes of sub-condition 13.2, the relevant events in relation to a party are:

13.3.1 if the party commits a breach of any terms of the Contract which is incapable of remedy or, if capable of remedy, has not been remedied by the party in accordance with a written notice from the other party requiring remedy within the period specified in the said notice;

13.3.2 if the party fails to make payment of any amount due under the Contract within the specified time for payment;

13.3.3 if the party makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or suspends payment of any of its debts or is unable to pay its debts as they fall due;

13.3.4 if an encumberancer takes possession, or a receiver or administrator is appointed, over any of the property or assets of the party;

13.3.5 if the party ceases, or threatens to cease, to carry on business;

13.3.6 if the other party reasonably apprehends that providing or receiving the Services or dealing with the party would be in breach of Sanctions Rules, the party fails to satisfy due diligence requests made by the other party in connection with compliance with Sanctions Rules or other relevant laws or regulations or the party does anything which is in breach of, or would cause the other party to be in breach of, Sanctions Rules.

13.4 On termination of the Contract for any reason the Customer shall immediately pay to the Company all indebtedness to the Company with applicable interest.

13.5 Termination of the Contract, however arising, shall not affect any of the parties’ rights, remedies, obligations and liabilities that have accrued as at termination.

13.6 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

13.7 If a notice of termination issued by a party under this clause 13, or termination pursuant to that notice, is prohibited or stayed under the Corporations Act 2001 (Cth), in no circumstances will the conduct of the party in issuing the notice be regarded as repudiatory by that party.

14. Force Majeure

The parties shall not be liable to perform any obligation under the Contract if inability to perform is caused directly or indirectly by any act of God, flood, war, riot, accident, terrorism, explosion, strike or labour dispute, compliance with any law, delay or default by subcontractor or supplier of materials or services, the existence of any circumstance making performance commercially impracticable or any other cause beyond the party’s reasonable control, provided that this condition 14 shall not apply to any obligation to make any payments due to the Company under the Contract.

15. Entire Agreement

15.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations, and understandings between the parties whether written or oral, relating to its subject matter. This condition 15.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

16. Severability

If any provision or remedy herein provided for be invalid or unenforceable or unlawful under any applicable law in whole or in part, it shall be deemed to be amended in so far as it is possible to do so in order to make it enforceable whilst retaining its purpose or severance from the Contract if it is not possible to do so and the remaining provisions of these Terms and Conditions, including any remaining default remedies, shall be given effect in accordance with the intent hereof. In the Contract’s sole discretion it may terminate the Contract by giving written notice to the Customer in the event that it considers that such deletion will have a materially adverse effect on its rights under the Contract.

17. No Partnership or Agency

17.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

18. Third Parties

Nothing in the Contract confers a benefit, right or interest on any person who is not a party to the Contract ("Third Party") and no Third Party shall have any rights to enforce any term of the Contract.

19. Privacy

19.1 In exercising its rights and performing its obligations under the Contract, the Customer shall at all times comply with its obligations under the Privacy Act 1988 (Cth), including the Australian Privacy Principles, (the "Privacy Law"). Without limiting this requirement, the Customer shall not collect, use, disclose or handle Personal Information (as defined in the Privacy Law) obtained or accessed in connection with the Services except in accordance with any applicable Sanctions Rules, shall take all reasonable technical and organisational measures to prevent the unauthorised loss, misuse or disclosure of such Personal Information and shall comply with any requirements of the Privacy Commissioner or other regulator acting under Privacy Law in relation to such Personal Information.

19.2 If the Company receives a request for access to Personal Information obtained or held by the Customer in connection with the Services, the Customer shall immediately provide the Company with all such assistance as the Company may reasonably require to enable the Company to comply with the request.

20. Sub-contracting

20.1 Unless otherwise restricted by the terms of the Contract and/or obligations under any accreditation or governing approval, the Company shall be entitled, in its absolute discretion, to sub-contract the whole or any part of the Service.

