

For the provision of Goods and Services by Scottsdale Australia Pty Ltd ACN 617 412 718 (**we/us/our**).

These Terms and our Quote form the basis of our agreement with you (together the **Agreement**) and constitute our offer of Goods and Services to you.

1. Quote

- (1) Our Quote may be made up of separate parts, which are to be taken as joined and to form one single instrument.
- (2) The terms of payment for the provision of Goods and/or Services are specified in the Quote.
- (3) You must tell us immediately if you disagree with anything contained in our Quote or if you think we have misunderstood your requirements.
- (4) If there is any inconsistency between these Terms and our Quote, our Quote will prevail to the extent of that inconsistency.

2. Acceptance

You accept our offer to provide the Deliverables specified in the Quote by signing and returning the Quote or by making a payment of an amount specified in the Quote.

3. Term

3.1 Initial Term

This Agreement commences on the Acceptance Date and continues for the Initial Term unless terminated in accordance with clause 13.2.

3.2 Continuation of Agreement

This Agreement will continue for each Rollover Period, unless terminated in accordance with clause 13.

4. Your general obligations

- (1) Where we access your Site for the purposes of performing our obligations under this Agreement, you must:
 - (1) provide adequate and safe facilities;
 - (2) ensure that our Personnel are appropriately inducted, trained and supervised in relation to:
 - (1) health safety and environment (**HSE**) risks associated with the performance of our obligations under this Agreement at your Site; and
 - (2) procedures required to manage the risks in sub clause 4(a)(ii)(A);
 - (3) immediately notify us of any incidents that occur in relation to our Personnel during the provision of the Services.
- (2) To enable us to properly perform our obligations under this Agreement, you must promptly provide us with all reasonable:

- (1) information, assistance, data, resources, records, plans, materials or access; and
- (2) Personnel within your organisation that we need to interact with in order to provide the Goods and Services,

following our request.

- (3) You acknowledge that our Quote assumes that:
 - (1) you will not delay our provision of Goods to you following the Acceptance Date;
 - (2) the information you provide to us will be accurate, complete, not misleading or contradictory; and
 - (3) you will comply with your obligations under 4(b).

5. Our general obligations

We must:

- (1) provide the Deliverables in accordance with the Agreement and ensure that the Deliverables meet the Specifications;
- (2) ensure that all Deliverables are of a high quality, professional standard and fit for their usual purpose;
- (3) where relevant to our obligations under the Agreement, comply with your HSE and security policies which have been provided to us and apply to the Site;
- (4) where access to your IT System is required to provide the Deliverables:
 - (1) only access and use that part of your IT System reasonably required, and only for the purpose and to the extent necessary to perform our obligations under the Agreement; and
 - (2) not tamper with, hinder the operation of or make unauthorised modifications to the your IT System or maliciously or negligently introduce any Harmful Code;
- (5) comply with all Laws in performing our obligations under the Agreement and ensure that the Deliverables comply with all Laws when provided;
- (6) during the Term, make all Documentation including any revisions, replacements or additions to the Documentation available to you so that the Documentation includes the most current and up-to-date versions generally available to our customers;
- (7) provide you with the training (if any) specified in the Quote; and
- (8) maintain the Insurances detailed in the Quote on terms that are reasonably commercially available.

6. Price and payment

6.1 Fees

- (1) As consideration for the Deliverables, you agree to pay us the Fees.
- (2) We will issue tax invoices to you in accordance with the payment terms specified in our Quote.
- (3) You must pay our tax invoices within 14 days of receipt (unless expressly stated otherwise in the Quote) without set-off, counterclaim, holding or deduction in the manner detailed within the tax invoice.

6.2 Deposit and part-payments

- (1) We may require you to make payment of a Deposit or other part-payment of our Fees as specified in the Quote before we commence processing your request for the Deliverables.
- (2) The Deposit or part-payments will be applied by us against any amount owing to us under this Agreement, following the issue of our invoice/s to you.
- (3) The Deposit or part-payments will be non-refundable, except as required by law, on the basis that the Deposit is a genuine pre-estimate of the expense incurred by us in processing your order.

6.3 Expenses

Any costs and reasonable out-of-pocket expenses which are set out in the Quote or are otherwise necessary to provide the Deliverables (**Expenses**) must be paid or reimbursed by you. We will submit documentation as evidence where required by you to verify the Expense that has been incurred.

