

TERMS OF SUPPLY

D&S Resources Proprietary Limited | ABN 14 607 257 223

Workshop: 11-15 Maxwell Road, Pooraka SA 5095 | City Office: Level 21/91 King William Street, Adelaide SA 5000

<p>Our details ("us", "our", "we")</p>	<p>D&S Resources Proprietary Limited ABN 14 607 257 223 Workshop: 11-15 Maxwell Road, Pooraka SA 5095 City Office: Level 21/91 King William Street, Adelaide SA 5000</p>
<p>Customer details ("you", "your")</p>	<p>Name(s): _____ Address: _____ Contact number: _____ Email address: _____</p>
<p>Acceptance and signature</p>	<p><i>I acknowledge that I have read, understood, and agree to these Terms, and that I have received a copy of these Terms. I warrant that I am authorised to enter into this agreement.</i></p> <p>Signature: _____ Print Name: _____ Date: / /</p>

We may from time to time supply to you Goods and Services. Irrespective of whether you sign a copy of these Terms, any Goods and Services we agree to supply to you are made on these Terms:

1. IMPORTANT – Exclusion of implied warranties

The only conditions and warranties binding on us in respect of the state, quality or condition of any Goods supplied by us to you, or in respect of any Service supplied by us to you, are those imposed and required by law to be binding on us (including under the Competition and Consumer Act 2010 (Cth) and applicable state fair trading laws).

All other conditions and warranties, whether express or implied by law, in respect of the Goods and Services which may apart from this clause be binding on us, **are hereby expressly excluded and negated.**

2. IMPORTANT – Limitation of liability

- 2.1 To the fullest extent permitted by law, our liability for a breach of any applicable terms, conditions or warranties is, at our option, limited to, and completely discharged by: (i) in the case of Goods, either the supply by us of equivalent goods, the repair or replacement by us of the goods supplied to you, or the refund by us of the price paid for those Goods; and (ii) in the case of Services, the supplying of the Services again, or the refund by us of the fee paid for those Services (during the period of 12 months prior to the liability arising).
- 2.2 Except to the extent already set out in this clause, we have no liability (including liability for negligence or recklessness) to any person for any loss or damage (direct, consequential or otherwise) suffered or incurred by any person in relation to any Goods or Services supplied by us. Without limiting the generality of this limitation, we have no liability for any loss or damage resulting from any failure, defect or deficiency of any kind in any Goods or Services, and we are not liable for any loss of profit or special, indirect or consequential damages of any kind.
- 2.3 Any valid claim by you against us must be presented to us within a reasonable time, and in no event longer than 60 days after the Goods or Services have been supplied. No action may be maintained by you against us unless a timely written claim has been given under this clause, and unless legal action is commenced within 12 months after the supply of the relevant Goods or Services.

3. IMPORTANT – Third Party Supplies – Pass-Through Terms

- 3.1 The terms set out in this clause 3 have priority over any other terms in these Terms to the extent of any inconsistency in relation to the liability and warranty position for Third Party Supplies.
- 3.2 From time to time, we may provide you Goods and/or Services (a **Third Party Supply**) from or on behalf of a third-party provider (the **Principal**). We may provide a Third Party Supply as principal or as agent.
- 3.3 We do not warrant the performance or integrity of any Third Party Supply. We merely pass through to you whatever end-user representations and warranties the Principal provides to or through us with the Third Party Supply.
- 3.4 We are not responsible for any acts or omissions of the Principal, for any obligations undertaken or representations that they may make, or for any other goods or services they may supply to you, either directly or through us.
- 3.5 We have no control over the intellectual property in a Third Party Supply, and therefore do not assume any responsibility for any liability arising as a result of the Third Party Supply. We do not indemnify you for claims by third parties that may arise as a result of a Third Party Supply infringing any intellectual property of any third party. We will pass through to you any indemnity or cover provided by the Principal in respect of the Third Party Supply.
- 3.6 We have no control over, and assume no responsibility for, the intellectual property related to any Third-Party Supply, including any liability arising from claims that a Third-Party Supply infringes the intellectual property rights of any third party. We do not indemnify or defend against any claims related to such third-party intellectual property infringement. However, if the Principal (the third-party supplier) provides any indemnity or coverage for such claims, we will pass that indemnity or coverage on to you, subject to the terms provided by the Principal.
- 3.7 Any modifications or adaptations made by you to a Third-Party Supply are your sole responsibility, including any liability arising from intellectual property infringement due to those modifications.

YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY OR OTHER LIABILITY IS AS STATED IN THE PRINCIPAL'S OWN TERMS AND CONDITIONS.

4. Binding contract to supply

- 4.1 You agree to these Terms by either:
 - (a) Signing and returning a copy of these Terms; or
 - (b) Continuing to use our services after receiving a copy of these Terms.
- 4.2 Upon Acceptance, you will be bound to purchase the Goods and Services. You may not cancel an order for Goods and Services after Acceptance without our written consent, which we may withhold where we have incurred costs or commitments in reliance on your order, and which we will not unreasonably withhold where no such costs or commitments have been incurred.
- 4.3 If we agree to cancel an order for Goods or Services, you must:
 - (a) Pay to us any expense, cost or loss incurred or suffered by us as a result of the cancellation of the order; and
 - (b) Complete the purchase of any Goods that we have made or purchased as a result of your order, and pay to us our fee for any Services that we have commenced to supply.

5. Variation of Terms

5.1 Legitimate Business Interest

We reserve the right to vary these Terms from time to time where such variation is reasonably necessary to protect our legitimate business interests. This includes, but is not limited to, responding to changes in the cost of providing Goods and Services, changes in applicable laws or industry standards, or necessary adjustments to our operational requirements.

5.2 Notice of Variation

We will provide you with at least 20 Business Days' written notice of any proposed variation to these Terms. The notice will set out the details of the variation and the date on which the variation takes effect.

5.3 Right to Terminate for Material Variation

If a proposed variation is material and you do not wish to accept the variation, you may terminate this Agreement by providing us with written notice before the variation takes effect. If you exercise this right to terminate, you will not be liable for any termination fee or penalty, provided that you remain liable for all Supply Charges and other amounts accrued or owing up to the date of termination.

5.4 Deemed Acceptance

If you do not provide notice of termination and continue to request or accept the supply of Goods and Services after the variation takes effect, you will be deemed to have accepted the varied Terms.

5.5 Suspension of New Supply

Pending the resolution of any objection to a variation or the expiry of the notice period, we reserve the right to suspend the provision of any new Goods and Services (but not existing obligations already in progress) to you.

6. Supply

- 6.1 We agree to supply, and you agree to purchase, Goods and Services in the manner and at the times provided in these Terms.
- 6.2 Our Representative will meet with Your Representative on a regular basis to co-ordinate the supply of the Goods and Services.

7. Exclusivity

- 7.1 We are free to provide similar Goods and Services to persons other than you.
- 7.2 If these Terms are stated to be non-exclusive, you are free to procure similar Goods and Services from persons other than us. Otherwise, you agree to deal with us on an exclusive basis for the purchase of Goods and Services of the same or a similar nature to the Goods and Services.

8. Supervision and personnel

- 8.1 Unless otherwise agreed, we will maintain control over our personnel when providing the Goods and Services. You and your personnel must co-operate with us and our personnel.
- 8.2 You will not approach our personnel and offer them employment or otherwise engage them to provide Goods and Services of the same or similar nature to the Goods and Services for a period of no less than 12 months following the termination of these Terms.
- 8.3 You acknowledge that any of your officers or personnel who contact us about the provision of any Goods or Services are authorised to do so.

9. Subcontracting

- 9.1 We may subcontract the supply of some or all the Goods and Services to other persons.
- 9.2 We will ensure all subcontractors appointed by us to supply Goods and Services under these Terms are subject to terms similar to these Terms.
- 9.3 If we have disclosed to you that the supply of some or all the Goods and Services will be supplied by a particular subcontractor:
 - (a) The supply will be a Third Party Supply;
 - (b) The subcontractor will be Principal; and

- (c) The Supply Charges that we are entitled to are subject to change due to corresponding changes imposed by our subcontractor.

10. Use of site

- 10.1 You will give us sufficient possession of any site required for us to supply the Goods and Services.

10.2 Site Safety Obligations – Customer’s Site Safety Compliance Obligation

You, as a person conducting a business or undertaking (PCBU) under the Work Health and Safety Act 2012 (SA), must ensure so far as is reasonably practicable that the site at which our personnel are required to perform Goods and Services is safe and without risks to health and safety. This obligation exists concurrently with (and does not diminish) our own WHS duties. It includes compliance with all applicable provisions of the Work Health and Safety Act 2012 (SA) (including the industrial manslaughter provisions under section 30A) and the Work Health and Safety Regulations 2012 (SA), and any relevant codes of practice issued by SafeWork SA.

