

ARA Fire Protection Services

Standard Terms and Conditions of Sale/Supply of Goods and/or Services

The following terms and conditions may be subject to consumer protection laws, including the *Competition and Consumer Act 2010* (Cth), and other applicable Australian consumer protection laws and regulations. Nothing in these terms and conditions is intended to exclude, restrict or modify any rights available to the Customer under the *Competition and Consumer Act 2010* (Cth) or any other applicable Australian consumer protection laws and regulations which may not legally be excluded, restricted or modified, in the circumstances that such consumer protection laws and regulations are applicable and available to the Customer.

1. Agreement

- 1.1 These Terms apply to and form part of the Agreement between the Supplier and the Customer. They supersede any previously issued terms and conditions of sale and/or supply.
- 1.2 Acceptance by the Supplier to provide the Goods and/or Services described or referred to in any Purchase Order issued by the Customer constitutes the formation of the Agreement and is expressly subject to and conditional upon these Terms.
- 1.3 Any Purchase Order for the purchase any Goods or Services, or any direction to proceed with procurement, manufacture or shipment of such shall constitute acceptance of these Terms and a representation that the Customer is solvent.
- 1.4 In the absence of a formal Purchase Order, any statement of intent or correspondence from the Customer to the Supplier seeking to acquire Goods and/or the performance of Services from the Supplier shall be taken to amount to a "Purchase Order" for the purposes of the Agreement, and all subsequent references to a "Purchase Order" shall thus include any document captured by this clause even though no Purchase Order has in fact been issued.
- 1.5 Any additional or different terms and conditions to those contained in this Agreement as provided in any communication or document from the Customer are rejected by the Supplier and shall not be effective or binding on the Supplier unless expressly agreed to by the Supplier's authorised representative in writing.
- 1.6 None of the Supplier's agents or representatives other than a manager or officer are authorised to make any representations, statements, conditions or agreements other than those contained in the Agreement, nor is the Supplier bound by any such unauthorised actions or representations.

2. Specification

The Goods or Services shall be supplied by the Supplier in a timely manner and in accordance with the Agreement, including any specifications set out in the Purchase Order. Where the Purchase Order does not contain any specifications, or where the specifications are ambiguous or unclear, the specifications (if any) set out in the Quotation shall apply.

3. Price

- 3.1 The Customer must pay to the Supplier the Price based on the Goods or Services requested in a Purchase Order at the then current prevailing rates of the Supplier for those Goods or Services, or, at the discretion of the Supplier, the amount specified in any Quotation or tax invoice (in the absence of a Quotation). The Prices set out in any Quotation shall apply for

thirty (30) days, after which the Prices may be subject to change.

- 3.2 Any increase in the cost of delivery and/or supply of the Goods or Services between the date of the Purchase Order and the date of delivery or supply of those Goods or Services shall be borne by the Customer.
- 3.3 The Supplier may change the Price at any time by providing written notice to the Customer.
- 3.4 Any Price quoted by the Supplier is based on the costs of labour, materials and statutory obligations applicable at the date of the Quotation. Any variations in these rates or obligations incurred by the Supplier shall be payable by the Customer.
- 3.5 The Supplier shall be entitled to charge its reasonable additional costs and fees for all delays caused as a result of the Supplier obeying any instructions given by the Customer (whether prior to, at the time of, or subsequently following the issuance of a Purchase Order) or where the Customer fails to fulfil the Customer's obligations under the Agreement.

4. GST and Other Taxes

- 4.1 The Price is exclusive of GST. The Customer must pay the Supplier an additional amount for any GST payable in respect of any taxable supply made under or in connection with the Agreement, provided the Supplier must provide the Customer with a tax invoice in respect of that taxable supply.
- 4.2 If there is an adjustment event in relation to the taxable supply:
 - (a) the Supplier must refund to the Customer the amount by which the GST paid by the Customer pursuant to clause 4.1 exceeds the adjusted GST on the taxable supply; or
 - (b) the Customer must pay to the Supplier the amount by which the adjusted GST on the supply exceeds the amount of GST paid pursuant to clause 4.1.
- 4.3 Any other taxes (excluding income taxes), duties, fees, charges or assessments of any nature levied by any government authority in connection with the Agreement shall be paid directly by the Customer to the governmental authority concerned. If the Supplier is required by law or otherwise to pay such a levy and/or fines, penalties or assessments in the first instance, or as a result of Customer's failure to comply with any applicable laws or regulations governing the payment of such levies by the Customer, the amount of any payments so made by the

Supplier shall be reimbursed by the Customer to the Supplier upon submission of the Supplier's invoices.

