

1. Definitions

- 1.1 "AMS" means AMS Electrical & Communications Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of AMS Electrical & Communications Pty Ltd.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting AMS to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Works" means all Works or Materials supplied by AMS to the Customer at the Customer'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 (plus any GST where applicable) for the Works as agreed between AMS and the Customer in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and AMS.
- 2.3 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.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that AMS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by AMS in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by AMS in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of AMS; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 At AMS' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by AMS to the Customer in respect of Works performed or Materials supplied; or
 - (b) AMS' Price at the date of delivery of the Works according to AMS' current pricelist; or
 - (c) AMS' quoted Price (subject to clause 5.2) which shall be binding upon AMS provided that the Customer shall accept AMS' quotation in writing within thirty (30) days.
- 5.2 AMS 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; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to AMS in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond AMS' control.
- 5.3 Variations will be charged for on the basis of AMS' quotation, and will be detailed in writing, and shown as variations on AMS' invoice. The Customer shall be required to respond to any variation submitted by AMS within ten (10) working days. Failure to do so will entitle AMS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At AMS' sole discretion, a deposit may be required.
- 5.5 Time for payment for the Works being of the essence, the Price will be payable by the Customer on the date/s determined by AMS, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with AMS' 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
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by AMS.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and AMS.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by AMS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to AMS an amount equal to any GST AMS must pay for any supply of Works by AMS under this or any other agreement. The Customer must pay GST, without deduction or

set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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 AMS' 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 AMS claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond AMS' control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify AMS that the site is ready.
- 6.3 AMS 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.
- 6.4 Any time specified by AMS for delivery of the Works is an estimate only and AMS will not be liable for any loss or damage incurred by the Customer 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 AMS is unable to supply the Works as agreed solely due to any action or inaction of the Customer, then AMS shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

7. Risk

- 7.1 If AMS retains ownership of the Materials under clause 11 then:
- (a) where AMS is supplying Materials only, all risk for the Materials shall immediately pass to the Customer on delivery and the Customer must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that the Materials are delivered by AMS or AMS' nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address);
 - (b) where AMS is to both supply and install Materials then AMS 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 Customer.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Customer specifically requests AMS to leave Materials outside AMS' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Customer's expense.
- 7.3 Where AMS is required to install the Materials then the Customer warrants that the structure of the premises or equipment in or upon which the Materials are to be installed or erected is sound and will sustain the installation and Works incidental thereto and AMS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 7.4 The Customer acknowledges and agrees that:
- (a) AMS does not guarantee the performance or transmission speed or quality of any data; and
 - (b) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, servers or networks by third parties; and
 - (c) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc.) and as such AMS cannot warrant against delays or errors in transmitting data between the Customer and any person or entity the Customer conducts communications with including orders, and you agree that AMS will not be liable for any losses which the Customer suffers as a result of delays or errors in transmitting orders or other communications and/or documents.
- 7.5 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.

8. Access

- 8.1 The Customer shall ensure that AMS has clear and free access to the worksite at all times to enable them to undertake the Works. AMS 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 AMS.

9. Hidden Mains and Services

- 9.1 Prior to AMS commencing the Works, the Customer must advise AMS of the precise location of all hidden services on the site and clearly mark the same. The hidden mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 9.2 Whilst AMS will take all care to avoid damage to any hidden services the Customer agrees to indemnify AMS 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 9.1.

10. Compliance with Laws

- 10.1 The Customer and AMS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities (including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation) that may be applicable to the Works.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Works.

