

The Company and Customer agree that each individual delivery of Goods and provision of Services is supplied to the Customer by the Company on the following terms and conditions (**Standard Terms**) and any terms issued by the Customer are expressly excluded unless otherwise agreed by the parties in writing.

## 1. DEFINITIONS

**ACL** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

**Company** means SOLAFT Filtration Solutions Australia Pty Ltd ABN 43 138 098 932 t/a SOLAFT Filtration Solutions and its Related Bodies Corporate as defined in the *Corporations Act 2001* (Cth).

**Credit Application** means the Application for Commercial Credit Account (if any, signed by the Customer).

**Customer** means the person(s), corporation, association or other entity identified in a Quotation or Order.

**Delivery Docket** means the docket provided to the Customer by the Company on delivery of Goods.

**Designs** mean any and all designs, specifications, formulae, drawings or other particulars, in any format.

**Fees** means monies owed by the Customer to the Company for Goods and Services.

**Goods** mean all goods supplied by the Company to the Customer, including any goods customised or modified to meet specific Customer requests or requirements.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth). **GST** has the same meaning as in the GST Act.

**Intellectual Property Rights** means all current and future Designs and registered and unregistered rights in respect of copyright, trademarks, trade secrets, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

**Invoice** means the written invoice issued to the Customer by the Company for payment of Goods or Services.

**Loss** includes any claim, notice, demand, debt, account, action, lien, cost, loss, expense, liability, litigation (including legal costs), investigation, judgment or damages of any kind, whether known or unknown.

**Manufacturer's Warranty** means an express written warranty provided by the Company to the Customer in respect of specific Goods.

**Order** means an order formed in accordance with clause 5.1.

**Products** means all products made from the Goods or new objects or materials made from the Goods or where the Goods become part of other objects or materials.

**Quotation** means a written quote for Goods or Services provided by the Company to the Customer at the of the Customer's request.

**Services** means the services provided to the Customer by the Company as specified in an Order.

**Site** means the location for delivery of the Goods and/or Services provided to the Customer by the Company as specified in an Order.

**Specifications** mean the Company's specifications for the installation, use and service in relation to a particular Good.

**Trial** means a trial period where the Customer can use the Goods for free or on a paid basis to determine performance and suitability for its purposes.

## 2. AGREEMENT

2.1 This agreement comprises:

- a. the Order;
- b. these Standard Terms; and
- c. any additional terms and conditions agreed in writing between the Company and the Customer, including in the Trial Commencement Form (**Special Conditions**).

2.2 To the extent of any inconsistency, the following will prevail in descending order of precedence:

- a. Special Conditions
- b. Order; and
- c. Standard Terms

## 3. QUOTATIONS

3.1 A Quotation is valid for thirty (30) days from the date it is provided. Unless otherwise stated, prices quoted by the Company are exclusive of GST, discounts and/or delivery charges.

## 4. TRIALS

4.1 The Company may, in its absolute discretion, offer the Customer a Trial.

4.2 All Trials are subject to these Standard Terms unless modified by terms set out in a Trial Commencement Form.

4.3 The Company may, at any time and in its absolute discretion, cancel, vary or postpone any Trial.

## 5. ORDERS

5.1 An Order is deemed placed with the Company when the Customer:

- a. accepts a Quotation; or
- b. requests Goods and Services from the Company at any time including at the end of a Trial and the Company confirms its acceptance of that request.

5.2 The Customer acknowledges and accepts that the Company at its discretion, reserves the right not to supply Goods or Services for any reason (including, but not limited to, where the Goods or Services are not or cease to be available, account disputes have occurred or conditions have been placed on the Company by its suppliers). The Company will not be liable to the Customer for any Loss the Customer incurs due to the Company exercising its rights under this clause.

5.3 Once an Order is placed, the Company will not accept cancellation of Orders unless written consent is provided by the Company on terms determined by the Company.

## 6. PRICES

6.1 Prices of Goods may vary without notice and will be the standard current recommended price for the Goods at the date of delivery, except where prices are those advertised or quoted. If discounted prices are not paid by the due date for payment as shown on the Invoice, then the standard current recommended price applies.

The Customer must pay all and any import duties, levies or imports or any GST, sales, transaction, use, excise, gross receipts, value added, property or other taxes or duties of any kind whatsoever assessed upon or relating in any way to the Goods ordered by the Customer.