5. Property and Risk

- 5.1 All risk and liability for the Goods will transfer to the Customer on delivery of Goods to the Customer or any third party who is acting on behalf of the Customer.
- 5.2 The Supplier shall retain title in all Goods until the Price for the Goods has been received in full by the Supplier and, subject to the provisions of the PPSA, be entitled, in addition to the rights conferred by clause 5.3(b), to retake possession of all Goods in the possession of the Customer which have been supplied by the Supplier sufficient to clear any outstanding indebtedness by the Customer to the Supplier under the terms of the Agreement, and the Supplier shall not be required to distinguish between Goods which have been paid for and Goods which have not been paid for.
- 5.3 Subject to the provisions of the PPSA, until the Supplier has received payment in full of the Price for all Goods supplied by the Supplier:
- the Customer shall be bailee of the Goods for the Supplier and shall store them upon its premises separately from its own goods and items or those of any other person and shall store them in a manner enabling them to be readily identifiable as Goods of the Supplier;
 - the Customer grants the Supplier an irrevocable licence to enter the Customer's premises and retrieve the Goods; and
 - the Customer shall not sell or dispose of any of the Goods or any interest in the Goods without the prior written consent of the Supplier.
- 5.4 If the Supplier consents in writing to the sale or disposal of Goods, or if any sale or disposal of Goods is made in breach of clause 5.3 and notwithstanding such breach:
- the Customer shall inform any person to whom it proposes to sell or dispose of the Goods or any interest in the Goods ("Acquirer") of the Supplier's interest;
 - the Customer shall ensure that the terms of the sale or disposal of Goods to the Acquirer includes a term which is identical in substance to this clause 5;
 - notwithstanding that the payment of the Price for the Goods would not otherwise have been due by the Customer, the Customer shall be obliged to pay the Price for the Goods to the Supplier as soon as it receives payment from the Acquirer;
 - the Customer shall hold all its rights against the Acquirer on trust for the Supplier and, to the extent necessary to discharge all debts owing to the Supplier in respect of the supply of Goods or other Goods only, any proceeds it receives;
 - the Customer agrees that the Supplier shall be entitled to trace all and any proceeds arising from any sale or disposal of the Goods until the Customer pays the full price for the Goods to the Supplier;
 - the Customer agrees that the Supplier shall be entitled to trace all and any proceeds arising from any sale or disposal of the Goods until the Customer pays the full

Price to the Supplier for all other Goods supplied by the Supplier; and

- the Customer shall, at the Supplier's request, assign its claims against the Acquirer and agrees irrevocably to appoint the Supplier and each of its officers as its attorney to give effect to and complete that assignment.
- 5.5 Where Goods have become Mixed Goods, the Customer agrees with the Supplier:
- that the ownership of the Mixed Goods, immediately passes to the Supplier, to the extent necessary to repay all moneys owing to the Supplier and to no greater extent; and
 - until payment of all sums owing to the Supplier, whether under this Agreement or any other contract, that the Customer shall hold the Goods as a fiduciary for the Supplier.
- 5.6 For the avoidance of doubt, subject to the PPSA, the ownership of Mixed Goods passes to the Supplier at the beginning of the single operation or event by which the Goods are converted, mixed, commingled or become part of Mixed Goods.
- 5.7 Where the Customer has not paid the Supplier in the manner required by these Terms:
- the Customer agrees with the Supplier to keep Mixed Goods as a fiduciary for the Supplier and, unless otherwise required by the Supplier, to store Mixed Goods in a manner that clearly shows the ownership of the Supplier; and
 - the Customer grants the Supplier a security interest in the Mixed Goods as security for payment of the Goods.

6. Delivery

- 6.1 Any dates for delivery of Goods or performance of Services advised by the Supplier are approximate and are based upon the Customer providing prompt access to any area for delivery of Goods or access to any site at which the Services are to be performed at and prompt receipt of all the necessary information in respect of the Goods and/or Services required.
- 6.2 All delivery costs for Goods or Services shall be in addition to the Price unless expressly stated otherwise by the Supplier.
- 6.3 Unless otherwise agreed, all shipments of Goods are 'Ex Works' from the Supplier's premises ('ex works' being defined by the INCOTERMS 2020 published by the International Chamber of Commerce and revised from time to time).
- 6.4 In respect of the performance of Services, the Supplier shall not be liable to the Customer in respect of any delay or non-performance of Services (or any loss, damage, cost, expense or liability resulting from such) occurring by reason of:
- delays caused by third parties; or
 - non-access or insufficient access to the site at which the Services are to be performed,

providing that the Supplier performs the Services at the next available opportunity as reasonably agreed upon with the Customer, and the Supplier shall otherwise be entitled to claim against the Customer its reasonable costs resulting from any such delay or non-access (or insufficient access).

