

Strathbrook Regional Services Pty Ltd ABN 52 118 178 626
Standard Terms & Conditions of Trade for supply of goods and works

Information for Consumers

To the extent permitted by law, our terms and conditions:

- exclude all warranties and guarantees about supply of goods and/or works we provide to you unless we expressly give them, to the extent it is permitted under law for us to exclude liability that way, as described in clause 6 and 7 of the following terms and conditions.
- limit our liability for consumer guarantees to supplying the relevant goods or services again or the cost of doing so where it is permitted under law for us to limit liability that way.
- provide that you may be liable for loss of or damage to goods and/or works we provide to you as listed in clauses 10 and 12 of the following terms and conditions. Please read them carefully so you understand your liability in these cases.
- indemnify us for claims including from injury and death arising in relation to the goods and/or works we provide to you unless caused by us.
- exclude our liability for indirect or consequential loss to the extent it is permitted under law for us to limit liability that way.
- allow us to take security over land and property owned by you to secure payment of any money owing to us.

1. APPLICATION OF TERMS

1.1 The meaning of words printed in italics *like this* and some other common key words is explained at the end of these terms. The words:

SRS, we, our and **us** refer to Strathbrook Regional Services Pty Ltd (ABN 52 118 178 626) including each related body corporate of SRS, its successors, assigns and any person acting on SRS's behalf with its authority; and

customer and **you** refer to purchasers, recipients and users of our *goods* and/or *works*.

1.2 Unless accompanied by a separate agreement issued by us or we agree otherwise, these terms and conditions of trade (**terms**) apply to any *contract*, agreement or understanding between us and you, and cover the supply and use of any:

- (a) *goods* supplied by us to you; and
- (b) *works* undertaken by us for you.

1.3 You accept these **terms** by creating an account with us; by requesting the supply or provision of *goods* or *works*; through your use of the *goods* or *works*; or by continuing to accept or use the *goods* or *works* after being notified of a change to these **terms**.

1.4 All *goods* are supplied, and *works* are provided, to you on these **terms**. No person employed by us or acting otherwise as our agent or purporting to do so has authority to accept orders and supply *goods* or provide *works* on any other terms and conditions or to vary these **terms** in any way whatsoever unless the person has been authorised to do so by us.

2. YOUR BASIC ASSURANCES

2.1 You agree to carry out on time, or promptly if no time is specified, all your obligations to us under every *contract* including to pay the *amount owing* as agreed or where there is no agreement on demand.

2.2 You declare that where we are providing a *quotation* for, or providing and supplying, *works* in relation to *premises* nominated by you:

- (a) you own the *premises* and have good right and title to charge it under the *contract*;
- (b) you do not breach any law or any obligation to any other person by signing or entering into the *contract*;
- (c) all the information you have given us is correct and not misleading;
- (d) you have not withheld any information that might have caused us not to provide a *quotation* or enter into the *contract*;

- (e) you have notified us about any structure on, and utilities under the surface of, the *premises* and any conditions of the *premises* that may influence or affect the nature, design, scope, performance and cost of the *works* we provide and supply to you; and
- (f) you are not in default under clause 14.1.

3. OUR BASIC ASSURANCES

3.1 We will act reasonably and fairly towards you, taking into account your interests and our business interests. That includes whenever we are:

- (a) considering any request you make; or
- (b) deciding whether to give our consent or to exercise a right, discretion or remedy in connection with the *contract*; or
- (c) setting any conditions for doing any of those things.

Even if we don't make a decision or do something straight away, we may still do so later on. This includes where we delay or defer doing so, or we agree to do or not to do something, or we temporarily waive a requirement.

3.2 Where we agree to provide and undertake *works* involving the supply and installation of irrigation and/or pumping equipment, we will:

- (a) use all reasonable endeavours to:
 - (i) perform *works* in a competent, proper and workmanlike manner and exercising a reasonable standard of skill and diligence, but we are not liable for any inaccuracy, error or omission arising from performance of the *works*;
 - (ii) take all reasonable measures necessary to protect people and property including the *works*; avoid unnecessary interference with passage of people and vehicles; and prevent nuisance, unreasonable noise and disturbance to *premises*; and
 - (iii) comply with any reasonable direction by you regarding access to and travelling over the *premises*;
- (b) maintain appropriate public liability, workers compensation and, as applicable, professional indemnity insurance;
- (c) use appropriate materials, plant and equipment and *personnel* to perform the *works*; and
- (d) keep the *worksite* clean and tidy and, on completion of the *works* remove all rubbish and surplus materials.

3.3 Despite clause 3.2, you acknowledge and agree that:

- (a) performance and fitness for purpose of *goods* and/or *works* supplied by us may be affected by the availability of electricity or water to be used with the *goods* and/or *works*;
- (b) our skills are limited to the design, supply, installation, maintenance and servicing of air-conditioning and refrigeration equipment, and we do not represent or promise that we are skilled, trained or qualified in conducting hydrogeological assessments or sampling or testing of *sources*;
- (c) we cannot control, influence, predict, promise or guarantee the supply of any electricity or water from any *source* at any time;
- (d) you are responsible for obtaining any authorisation or approval for connecting *works* to, or taking electricity or water from, any *source*;
- (e) any sampling or testing of a *source* we, our *personnel* or our contractors undertake in connection with the proposed supply and installation of air conditioning or refrigeration equipment, and the result of that sampling or testing, is indicative only at the time of the sampling or testing, and is not a reliable indicator of future performance of the *source* or availability of electricity or water from the *source*;
- (f) where you undertake, or provide us with any results of, sampling and testing of a *source*, or you provide us with information about the availability a *source*, we are entitled to rely upon those results and information for the purpose of designing, supplying and installing any *goods* and/or *works*; and
- (g) we are not liable, and you will indemnify and hold us harmless, for any *loss* in respect of, arising out of or in connection with any sampling or testing of a *source*, the failure to sample or test any *source* at any time, or the supply or lack of supply of any electricity or water from any *source* at any time.

