Sydney Electrical Communications Group Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "SECG" means Sydney Electrical Communications Group Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Sydney Electrical Communications Group Pty Ltd.

1.2 "Client" means the person/s ordering the Works as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.

1.3 "Works" means all Works or Materials supplied by SECG to the Client at the Client's request from time to time (where the context so permits the terms 'Works' or 'Materials' shall be interchangeable for the other).

1.4 "Price" means the Price payable for the Works as agreed between SECG and the Client in accordance with clause 5 below.

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.

2.2 These terms and conditions may only be amended with SECG's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and SECG.

3. Electronic Transactions Act 2000

3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

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

5. Price and Payment

5.1 At SECG's sole discretion the Price shall be either:
(a) as indicated on invoices provided by SECG to the Client in respect of Works performed or Materials supplied; or
(b) SECG's quoted Price (subject to clause 5.2) which shall be binding upon SECG provided that the Client shall accept SECG's quotation in writing within thirty (30) days.

5.2 SECG reserves the right to change the Price:
(a) if a variation to the Materials which are to be supplied is requested; or
(b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested, including any additional costs incurred by SECG where the Client requests the acceleration of the existing work schedule (as per clause 6.3); or
(c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, in accordance with clauses 6.2 and 6.4, , limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, obscured building defects, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
(d) in the event of increases to SECG in the cost of labour or materials which are beyond SECG's control.

5.3 At SECG's sole discretion a non-refundable deposit of up to twenty percent (20%) will be required prior to commencement of the Works.

5.4 Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice and/or statement. Furthermore, any discounts applicable to the Price can only be used once and not in addition to, with any other special deal that SECG may offer from time to time.

5.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by SECG, which may be:
(a) on completion of the Works; or
(b) before the completion of the Works; or
(c) by way of progress payments in accordance with SECG's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
(d) the date specified on any invoice or other form as being the date for payment; or
(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SECG.

5.6 At SECG's sole discretion payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed in writing to between the Client and SECG.

5.7 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, SECG reserves the right to treat retentions as placing the Client's account into default.

5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to SECG an amount equal to any GST SECG must pay for any supply by SECG under this or any other agreement for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of the Works

6.1 Subject to clause 6.2 it is SECG's responsibility to ensure that the Works start as soon as it is reasonably possible.

6.2 The Works commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that SECG claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond SECG's control, including but not limited to any failure by the Client to:
(a) make a selection; or
(b) have the site ready for the Works; or
(c) notify SECG that the site is ready.

6.3 In the event that SECG is required to provide the Works urgently, requiring SECG's staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays), then SECG reserves the right to charge the Client additional labour costs (penalty rates will apply) as per clause 5.2(d), unless otherwise agreed between SECG and the Client.

6.4 SECG reserves the right to postpone the Works where (in the reasonable opinion of SECG) the work site poses a safety risk for all parties (including, but not limited to, poor weather conditions, or the discovery of asbestos). The Client accepts in this instance should employees of SECG be unable able to work a full forty eight (48) hours per week due solely to the event of inclement weather, that the cost of such employment whilst the employees are unable to work shall be the responsibility of the Client and shall be added to the Price.

6.5 SECG may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.6 Where SECG gives advice or recommendations to the Client, or the Client's agent, regarding any aspect of the scope of the Works, and such advice or recommendations are not acted upon, then SECG shall require the Client or their agent to authorise commencement of the Works in writing. SECG shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.

6.7 Any time specified by SECG for delivery of the Works is an estimate only and SECG will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that SECG is unable to supply the Works as agreed solely due to any action or inaction of the Client, then SECG shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and SECG shall be entitled to charge a reasonable fee for redelivery and/or storage of any Materials.

6.8 The Client shall ensure that SECG has clear and free access to the work site at all times to enable them to undertake the Works. SECG shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of SECG.

7. Risk

7.1 If SECG retains ownership of the Materials under clause 14 then;
(a) where SECG is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
(i) the Client or the Client's nominated carrier takes possession of the Materials at SECG's address; or
(ii) the Materials are delivered by SECG or SECG's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
(b) where SECG is to both supply and install Materials then SECG shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.

7.2 Notwithstanding the provisions of clause 7.1, where SECG requires that Materials, fittings and appliances, or plant and tools required for the Works be stored at the work site, the Client shall supply SECG a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

7.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

7.4 Where the Client has supplied materials for SECG to complete the Works, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. SECG shall not be responsible for any defects in the materials, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.

7.5 The Client acknowledges that SECG is only responsible for parts that are replaced by SECG, and in the event that other Materials, subsequently fail, the Client agrees to indemnify SECG against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

7.6 Where the Client is to supply SECG with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. SECG shall not be liable whatsoever for any errors in the Materials that are caused by incorrect or inaccurate data being supplied by the Client.