- 6.5 Where the Supplier is to attend a site or location of the Customer for the purposes of performing Services:
- (a) the Customer must ensure hand washing and sanitary conveniences are made available to the Supplier in addition to adequate lighting, power, water, hoisting, unloading and storage space; and
 - (b) the Customer must ensure that the relevant site or location is free of asbestos, radiation or radioactivity, contaminants or toxic substances, and
- in the event the Customer fails to fulfil the above obligations or otherwise is in breach of such, the Supplier shall not be liable to the Customer for any delay in performing the Services until such time as the breach is rectified by the Customer and a new time and date to perform the Services is reasonably agreed to by the Supplier, and the Supplier shall otherwise be entitled to claim against the Customer its reasonable costs resulting from any such delay.
- 6.6 The Supplier shall not be liable for any delay in the supply or delivery of Goods or performance of Services where the delay is caused by a Force Majeure Event. The Supplier shall provide the Customer with written notice of the delay within five (5) business days upon being made aware of a Force Majeure Event but only if the Force Majeure Event can reasonably be expected to significantly delay the supply or delivery of Goods or performance of Services (significant meaning the delay will or is anticipated to continue for a period of thirty (30) calendar days or more) and such notice shall detail the Supplier's estimation as to the anticipated duration of the delay.
- 6.7 Where a Force Majeure Event delays the supply or delivery of Goods or performance of Services, the date of delivery of Goods or performance of Services shall be extended for a period equal to the time lost by reason of the Force Majeure Event.
- 6.8 The Customer shall not be entitled to a reduction in Price for Goods or Services subject to an event of delay under clause 6.4, 6.5 or 6.6.
- 6.9 The Supplier shall not be liable to the Customer for any Loss or damages claimed by the Customer arising from or in connection with a Force Majeure Event or a delay under clauses 6.4 or 6.5.
- 6.10 Where the Customer purports to claim liquidated damages or general law damages against the Supplier for any delay in performance of the Supplier's obligations under this Agreement, the Supplier's liability to the Customer in respect of such shall not exceed in aggregate in excess of 5% of the Price payable pursuant to the relevant delayed Purchase Order.

7. Payment

- 7.1 Unless otherwise specified by the Supplier in writing, payment of the Price is to be made by the Customer no later than fourteen (14) days from the date of a tax invoice issued to

the Customer in respect of the Goods or Services supplied. In the event an invoice is overdue, the Supplier may suspend the provision of Goods and/or Services until payment is made without incurring any liability to the Customer.

- 7.2 Where the Supplier regularly performs Services or regularly supplies Goods for the Customer on a continuous basis over a period of time, the Supplier shall submit a detailed payment claim at intervals of one (1) month and each payment claim shall be for Services and Goods provided up to the end of the given month. Otherwise, the Supplier shall issue the Customer a tax invoice at each occurrence at which the Customer procures the Supplier to supply Goods or perform Services.
- 7.3 At the Supplier's sole discretion, a deposit for an amount determined by the Supplier or pre-payment of the Price may be required. Where a deposit or pre-payment is required by the Supplier, the Supplier shall not commence the provision of Goods or performance of Services until such time as the deposit or pre-payment is paid by the Customer and the Supplier shall not be liable to the Customer for any Loss incurred in respect of a delay in supplying Goods or performing Services due to the Customer's failure to promptly make payment of the deposit or pre-payment as directed.
- 7.4 Payment of the Price and any other payment must be made in cleared funds by cash, cheque, bank transfer, credit card, direct debit, or by any other method as agreed between the Customer and the Supplier. Credit Card payments will incur a surcharge.
- 7.5 In the event of bankruptcy or insolvency of the Customer, or in the event any proceeding is brought against the Customer, voluntarily or involuntarily, under bankruptcy or insolvency laws, or where the Customer voluntarily resolves to wind up or appoint a liquidator (or similar), or where the Supplier otherwise has reason to believe the Customer is unlikely to pay any amounts owing to the Supplier (or soon to be owing), the Supplier shall be entitled to cancel any Purchase Order raised by the Customer and shall receive reimbursement for its reasonable and proper cancellation charges at the discretion of the Supplier.
- 7.6 The Supplier may, at its sole discretion, retain possession of equipment repaired, modified, inspected, maintained or serviced under this Agreement until the Price is paid in full. If the Price is not paid within ninety (90) days from the date of the relevant tax invoice, the Supplier may, upon not less than seven (7) days' written notice by registered mail or email to the Customer, at the Customer's last known address or email address (as applicable), sell the equipment at public or private sale and apply the net proceeds to the outstanding Price.
- 7.7 Interest on overdue invoices owed by the Customer accrues from the date when payment becomes due, until the date of payment, at a rate of ten percent (10%) per annum, calculated daily.
- 7.8 The Customer indemnifies the Supplier from and against all Loss incurred by the Supplier in pursuing any sums owed by the Customer to the Supplier, including in respect of debt collection fees and legal fees on an ordinary basis for the

recovery (or attempted recovery) of any debt owing to the Supplier by the Customer.