4. QUOTATIONS AND PRICING

- 4.1 We may at any time and in our discretion accept or reject in whole or in part any request from you for a *quotation*.
- 4.2 Unless we agree otherwise, a *quotation* is valid for a period of 30 days from the date of the *quotation*. Any *quotation* may be withdrawn earlier by notice from us in our discretion.
- 4.3 We may withdraw, change or re-issue a *quotation* if supply of the quoted *goods* and/or *works* does not start within 30 days after the date of the *quotation*.
- 4.4 We are entitled to change the pricing in the *contract* for the whole or any part of the *contract* if:
- (a) supply of the quoted *goods* and/or *works* does not start within 30 days after the date of the written order acknowledgement;
 - (b) supply under the *contract* is stopped or suspended for more than 30 days;
 - (c) supply under the *contract* is changed in any way before, during or after commencement of supply, including but not limited to re-design of the project, the start date of supply, the completion date of supply and the agreed rate of supply of the *goods* and/or *works*; or
 - (d) supply under the *contract* has not been completed within 12 months of the date of the *quotation*.
- 4.5 The price quoted in any *quotation* is subject to you ordering the whole quantity of the *goods* and *works* described in the *quotation*. If you order less than the whole quantity of *goods* and *works* specified in the *quotation*, then we may revise the pricing for such *goods* and/or *works* to reflect your order.
- 4.6 Unless expressly stated in a *quotation*, the prices, fees or rates quoted do not include any *works*. We are entitled to charge for any or all *works* not specified in a *quotation* and which you request us to perform, and those charges are in addition to any price, fee or rate specified in a *quotation*.
- 4.7 Where we have agreed to provide *works*, you must pay our costs for such *works* when such *works* have been performed.
- 4.8 Unless we agree otherwise, the price charged for the *goods* and *works* is the price applying at the date of despatch. Any of our price indications or price lists are subject to alteration in accordance with these *terms*.
- 4.9 Unless the *quotation* states that the price is a lump sum:
- (a) the price in the *quotation* is based on estimated quantities and rates of *goods* and *works* as applicable;
 - (b) you are liable to pay for the actual quantity of *goods* and the quantum of the *works* necessary for us to perform our obligations; and
 - (c) any adjustment in the actual price compared to the quoted price will reflect the increase or decrease of the *goods* and/or *works* actually supplied or provided.

5. THE CONTRACT

- 5.1 An order or offer to purchase *goods* and/or *works* can be made by you in writing or verbally. However, an order or offer made by you (including your acceptance of a *quotation*) does not constitute a binding contract until we have accepted or confirmed such order or offer in accordance with these *terms*.
- 5.2 An order or offer made by you is accepted by us only if we:
- (a) formally accept the order by written acknowledgement; or
 - (b) deliver the ordered *goods* and/or commence the *works* described in the order or offer, whichever occurs first.
- 5.3 We may at any time and in our discretion accept or reject part or all of any order or offer made by you.
- 5.4 You are not entitled to cancel or change part or all of any order or offer accepted by us, unless we agree.
- 5.5 The *contract*, when created, is constituted by (in descending order of precedence):
- (a) any specific terms agreed by the parties in accordance with clause 5.8;
 - (b) the *quotation* (if applicable);
 - (c) these *terms*;
 - (d) the relevant *working documents*;
 - (e) the applicable *delivery offer*; and

- (f) the credit terms applying to you (if applicable).
- 5.6 Previous dealings between you and us have no effect on the *contract*, and any trade custom or trade usage is superseded by the *contract* and is not applicable in interpretation and construction of the *contract*.
- 5.7 A *contract* for the supply of *goods* and/or *works* pursuant to an order or offer constitutes the entire agreement between us and you with respect to the *goods* supplied or *works* provided under that *contract* and all prior negotiations, proposals and correspondence are superseded by that *contract*.
- 5.8 Except as provided in these *terms*, no variation of the *contract* is effective unless it is agreed to by us and you in writing.
- 5.9 You acknowledge that each *contract* constitutes a security agreement for the purpose of the *PPSA*, and that any one or more members of the *SRS group* may register a financing statement (or comparable notice) on behalf of itself and any other member(s) of the *SRS group* in respect of the *security interests* created by the *contract*.

6. WARRANTIES AND LIMITATION OF LIABILITY

- 6.1 Subject to clause 7, and to the extent permitted by law, all implied conditions and warranties are excluded. To the extent that any implied conditions and warranties cannot be excluded, your sole and exclusive remedy for any *loss* (whether direct, indirect, liquidated, special or *consequential loss* and including *loss* arising as a result of death or personal injury to you or any other person) however arising (including by reason of any breach of contract, condition or warranty in the *contract* (whether express or implied)) is limited, at our discretion, to:
 - (a) in the case of any *goods* supplied by us pursuant to the *contract*:
 - (i) the replacement, resupply or repair of the relevant *goods* or supply of equivalent *goods*;
 - (ii) the repair of the *goods*;
 - (iii) after prior agreement between us and you, payment of the cost of replacing or repairing or having the *goods* replaced or repaired; or
 - (iv) reimbursement of some or all amounts paid by you in respect of the *goods*; or
 - (b) in the case of any *works* supplied by us pursuant to the *contract*:
 - (i) the provision of the *works* again; or
 - (ii) payment of the cost of having the relevant *works* provided again; or
 - (iii) reimbursement of some or all amounts paid by you in respect of the *works*.
- 6.2 Any *goods* which are not manufactured by us are subject solely to the warranties (if any) specified by the manufacturers or the third-party suppliers to us, and you acknowledge that, to the extent permitted by law, we give no warranties beyond those manufacturer or supplier warranties.
- 6.3 You acknowledge that we make no representations or promises as to the fitness or suitability for any purpose of any of the *goods* or *works* described in the *quotation* or *contract*.
- 6.4 Except as required by law, we are not obliged to accept *goods* returned for any reason.
- 6.5 Subject to clause 6.1 and the *ACL*, we are not liable to you for any *loss*, (whether direct, indirect, liquidated, special or *consequential loss* and including *loss* arising as a result of death or personal injury, however caused (including negligent or reckless conduct or omission)) which you or any other person may suffer or incur and which may, without limiting the generality of the foregoing, arise directly or indirectly in respect of the *goods* and/or *works*, any defects in the *goods* and/or *works* or in respect of any failure or omission by us or any of our *personnel* to comply with the *contract* or any obligation imposed by law.