7.7 Any advice, recommendation, information, assistance or service provided by SECG in relation to Materials or Works supplied is given in good faith, is based on SECG's own knowledge and experience and shall be accepted without liability on the part of SECG and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Materials or Works.

7.8 The Client agrees to indemnify SECG from any damage caused by any other tradesman during and after the completion of the Works. If the Client instructs SECG to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at in accordance with clause 5.2.

8. Air Conditioning and Electrical

8.1 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 5.2(b) if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required, or the unit needs to be relocated due to complaints from neighbours or local authorities, or any electrical wiring requires re-positioning (including where the request is made by any third party contracted by the Client).

8.2 SECG shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however SECG cannot guarantee that noise levels will remain constant post-installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering, etc.

8.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof, and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), SECG reasonably forms the opinion that the Client's premises is not safe for the installation of Materials to proceed then SECG shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 6.4) until SECG is satisfied that it is safe for the installation to proceed.

8.4 The Client acknowledges that SECG is only responsible for the Materials supplied by SECG, and in the event that other components subsequently fail, the Client agrees to indemnify SECG against any loss or damage to the Materials, or caused by the Material, or any part thereof howsoever arising.

9. Plumbing

9.1 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where SECG is requested to merely clear such blockages, SECG can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, SECG will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.

10. Installation

10.1 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that SECG, its employees or SECGs reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then SECG shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 6.2 above) until SECG is satisfied that it is safe for the installation to proceed. SECG may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.

11. Access

11.1 The Client shall ensure that SECG has clear and free access to the work site at all times to enable them to undertake the Works. SECG shall not be liable for any loss or damage to the site (including, without limitation, to ceiling tiles and panels, face brickwork and rendered masonry services, damage to pathways, driveways and concreted or paved or grassed areas) which SECG may have to break into or disturb in performance of the Works, unless due to the negligence of SECG.

12. Service Locations

12.1 Prior to SECG commencing any work the Client must advise SECG of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, telephone cables, fibre optic cables, and any other services that may be on site.

12.2 Whilst SECG will take all care to avoid damage to any underground services the Client agrees to indemnify SECG in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Compliance with Laws

13.1 The Client and SECG shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.

13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

13.3 The Client agrees that the site will comply with any works health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

14. Title

14.1 SECG and the Client agree that ownership of the Materials shall not pass until:
(a) the Client has paid SECG all amounts owing to SECG; and
(b) the Client has met all of its other obligations to SECG.

14.2 Receipt by SECG of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

14.3 It is further agreed that:
(a) until ownership of the Materials passes to the Client in accordance with clause 14.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to SECG on request.
(b) the Client holds the benefit of the Client's insurance of the Materials on trust for SECG and must pay to SECG the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
(c) the production of these terms and conditions by SECG shall be sufficient evidence of SECG's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with SECG to make further enquiries.
(d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for SECG and must pay or deliver the proceeds to SECG on demand.
(e) the Client should not convert or process the Materials or intermix them with other Materials but if the Client does so then the Client holds the resulting product on trust for the benefit of SECG and must sell, dispose of or return the resulting product to SECG as it so directs.
(f) unless the Materials have become fixtures the Client irrevocably authorises SECG to enter any premises where SECG believes the Materials are kept and recover possession of the Materials.
(g) SECG may recover possession of any Materials in transit whether or not delivery has occurred.
(h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of SECG.
(i) SECG may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

15. Personal Property Securities Act 2009 ("PPSA")

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

15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials that have previously been supplied and that will be supplied in the future by SECG to the Client.

15.3 The Client undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which SECG may reasonably require to:
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
(b) indemnify, and upon demand reimburse, SECG for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of SECG;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials in favour of a third party without the prior written consent of SECG; and
(e) immediately advise SECG of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.

15.4 SECG and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

15.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

15.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

15.7 Unless otherwise agreed to in writing by SECG, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

15.8 The Client shall unconditionally ratify any actions taken by SECG under clauses 15.3 to 15.5.

15.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

16.1 In consideration of SECG agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

16.2 The Client indemnifies SECG from and against all SECG's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SECG's rights under this clause.

16.3 The Client irrevocably appoints SECG and each director of SECG as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

17.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify SECG in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SECG to inspect the Materials or to review the Works provided.

17.2 In the event that the Client repairs, alters or overhauls the Materials in any way without the consent of SECG, then SECG shall not be responsible for any loss or damage to the Materials, or caused by the Materials, or any part thereof however arising and warranty implied or otherwise shall be voided.

17.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

17.4 SECG acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

17.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SECG makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. SECG's liability in respect of these warranties is limited to the fullest extent permitted by law.