20.2 The Company may assign, delegate, license or hold on trust, all or any part of its rights or obligations under the Contract.

20.3 The Contract is personal to the Customer which may not assign, delegate, license, hold on trust or sub-contract all or any of its rights or obligations under the Contract without the Company’s prior written consent.

21. Confidentiality

For the purposes of this condition 21, "Confidential Information" shall mean all information which a party may have or acquire before or after the date of the Contract which relates to a party’s business, products, developments, trade secrets, know-how or other matters connected with the Services and information concerning a party’s relationships with actual or potential clients, customers or suppliers and all other information designated as confidential by a party.
confidential or which ought reasonably to be considered confidential.

21.1 Each party (the "Recipient") shall keep all Confidential Information of the other party (the "Disclosing Party") in the strictest confidence. Save for the purposes of fulfilling its obligations under the Contract, the Recipient shall not, without the prior written consent of the Disclosing Party, disclose, divulge or grant access to the Confidential Information which it has received and shall not permit any of its employees, agents or officers to disclose, divulge or grant access to such Confidential Information.

21.2 Notwithstanding condition 21.1, a Recipient may disclose Confidential Information which it has received if:

21.2.1 it is required to do so by any governmental, local government or regulatory authority, any accreditation body or by law (but then only if it is strictly required to do so);

21.2.2 it is strictly necessary for the purpose only of obtaining professional advice in relation to, or enforcing its rights under, the Contract;

21.2.3 it was already known to the Recipient prior to the time of disclosure by the Disclosing Party (where the Recipient can prove the same with documentary evidence); or

21.2.4 it is information which subsequently becomes public knowledge other than by breach of the Contract by the Recipient.

21.3 In the event of an information request being made to a Recipient pursuant to any freedom of information legislation in respect of any Confidential Information then the Recipient shall notify the Disclosing Party and shall not disclose any information until an analysis has been made as to whether the information requested is capable of benefiting from an exemption from disclosure, unless such non-disclosure would be in breach of a legal or regulatory requirement.

21.4 The obligations of the parties under this condition 21 shall continue to apply without limit of time.

22. Export Control Licence

For the purposes of this condition 22, "Export Control Licence" shall mean any public or governmental licence, approval, permit or similar (whether temporary or permanent), issued directly or indirectly, by any United Kingdom or foreign authority which, from time to time, is necessary to obtain in order to be entitled to market, import, export, re-export products and/or provision of services and/or transfer of technology and/or Intellectual Property Rights.

22.1 The Company's performance of its obligations under this Contract may, wholly or partly, be subject to Export Control Licences. If any such Export Control Licence requires signed end user certificates or any other governmental or court approvals or consents the parties agree to assist each other in completing the relevant end user certificates or other such approvals or consents and the Customer undertake to conform to and apply the terms of such, end user certificates, Export Control Licences or restrictions.

22.2 The Customer represents and warrants that it shall inform the Company in writing, prior to the Company carrying out any Service, of any applicable import or export restrictions that may apply to the Services to be provided, including any licences where any products, information or technology may be exported/imported to or from a country that is banned from such transaction.

22.3 The Company shall make reasonable efforts to obtain the necessary Export Control Licences, but the parties acknowledge that the issuance of Export Control Licences is at the sole discretion of the relevant authorities. If any necessary Export Control Licence are delayed, denied or revoked, the Company shall notify the Customer thereof in writing as soon as reasonably practicable, and the Company shall be entitled to a corresponding extension of the time for provision of the Services, and, in case any necessary Export Control Licence are denied or revoked, terminate the Contract, wholly or partly, without liability in relation to the Customer.

22.4 Should the Services or any product of the Company be subject to any Export Control Licences or any other governmental or court restrictions, the Customer undertakes to conform to and apply the from time to time valid terms of such Export Control Licences or restrictions.