7. CONSUMER TRANSACTIONS

- 7.1 Where and only to the extent that the supply of *goods* and/or *works* is to a *consumer* then:
 - (a) clause 6 does not apply;
 - (b) this clause 7 applies and, to the extent of any inconsistency with any other clause of these *terms*, prevails; and
 - (c) except as expressed otherwise in this clause, nothing in these *terms* is to be construed as excluding, restricting or modifying any *consumer guarantees* provided under the *ACL*,in respect of that supply of *goods* and/or *works*.

- 7.2 Your right to undisturbed possession of the *goods* will not apply to the extent that the *SRS group* maintains a valid *security interest* in the *goods* pursuant to clauses 9 and 13.
- 7.3 To the extent that *goods* and/or *works* supplied by us to you are of a kind ordinarily acquired for your personal, domestic or household use or consumption, then:
- (a) our liability for any failure to comply with a *consumer guarantee* (other than those guarantees as to title, undisturbed possession and undisclosed securities) is limited, at our discretion, to:
 - (i) replacement, resupply or repair of the *goods*;
 - (ii) payment of the cost of replacing or acquiring equivalent goods; or
 - (iii) payment of the cost of having the *goods* repaired; and
 - (b) to the extent that the *goods* and/or *works* comprise a service, our liability for any failure to comply with a *consumer guarantee* is limited, at our discretion, to supplying the service again or payment of the costs of having the service supplied again.
- 7.4 Clause 7.3 will not apply if you establish that it would not be fair and reasonable for us to rely on that clause. To the extent that clause 7.3 does not apply, we acknowledge that our *goods* come with *consumer guarantees* that cannot be excluded under the *ACL* and you may be entitled to:
- (a) a replacement or refund for a major failure and for compensation for any other reasonably foreseeable *loss*; or
 - (b) have the *goods* repaired or replaced if the *goods* fail to be of acceptable quality and the failure does not amount to a major failure.
- 7.5 If during the 30 days from date of *delivery* or receipt (or such other period that is reasonable in the circumstances) the *goods* prove to be defective, we will comply with our obligations as set out above or in the *ACL*, as applicable.
- 7.6 In order to make a claim under this clause 7, you must make a written claim by email sent to service@strathreg.com.au and you must provide us with details of the *goods*, the date of supply, satisfactory proof of purchase, a description of the defect and your contact details. Upon accepting the claim, we will assist you with the appropriate remedy.
- 7.7 Unless the cost of doing so is unreasonably significant, you will be responsible for returning the *goods* (to us) at your expense. In all other cases, we will collect the *goods* at our expense.

8. INVOICING, PAYMENT & GST

- 8.1 Where you have an established and approved credit account with us, you agree to comply with the terms and conditions of that credit account. We may charge you an administration fee as determined by us from time to time to cover credit card merchant fees and our associated overhead costs incurred in connection with providing that credit account.
- 8.2 The granting of credit does not oblige us to extend any particular amount of credit to you and we may withdraw, refuse, suspend or limit credit to you at any time, in our discretion, without notice or providing any reason.
- 8.3 If you have a credit account with us then, unless we agree otherwise:
- (a) we may issue invoices for *goods* and/or *works*:
 - (i) on despatch of such *goods* and/or *works*;
 - (ii) when such *goods* and/or *works* are delivered;
 - (iii) when such *goods* and/or *works* are deemed delivered in accordance with clause 10; or
 - (iv) at such other intervals or cycles as may be determined by us in our discretion from time to time; and
 - (b) you must pay all invoices in full and without set-off by:
 - (i) the last business day of the month during the month in which the invoice was issued; or
 - (ii) the day that is seven (7) days after the date on which the invoice was issued;whichever occurs first.
- 8.4 If you do not have a credit account with us then you must pay us for the *goods* and/or *works* at the time specified in any *quotation* or, if there is no *quotation*, at the time you place an order with us for such *goods* and/or *works*.