6.2 The cost of any:

- a. special packing and packing materials used in relation to the Goods; or
  - b. customisation or modification of the Goods to meet specific Customer requests or requirements,
- will be at the Customer's expense even if such costs have been omitted from any Quotation or Order.

## 7. PAYMENT

7.1 Unless otherwise stated by the Company, the Customer will pay the Fees to the Company within thirty (30) days from the later of:

- a. the date of the delivery of the Goods;
- b. the date of the relevant Invoice for the Goods; or
- c. in the case of Goods delivered outside of Australia and where payment is by way of an irrevocable letter of credit, the date of the irrevocable letter of credit received by the Company prior to despatch of the Goods.

7.2 If the Customer fails to make payment of the Fees by the due date (**Overdue Fees**), the Customer:

- a. will be charged interest on the Overdue Fees from the due date, at a rate 4% higher than the current cash rate of the Reserve Bank of Australia;
- b. acknowledges and agrees that the Company may issue legal proceedings to recover any Overdue Fees; and
- c. acknowledges and agrees that the Customer will be liable for any costs incurred by the Company in relation to recovering the Overdue Fees, including legal fees on a full indemnity basis.

## 8. DELIVERY

8.1 Subject to clause 10, the Company will deliver the Goods to the address specified in an Order unless otherwise agreed between the parties.

8.2 If the Company or its agent is not responsible for the delivery of the Goods, delivery is made when the Goods leave the premises of the Company.

8.3 If the Customer requires the Goods to be supplied by a specific date, the Company will use its best endeavours to comply with that request although the Company is not liable for any Loss whether consequential or direct arising from late delivery or non-delivery of Goods.

8.4 Delivery of the goods is subject to availability at the time of order placement. Should there be any changes to the final delivery date, SOLAFT will use its best endeavours to communicate with the customer and provide an updated date once the purchase order is placed with SOLAFT.

8.5 The Company may at its discretion deliver the Goods to the Customer in any number of instalments unless the Customer has specifically requested no instalment delivery of the Goods. If any of the Goods delivered by instalment are defective for any reason, the defective instalment will be a severable breach and will not be deemed a repudiation of this Agreement. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

8.6 The Customer waives any claim for shortage of any Goods delivered if a claim in respect of shortage has not been lodged with the Company within seven (7) days from the date of receipt of Goods by the Customer.

8.7 The Service commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Company claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Company's control, including but not limited to any failure by the Customer to:

- a) Confirm a pending decision on selection; or
- b) Have the Site ready for the Services; or
- c) notify SOLAFT that the site is ready

**9. STORAGE**

- 9.1 The Company reserves the right to reasonably charge the Customer if:
- a. the Customer notifies the Company it is unable to take delivery of the Goods at the initial delivery time, whereupon the Company will be entitled to charge storage fees to the Customer in respect of the Goods held for delivery by the Company from the initial delivery date to the date of actual delivery at normal commercial rates prevailing at that time; or
  - b. delivery instructions are not provided by the Customer within seven (7) days of a request by the Company for such instructions, whereupon the Company may charge for storage from the first day after the Company requests the Customer to provide delivery instructions.

**10. LOSS & DAMAGE IN TRANSIT**

- 10.1 The Company is not responsible for any loss or damage to Goods in transit and the risk of loss or damage to the Goods will be carried by the Customer as and from the point of its departure from the Company's premises and all claims against the Company arising from any loss or damage in transit are hereby waived.

**11. RECEIPT OF GOODS AND DEFECTIVE GOODS**

- 11.1 The Customer must take delivery or collection of Goods and/or Services whenever they are tendered for delivery.
- 11.2 It is the absolute responsibility of the Customer to check all Goods on receipt.
- 11.3 If the Customer believes any of the Goods are defective the Customer must notify the Company in writing of the defect within fourteen (14) days of delivery of the Goods and return the defective Goods to the Company (at its own cost) within fourteen (14) days of giving such notice to the Company. The Customer will be deemed to have accepted the Goods unless it notifies the Company otherwise in writing within fourteen (14) days of delivery of the Goods.
- 11.4 Acceptance of the Goods by the Customer, waives any future rights to claims of damage against the Company to the maximum extent permitted by law.
- 11.5 If, on inspection of the defective Goods:
- a. the Company is satisfied that the Goods are defective, then the Company may either replace the Goods or refund the Customer the Fees paid for the Goods supplied; or
  - b. the Company:
    - i. is not satisfied that the Goods are defective; or
    - ii. the Company determines that the Goods are only defective because the Customer has, in the Company's opinion, failed to comply with the relevant Specifications,