8. Security

- 8.1 The Customer consents to the Supplier creating and maintaining a registration on the Personal Property Securities Register (“**Register**”) in any required form, in relation to any security interest contemplated or created by the Agreement, including a security interest as defined in the PPSA.
- 8.2 The Customer agrees to sign any necessary documents and provide all reasonable assistance and information to facilitate the registration and maintenance of a security interest on the Register if required by the Supplier. The Supplier reserves the right to register a financing statement or financing change statement in respect of any security interest and the Customer waives the right to receive notice of a verification statement in relation to any registration of a security interest on the Register, by way of clause 8.1 or 8.2, in respect of any Goods supplied.
- 8.3 The Customer undertakes to do any and all acts that are reasonably required by the Supplier so as to:
- allow the Supplier to create and maintain a perfected security interest (including a purchase money security interest) pursuant to the PPSA in respect of any Goods supplied and any and all proceeds of those Goods;
 - allow the Supplier to register a financing statement or financing change statement;
 - ensure that the Supplier maintains its secured position under the PPSA;
 - not register a financing statement or financing change statement without the Supplier’s prior written consent; and
 - not register or commit to the register of a financial statement or financing change statement in respect of the Goods, in favour of a third party, without the Supplier’s prior written consent.
- 8.4 The Supplier and Customer agree that no information (as defined in section 275(1) of the PPSA) will be provided to an interested person or person requested by an interested person. This clause 8.4 may be waived by providing prior written notice to the Supplier authorising the disclosure of the above information to a specified party.
- 8.5 If the Agreement is subject to Chapter 4 of the PPSA, the Supplier and Customer agree that:
- pursuant to section 115(1) of the PPSA, the Customer waives sections 95, 96, 118, 121(4), 125, 130, 132(3)(d), 134, 135, 142 and 143 of the PPSA; and
 - pursuant to section 115(7) of the PPSA, sections 127, 129(2), 129(3), 130(1), 132, 134(2), 135, 136(3), 136(4), 136(5) and 137 of the PPSA do not apply to the Agreement.
- 8.6 The Agreement (including clauses 5 and 6 of these Terms) is a security agreement for the purposes of the PPSA. For the avoidance of doubt, collateral, for the purposes of section 20(2) of the PPSA includes but is not limited to; Goods (as described in the Agreement) or Goods provided by the Supplier to the Customer at any subsequent time.

- 8.7 The Supplier may apply amounts received in connection with the sale of Goods to satisfy obligations secured by security interests contemplated or constituted by the Agreement, at the Supplier’s absolute discretion.
- 8.8 Despite anything to the contrary contained in these Terms or any other rights which the Supplier may have howsoever:
- the Customer charges all of its estate and interest in land, personal property or other property in favour of the Supplier to secure all monetary and other obligations under the Agreement;
 - the Customer acknowledges and agrees that the Supplier is entitled to register securities for all purposes of clause 8.8(a) (including an absolute caveat) with any applicable security registries, providing that those registered securities must be withdrawn once all payments and other monetary obligations payable under the Agreement have been met; and
 - the Customer irrevocably appoints the Supplier as the Customer’s true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 8.

9. Insurance

- 9.1 The Supplier shall, until acceptance of the Goods by the Customer and/or completion of the performance of the Services, at its own cost and in a form reasonably acceptable to the Customer, insure the Goods and Services and any materials provided by the Customer to the Supplier pursuant to clause 12 (for the duration for which such are within the Supplier’s possession) for any loss of or damage to the Goods and/or Services.
- 9.2 The Supplier shall have in effect for the duration of the Agreement, the following insurances:
- those which the Supplier is required to hold by law; and
 - public and products liability insurance for an amount of at least \$20,000,000.00 in aggregate.

10. Warranty

- 10.1 The Supplier warrants to the Customer that:
- the Services to be performed under the Agreement will be performed with reasonable care and skill in accordance with any specifications; and
 - the Goods to be provided under the Agreement will be free from material defects and will be of the kind and quality stipulated in the Agreement (“**Warranty**”).
- 10.2 The Warranty shall apply only to defects appearing within twelve (12) months from the date of completion of the Services or delivery of the Goods (“**Warranty Period**”) following which the Customer is deemed to have accepted the Services or Goods as is. Where testing of the Goods (or things to which the Services are supplied for) is requested by the Customer, the conditions of any tests to Goods or Services shall be mutually agreed upon by the parties, and the Supplier shall be notified of and shall be represented at the time at location at which any tests are conducted.
- 10.3 If the Supplier breaches the Warranty, provided the Customer has given the Supplier written notice of such breach within the Warranty Period, the Supplier’s liability is

strictly limited to the remedies available under clauses 10.6(a) and 10.6(b). Where the Customer is a 'consumer' as defined in the *Competition and Consumer Act 2010* (Cth) or pursuant to any applicable Fair Trading Act of any State or Territory in Australia (as applicable), the Customer may be entitled to a refund of the Price paid for the relevant Goods or Services. No interest shall be payable by the Supplier on any such refund.