- 8.5 If we deliver only part of an order, then we may invoice, and you must pay for, that part of the *goods* and/or *works* delivered, unless we agree otherwise.
- 8.6 You must notify us in writing if (where you are a body corporate) there is any change in your shareholding or ownership or (in any case) any material change in your financial position.
- 8.7 In addition to our rights in clause 4 or any rights under a *contract*, we may increase or decrease the *contract* price of *goods* and/or *works* during the term of the *contract* where we incur an increase or decrease in our costs (including any transaction or other taxes) of supplying the *goods* and/or *works*.
- 8.8 You are not entitled to set off against and deduct from any *amount owing* due to us any *loss* due to or claimed by you from us arising from or in connection with a *contract* or *works*.
- 8.9 We reserve the right to charge interest on any overdue amounts at a rate of 10%, as determined and calculated by us. This interest will be payable upon our demand and will continue to accrue until the overdue amount is fully paid.
- 8.10 A statement in writing issued by us as to any *amount owing* under a *contract* by you on the date stated in such statement is prima facie evidence that such amount is owing.
- 8.11 Unless we agree otherwise, we will allocate and apply amounts received from you in the following order:
- (a) first, in or towards payment of any part of the *amount owing* which is not part of the purchase price of any *goods*, in the order in which those amounts were incurred; and
 - (b) secondly, in or towards payment of the purchase price of *goods* or *works* in the order in which those *goods* or *works* were invoiced.
- We will consider but we are not required to accept any instruction, request or appropriation of you as to the way in which a payment made by you should be applied by us, or any condition attached by you to any payment made by you.
- 8.12 Unless we agree otherwise or as required by law, all amounts stated in a *quotation* or payable under a *contract* are calculated or expressed exclusive of GST. If GST is payable, the amount of GST will be specified separately in the relevant documentation.
- 8.13 If GST is or becomes payable by you in relation to a supply under a *contract*, you must pay to us an amount equal to the GST. An amount of GST payable under this clause 8 must be paid:
- (a) at the same time as the payment of the amount in respect of that supply is due; and
 - (b) in addition to the amount payable under the *contract*.
- 8.14 You are not obliged to pay any GST unless we have issued valid tax invoice to you.
- 8.15 If you fail to pay such GST when due, we may recover it from you as a debt under the *contract*.
- 8.16 For the purposes of this clause 8, terms used in this clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.

9. SECURITY INTEREST, CHARGE AND MORTGAGE

- 9.1 You grant to us a *security interest* in the *goods* to secure payment of the *amount owing*. The *security interest*:
- (a) extends to and continues in all proceeds, *accessions* and *processed goods*; and
 - (b) is a purchase money security interest to the extent to which it secures payment of that part of the *amount owing* which comprises the aggregate unpaid purchase price of *goods*.
- 9.2 You must not do or permit anything to be done that may result in the purchase money security interest granted to the *SRS group* ranking in priority behind any other security interest.
- 9.3 You charge and mortgage in our favour, all of your interest and rights in all your present and future real property to secure the performance of your obligations under each *contract*, including payment of an *amount owing*. You acknowledge that you grant to us, and we have, a caveatable interest in any of your real property under this clause and we may lodge a caveat over that property. If we request, you agree to immediately execute a mortgage in favour of us on terms satisfactory to us to more particularly describe the mortgage conferred by this clause. If you fail within a reasonable time of such demand to execute that mortgage, then you irrevocably appoint us as your attorney with authority to do on your behalf any thing that you may lawfully authorise an attorney to do including, without limitation, to make, sign, execute, seal and deliver any document and to take possession of, use, sell or otherwise dispose of any of your real property.

- 9.4 You waive or contract out of your rights to receive any notice or statement (including notice of a verification statement) under any provision of the *PPSA* unless the notice or statement is required by the *PPSA* and cannot be excluded.
- 9.5 In connection with the enforcement of a *security interest* arising under these *terms* or a *contract*, to the fullest extent permitted by the *PPSA*, you agree that the *SRS group* need not comply with sections 95, 117, 118, 121(4), 125, 130, 132(3)(d) and 132(4) of the *PPSA* and sections 142 and 143 of the *PPSA* are excluded.
- 9.6 You must pay us all costs and expenses incurred by us (including legal expenses on a full indemnity basis) and stamp duty (including fines and penalties) in connection with registering, maintaining or releasing any *security interest* or caveat in connection with a *contract*, or the recovery of the *amount owing* or in otherwise enforcing our rights against you under a *contract*. The costs of registering any *PPSA* financing statement will be paid by you and may be invoiced or debited against your credit account.

10. DELIVERY

- 10.1 Delivery of *goods* will be in accordance with the applicable *delivery offer*. It is your obligation to ensure that you are familiar with and observe the requirements of any *delivery offer*. We may deliver the *goods* in any number of instalments.
- 10.2 If we:
- (a) quote the price of *goods* as "ex works", you must collect the *goods* from our nominated premises at the time notified by us to you.
 - (b) quote the price of *goods* as "delivered", we will deliver the *goods* to your nominated site, and you must:
 - (i) nominate the site for delivery in writing to us prior to the delivery;
 - (ii) ensure that an area is available which complies with all applicable work health and safety legislation; and
 - (iii) ensure that your representative is available at the time of delivery to acknowledge delivery by signing a delivery receipt; or
 - (c) do not specify the mode or location of delivery, delivery is taken to be "ex works".
- 10.3 Delivery of *goods* (***delivery***) is taken to occur at the time and place that:
- (a) you or your nominated carrier:
 - (i) take possession of the *goods* at our nominated premises; or
 - (ii) are notified by us that the *goods* are ready for collection, whichever is the first to occur; or
 - (b) we (or our nominated carrier) deliver the *goods* to you even if you are not present at the nominated site.
- 10.4 If *goods* are to be delivered by us and:
- (a) unless we agree otherwise or unless otherwise provided in the *delivery offer*, you must at your risk and cost unload the *goods*; and
 - (b) you or your representative are not in attendance when the *goods* are delivered at your nominated site, we reserve the right to unload the *goods*.
- 10.5 If *goods* are to be delivered by us, they are deemed to be delivered:
- (a) if we agree that you or your representative will unload the *goods*, when we deliver the *goods* on a truck to a site adjacent to your nominated site; or
 - (b) at your sole risk when we have unloaded the *goods* at or adjacent to your site to a ground level, flat area.
- 10.6 We will make all reasonable efforts to have the *goods* delivered to you as agreed between you and us but any time specified by us for delivery is an estimate only, and we are not liable for:
- (a) any failure or delay in delivery of part or all of the *contract* for any reason; or
 - (b) any *loss* due to unloading or packaging; or
 - (c) damage to property caused upon entering premises to deliver the *goods*.