6.4 Disputed Tax Invoice

- (1) If you dispute any part of a tax invoice you must pay the portion not in dispute and provide notice to us within 7 days of receiving the tax invoice of your reasons for dispute (**Fee Dispute Notice**).
- (2) Within a reasonable time of receiving the Fee Dispute Notice, we will address your reasons of dispute, to enable a prompt and amicable resolution. If the dispute cannot be resolved within 7 days of our response, then the dispute must be referred to the procedure contained in clause 12.

6.5 Variation

You agree that we may reasonably vary our Fees where any of the assumptions set out in sub clause 4(c), or any other assumptions detailed in the Quote prove to be incorrect.

6.6 Review

You agree that we may reasonably alter our Fees under this Agreement upon providing at least 30 days' notice to you (**Review Notice**). The new Fees will apply at the commencement of the next Rollover Period.

6.7 Late Payment

If you fail to make payment within the time required under this Agreement we may:

- (1) exercise our rights under sub clause 8.4(r);
- (2) charge you an Admin Fee;

- (3) charge interest on the overdue amount at the Default Rate as from the first day that payment is overdue to the date we receive payment in full of all overdue amounts; and
- (4) charge you for all costs and expenses incurred by us in recovering any outstanding Fees or charges, including legal fees (on a solicitor and own client basis) and court costs, which you must pay upon demand.

6.8 GST

Unless otherwise expressly stated, all amounts under this Agreement are exclusive of GST. If GST is imposed on any supply made under or in accordance with this Agreement and GST has not been accounted for in determining the consideration payable for the supply, then we may recover from you an amount on account of GST.

7. Delivery and production schedule

- (1) Upon payment of any Deposit or part-payments required in accordance with clause 6.1, we will advance any Goods ordered in our production queue.
- (2) Subject to sub-clause (a), we will use reasonable commercial endeavours to:
 - (1) meet Delivery Dates specified in the Quote or as otherwise agreed in writing;
 - (2) minimise and mitigate against delays; and
 - (3) promptly notify you if we believe we will not be able to meet any Delivery Dates and provide you with revised Delivery Dates;

8. Our specific obligations

8.1 Plant and equipment

The following apply to our supply of any P&E under the Agreement:

- (1) if specified in the Quote, we must install the P&E at the Site in accordance with the requirements set out in the Quote;
- (2) all items of P&E must be new, unused and of recent origin unless otherwise specified in the Quote;
- (3) risk in the P&E will transfer to you when delivered to the Site in accordance with the Quote and the your delivery instructions;
- (4) unless specified otherwise in the Quote, title in the P&E will transfer to you upon our receipt of full payment of the applicable Price;
- (5) we must provide the ancillary services (if any) in connection with the P&E as specified in the Quote;
- (6) we warrant that the P&E:
 - (1) will, during the Warranty Period, comply with and perform in accordance with the Specifications;
 - (2) may be used in accordance with the Documentation without HSE risks; and

- (3) will not be subject to any encumbrance or interest, except for an encumbrance or interest which arises by operation of a Law that cannot be excluded by contract;
- (7) subject to clause 8.1(h), during the Warranty Period we must, at no cost to you:
 - (1) remedy all Defects in the P&E either by repair, replacement or modification; and
 - (2) take all reasonable measures (including providing a Workaround) to enable you to continue to productively use the P&E while remedying Defects;
- (8) we are not required to remedy any Defect in the P&E during the Warranty Period to the extent the Defect arises as a result of:
 - (1) your failure to comply with your obligations under the Agreement;
 - (2) modifications to the P&E that were effected or attempted by a person other than us, our Personnel or a person authorised by us;
 - (3) damage caused by operation of the P&E other than in accordance with the Documentation and the Agreement; or
 - (4) damage caused by use of consumables or parts with the P&E which are not authorised by us; and
- (9) if you request we remedy a Defect during the Warranty Period, that we reasonably determine has arisen as a result of circumstances set out in clause 8.1(h), we are entitled to charge you for the costs and expenses (at our then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect.