23. Anti-Corruption

23.1 The Customer undertakes to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the United Kingdom Bribery Act 2010 and the Foreign Corrupt Practices Act 1977 ("Anti-Corruption Laws") and that it shall not do, nor omit to do, any act that will lead to the Company being in breach of any of the Anti-Corruption Laws. The Customer shall:

23.1.1 comply with the Company's Anti-corruption policies as may be notified by the Company to the Customer and updated from time to time ("Relevant Policies");

23.1.2 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of the Contract;

23.1.3 promptly notify the Company (in writing) if a foreign public official becomes an officer or employee of the Customer or acquires a direct or indirect interest in the Customer (and the Customer warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract).

24. Notices

All notices to be served by one party on the other under the Contract shall be in writing and shall be deemed duly delivered or served at the time of service if delivered personally and 8 days after posting if posted by ordinary or (if posted to or from another country, by airmail) pre-paid post in each case to the registered address, if applicable, or if not applicable the last known address of the other party.

25. Waiver

25.1 A waiver of a right, remedy or power must be in writing and signed by the party giving the waiver. A waiver given by a party in accordance with this condition 25 may be subject to such conditions as are specified in the waiver, is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be construed as a waiver of that obligation or breach on any other occasion. Without limiting the foregoing:

25.1.1 no failure or delay by a party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right, power or remedy; and

25.1.2 a waiver by either party hereof of a breach by the other party of any of the provisions of the Contract shall not be deemed a waiver of future compliance therewith, and such provisions shall remain in full force and effect.

26. Governing Law

26.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed under the laws in force in New South Wales, Australia.

26.2 Each party irrevocably agrees that the courts of New South Wales, Australia shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

27. Interpretation

27.1 In these Terms and Conditions, unless a contrary intention is expressed:

27.1.1 headings and italised, highlighted or bold type do not affect the interpretation of these Terms and Conditions;

27.1.2 the singular includes the plural and the plural includes the singular;

27.1.3 a gender includes all other genders;

27.1.4 other parts of speech and grammatical forms of a word or phrase defined in these Terms and Conditions have a corresponding meaning;

27.1.5 a reference to a 'person' includes any individual, firm, company, partnership, joint venture, an unincorporated body or an association, a trust, corporation or other body corporate and any government agency (whether or not having a separate legal personality);

27.1.6 a reference to a condition, clause, party, annexure, exhibit or schedule is a reference to a condition or clause of, and a party, annexure, exhibit and schedule to, these Terms and Conditions and a reference to these Terms and Conditions includes any clause, annexure, exhibit and schedule;

27.1.7 a reference to a document (including these Terms and Conditions) includes all amendments or supplements to, or replacements or novations of, that document;

27.1.8 a reference to a party to any document includes that party's successors and permitted assigns;

27.1.9 a reference to any legislation includes all delegated legislation made under it and includes all amendments, consolidations, replacements or re-enactments of any of them, from time to time;

27.1.10 a promise, agreement, representation or warranty by two or more persons binds them jointly and severally;

27.1.11 a provision of these Terms and Conditions may not be construed adversely to a party solely on the ground that the party (or any of its officers, directors or agents) was responsible for the preparation of these Terms and Conditions or the preparation or proposal of that provision;

27.1.12 a reference to a body, other than a party to the Contract (including an institute, association or authority), whether statutory or not, which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
27.1.13 the words 'include', 'including', 'for example', 'such as' or any form of those words or similar expressions in these Terms and Conditions do not limit what else is included and must be construed as if they are followed by the words 'without limitation', unless there is express wording to the contrary;

27.1.14 a reference to a day is to the period of time commencing at midnight and ending 24 hours later;

27.1.15 if a period of time is specified and dates from a day or the day of an act, event or circumstance, that period is to be determined exclusive of that day; and

27.1.16 if an act or event must occur or be performed on or by a specified day and occurs or is performed after 5.00 pm on that day, it is taken to have occurred or been done on the next day.