10.7 Where you do not accept *delivery of goods* or allow performance of the *works* which you have ordered from us when such *goods* or *works* are ready for *delivery* or performance, you are liable for any additional charges that we may incur for storage or double-handling, at our then current rates.

11. SHORTAGES, DEFECTS AND INACCURACIES, FAILURE OF, OR DELAY IN, SUPPLY

11.1 You agree to check all *goods* received immediately upon *delivery* and/or all *works* immediately upon completion. We will not be liable for any claim by you for shortages or improper or defective or damaged *goods*, or defective or improper *works*, unless notified to us:

- (a) in the case of the supply of *goods*, within 2 *business days* of *delivery*; and
- (b) in the case of performance or supply of *works*, within 10 *business days* of performance or supply.

11.2 We will endeavour to rectify inaccuracies or short supply of *goods* within 5 *business days* of notification but will not be responsible for any *loss* (including *consequential loss*) however caused arising out of or resulting from such inaccuracies or short supply.

11.3 We will endeavour to rectify any defects in *works* as soon as practicable and within 30 *business days* of notification.

11.4 If, due to any cause whatsoever, we are unable to supply or perform any part of a *contract* by the nominated delivery date or at all, we are entitled, in our discretion:

- (a) to supply to you similar *goods* and/or *works* which, in our reasonable opinion, are an appropriate substitute without prior reference to you; or
- (b) not to supply part or all of the *goods* and/or *works*; or
- (c) delay supply of part or all of the *goods* and/or *works*.

11.5 If we are prevented (directly or indirectly) from supplying the *goods* or providing the *works* or any part of them by reason of an exceptional circumstance or event outside our reasonable control, that could not have been avoided before the formation of the *contract*, and which we cannot reasonably have prevented, avoided or overcome (including but not limited to the act, declaration or direction of any government agency, the declaration of a state of emergency, adverse weather events or natural disasters, a pandemic or epidemic declared by the Australian Commonwealth government, or failure by a supplier to deliver to us any *goods* or components of *goods*) we are under no liability whatsoever to you for any *loss* and we are entitled, in our discretion, to give notice to you, either to cancel any *contract* or to extend the time for its performance.

12. RISK

12.1 Risk in *goods* passes to you on:

- (a) *delivery* of the *goods* to you; or
 - (b) deemed *delivery* of the *goods* to you in accordance with clause 10,
- whichever occurs first, and it is your obligation to insure the *goods* on or before *delivery*.

12.2 You agree to indemnify us from any claim arising from or in any way relating to the unloading or *delivery* of the *goods*.

12.3 If any of the *goods* are damaged or destroyed following *delivery* but prior to ownership passing to you, we are entitled to receive all insurance proceeds payable for the *goods*.

12.4 If we or our *personnel* enter upon any *premises* at your actual or implied request, you indemnify us and our *personnel* for any damage suffered by you or your *personnel* or to your property as a result of or in connection with our *personnel* entering the *premises* except to the extent of any negligent act or omission by our *personnel*.

12.5 If a vehicle engaged in the delivery of *goods* to your *premises* is disabled or damaged due to the condition of your *premises*, you are liable for the cost of salvage of or repair to the vehicle. You indemnify us and keep us indemnified against any *loss* suffered by us or as a consequence of us becoming liable to any third party directly or indirectly as a result of our *personnel* entering any *premises* at your actual or implied request or unloading *goods*.

12.6 Risk in *works* passes to you when:

- (a) we notify you that the *works* are complete; or
 - (b) you commence using the *works*,
- whichever occurs first.

- 12.7 For the purpose of work health and safety, you agree that you are responsible for work health and safety on any *worksite* and unless we agree otherwise, you:
- (a) accept that you are the person having management or control of the *worksite* at which the *works* are being undertaken; and
 - (b) will discharge the duties of a person who conducts a business or undertaking under *WHS legislation* and, without limitation, you will ensure your *personnel* discharge their duties under *WHS legislation*.
- 12.8 We will comply with and discharge all obligations on us imposed under *WHS legislation* including any we agree to accept in connection with a *contract*.

13. TITLE AND RELATED MATTERS

- 13.1 The legal and equitable title to the *goods* and/or *works* will only be transferred from us to you when the *amount owing* has been reduced to zero.
- 13.2 Until the *amount owing* has been reduced to zero:
- (a) you hold the *goods* as bailee for us and a fiduciary relationship exists between you and us;
 - (b) you must keep the *goods* separate and in good condition as our fiduciary, clearly showing our ownership of the *goods*, and must keep books recording our ownership of the *goods* and your sale or otherwise of them in accordance with clause 13.5 and 13.6; and
 - (c) if required by us, you must immediately deliver up the *goods* to us at your cost.
- 13.3 If you are in default, then in addition to our rights under clause 9, we may take possession of the *goods* wherever the *goods* are located, and you agree that our *personnel* may enter upon your *premises* for that purpose.
- 13.4 You may only install or affix the *goods* to other goods (so that they become an *accession* to those other goods) or use or permit the *goods* to be manufactured, processed, assembled, commingled or otherwise dealt with (so that they become *processed goods*) in the ordinary course of your normal business.
- 13.5 Despite clause 13.1 but subject to clauses 9 and 13.4, you may sell as our fiduciary agent the *goods* or any *accession* or any *processed goods* to a third party in the normal course of your business provided that where you are paid by that third party, you hold the proceeds of sale, to the extent of the *amount owing* on trust for us. You must keep those proceeds separate on trust for us and not mix those proceeds with any other monies.
- 13.6 Despite this clause 13, you are still required to pay us for *goods* already delivered and for *goods* manufactured or ordered to specification and not yet delivered.