8.2 Maintenance Services

The following apply to the supply of any Maintenance Services under the Agreement:

- (1) we must provide the Maintenance Services for the period specified in the Quote;
- (2) we must provide the general support specified in the Quote during the hours of support specified in the Quote;
- (3) we must provide preventative maintenance services to the Supported P&E on a scheduled basis as set out in the Quote;
- (4) after being notified of a Defect or possible Defect in the Supported P&E, we must provide remedial maintenance services as set out in the Quote.
- (5) where we replace parts of the Supported P&E:
 - (1) the replacement parts will be new unless otherwise agreed; and

- (2) title and risk in the replacement parts will transfer to you upon your payment of those parts unless otherwise agreed;
- (6) we warrant that the Maintenance Services will be performed:
 - (1) using appropriate materials of high quality; and
 - (2) to a standard that ensures continuity of performance of the Supported P&E in a reasonable time and manner; and
 - (3) we are not required to provide the Maintenance Services to the extent that a Defect or failure arises as a result of the circumstances set out in clause 8.1(h).

8.3 Certification Services

The following apply to our performance of any Certification Services under the Agreement:

- (1) the Deliverables relating to our Certification Services will be strictly prepared based on the information (including location of the building and wind classification), designs, plans and any other relevant material provided or made available to us in connection with the Project;
- (2) where a design of the Project fails to achieve certification, we will specify the failure and provide sufficient reasoning to enable you to update the designs in order to rectify the failure;
- (3) unless otherwise specified in the Quote, our Certification Services include a single assessment of a design or designs relating to the Project. Re-assessment of any design entails a re-delivery of the Certification Services and additional Fees for our re-delivery of the Certification Services, or a part of the Certification Services will be charged;
- (4) our Certification Services will only be provided in relation to steel frame and steel truss designs, the Certification Services do not include:
 - (1) a certification of the frame or trusses once constructed; or
 - (2) rectification or alteration of the frame or truss designs where the designs fail to comply with the certification requirements.

8.4 Licensed Software

The following apply to the supply of any Licensed Software under the Agreement:

- (1) subject to clause 8.4(d), we grant you a non-exclusive licence to:
 - (1) install and use the Licensed Software for internal business functions and activities, or such other purposes specified in the Quote, and otherwise in accordance with the terms of the Class of Licence; and

- (2) provide a sublicense on the same terms as those contained in this clause 8.4 to any approved sublicensee listed in the Quote;
- (2) the licence period for the Licensed Software is the Term;
- (3) you agree not to:
 - (1) subject to 8.4(a)(ii), distribute, sublicense or otherwise transfer all or any part of the Licensed Software to any other person; and
 - (2) subject to any right under, sections 47B(3), 47C, 47D, 47E or 47F of the Copyright Act, either directly or indirectly, modify, attempt to decompile, cross compile, disassemble, reverse engineer, or use any other means to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Licensed Software;
- (4) you must comply with any additional licence conditions and restrictions on use of the Licensed Software specified in the Quote;
- (5) we must supply you with the number of copies of the Licensed Software as specified in the Quote;
- (6) we must if specified in the Quote, install the Licensed Software within your IT System;
- (7) during the Term:
 - (1) we must make available any Updates and New Releases to you when we make them generally available to other customers;
 - (2) as a consequence of 8.4(g)(i), we may need to make reasonable amendments to the provisions of this Agreement. We reserve the right to unilaterally make such changes provided they do not adversely affect your rights and obligations under this Agreement. You acknowledge and agree that any change made pursuant to this sub clause will apply immediately upon notice of the variation being provided to you.
 - (3) if you do not install the Update or New Release:
 - (1) you acknowledge and agree that subsequent Updates or New Releases may not operate with the Licensed Software; and
 - (2) we are not responsible for any Defect in the Licensed Software, nor any incident or outage, which would not have occurred had the latest version of the Licensed Software been used;
- (8) We must provide software training (if any) in connection with the Licensed Software as specified in the Quote.
- (9) We will use our best endeavours to provide general software support to you within 1 Business Day of a request being made. General software support provided under this Agreement does not include any dealings with or responding to issues related to your IT System or your use of the Software outside the Documentation.
- (10) You may at any time request that we provide additional software support and training services (**Additional Support Services**). The Fees for Additional Support Services will be set out by us upon receipt of a written request from you.
- (11) We are not obliged to provide Additional Support Services.
- (12) we warrant that the Licensed Software will:
 - (1) during the Term, comply with and perform in accordance with the Specifications;
 - (2) during the Term, be compatible and inter-operate with, and will not detrimentally affect the operation or performance of, your IT System when used in accordance with the Documentation; and
 - (3) when delivered to you, be free from any Harmful Code;
- (13) the Licensed Software is provided on an as is basis without any representation, warranty or guarantee as to quality, condition or fitness for purpose and we do not warrant that the Licensed Software will be free of defect, uninterrupted, accurate, complete, current, stable, bug free, error free or available at any time in respect of its operation;
- (14) Subject to clauses 8.4(o) and 8.4(p), during the Term we must, at no cost to you:
 - (1) remedy all Defects in the Licensed Software either by repair or modification; and
 - (2) take all reasonable measures (including providing a Workaround) to enable you to continue to productively use the Licensed Software while remedying Defects;
- (15) we are not required to remedy any Defect in the Licensed Software to the extent the Defect arises as a result of:
 - (1) your failure to comply with your obligations under the Agreement;
 - (2) any failure of your Inputs to comply with the Documentation;
 - (3) modifications to the Licensed Software that were effected or attempted by a person other than us, our Personnel or a person authorised by us; or
 - (4) damage caused by use of the Licensed Software other than in accordance with the Documentation and the Agreement.
- (16) where we, acting reasonably, determine that a Defect arises as a result of circumstances set out in clause 8.4(o), then if you request that we remedy the Defect, we will be entitled to charge you for the costs and