- 10.4 The liability of the Supplier for any loss incurred by the Customer as a result of a Warranty breach (whether the claim is based in contract, negligence or otherwise) will not under any circumstance exceed the actual cost of correcting defects in the relevant Services and/or Goods. The foregoing shall constitute the exclusive liability of the Supplier.
- 10.5 Any condition, term, guarantee or warranty which would otherwise be implied in the Agreement is hereby excluded to the full extent permitted by law.
- 10.6 Where legislation implies in the Agreement any condition, term, guarantee or warranty ("**Mandatory Warranty**"), and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such Mandatory Warranty, the Mandatory Warranty is deemed to be included in the Agreement and the liability of the Supplier for any breach of such Mandatory Warranty is limited, at the absolute discretion of the Supplier, to one or more of the following, as appropriate in the circumstances:
- (a) if the breach relates to the Goods:
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of the cost of having the Goods repaired; and
 - (b) if the breach relates to the Services:
 - (i) the supplying of the Services again; or
 - (ii) the payment of the cost of having the Services supplied again.
- 10.7 The provisions of this clause 10 shall survive termination of the Agreement.

11. Limitation of Liability

- 11.1 The Supplier's liability for or under any claim by the Customer in respect of this Agreement or matters associated with this Agreement is strictly limited to the value of the portion of the Price allocable to the Goods or Services which give rise to such claim, including negligence for any direct Loss arising out of or connected with this Agreement, or from the performance or breach thereof or from the design, manufacture, sale, delivery, resale, installation, technical direction of installation, inspection, repair, test, modification, operation or use of any equipment, material or components covered by or furnished under this Agreement.
- 11.2 The Supplier will not liable for any:

- (a) make good of Goods or Services exempt from a Warranty or Mandatory Warranty by reason of clause 11.3 (and any loss or damage resulting from such exemption);
 - (b) Consequential Loss; or
 - (c) any claims by third Parties against the Customer for Loss.
- 11.3 The Supplier's Warranty and Mandatory Warranty (as applicable) shall not apply in respect of:
- (a) breaches of the Warranty not reported to the Supplier by the Customer within the Warranty Period;
 - (b) failures or damage in respect of the Goods or Services due to misapplication, misuse, abuse, improper installation, abnormal conditions of temperature, dirt or corrosive matter;
 - (c) failure in respect of the Goods or Services due to operation (either intentional or otherwise) above rated capacities or in an otherwise improper manner;
 - (d) Goods which have been in any way tampered with or altered by anyone other than an authorised representative of the Supplier;
 - (e) Goods which have been improperly stored or maintained;
 - (f) Goods damaged in shipment or otherwise without fault of the Supplier;
 - (g) expenses incurred by the Customer in an attempt to repair or rework any alleged damage to Goods or failures in respect of Services, and
- in respect of Services specifically:
- (h) Services which do not conform with any requirements of the Customer, where those requirements were not communicated to the Supplier by the Customer prior to the performance of the Service;
 - (i) any servicing of equipment or items performed by a third party (whether in a manner similar or identical to the Services performed by the Supplier), either prior to or subsequently after the performance of the applicable Services by the Supplier (i.e. such as where the Supplier services equipment and thereafter the same equipment is serviced by a third party);
 - (j) the equipment or items subject to the Services thereafter not being properly maintained by the Customer as ordinarily required for items of such kind, or are otherwise misused, dismantled, misappropriated, modified, altered, tampered with, materially changed, or stored incorrectly by the Customer; and
 - (k) any failure in respect of Services (or defective Services) by reason of:
 - (i) the Customer failing or neglecting to maintain the Premises in which the Goods are delivered to or Services are performed at in line with requisite Australian standards, codes and regulations; or
 - (ii) malicious damage, theft, or vandalism to the things, equipment or plant subject to the Services; and
 - (l) where the Supplier supplies and/or installs replacement fire doors, the Supplier's Warranty and

Mandatory Warranty will not apply where the Customer has failed to appropriately paint such doors within 48 hours of the supply or installation.

- 11.4 The Customer agrees to indemnify the Supplier from and against:
- (a) any Loss (including for legal costs on a full indemnity basis) or injury to or death of any person caused or contributed to by the act, omission, negligence or breach of the Agreement by the Customer, the Customer's employees, servants or agents, during the Supplier's performance of Services or supply or delivery of Goods;
 - (b) any Loss (including for legal costs on a full indemnity basis or injury to or death of any person suffered by the Supplier generally, where caused or contributed to by the act, omission, negligence or breach of the Agreement by the Customer, the Customer's employees, servants or agents; and
 - (c) any Loss (including for legal costs on a full indemnity basis or injury to or death of any person by reason of any of the events, acts or things encompassed by clause 11.3 or the general failure to exercise due care and skill by the Customer.
- 11.5 The Customer shall assume all risks and liabilities for and in respect of the provision of Goods and/or Services and for injuries to or death of persons and damage to property howsoever arising and the Customer indemnifies the Supplier from and against:
- (a) the loss of or damage to any Goods for which payment of the Price has not yet been made in full, whether by fire, theft, accident, seizure, confiscation or otherwise whilst in the Customer's custody, possession or control; and
 - (b) all other Loss howsoever arising or incurred, as a result of or in connection with the provision of the Goods and/or Services.