the Customer must collect the Goods from the Company (at its own cost) within fourteen (14) days of notice from the Company to the Customer that the Goods are not defective, and if the Customer fails to collect the Goods within that time it must pay on demand any unpaid Fees and the Company reserves all rights in relation to the recovery of the Fees and the Company may sell or otherwise deal with those Goods to the extent necessary to pay the costs (and any reasonable associated costs) of storing those Goods (with such costs being recoverable from the Customer as additional Fees) and may take any other action to otherwise mitigate its loss.

**12. RETURNED GOODS**

- 12.1 Subject to clause 11, the Company will not accept Goods for return unless the Customer notifies the Company within fourteen (14) days from delivery of the Goods and the Company provides written approval to the Customer.
- 12.2 Goods must be in a condition approved by the Company and will be returned to the Company at the Customer's cost. Any Goods supplied to the Customer and subsequently returned to the Company will incur a reasonable surcharge assessed by the Company.

**13. DESCRIPTION OF GOODS SOLD**

- 13.1 The descriptions, illustrations and performances contained in catalogues, price lists and other advertising matter of the Company do not form part of any contract of sale of the Goods or of the description applied to the Goods and subject to clause 14, all Goods which the Company supplies to the Customer are as described on the Quotation or where no Quotation is provided, the Order and such description prevails over all other descriptions except where modified by the parties in writing.

**14. WEIGHTS AND MEASUREMENTS**

- 14.1 The Customer acknowledges that:
- a. weights given in Quotations and acknowledgements of Orders are usual for the type of goods in question. The Customer acknowledges that deviations up to plus or minus 5% in the Goods delivered are recognised and permissible in the industry and do not entitle the Customer to compensation or a claim against the Company. The weight to be Invoiced is the weight of the Goods under normal atmospheric conditions ascertained after equilibrium has been reached from the dry side at a relative humidity of 65% and at a temperature of 20 degrees Celsius; and

- b. the Goods are manufactured in such a way that after being run in on the machine on normal tension and in accordance with the relevant Specifications, they will reach the dimensions required for satisfactory service. Variations in dimensions from the Order or from the Quotation do not entitle the Customer to compensation or a claim against the Company, unless the Goods fail to (after a reasonable time) reach those dimensions.

**15. DESIGNS**

- 15.1 Where Designs are prepared by the Company the Customer acknowledges the Designs are valuable and confidential assets of the Company and that the Company maintains all Intellectual Property Rights in respect of the Designs.
- 15.2 Where Designs are supplied by the Customer:
  - a. the Customer is fully responsible for the accuracy and detail of the Designs and the Company is not liable for any Loss suffered by the Customer in respect of Goods supplied and based on the Customer's Designs which are either incorrect, misleading or inaccurate, unsuitable or unusable for any reason or are not of sufficient quantities for the Customer's intended use or purpose;
  - b. the Company may refuse any Order where, in the Company's reasonable opinion, the Customer has failed to provide sufficient detail in the Designs to enable the Company to provide the requested Goods;
  - c. the Customer warrants its Designs do not infringe any copyright or other Intellectual Property Rights of any third party and the Customer indemnifies the Company on demand against any costs suffered by or, claims or proceedings made against the Company arising from its use of the Designs supplied by the Customer;
  - d. the Company's price is based on estimates of quantities required based on the Designs. If there are any adjustments to the Designs by the Customer which result in a change of quantities estimated by the Company and set out in a Quotation or Order, then any such increase or decrease are to be adjusted on a unit rate basis according to the Company's then prevailing price list;
  - e. notwithstanding anything else contained in the Agreement, the Company is not under any obligation to accept any changes to the Designs once it has placed an order for any special materials that may be required to fulfil an Order or manufacture of the Goods has commenced; and
  - f. no error or mis-description by the Customer will vitiate a contract between the Company and the Customer for the supply of Goods and the Customer is bound to take the Goods ordered and pay for them without deduction or set-off of any kind.
  - g. The Company reserves the right to substitute comparable components of the Goods, and in all such cases the Company will notify the Customer of any substitution