expenses (at our then current commercial rates) that arise out of or in connection with identifying and attempting to remedy that Defect;

- (17) you acknowledge that you have no right, title or interest in the Licensed Software except as set out in clause 8.4(a); and
- (18) you acknowledge that in addition to any other rights or remedies we may have, we may suspend the functionality of the Licensed Software at any time and without any liability to you where you or any of your Personnel are in breach a provision of this Agreement.

9. IPR's

9.1 IPR's generally

Unless otherwise specified in the Quote:

- (1) each party retains all right, title and interest in and to its pre-existing IPR's;
- (2) you grant us a licence to use your pre-existing IPR's strictly for the purposes of providing the Deliverables;
- (3) we own all IPR's in the Deliverables including the Licensed Software;
- (4) all IPR's in any adaptation, translation or derivative of the Licensed Software including Updates and New Releases vest in us upon creation or must otherwise be assigned to us immediately following creation;
- (5) you own all IPR's in the Software Outputs;
- (6) subject to the provisions of this Agreement, we grant you a license to use and exploit the IPRs in the Deliverables supplied to you strictly for the purposes for which they were provided;
- (7) nothing in the Agreement prohibits us from using our IPR's to provide Goods and Services to third parties, even if they are the same or substantially the same as those provided to you; and
- (8) you agree that you must not copy, reproduce, sublicense nor deploy or commercialise the IPR's in the Deliverables in any manner that is outside the purposes for which they were provided nor allow any other person to do so.

9.2 Third Party Material

- (1) You must ensure that we are permitted to use any Third Party Material that you provide to us for the purposes of us fulfilling our obligations under this Agreement.
- (2) If a Deliverable incorporates any Third Party Material that you did not provide to us, we must (or procure the applicable third party) grant to you a non-exclusive licence to exercise all IPR's in such Third Party Material for the purposes of receiving the intended benefit of the Deliverables as set out in the Agreement.

10. Confidentiality

10.1 Recipient must keep Confidential Information confidential

Each party must:

- (1) keep confidential all Confidential Information;
- (2) only use Confidential Information for the purpose of providing or receiving (as the case may be) the Goods and Services; and
- (3) procure that its employees and contractors comply with sub-clauses (a) and (b).

10.2 Disclosure exceptions

The obligations in clause 10.1 do not apply:

- (1) to the extent necessary to enable a party to make any disclosure required by Law;
- (2) to the extent necessary to enable a party to perform its obligations under this Agreement;
- (3) provided a third party receiving the Confidential Information has obligations of confidentiality equivalent to those contained in this clause 9 and only in circumstances where:
 - (1) disclosure is required for any quality assurance or insurance purposes; or
 - (2) necessary to receive professional (legal or financial) advice; or
- (4) to any disclosure agreed in writing between the parties.

11. Non-solicitation

- (1) Neither party may, without the prior written consent of the other party, during and for 12 months after the expiry or termination of the Agreement, directly or indirectly engage, employ, solicit or otherwise retain any person who is an employee of or engaged by the other party and who is or was engaged in the performance of the Agreement.
- (2) Clause 11(a) does not prevent either party from employing or engaging a person who responds to a genuine advertisement placed by or on behalf of that party in good faith.
- (3) The parties agree that the restrictions in this clause 11 are necessary to protect the legitimate business interests of each party.