12. Materials Supplied by the Customer

- 12.1 The Customer shall provide to the Supplier any patterns, designs, specifications, drawings, samples, technical information or otherwise, as specified in the Agreement (whether in electronic format or otherwise), or which the Customer has agreed in writing to provide to enable the Supplier to supply the Goods and/or Services ("**Materials**").
- 12.2 All Materials and the Customer's Intellectual Property within such Materials (if any), remain the property of the Customer and the Customer shall otherwise grant a licence to the Supplier to use its Intellectual Property within the Materials for the purposes of supplying the Goods or Services.
- 12.3 The Supplier will not use the Materials for any purpose other than to the extent required to supply the Goods and/or Services to the Customer.

13. Intellectual Property

- 13.1 Other than as agreed between the Parties:
- (a) the Supplier hereby grants to the Customer a perpetual, irrevocable, non-exclusive, royalty-free, transferable licence to use all Intellectual Property (where owned by

- the Supplier) which is used by the Supplier in connection with the performance Services under the Agreement;
- (b) all Intellectual Property developed by the Supplier in connection with the performance of the Services under the Agreement vests in the Supplier; and
- (c) the Customer agrees to enter into and/or execute any document reasonably required to give effect to the provisions of this clause 13.1.

13.2 The Supplier warrants that:

- (a) the supply of Services by the Supplier to the Customer and the licence granted by the Supplier pursuant to clause 13.1 does not infringe the Intellectual Property rights of any third party; and
- (b) the Services are not subject to any Intellectual Property rights of any third party that in any way restrict the rights of the Customer or its Customers to use or sell the same.

14. Termination and Cancellation

- 14.1 The Customer may cancel any Purchase Order prior to provision of the Goods and/or Services under that Purchase Order by seven (7) days' written notice to the Supplier. Regardless of the circumstances, where the Customer cancels a Purchase Order, the Customer will be liable to make payment to the Supplier for any costs reasonably incurred by the Supplier together with such reasonable and proper cancellation charges as are determined by the Supplier in fulfilling or otherwise preparing to fulfil the Purchase Order.
- 14.2 The Supplier may suspend or terminate the Agreement at any time:
- (a) for convenience by giving the Customer thirty (30) days' written notice to such effect ("**Termination Notice**"). The Supplier will fulfil any Purchase Orders issued to the Supplier prior to the date of the Termination Notice, unless the Parties agree otherwise. Fulfilment of such Purchase Order(s) shall not affect termination of the Agreement in accordance with this clause 14.2(a). If a Purchase Order is issued to the Supplier after the date of the Termination Notice, but prior to termination of the Agreement, the Supplier may at its discretion elect to accept the Purchase Order;
 - (b) if the Customer is in default of a material term of the Agreement by giving fourteen (14) days written notice to the Customer and the Customer fails to remedy such default within fourteen (14) days of written notice from the Supplier or if such default is not capable of remedy;
 - (c) immediately if the Customer has failed to pay an invoice by its due date; or
 - (d) immediately if the Customer becomes insolvent, is made bankrupt, resolves to wind up or appoint a liquidator (or equivalent), is placed into external administration or liquidation, has a receiver or other controller appointed over its assets, or where the Supplier has reason to believe the Customer is or will be unable to pay any amounts it owes (or may owe) to the Supplier in respect of Goods or Services supplied.

14.3 Termination of the Agreement pursuant to this clause 14 shall be without prejudice to the rights of either party accruing prior to termination.

15. Dispute Resolution

- 15.1 If a Dispute arises, either party may by hand, registered post or email, give the other party written notice of the Dispute identifying and providing details and particulars of the Dispute and entitled Dispute Notice ("**Dispute Notice**"), within fourteen (14) days of the occurrence of the event(s) or circumstance(s) on which the Dispute arises or is based.
- 15.2 The Supplier shall not be liable to the Customer in respect of any Dispute (including any claim) in connection with the Agreement where clause 15.1 is not complied with.
- 15.3 Within seven (7) days of receipt of a Dispute Notice, representatives of the Parties having authority to bind the Parties shall confer to seek to resolve the Dispute or agree on a method of doing so and whether that method shall be binding. If a resolution or method of resolution has not been agreed within twenty-one (21) days of the service of Dispute Notice, the Dispute shall be referred to mediation. All aspects of such mediation shall be subject to "without prejudice" privilege.
- 15.4 In the event a Dispute is not resolved between the Parties, reasonable efforts must be made to endeavour to resolve the Dispute through mediation before commencing proceedings in relation to the Dispute. The Customer will be barred from commencing proceedings unless the procedure in clause 15 is strictly complied with. The Supplier is exempt from complying with the mediation requirement where the Dispute concerns non-payment by the Customer for Goods or Services provided by the Supplier.