**16. FITNESS FOR PURPOSE**

- 16.1 The Customer agrees it has not relied on the skill, judgement or recommendation of the Company or any of its employees, agents or sub-contractors in relation to the suitability of any of the Goods for a particular purpose, unless:
  - a. the Customer has indicated that purpose in writing to the Company and the Company has acknowledged in writing that the Goods will be fit for the particular purpose; or
  - b. such advice forms part of specific Services set out in an Order.

**17. PERFORMANCE AND RELIANCE**

- 17.1 Any performance values or specifications given by the Company are estimates only and the Company has no liability to the Customer for damages for failure of the Goods to attain such values or meet such specifications unless the Company specifically guarantees in writing. Any such written guarantees are subject to the recognised tolerances applicable to such values or specifications.
- 17.2 The Customer acknowledges and agrees the Company is not responsible for the consequence of any representation made or technical advice given by its employees, agents or sub-contractors in connection with the manufacture, design, installation, modification, customisation and use of the Goods, except unless otherwise stated by the Company in writing and the Customer agrees that all such advice is accepted by the Customer entirely at the Customer's risk.

**18. THE SUPPLIER'S PROPERTY**

- 18.1 Any property of the Company under the Customer's possession, custody and control is completely at the Customer's risk with regard to loss or damage caused to the property or by it.

**19. RETENTION OF TITLE AND RIGHT OF ENTRY**

- 19.1 Despite delivery of the Goods to the Customer, all right title and interest in the Goods remains with the Company until the Customer has paid the Fees in full.
- 19.2 If the Goods are re-sold prior to payment of the Fees, the proceeds from the sale of Goods will be held on trust for the Company.
- 19.3 Where the Customer has mixed or used the Goods and other materials to create Products, all right title and interest in the Products immediately pass to the Company until the Customer has paid the Fees in full.
- 19.4 To the extent there remains any unpaid Fees on any Goods or Products held by the Customer, the Customer must keep those Goods and Products in a fiduciary capacity as bailee for the Company.

- 19.5 Until the date of full payment of the Fees the Customer must store the Goods and Products clearly identified as the property of the Company and if requested, must supply to the Company within seven (7) days, an inventory of all Goods and Products in the Customer's possession. The Customer will allow any representative of the Company access to its premises to conduct any stock take of the Goods and Products without notice.
- 19.6 In the event of a default by the Customer in respect of any of the terms of the Agreement including the payment of any Fees under this Agreement or any insolvency or liquidation of the Customer, the Company has the right (without giving notice) to retake possession of the Goods or Products and the Customer hereby authorises the Company and its representative, servant, agent or employee to enter the Customer's premises on which the Goods or Products are housed or stored for the purpose of retaking possession of the Goods or Products and the Company is not be liable for any Loss incurred by the Customer as a direct or indirect result of the Company retaking possession of the Goods or Products.
- 19.7 In the event that the Company retakes possession of the Goods or Products the Company is entitled to sell the Goods or Products free of any claim from the Customer.
- 20. PERSONAL PROPERTY SECURITIES ACT 2009 Cth (PPSA)**
- 20.1 In this clause:
- 'Financing Statement' has the meaning given to it in the PPSA;
  - 'Financing Change Statement' has the meaning given to it in the PPSA;
  - 'PPS Register' means the Personal Properties Securities Register established under section 147 of the PPSA;
  - 'Security Agreement' has the meaning given to it in the PPSA; and
  - 'Security Interest' has the meaning given to it in the PPSA.
- 20.2 The Customer acknowledges and agrees that this Agreement constitutes a Security Agreement; and creates a Security Interest in:
- the Goods previously supplied by the Company to the Customer (if any); and
  - all Goods supplied to the Customer in the future by the Company, collectively known as the 'PPS Goods'.
- 20.3 The Customer undertakes to promptly sign any further documents and provide any further information (such information to be complete, accurate and up-to date in all respects) which the Company may reasonably require to:
- register a Financing Statement or Financing Change Statement on the PPS Register in relation to a Security Interest over the PPS Goods;
  - register any other document on the PPS Register which is necessary to perfect the Company's Security Interest over the PPS Goods;
  - correct a defect in any document;
  - indemnify, and on demand, reimburse, the Company for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPS Register;
  - not register a Financing Statement or a Financing Change Statement in respect of the PPS Goods without the prior written consent of the Company;
  - not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the PPS Goods in favour of a third party without the prior written consent of the Company;
  - keep full and complete records of the PPS Goods; and
  - without limiting any other right the Company may have, immediately return the PPS Goods if requested to do so by the Company, following non-repayment of any amount owing by the Customer to the Company or following the breach of any other obligation of the Customer.
- 20.4 The Company and the Customer agree that sections 96 and 125 of the PPSA do not apply to this Agreement.
- 20.5 The Company is not required to give any notice or statement under the PPSA (including a notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 20.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 20.7 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 21. WARRANTIES AND GUARANTEES**
- 21.1 Except as otherwise provided in any Manufacturer's Warranty, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or otherwise are expressly excluded.
- 21.2 Any Manufacturer's Warranties, or any other warranty or representation provided by the Company are void and of no effect if the Customer (in the Company's opinion) fails to comply with the relevant Specifications.