12. Disputes

- (1) If a dispute (**Dispute**) arises between the parties to this Agreement which they cannot resolve, then the party claiming that a Dispute has arisen must deliver to the other party a notice containing particulars of the Dispute (**Dispute Notice**).
- (2) During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties to the Dispute (**Initial Period**), the parties must meet in good faith in an attempt to resolve the Dispute.
- (3) If the parties cannot resolve the Dispute within the Initial Period then unless they all agree otherwise, they

must appoint a mediator to mediate the Dispute in accordance with the rules of the Resolution Institute. The parties must participate in the mediation in good faith.

- (4) The mediator must be agreed on by the parties within 10 Business Days after the Dispute Notice is given to the parties and if they cannot agree within that time the mediator will be nominated by the president of the Resolution Institute.
- (5) The mediation concludes when:
 - (1) all the parties agree in writing on a resolution of the Dispute; or
 - (2) a party, not earlier than 20 Business Days after appointment of the mediator, has given 5 Business Days' notice to the other parties and to the mediator, terminating the mediation, and that 5 Business Days has expired without all the parties agreeing in writing on a resolution of the issue.

13. Termination

13.1 Termination without cause

Either party may terminate this Agreement with effect from the expiration of the Initial Term or any Rollover Period, upon providing at least 14 days' notice to the other party prior to the end of the then current period.

13.2 Termination for breach

- (1) If you fail to make payment of our Fees relating to a Rollover Period, prior to the commencement of the Rollover Period, we may terminate this Agreement immediately upon providing notice to you.
- (2) If either party breaches any provision of this Agreement and such a breach is capable of rectification, the other party must give the defaulting party written notice requesting that the breach be rectified within 10 Business Days (**Breach Notice**).
- (3) If a breach has not been rectified within 5 Business Days of the giving of a Breach Notice, the party giving the Breach Notice may terminate this Agreement immediately by notice in writing to the other.
- (4) If any party breaches a material term and the breach is not capable of rectification, the other party may terminate this Agreement immediately by notice in writing to the party in breach.

13.3 Consequences of termination

- (1) Following termination you must:
 - (1) promptly pay all outstanding Fees and all Expenses that have been incurred by us to date, unless the Fees or Expenses are that subject to dispute under clause 6.4 in which case they must be paid upon resolution of the dispute; and
 - (2) return or delete all of our Confidential Information that has been provided to you or

accessed by you under or in connection with the Agreement.

- (2) Following termination we must:
 - (1) refund you the balance of any money that you have paid in advance, once we have set-off all of our outstanding Fees and Expenses; and
 - (2) return or delete all of your Confidential Information that has been provided to us accessed by us under or in connection with this Agreement except for one copy where required for quality assurance or insurance purposes.

14. Disclaimers and liability

14.1 Disclaimer

You acknowledge and agree:

- (1) you are solely responsible for ensuring the Project as constructed conforms with the plans, obtains an as built engineering certification and is constructed in compliance with all applicable Laws;
- (2) that all Software Outputs are dependent upon your Inputs;
- (3) you are solely responsible for ensuring your Inputs in:
 - (1) the Licensed Software; and
 - (2) Software Outputs,are accurate and conform to the relevant requirements of the Project.
- (4) that you and your Personnel are responsible for ensuring that all Software Outputs will enable the Project to comply with all applicable Laws;
- (5) the Licensed Software is not a substitute for professional judgement or independent enquiry, analysis, review, testing, calculations or other activities a skilled professional would be expected to make in the circumstances; and
- (6) to the extent permitted by Law, we disclaim any and all liability and you fully release us from any Claims made in connection with:
 - (1) all Software Outputs, where issues relate to the Software Outputs failing to conform with the requirements of the Project or otherwise violate any Laws; and
 - (2) the Project failing to:
 - (1) conform with the plans;
 - (2) obtain an as built engineering certification; and
 - (3) be constructed in compliance with all applicable Laws.