14. DEFAULT AND TERMINATION

- 14.1 You are in default if:
- (a) you do not pay any of the *amount owing* on time;
 - (b) you or a *guarantor* does not comply with a promise or an obligation under the *contract* to do or not do something;
 - (c) you are or become *insolvent* or steps are started to make you *insolvent*;
 - (d) any *guarantor* is or becomes *insolvent* or steps are started to make a *guarantor insolvent*;
 - (e) any *security interest* created under the *contract* does not have or loses the priority it is intended to have;
 - (f) any *security interest* granted by you or a *guarantor* is enforced or becomes enforceable;
 - (g) we believe on reasonable grounds that urgent action is necessary to protect any *goods* or *works* including from seizure or sale; or
 - (h) the *goods* or *works* is subject to a freezing or confiscation order.
- 14.2 If you are in default under clause 14.1, then you agree that we may:
- (a) treat the whole of the *contract* as repudiated;
 - (b) refuse to supply (or suspend the supply of) the *goods* or provide the *works* to you on credit or at all and/or amend the terms of any credit granted;
 - (c) treat any other *contract* between you and us as repudiated;
 - (d) take possession of any *goods* or *processed goods*, wherever they are located;

- (e) to remove any *goods* which have become an *accession*; and
 - (f) appoint any person to be a receiver of all or any of the *goods*, *accessions*, *processed goods* or other assets the subject of a *security interest* created under the *contract*.
- 14.3 You may terminate the *contract* for convenience (or part thereof) within 5 *business days* of us providing a notice increasing the price in accordance with clause 8.7 provided that you must pay any *amount owing* for *goods* and/or *works* supplied by us prior to the termination.
- 14.4 We may, by written notice, terminate a *contract* for convenience within twelve (12) months after the date of first delivery of the *goods* and/or *works*.
- 14.5 Subject to clause 14.3, you are not entitled to terminate, suspend or cancel part or all of a *contract* for any reason (including for convenience) except if we have failed to remedy our breach of the *contract* within a reasonable period after you give us written notice of such breach. If you purport to wrongly terminate or rescind part or all of a *contract* or refuse to take delivery of any *goods* delivered in accordance with a *contract*, we may recover from you the total amount of the order placed with us, less any amounts already paid by you.

15. DISPUTE RESOLUTION

- 15.1 If there is a dispute or disagreement between you and us arising in any way from or in relation to a *contract*, then you and we agree to use all reasonable endeavours (including any reasonably appropriate alternative dispute resolution procedures) to resolve the dispute or disagreement before resorting to litigation.
- 15.2 Nothing in this clause 15 prevents you or us seeking urgent interlocutory relief from a court or otherwise requires you or us to participate in informal resolution processes for longer than 20 *business days* after a dispute has arisen.

16. CONFIDENTIALITY

- 16.1 You and we agree that a *contract* and any other information provided by one party to the other pursuant to the *contract* is and remains confidential between the parties and the parties must not disclose it, or permit or cause it to be disclosed, either directly or indirectly, to any third party unless:
- (a) the information is in the public domain prior to the disclosure by the party;
 - (b) to a professional adviser or related body corporate of the party;
 - (c) prior approval in writing has been obtained from the other party; or
 - (d) disclosure is required by a law (including any legally binding notice or order) applicable to, or a requirement of the rules of any stock exchange having jurisdiction over, any member of the *SRS group*.

17. WORKING DOCUMENTS

- 17.1 Unless otherwise agreed, you are responsible for preparing, and must deliver to us, at your cost all *working documents* prior to commencement of the *works*. All *working documents* will remain in our custody and control for the duration of the *works*.
- 17.2 We accept no responsibility for the correctness of *working documents* prepared by you or a third party. If errors or defects occur, or *loss* is suffered, by you or us as a result of *working documents* prepared by you or a third party, you are liable for the cost of rectification.
- 17.3 A *quotation* does not include any fee for design, re-design, detailing, re-detailing, scheduling or re-scheduling of *working documents* to be prepared by us unless stated in the *quotation*. You must pay our costs for such services, if applicable, when such *working documents* are prepared by us.
- 17.4 We reserve the right to schedule supply of *goods* as detailed in the *working documents* or as otherwise agreed in writing.
- 17.5 Unless we agree, neither you nor any third party is authorised to reproduce, adapt or use in any manner whether part or whole any *working documents* prepared by us (whether prepared on a fee paying basis or not). Any unauthorised reproduction, adaptation or use may be, among other things, a breach of copyright and actionable by us.
- 17.6 You indemnify us against all *loss* as a result of or related to:
- (a) any inaccuracy, omission or error in the *working documents* prepared by you or a third party; or
 - (b) *working documents*, or any other documents provided by you to us for the purposes of or in the course of the supply of *goods* or performance of *works*, breaching a third party's intellectual property rights,

and this clause 17.6 survives termination or expiry of the *contract*.

17.7 Unless we agree otherwise, you may not use any of our trade marks or other intellectual property.

18. ATTORNEY

18.1 You irrevocably appoint us and each of our authorised officers, jointly and severally, to be your attorney to do any act or thing which you are required to do under a *contract*, if you are in default under the *contract*, including as described in clause 14.1 (including executing and registering instruments). We may exercise our powers even if this involves a conflict of duty and even if we have a personal interest in doing so. A third party may rely on a copy of these *terms* as evidence of the appointment of us as your attorney. You agree that you will ratify all acts and things done by us and our authorised officers in the lawful exercise of this power of attorney.