- 11. Title**
- 11.1 AMS and the Customer agree that ownership of the Materials shall not pass until:
- (a) the Customer has paid AMS all amounts owing to AMS; and
 - (b) the Customer has met all of its other obligations to AMS.
- 11.2 Receipt by AMS 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.
- 11.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to AMS on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Materials on trust for AMS and must pay to AMS 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 AMS shall be sufficient evidence of AMS' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with AMS to make further enquiries.
 - (d) the Customer 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 Customer sells, disposes or parts with possession of the Materials then the Customer must hold the proceeds of any such act on trust for AMS and must pay or deliver the proceeds to AMS on demand.
 - (e) the Customer should not convert or process the Materials or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of AMS and must sell, dispose of or return the resulting product to AMS as it so directs.
 - (f) unless the Materials have become fixtures the Customer irrevocably authorises AMS to enter any premises where AMS believes the Materials are kept and recover possession of the Materials.
 - (g) AMS may recover possession of any Materials in transit whether or not delivery has occurred.
 - (h) the Customer 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 AMS.
 - (i) AMS may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Customer.
- 12. Personal Property Securities Act 2009 ("PPSA")**
- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Customer 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 and/or collateral (account) – being a monetary obligation of the Customer to AMS for Works – that have previously been supplied and that will be supplied in the future by AMS to the Customer.
- 12.3 The Customer 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 AMS 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 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, AMS 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 AMS;
 - (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 AMS; and
 - (e) immediately advise AMS 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.
- 12.4 AMS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by AMS, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer shall unconditionally ratify any actions taken by AMS under clauses 12.2 to 12.5.
- 12.9 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.
- 13. Security and Charge**
- 13.1 In consideration of AMS agreeing to supply the Works, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies AMS from and against all AMS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AMS' rights under this clause.
- 13.3 The Customer irrevocably appoints AMS and each director of AMS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Customer must inspect all Materials on delivery (or the Works on completion) and must within three (3) days of delivery notify AMS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer 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 Customer must allow AMS to inspect the Materials or to review the Works provided.
- 14.2 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**).
- 14.3 AMS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AMS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. AMS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, AMS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If AMS is required to replace any Materials under this clause or the CCA, but is unable to do so, AMS may refund any money the Customer has paid for the Materials.
- 14.7 If AMS is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then AMS may refund any money the Customer has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Customer which were not defective.
- 14.8 If the Customer is not a consumer within the meaning of the CCA, AMS' 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 Customer by AMS at AMS' sole discretion;
 - (b) limited to any warranty to which AMS is entitled, if AMS did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 14.9 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 14.1; and
 - (b) AMS has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Customer'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.
- 14.10 Notwithstanding clauses 14.1 to 14.9 but subject to the CCA, AMS 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 Customer failing to properly maintain or store any Materials;
 - (b) the Customer using the Materials for any purpose other than that for which they were designed;
 - (c) the Customer 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 Customer or any third party without AMS' prior approval;
 - (e) the Customer failing to follow any instructions or guidelines provided by AMS;
 - (f) fair wear and tear, any accident, or act of God.
- 14.11 Notwithstanding anything contained in this clause if AMS is required by a law to accept a return then AMS will only accept a return on the conditions imposed by that law.
- 15. Intellectual Property**
- 15.1 Where AMS has designed, drawn, written plans or a schedule of Works, or created any Materials for the Customer, then the copyright in all such designs, drawings, documents, plans, schedules and Materials shall remain vested in AMS, and shall only be used by the Customer at AMS' discretion.
- 15.2 The Customer warrants that all designs, specifications or instructions given to AMS will not cause AMS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify AMS against any action taken by a third party against AMS in respect of any such infringement.
- 15.3 The Customer agrees that AMS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or Materials which AMS has created for the Customer.
- 16. Default and Consequences of Default**
- 16.1 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 AMS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes AMS any money the Customer shall indemnify AMS from and against all costs and disbursements incurred by AMS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, AMS' contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies AMS may have under this contract, if a Customer has made payment to AMS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by AMS under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this contract.
- 16.4 Without prejudice to AMS' other remedies at law AMS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to AMS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to AMS becomes overdue, or in AMS' opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by AMS;
 - (c) the Customer 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

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

17. Cancellation

- 17.1 Without prejudice to any other remedies AMS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions AMS may suspend or terminate the supply of Works to the Customer. AMS will not be liable to the Customer for any loss or damage the Customer suffers because AMS has exercised its rights under this clause.
- 17.2 AMS 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 Customer. On giving such notice AMS shall repay to the Customer any sums paid in respect of the Price, less any amounts owing by the Customer to AMS for Works already performed. AMS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Customer cancels the delivery of Works the Customer shall be liable for any and all loss incurred (whether direct or indirect) by AMS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 Cancellation of orders for Materials made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once an order has been placed.

18. Privacy Act 1988

- 18.1 The Customer agrees for AMS 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 Customer in relation to credit provided by AMS.
- 18.2 The Customer agrees that AMS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 18.3 The Customer consents to AMS being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Customer agrees that personal credit information provided may be used and retained by AMS 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 Customer'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 Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 18.5 AMS may give information about the Customer 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 Customer including credit history.
- 18.6 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above;
 - (b) name of the credit provider and that AMS is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer'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 Customer no longer has any overdue accounts and AMS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of AMS, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Customer shall have the right to request (by e-mail) from AMS:
- (a) a copy of the information about the Customer retained by AMS and the right to request that AMS correct any incorrect information; and
 - (b) that AMS does not disclose any personal information about the Customer for the purpose of direct marketing.
- 18.8 AMS will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Customer can make a privacy complaint by contacting AMS via e-mail. AMS 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Building and Construction Industry Security of Payments Act 1999

- 19.1 At AMS' sole discretion, if there are any disputes or claims for unpaid Works and/or Materials then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 19.2 Nothing in this contract 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.

20. Service of Notices

- 20.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21. Trusts

- 21.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not AMS may have notice of the Trust, the Customer covenants with AMS as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the Customer will not without consent in writing of AMS (AMS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

22. General

- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the State in which AMS has its principal place of business, and are subject to the jurisdiction of the Parramatta Courts in that State.
- 22.3 Subject to clause 14, AMS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by AMS of these terms and conditions (alternatively AMS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 22.4 AMS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 22.5 The Customer cannot licence or assign without the written approval of AMS.
- 22.6 AMS may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of AMS' sub-contractors without the authority of AMS.
- 22.7 The Customer agrees that AMS may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for AMS to provide Works to the Customer.
- 22.8 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.
- 22.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.