14.2 Liability

- (1) Neither party will be liable to the other whether in contract, tort (including negligence) or otherwise in connection with the Agreement (including under an

- indemnity) for Loss, to the extent that the other party (or the other party's Personnel) contributed to the Loss.
- (2) Subject to clause 14.2(d), to the extent permitted by Law, neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party whether in contract, equity, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity) even where the other party were appraised of the likelihood of such Loss occurring.
- (3) Subject to clause 14.2(d), to the extent permitted by Law, our maximum liability to you, whether in contract, equity, tort (including negligence) or otherwise in connection with the Agreement (including under an indemnity), is limited to the greater of:
 - (1) the amount paid out under any of the Insurances (less any excess); and
 - (2) the aggregate of our Fees that arose during the Initial Term.
- (4) The exclusions and limitations of liability in clauses 14.2(b) and 14.2(c) do not apply to liability in relation to:
 - (1) personal injury, including death;
 - (2) loss of, or damage to, tangible property; or
 - (3) an infringement of a third party's IPR's or Moral Rights;
 - (4) any fraudulent act or omission of ours or of our Personnel; or
 - (5) any breach by us or our Personnel of any of our confidentiality obligations under clause 10.
- (5) A party who suffers Loss must use reasonable steps to mitigate its Loss. The other party will not be responsible for any Loss to the extent that the injured party could have avoided or reduced the amount of the Loss by taking reasonable steps to mitigate its Loss.
- (6) To the extent that we fail to comply with any applicable guarantee under sections 54 to 62 of the Australian Consumer Law in respect of the Goods and Services that are not of a kind that are ordinarily acquired for personal, domestic or household use or consumption then, to the extent permitted by Law, our liability for failure to comply with any such guarantee is limited to one or more of the following, at our election:
 - (1) where we have supplied Goods:
 - (1) the replacement of the Goods or the supply of equivalent goods;
 - (2) the repair of the Goods;
 - (3) the payment of the cost of replacing the Goods or of acquiring equivalent goods;

- (4) the payment of the cost of having the Goods repaired; and
- (2) where we have supplied Services:
 - (1) supplying the Services again; or
 - (2) payment of the cost of having the Services supplied again.

15. Indemnity

15.1 Your indemnity

You agree to indemnify us and to keep us indemnified against any Loss that may be suffered by us arising from or in connection with (directly or indirectly):

- (1) any breach or default by you or your Personnel of this Agreement (including any breach of warranty);
- (2) a negligent act or omission by you or your Personnel; and
- (3) your failure or the failure of your Personnel to comply with any Law.

15.2 Our indemnity

- (1) Subject to sub clause (b), we will indemnify you with respect to any damages awarded against you in connection with a Claim made by a third party that that Deliverables infringe the IPR's of that third party.
- (2) We will not be liable to you under sub clause 15.2(a) if:
 - (1) you do not notify us of the other person's Claim within 10 Business Days after becoming aware of it;
 - (2) our ability to defend the Claim has been prejudiced by your non-compliance with any of your obligations under this Agreement;
 - (3) you do not give us reasonable assistance (based on the circumstances) in defending the Claim; or
 - (4) you do not permit us to have control of the defence of the Claim and all related settlement negotiations.

16. Assignment

- (1) Subject to clause 16(b), a party cannot assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.
- (2) You agree that if we merge or amalgamate with another company, business or otherwise sell or dispose of our business, we may:
 - (1) transfer your matter, including all materials, personal information, confidential information and ideas supplied by you, to that other person, provided they agree to be bound on terms equivalent to those contained in this Agreement; and

- (2) assign, novate or otherwise transfer any of our rights or obligations under this Agreement.

17. Notices

Any notice given under or in connection with this Agreement:

- (1) must be in legible writing and in English;
- (2) must be addressed to a party's contact address as shown on the Quote or as otherwise notified by a party to the other party from time to time;
- (3) must be:
 - (1) delivered to that party's address;
 - (2) sent by pre-paid mail to that party's address;
 - (3) transmitted by facsimile to that party's address; or
 - (4) sent by email to that party's email address; and
- (4) will be deemed to be received by the addressee:
 - (1) if delivered by hand, at the time of delivery;
 - (2) if sent by post, on the third business day after the day on which it is posted, the first business day being the day of posting;
 - (3) if sent by facsimile, on the business day on which the notice is received by the recipient's facsimile receiving facility, and a correct and complete transmission report is received; or
 - (4) if sent by email, at the time that would be the time of receipt under the *Electronic Transactions Act 1999 (Cth)*.