19. ELECTRONIC TRANSACTIONS

19.1 A *contract* may be signed:

- (a) electronically in accordance with the *Electronic Transactions Act 2000* (NSW); and
- (b) by the respective parties by counterparts, which together will constitute one agreement, and the contract date will be the date on which the last counterpart is signed.

20. NOTICES

20.1 *Notices* must be in writing. They may be:

- (a) given personally (if they are for you and you are a corporation, to one of your directors; if they are for us, to one of our employees at our usual business premises);
- (b) left at the address last notified;
- (c) sent by prepaid post to the address last notified;
- (d) sent by email to the email address last notified; or
- (e) given in any other way permitted by law.

20.2 *Notices* take effect from the time they are received unless a later time is specified in them.

20.3 If *notices* are sent:

- (a) by post, they are taken to be received on the date they would have been delivered in the ordinary course of post; and
- (b) by email which produces a delivery confirmation report, they are taken to be received at the time shown in the delivery confirmation report.

21. GUARANTEE

21.1 This clause 21 applies if a *quotation* or *contract* identifies that a nominated person(s) guarantees or provide a *security interest* to secure your obligations under a *contract* (the **guarantor**).

21.2 In consideration of us entering a *contract* at the request of you or the *guarantor*, the *guarantor*:

- (a) guarantees the due and punctual:
 - (i) payment by the *customer* of any *amount owing*;
 - (ii) performance of the *customer's* obligations, under the *contract*;
- (b) separately indemnifies and agrees to keep indemnified the *SRS group* against all *loss* suffered or incurred by the *SRS group* as a result of any failure by the *customer* to perform any obligation or failure to pay any money; and
- (c) separately promises to perform the *customer's* obligations without demand if the *customer* fails promptly to do so.

21.3 The guarantees, indemnities and promises of the *guarantor* are original and independent and are not by way of surety. The *guarantor's* respective guarantees, indemnities and promises will have full force and effect even if:

- (a) the *customer* or us or both, are not, or cease to be, bound by all or any of the terms of the *contract*;

- (b) the obligations of the *customer* or us or both are abrogated, diminished or modified in any way otherwise than by performance of all of the respective parties' obligations; or
- (c) the obligations of the *customer* or us or both are abrogated, diminished or modified by operation of law, disclaimer of the *contract* by a liquidator or any other person who is or purports to be entitled by law to disclaim it or otherwise.

21.4 The *guarantor* is not released from liability under this clause 21 except by:

- (a) payment in full of one hundred (100) cents in each dollar of the *amount owing* under the *contract*;
- (b) performance and observance of all the obligations of the *customer* under the *contract*;
- (c) payment of all money payable under this guarantee, indemnity and promise; or
- (d) us giving *notice* of the release of the *guarantor*.

21.5 The guarantees, indemnities and promises given by the *guarantor* under a *contract* are not affected by:

- (a) any waiver or indulgence, whether as to time or otherwise;
- (b) any variation, assignment, renewal or extension of a *contract*;
- (c) any want of capacity or of due execution by the *customer* or SRS; or
- (d) rescission or repudiation of a *contract*.

22. MISCELLANEOUS

22.1 Each *contract* is governed by the law of New South Wales. You and we submit to the non-exclusive jurisdiction of the courts of that place.

22.2 Where we are required by these *terms* to agree to do or not to do something, that agreement must be given in writing by us. If we do not give our agreement in writing, then we are not obliged to do or not do that thing.

22.3 We may assign or otherwise deal or novate our rights and obligations under a *contract* (in whole or in part) to any person or otherwise deal with the benefit of any *contract* without the consent of the *customer*. The *customer* must sign such documents as we may require to effect any such assignment, novation or other dealing. The *customer* may not assign, transfer or otherwise deal with its rights under a *contract* or grant a security interest in a *contract* or *goods* to any party without prior notice to and written consent from us.

22.4 If a provision of the *contract* is void or voidable or unenforceable by us but would not be void or voidable or unenforceable if it were read down, it will be read down accordingly.

22.5 If despite clause 22.4 a provision of the *contract* is still void or voidable or unenforceable by us:

- (a) if the provision would not be void or voidable or unenforceable if a word or words were omitted there from, that word or those words (as the case may be) are severed; and
- (b) in any other case, the whole provision is severed, and the remainder of the *contract* has full force and effect.

22.6 If any law which makes unfair contract terms void could apply to a term in the *contract*, the following rules apply to interpreting that term:

- (a) if the law would make the term void because the term permits us to exercise a right or discretion in a way or to an extent that would cause detriment to you, the term will be read down and construed so as not to permit us to exercise the right or discretion in such a way or to such an extent but otherwise the term will be construed as permitting us to exercise the right or discretion in all ways and to any extent consistent with the term;
- (b) if the law would make the term void because the term imposed a particular amount for a fee or charge, the term will be read down and construed as authorising the maximum amount for that fee or charge which would not cause the term to be void;
- (c) if the law would make the term void because it authorised us to recover costs or *loss* to be calculated by us in a specified way or in a way we chose, the term will be read down and construed as authorising us to recover the maximum reasonable costs and *loss* to be calculated in a reasonable way that did not cause the term to be void; and
- (d) if, despite the application of clauses 22.6(a), 22.6(b) and 22.6(c) to the term, the law would make the term void, the term is to be read down and construed as if it were varied, to the minimum extent necessary, so that the term is not void.

These reading down rules apply before any other reading down or severance provision in the *contract*.