16. Remote Locations

- 16.1 This clause 16 applies where the performance of Services requires the Supplier (or its employees, agents or subcontractors) to travel to regions or areas beyond those which it ordinarily services from time to time ("**Remote Locations**").
- 16.2 The Supplier's allowance for the performance of Services at Remote Locations shall not exceed in excess of twelve (12) hours per day, including any breaks required by law.
- 16.3 The Price for the Services does not include the cost of:
- food and accommodation;
 - any travel to and from the Remote Location (including any flights);
 - freight for tools and equipment to and from the Remote Location; and
 - any other ancillary costs associated with travel to and from the Remote Location or any arrangements necessary to access the Remote Location.
- 16.4 The Supplier shall be entitled to charge the Customer in respect of any costs set out above at clause 16.3 in addition to the Price payable for such Services.
- 16.5 Notwithstanding the above, where the additional charges described above exceed 20% of the Price payable for the Services intended to be performed at the Remote Location,

the Supplier must discuss the charges with the Customer prior to performing the Services. Should the Customer disagree with or dispute the additional charges sought to be applied by the Supplier, the Supplier may elect not to proceed with performing the Services at the Remote Location.

17. Exclusions

Any Quotation or invoice issued to the Customer by the Supplier and any Services performed by the Supplier shall not include any allowances for the following (except where otherwise expressly agreed to in writing by the Supplier):

- third party isolations;
- rectification or replacement of existing equipment or equipment which is faulty or non-compliant with the codes, standards or regulations for such equipment;
- building works for access to the things, equipment or plant being serviced;
- core holes and penetrations or sealing of existing penetrations;
- make safe of asbestos or lead paint;
- cause and effect matrixes or changes to Services;
- security guards and/or traffic controllers;
- costs of obtaining electronic AutoCAD backgrounds;
- fire engineering costs or documentation;
- fire brigade assessment fees or charges;
- seismic restraints;
- covering sprinkler heads during painting and replacing painted sprinkler heads;
- special colours for flush fire sprinkler plates;
- 12-month testing and maintenance or regulatory testing and maintenance;
- in-slab conduits (all wiring shall be installed in false ceilings);
- drilling of structural steel beams (if required, this must be attended to by the Customer prior to the performance of the Services);
- cylindrical cabinet plinths or cement slabs;
- site specific materials;
- connection to site wide networks or ASE;
- external certification;
- wall mounting plates and small consumables (including unistrut and mounting screws);
- connection and supply of incoming and outgoing 240V power cabling; and
- make good penetrations or any air conditioning related works.

18. Compliance with laws

The Parties must at all times comply with all applicable laws relating to anti-bribery, improper payments, anti-money

laundering, and modern slavery, including but not limited to the *Criminal Code Act 1995* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth), the *Anti-Money Laundering and Counter-Terrorism Financing Rules 2007* (Cth), and the *Modern Slavery Act 2018* (Cth).

19. General

- 18.1 If any provision or part of any provision of the Agreement is unenforceable, such unenforceability shall not affect other parts of such provision or any other provision of the Agreement.
- 18.2 The Supplier may alter, amend, revise or change any terms of the Agreement with seven (7) calendar days' written notice given to the Customer of any such alteration, amendment, revision or change. The Agreement (as amended from time to time) shall apply to all Services performed and all Goods supplied by the Supplier, for the Customer and shall comprise the entire agreement between the Parties, notwithstanding any other terms and conditions which may be supplied by the Customer (which are rejected and of no binding effect unless otherwise expressly agreed to in writing by the Supplier's duly authorised representative).
- 18.3 Any waiver by the Customer of strict compliance with any provision of the Agreement shall not be effective unless in writing and signed by an authorised officer of the Customer.
- 18.4 Written notice for the purposes of these Terms means notice given by an authorised representative of the party giving notice, given to the receiving party by hand, post or mail, or by email.
- 18.5 This Agreement shall be governed by and must be construed in accordance with the laws applying in the state of New South Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of the state of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Contract.
- 18.6 No provision of this Agreement shall be construed adversely against one party solely on the basis that that party was responsible for the drafting of that provision.

20. Survival

Clauses 5, 6, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19 survive the termination of this Agreement.