- 21.3 Any Manufacturer's Warranties, or any other warranty or representation provided by the Company are void and of no effect if the Customer fails to comply with the relevant payment terms as set out in the contract between both parties. In the absence of a contract then the payment terms are as set out in clause 7.
- 21.4 The Company provides no express or implied warranties for workmanship in the provision of Services unless otherwise required under statute or general law.
- 21.5 The Company provides no express or implied warranties on the accuracy or completeness of any information, advice or recommendations provided in the provision of Services.

## 22. EXCLUSION OF LIABILITY

- 22.1 To the fullest extent permitted by law, the Company is not liable to the Customer or anyone else for:
- Any Loss incurred by the Customer which (in the Company's opinion) arises from a failure of the Customer to comply with the relevant Specifications;
  - Any claim action or proceeding by a third party against the Customer;
  - Any claim, liability or proceeding by a third party against the Company (or any Loss incurred or suffered by the Customer as a result of any such claim, liability or proceeding);
  - Any Loss incurred by the Customer as a direct or indirect result of any errors or omissions contained within, or from the use of, any information, advice or recommendations provided by the Company.
  - Any Loss incurred by the Customer as a direct or indirect result of any Services provided by the Company;
  - Any Loss incurred by the Customer; or
  - Any indirect or consequential Loss or damage incurred by the Company, any loss of actual or anticipated savings, opportunity, revenue, profit or goodwill, or other economic loss, arising out of, or in connection with any of the Goods or Services or their supply, including any customisation or modification of any Goods by the Company at the request of the Customer.
- 22.2 Unless otherwise specified in the terms of any applicable Manufacturer's Warranty, the Company's liability for a breach of a condition or warranty implied by Part 3-2, Division 1 of the ACL is limited to the lowest of:
- In the case of any Goods:
    - The replacement of the Goods;
    - The supply of equivalent Goods;
    - The payment of the cost of replacing the goods or of acquiring equivalent Goods; or
    - The payment of the cost of having the Goods repaired.
  - In the case of Services:
    - The supplying of the Services again; or
    - The payment of the cost of having the Services supplied again.

## 23. WAIVER AND INDEMNITY

- 23.1 Except for the specific warranties and representations made by the Company in this agreement or any Manufacturer's Warranty, the Customer acknowledges:
- It has entered into this Agreement relying entirely on its own independent appraisal and assessment of the Goods;
  - It has not relied upon any warranty, statement or representation made or given by or on behalf of the Company;
  - It is fully aware of the contents of this Agreement; and
  - to the fullest extent permitted by law, it waives any possible cause of action or rights, in equity or otherwise, the Customer may have against the Company, including, any cause of action or rights the Customer may have under or in respect of the ACL or any other similar legislation or any portion of legislation touching or concerning anything the subject of, or incidental to, the Agreement and releases and indemnifies the Company on demand from and against (as the case may be) any claim, liability or proceeding arising out of or incidental to any such cause of action or right or any like cause of action or right of any person or entity whatsoever.
- 23.2 The Customer indemnifies the Company on demand from and against (as the case may be) any claim, liability or proceeding by a third party against the Company (or any Loss incurred or suffered by the Company as a result of any such claim, liability or proceeding) in connection with the Goods or Services or their supply.