18. General

The parties agree that:

- (1) they will act reasonably in exercising all of their rights under the Agreement;
- (2) each party may nominate one or more employee(s) as its nominated representative(s) in the Quote (**Authorised Representative**). Any direction, consent or approval given by any person other than a party's Authorised Representative will not bind the party unless the direction is confirmed in writing by that party's Authorised Representative. A party may notify the other party of any replacement of its Authorised Representative from time-to-time;
- (3) they will direct all enquiries relating to the Agreement to the other party's Authorised Representative, or to another person if the other party directs;
- (4) they will send all notices relating to the Agreement to the other party's Authorised Representative (or as updated under clause 18(b));
- (5) subject to 8.4(g)(ii), the Agreement may only be varied by a written agreement between the parties signed by Authorised Representatives of the parties;
- (6) the Agreement sets out all the parties rights and obligations relating to the subject matter of the

Agreement, and it replaces all earlier representations, statements, agreements and understandings except as stated otherwise in the Agreement;

- (7) clauses and rights in the Agreement can only be waived in writing signed by the waiving party. Failure or delay of a party in exercising a right under the Agreement does not waive the party's rights. A waiver will only waive the particular rights in the particular circumstances and will not waive any other rights, or the same rights in other circumstances;
- (8) their relationship is of principal and contractor. The Agreement does not create any partnership, joint venture or employment relationship. Each party must not represent itself or allow anyone else to represent that the other party is a partner, joint venturer, officer or employee of that party;
- (9) that the *Sale of Goods (Vienna Convention) Act 1986 (Old)* does not apply, to the extent that the parties are permitted by Law to exclude it;
- (10) clauses, 9, 10, 12, 13.3, 14, 15, 17, 18 any other clause in the Agreement which is expressed to survive or by its nature survives, will survive termination or expiry of the Agreement;
- (11) each party will bear its own costs in relation to the preparation, negotiation and execution of the Agreement and any variations;
- (12) the Agreement is governed by and is to be construed in accordance with the Laws applicable in Queensland. Each party submits to the jurisdiction of the courts of Queensland.

19. Definitions and Interpretation

19.1 Definitions

Acceptance Date means the date you accept this Agreement in accordance with clause 1.

Admin Fee means a fee payable by you as a consequence of a late payment which is calculated based on the reasonable costs incurred by us relating to recovery.

Agreement has the meaning given in the introductory paragraphs of these Terms.

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*.

Authorised Representative has the meaning given in clause 18(b).

Business Day means any day other than a Saturday, Sunday or public holiday at the place where an act is to occur or be performed.

Certification Services mean the engineering certification services we provide in respect of steel frame and steel truss designs as set out in the Quote.

Claim means any claim, action, proceeding, demand or investigation of any kind, and includes the allegation of a claim.

Class of Licence means the specific rights we grant you to use the Licensed Software, which may be connected with a Smartcard, as specified in the Quote.

Confidential Information means all information disclosed by or on behalf of a party (**Discloser**) to the other party (**Recipient**) in connection with the Agreement or created using that information, which is confidential in nature and designated as confidential, or which a reasonable person receiving the information would realise is sensitive or confidential, and all information to the extent it is derived from that information. Confidential Information does not include any information which:

- (a) is or becomes public, except through breach of a confidentiality obligation;
- (b) the Recipient can demonstrate was already in its possession or was independently developed by the Recipient; or
- (c) the Recipient receives from another person on a non-confidential basis, except through breach of a confidentiality obligation.

Consequential Loss means:

- (a) indirect or consequential loss not arising as a natural consequence of a breach or other event giving rise to liability of a party;
- (b) any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity; or
- (c) loss of data, other than loss of data arising out of any obligation of the Supplier under the Agreement with respect to:
 - (i) the hosting, storage, migration, conversion cleansing or back-up of data for the Customer in providing Goods or Services; or
 - (ii) Harmful Code.

Copyright Act means the Copyright Act 1968 (Cth).

Corporations Act means the Corporations Act 2001 (Cth).

Defect means a failure of a Deliverable to comply with the Specifications.

Deliverables mean the finalised work product to be provided to you in connection with the Goods and Services as described in the Quote.

Delivery Date means any date and time for delivery of a Deliverable as stated in the Quote.

Deposit means an amount to be paid at the time and in the amount outlined in our Quote.

Discloser has the meaning given in the definition of Confidential Information.

Documentation means any training manuals, user manuals, operating manuals, technical manuals or other documentation relating to the operation or functions of any of the Deliverables.

Fee means the price or prices described in the Quote.

Goods mean any products we will provide, as set out in the Quote.

GST has the meaning given in the GST Law and includes an amount payable under or in accordance with section 5 of the GST and Related Matters Act 2000 (Qld) or equivalent legislation.