23. DEFINITIONS

23.1 In these *terms*:

- (a) **accession** means any *goods* which are installed in or affixed to other goods;
- (b) **ACL** means the Australian Consumer Law which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (c) **amount owing** means, at any time, all amounts payable by the *customer* to any member of the *SRS group* at that time (whether or not those amounts have become due for payment under any provision of these *terms*) in connection with the *goods* and/or *works* or a *contract* (including, without limitation, any invoiced amount, interest, fees, costs or expenses);
- (d) **business day** means a day other than a Saturday, Sunday or public holiday in Sydney, Australia;
- (e) **consequential loss** means any loss of profit, loss of any contract (except for the *contract*), loss of revenue, loss of use, loss of business opportunities, loss of anticipated savings, damage to goodwill or loss of customers, arising in connection with a *contract*;
- (f) **consumer** means a *customer* that is a consumer (as that term is defined in the *ACL*) in respect of the particular supply of *goods* or services;
- (g) **consumer guarantees** means the guarantees relating to the supply of goods and services to *consumers* provided by Division 1 of Part 3-2 of the *ACL*;
- (h) **contract** means:
 - (i) a contract created in accordance with clause 5; and
 - (ii) any other contract, arrangement or agreement to which these *terms* are expressed to form part;
- (i) **Corporations Act** means the *Corporations Act 2001* (Cth)
- (j) **customer** means the person, body corporate or entity that agrees to purchase *goods* and/or *works* from us;
- (k) **delivery offer** means the delivery offer, which sets out the terms and conditions on which we deliver *goods*;
- (l) **goods** means goods, products, materials and any other items supplied by us to you;
- (m) a person is **insolvent** if:
 - (i) they are (or state they are) an insolvent under administration or insolvent (each as defined in the *Corporations Act*);
 - (ii) they have an *administrator* appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a *receiver* appointed to any part of their property;
 - (iii) execution or distress or any other *process* is levied or attempted or imposed against or over any of their undertaking, property or assets;
 - (iv) a compromise, arrangement, assignment, moratorium or composition is proposed with, or becomes effective in relation to, their creditors or any class of their creditors (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by us);
 - (v) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to above;
 - (vi) they are taken (under section 459F of the *Corporations Act*) to have failed to comply with a statutory demand;
 - (vii) they are the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act* (or they make a statement from which we reasonably infer they are so subject);
 - (viii) they are a natural person, they commit an act of bankruptcy within the meaning of the *Bankruptcy Act 1966* (Cth);
 - (ix) they are otherwise unable to pay their debts (including any *amount owing*) when they fall due; or

- (x) something having a substantially similar effect to any of the things referred to above happens in connection with them under any law
- (n) **loss** means any actions, claims, losses, damages, penalties, demands or costs whatsoever (including, without limitation, legal fees, costs and disbursements on a full indemnity basis, whether incurred or awarded against a party) and all other liability;
- (o) **notice** means any notice, certificates and other communication in connection with a *contract*;
- (p) **personnel** means, in relation to a party, any natural person who is an employee, officer, agent or professional advisor of that party;
- (q) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (r) **premises** means real property or building at which we undertake or provide *works* in connection with a *contract*;
- (s) **processed goods** means *goods* which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
- (t) **quotation** means a quote for *goods* or *works* or both issued to you by us;
- (u) **source** means an existing or future electricity or water source from which electricity or water may be taken, extracted, drawn or pumped including (in the case of electricity) any renewable energy source or battery and (in the case of water) a source below ground level such as an aquifer or a source above ground level such as a dam, tank, water course or river;
- (v) **SRS** means Strathbrook Regional Services Pty Ltd ABN 52 118 178 626 including its successors, assigns and any person acting on SRS's behalf with its authority;
- (w) **SRS group** means SRS and each related body corporate (as that term is defined in the *Corporations Act*) of SRS from time to time;
- (x) **WHS legislation** means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW);
- (y) **working documents** means design drawings, structural drawings, construction drawings, specifications and reinforcement schedules or other similar documents together with any variation or site instruction;
- (z) **works** refers to any labour or services provided by us to you (including the provision of credit) or works undertaken by us for you including the supply of any *goods* in connection with those works under a *contract* (whether or not a fee is charged for the labour or services) including but not limited to estimating, scheduling and re-scheduling, detailing and re-detailing, designing and re-designing, installing, project managing and providing administrative services; and
- (aa) **worksite** refers to any *premises* or site nominated by you where we perform or supply *works*.

23.2 Unless the contrary intention appears, a reference in a *contract* to:

- (a) **(clauses, annexures and schedules)** a clause, item, annexure or schedule is a reference to a clause or item in or annexure or schedule to the *contract*;
- (b) **(variations or replacement)** a document (including the *terms*) includes any variation or replacement of it;
- (c) **(reference to legislation)** any legislation, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by a government agency and other instruments under them, and considerations, amendments, re-enactments or replacements of any of them;
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate or entity (as that term is defined in section 64A of the *Corporations Act*);
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

- (i) **(jointly and individually)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) **(calculation of time)** a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day, and a reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (k) **(time of day)** time is a reference to the time in Sydney, Australia;
- (l) **(from time to time)** a power, an authority, or a discretion given to a party may be exercised at any time and from time to time;
- (m) **(reference to a group)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (n) **(meaning not limited)** the words “include”, “including”, “for example” or “such as”, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (o) **(reference to any thing)** any thing (including any amount) is a reference to the whole and each part of it;
- (p) **(measurements)** any measurement is a reference to Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth); and
- (q) **(dollars)** “dollars”, “\$”, “A\$” or “AUD” is a reference to the lawful currency of Australia.

[REMAINDER OF PAGE INTENTIONALLY BLANK]