21. Definitions

In these Terms:

- (a) "**Agreement**" means the agreement between the Supplier and the Customer for the provision of Goods or Services comprising of:
- (i) the Purchase Order or any other document captured by clause 1.4;
 - (ii) these Terms; and
 - (iii) any Quotation or tax invoice issued by the Supplier.
- (b) "**Consequential Loss**" means any indirect, special or consequential loss, including (without limitation):
- (i) exemplary, punitive, aggravated or nominal damages;

- (ii) loss of profit or anticipated profit, loss of revenue, loss of time, loss of goodwill, loss of contract, loss of business or business opportunity, loss of financial opportunity, loss of use (including loss of use of equipment or associated equipment, loss of facilities or services and downtime costs), loss of production, loss of investment return, or loss of income, whether the loss is direct or indirect;
 - (iii) increase in direct or indirect financing costs, or failure to realise anticipated savings; or
 - (iv) any loss, damage, cost, expense or liability that is not fairly or reasonably:
 - (1) considered to arise naturally (being according to the usual course of things) from a breach of this Agreement or relevant matter; or
 - (2) contemplated by the Supplier and the Customer as at the date of this Agreement as the probable result of a breach or relevant matter,
 whether present or future, fixed or unascertained, actual or contingent.
- (c) "**COVID-19 Event**" means any of the events set out below that specifically relate to the COVID-19 coronavirus global pandemic (including related epidemic, pandemic or disease outbreak) which have the effect of delaying and/or preventing the Supplier from performing its obligations under the Agreement:
- (i) the act of any government or authority;
 - (ii) the declaration of a state of emergency, or the invocation of lockdown or martial law having an effect on commerce generally; and
 - (iii) any other cause, impediment or circumstance beyond the reasonable control of any party within the Supplier's supply chain whose consequences could not be avoided under this Agreement.
- (d) "**Customer**" means the Customer (or any person acting on behalf of and with the authority of the customer) as described on any Purchase Order or Quotation, including their successors or permitted assigns.
- (e) "**Dispute**" means a dispute between the Parties which has arisen in connection with the subject matter or interpretation of the Agreement, including a dispute concerning a claim in tort, contract, under statute, or on any other basis in law or equity available under the law governing the Agreement.
- (f) "**Force Majeure Event**" means any act or event beyond the Supplier's control which delays the Supplier in performing its obligations pursuant to this Agreement and includes (without limitation):
- (i) acts of God, acts of the Customer, acts of civil or military authority, priorities, fire, strikes or other labour disturbances, floods, cyclones, war, riots, invasions, hostility between nations, civil insurrection, military coup or act of a foreign enemy, delays in transport or car shortages, epidemic, pandemic or quarantine;

- (ii) causes beyond the Supplier's reasonable control resulting in it being unable to obtain necessary labour, drawings, materials, components or manufacturing facilities;
 - (iii) COVID-19 Event; and
 - (iv) any other act or event which could not be reasonably foreseen, prevented, overcome or remedied by the Supplier expending a reasonable sum or money or exercising reasonable steps.
- (g) "**Goods**" means goods, materials, parts or products described in a Purchase Order or Quotation.
- (h) "**Intellectual Property**" means any intellectual or industrial property whether protected by statute, at common law, or in equity, including any trade mark, patent, invention, copyright, or design right (whether or not registrable), in any design, specification, process, technique, software, know how, trade secret, technical information, financial information, business method and confidential information.
- (i) "**Loss**" means any loss, damage, expense, cost or claim, of any kind, including damages or compensation, howsoever arising;
- (j) "**Mixed Goods**" means where:
- (i) the Customer makes a new object from the Goods, whether finished or not; or
 - (ii) the Customer mixes or otherwise comingles the Goods with other articles, goods or products; or
 - (iii) the Goods become part of another product.
- (k) "**PPSA**" means the *Personal Property Securities Act 2009* (Cth) as may be amended or replaced from time to time.
- (l) "**Price**" means the price payable for the Services and/or Goods in accordance with clause 3.1.
- (m) "**Purchase Order**" means any purchase order, work order, work authorisation or any other form requesting for the supply of Goods and/or Services from the Supplier (whether oral or written).
- (n) "**Quotation**" means any quotation provided by the Supplier to the Customer in respect of a Purchase Order.
- (o) "**parties**" means the Customer and Supplier.
- (p) "**Related Bodies Corporate**" is defined in section 9 of the *Corporations Act 2001* (Cth) as may be amended or replaced from time to time.
- (q) "**Services**" means all services or described in a Purchase Order or Quotation.
- (r) "**Supplier**" means ARA Fire Protection Services Pty Ltd ABN 19 002 051 041 and its Related Bodies Corporate, including Fire Suppression Services Pty Ltd ABN 65 120 210 424 and Oceanlink Marine Services Pty Ltd ABN 78 622 161 979.
- (s) "**Terms**" means these Standard Terms and Conditions of Sale/Supply of Goods and/or Services as amended from time to time.