17.6 If the Client is a consumer within the meaning of the CCA, SECG's liability is limited to the extent permitted by section 64A of Schedule 2.

17.7 If the Client is not a consumer within the meaning of the CCA, SECG's liability for any defect or damage in the Materials is:
(a) limited to the value of any express warranty or warranty card provided to the Client by SECG at SECG's sole discretion;
(b) limited to any warranty to which SECG is entitled, if SECG did not manufacture the Materials;
(c) otherwise negated absolutely.

17.8 Subject to this clause 17, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 17.1; and
(b) SECG has agreed that the Materials are defective; and
(c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
(d) the Materials are returned in as close a condition to that in which they were delivered as is possible.

17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, SECG shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
(a) the Client failing to properly maintain or store any Materials;
(b) the Client using the Materials for any purpose other than that for which they were designed;
(c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) interference with the Works by the Client or any third party without SECG's prior approval;
(e) the Client failing to follow any instructions or guidelines provided by SECG;
(f) fair wear and tear, any accident, or act of God.

17.10 In the case of second hand Materials, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Materials prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Materials as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Materials has agreed to provide the Client with the second hand Materials and calculated the Price of the second hand Materials in reliance of this clause 17.10.

17.11 Notwithstanding anything contained in this clause if SECG is required by a law to accept a return then SECG will only accept a return on the conditions imposed by that law.

18. Intellectual Property

18.1 Where SECG has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in SECG, and shall only be used by the Client at SECG's discretion.

18.2 The Client warrants that all designs, specifications or instructions given to SECG will not cause SECG to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SECG against any action taken by a third party against SECG in respect of any such infringement.

18.3 The Client agrees that SECG may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which SECG has created for the Client.

19. Default and Consequences of Default

19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at SECG's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 If the Client owes SECG any money the Client shall indemnify SECG from and against all costs and disbursements incurred by SECG in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SECG's contract default fee, and bank dishonour fees).

19.3 Further to any other rights or remedies the Materials may have under this contract, if a Client has made payment to the Materials by credit card, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Materials under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.

19.4 Without prejudice to any other remedies SECG may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SECG may suspend or terminate the supply of Works to the Client. SECG will not be liable to the Client for any loss or damage the Client suffers because SECG has exercised its rights under this clause.

19.5 Without prejudice to SECG's other remedies at law SECG shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SECG shall, whether or not due for payment, become immediately payable if:
(a) any money payable to SECG becomes overdue, or in SECG's opinion the Client will be unable to make a payment when it falls due;
(b) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

20.1 SECG may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. SECG shall not be liable for any loss or damage whatsoever arising from such cancellation.

20.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by SECG as a direct result of the cancellation (including, but not limited to, any loss of profits).

20.3 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Act 1988

21.1 The Client agrees for the Materials to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Materials.

21.2 The Client agrees that the Materials may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Client; and/or
(b) to notify other credit providers of a default by the Client; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

21.3 The Client consents to the Materials being given a consumer credit report to collect overdue payment on commercial credit.

21.4 The Client agrees that personal credit information provided may be used and retained by the Materials for the following purposes (and for other agreed purposes or required by):
(a) the provision of Works; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Works.

21.5 The Materials may give information about the Client to a CRB for the following purposes:
(a) to obtain a consumer credit report;
(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

21.6 The information given to the CRB may include:
(a) personal information as outlined in 21.1 above;
(b) name of the credit provider and that the Materials is a current credit provider to the Client;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Materials has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
(g) information that, in the opinion of the Materials, the Client has committed a serious credit infringement;
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

21.7 The Client shall have the right to request (by e-mail) from the Materials:
(a) a copy of the information about the Client retained by the Materials and the right to request that the Materials correct any incorrect information; and
(b) that the Materials does not disclose any personal information about the Client for the purpose of direct marketing.

21.8 The Materials will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

21.9 The Client can make a privacy complaint by contacting the Materials via e-mail. The Materials will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

22. Building and Construction Industry Security of Payments Act 1999

22.1 At SECG's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.

22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

23. General

23.1 The failure by SECG to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SECG'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.

23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which SECG has its principal place of business, and are subject to the jurisdiction of the Sydney Courts in that state.

23.3 Subject to clause 17 SECG shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by SECG of these terms and conditions (alternatively SECG's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).

23.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by SECG nor to withhold payment of any invoice because part of that invoice is in dispute.

23.5 SECG may license or sub-contract all or any part of its rights and obligations without the Client's consent.

23.6 The Client agrees that SECG may amend these terms and conditions at any time. If SECG makes a change to these terms and conditions, then that change will take effect from the date on which SECG notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for SECG to provide any Works to the Client.

23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

23.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

Please note that a larger print version of these terms and conditions is available from SECG on request.

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