GST Law has the meaning given to that term in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Harmful Code means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data.

HSE has the meaning given in sub clause 4(a)(ii)(A).

Initial Term means the period of time set out in the Quote.

Inputs means the information, numbers or any other form of data that is entered into the Licensed Software.

IT System means your physical and computing environment including your networks.

IPR's includes all copyright, trade mark, design, patents, semiconductor or circuit layout rights and other proprietary rights, and any rights to registration of such rights existing anywhere in the world, whether created before or after the date of the Agreement but excludes Moral Rights.

Laws means all:

- (a) Acts, ordinances, codes, standards, regulations, by-laws, orders, awards and proclamations in force from time to time in Queensland and any other relevant jurisdiction;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the provision of the Deliverables; and
- (c) the requirements of any authority with jurisdiction in respect of the Deliverables and/or the Site, as applicable.

Licensed Software means any software we are providing to you under or in connection with this Agreement as set out in the Quote.

Loss includes any damage, loss, cost, liability or expense of any kind and however arising (including as a result of any Claim) including penalties, fines and interest whether prospective or contingent and any amounts that for the time being are not ascertained or ascertainable.

Moral Rights means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the Copyright Act, and rights of a similar nature anywhere in the world, whether existing before or after the date of Agreement.

Maintenance Services means the plant and equipment maintenance services specified in the Quote.

New Release means software provided primarily to provide an extension, alteration, improvement or additional

functionality to the Licensed Software, but does not include any software that is generally licensed by us to our customers as a different product.

P&E means the plant and equipment specified in the Quote.

Personnel means officers, directors, employees and agents and, in our case, includes any Subcontractor.

Project means a steel framing design, truss engineering certification or steel frame fabrication job that a customer of yours has engaged you to perform.

Proforma Invoice is a quote prepared in the format of an invoice.

Quote means our documentation that contains information about the specific contract between the parties, and includes any invoice issued by us.

Recipient has the meaning given in the definition of Confidential Information.

Related Body Corporate has the meaning given in the Corporations Act.

Rollover Period means a duration of time equal to the Initial Term that arises:

- (a) at the expiration of the Initial Term; and
- (b) again in perpetuity on the expiry of each earlier Rollover Period.

Services means any services we will perform, described in the Quote.

Site means each site or premises of yours at which the Deliverables are to be provided as specified in the Quote.

Smartcard means a card used with the P&E that provides you with a certain quantity of production.

Software Outputs means created or generated by you or your Personnel utilising the Licensed Software

Specifications mean the standards and other requirements for the Deliverables as to quality, functionality, performance, interoperability and other matters set out or referred to in the Agreement.

Subcontractor means a third party to whom we subcontract the performance or supply of any Deliverable.

Supported P&E means the P&E in respect of which we will supply the Maintenance Services as specified in the Quote.

Term means the duration of this Agreement comprising the Initial Term and each subsequent Rollover Period.

Terms mean these Scottsdale Construction Supply Terms.

Third Party Material means all Material in which the IPR's are owned by a party other than the Supplier or the Customer, and includes the Material specified in the Quote as Third Party Material.

Update means a version of the software produced primarily to overcome Defects in the Licensed Software.

Warranty Period means the warranty period as specified in the Quote, commencing on the Acceptance Date.

Workaround means a fix or alternative procedure to temporarily address a Defect.

19.2 Interpretation

Unless it is expressly stated that a different rule of interpretation will apply:

- (1) a reference to an agreement includes any variation or replacement of the agreement;
- (2) if the due date for any obligation is not a Business Day, the due date will be the next Business Day;
- (3) all currency amounts are in Australian dollars;
- (4) headings are provided for convenience and do not affect the interpretation of the documents making up the Agreement;
- (5) "include", "includes" and "including" must be read as if followed by the words "without limitation";
- (6) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (7) agreements, representations and warranties made by two or more people will bind them jointly and severally;
- (8) a reference to any legislation includes any consolidation, amendment, re-enactment or replacement of legislation;
- (9) a person includes the person's executors, administrators and permitted novatees and assignees;
- (10) no rule of construction will apply to a provision of a document to the disadvantage of a party merely because that party drafted the provision or would otherwise benefit from it;
- (11) if any part of the Agreement is invalid, unlawful or unenforceable, the invalid, unlawful or unenforceable part of the Agreement will not apply but the other parts of the Agreement will not be affected.