## 24. PROTECTION OF INTELLECTUAL PROPERTY

- 24.1 During the term of the Agreement and forever after, the Customer acknowledges where the Company has Intellectual Property Rights in Goods, Services or Branding Marks it is the sole property of and remains the property of the Company and it will not itself do or assist any third party to infringe or challenge the Company's Intellectual Property Rights in those items.
- 24.2 Where the Goods or packaging for the Goods is marked with any of the Company's trade marks, logos or other information is placed on the Goods by the Company (**Branding Marks**), the Customer must not:

- a. Remove the Branding Marks from the Goods;
- b. Tamper with, alter or obscure the Branding Marks in any way; or
- c. Place any other intellectual property on the Goods.

24.3 The Customer must notify the Company promptly and in writing if it becomes aware of any infringement of any of the Company's Intellectual Property Rights and must fully cooperate with the Company in any infringement action.

#### **25. CHANGE OF OWNERSHIP**

25.1 Any change of controlling ownership, legal status or financial position of the Customer must be notified in writing to the Company twenty-eight (28) days prior to any such change.

#### **26. CHANGES OR ALTERATIONS TO THIS AGREEMENT**

26.1 Any variation of any terms constituting this agreement does not constitute a waiver of the rights of the Company. Any amendments will be effective subject to notice of the change being given by the Company to the Customer not less than twenty-eight (28) days prior to the date that the change or alteration is to become effective.

26.2 The Customer will be deemed to have agreed to, and be bound by the change or alteration unless it advises its objection in writing to the Company within twenty-eight (28) days of the receipt of the notice of amendment.

#### **27. INSURANCE**

27.1 The Customer must maintain all prudent insurance in respect of any loss or damage to all Goods and Products held in its possession and must nominate the Company as a co-beneficiary of all such insurance policies and must provide certificates of insurance to the Company upon demand.

#### **28. GOVERNING LAW AND JURISDICTION**

28.1 The Agreement is governed and construed by the laws applicable in the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place in respect of any dispute of whatsoever nature arising under the Agreement or its implementation or enforcement.

#### **29. PRIVACY**

29.1 The Company will endeavour to take reasonable commercial steps to protect all personal information provided by the Customer in accordance with the Australian Privacy Principles of the Commonwealth Privacy Act.

29.2 The Customer can email the Company at: [privacy@solaft.com](mailto:privacy@solaft.com) to request the information the Company has about the Customer or obtain further details on how the Company collects and protects the Customer's personal information and can view our privacy policy at [www.solaft.com](http://www.solaft.com).

#### **30. RIGHT OF SET OFF**

30.1 The Customer agrees that where it has supplied goods or services to the Company, the Company may recover any monies owed to it by the Customer by setting off such amounts (together with interest and costs of collection) against any sum owed to the Customer by the Company.

#### **31. SEVERABILITY**

31.1 If any provision of the Agreement is deemed by a court of law to be void, invalid or unenforceable then such provision will be severed from the Agreement and the remaining provisions remain in full force and effect.

#### **32. SEPARATE CONTRACT**

32.1 Each Order constitutes a separate contract for the sale of Goods or Services and the breach of any one such contract will not be grounds for the termination of any other Order formed between the parties.

#### **33. FORCE MAJEURE**

33.1 If, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company or the Customer, either is unable to perform in whole or in part any obligation in relation to any contract made for the supply of Goods to which this Agreement applies, the party is relieved of their obligations to the extent and for the period that it is so unable to perform and is not liable to the other party in respect of such inability except that an obligation to pay money is never excused by such circumstances.

#### **34. CANCELLATION**

34.1 This agreement supersedes and prevails over any previous terms and conditions.

#### **35. GENERAL**

35.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

**36. CREDIT APPLICATION**

- 36.1 If, at any time, the Supplier believes the Customer's circumstances have changed or may change which does or may cause the Customer to be unable to meet its payment obligations to the Supplier, the Supplier may:
- a. Request a new Credit Application; or
  - b. Cancel the Customer's credit upon providing 14 days written notice to the Customer.