10.3 Pre-Commencement Hazard Disclosure

Before our personnel attend any site, you must provide us with a written site-specific hazard register or hazard notification identifying all known or foreseeable hazards relevant to the performance of the Goods and Services. This includes but is not limited to: confined spaces, hazardous substances, live services (electrical, gas, hydraulic), overhead work, ground instability, and access restrictions. Failure to disclose a known hazard will entitle us to recover any costs, losses or damages arising from that failure.

10.4 Site Inductions and Access

You must ensure that all our personnel are provided with site-specific inductions before commencing work, and that all necessary access, permits to work, and safe work method statement (SWMS) acknowledgements are in place before we are required to commence supply.

10.5 Right to Suspend for Safety

If we identify, or reasonably suspect, a risk to the health or safety of any of our personnel at the site that has not been adequately controlled, we may immediately suspend the supply of Goods and Services until the risk has been remediated to our reasonable satisfaction. Suspension under this clause does not constitute a breach of these Terms, and we are entitled to recover our reasonable standby costs for the period of suspension.

10.6 Indemnity

You indemnify us and our personnel against any loss, cost, damage, penalty, or liability (including WHS fines and legal costs on a full indemnity basis) arising from your failure to comply with your site safety obligations under this clause or under the Work Health and Safety Act 2012 (SA).

10.7 Survival and Priority

The obligations in this clause survive termination of the Agreement and, to the extent of any inconsistency with any other clause, take priority.

11. Delivery of Goods

- 11.1 In the absence of a specific delivery charge, we will charge our usual fees for the delivery of Goods.
- 11.2 The delivery times made known to you are estimates only. We will use reasonable endeavours to meet the proposed delivery times. However, we will not be liable to you for any loss you suffer as a result of any delay in delivery caused by any reason, including our negligence.
- 11.3 The terms of delivery of Goods is ex-our premises, and you will be responsible (and pay) for all freight and insurance ex-our premises.
- 11.4 We are conclusively presumed to have delivered Goods on these Terms if the Goods are delivered to your carrier ex-our premises, or the consignment address, whether we obtain a receipt or signed delivery docket for the Goods.

11.5 If delivery cannot be achieved, we may store the Goods or redeliver the Goods to you, and you must pay or indemnify us for all costs and expenses incurred in doing so.

11.6 Indemnity by Customer

You indemnify us and our employees, agents, and contractors against all losses, damages, expenses, and costs (including legal costs on a full indemnity basis) that we may incur or sustain as a result of:

- any breach of these Terms by you;
- any claim by a third party against us relating to your use or possession of the Goods and Services;
- any environmental damage or pollution caused by you or your agents at a delivery site;
- any infringement of intellectual property rights arising from our use of specifications, drawings, or instructions provided by you; and
- any loss or damage arising from our reliance on information or data provided by you.

11.7 Carve-out for Misconduct

The indemnity in clause 11.6 will be reduced proportionally to the extent that our own gross negligence or wilful misconduct contributed to the loss or damage.

11.8 Survival of Indemnity

This indemnity is a continuing obligation, separate and independent from your other obligations, and survives the termination or expiry of this Agreement.

- 11.9 You are not relieved of your obligation to accept and to pay for any part of an order as a result of any extensions, partial consignments or suspensions of delivery.
- 11.10 We will not be responsible for any loss or damage to Goods in transit. We will render you such reasonable assistance as may be necessary to press claims on any carrier provided you have notified us and the carrier immediately upon the loss or damage being discovered on receipt of the Goods.
- 11.11 If we agree you may return the Goods, the Goods will be at your risk until such time as the Goods reach our place of business. The expense of return will be borne by you.
- 11.12 You warrant you will arrange for appropriate insurance for Goods in transit, the cost of which will be borne by you.

12. Material Certification and Testing Documentation

12.1 Provision of Documentation by Us

Where the Proposal specifies that Goods and Services require certification or fabrication to specific standards, we will provide you with relevant documentation, which may include:

- material traceability certificates and mill certificates;
- compliance documentation for relevant Australian Standards (including AS/NZS 1163 or AS/NZS 3678 where applicable); and
- Safety Data Sheets (SDS) for any applicable Goods.

12.2 Format and Timing

We will provide the documentation referred to in clause 12.1 in English and in electronic format at the time of delivery of the relevant Goods and Services, or within a reasonable time thereafter.

12.3 Customer-Supplied Materials and Specifications

Where you provide us with materials, components, or specifications for use in the Goods and Services:

- you warrant that such materials and specifications comply with all applicable Australian Standards and regulatory requirements; and
- you indemnify us against any loss, cost, or damage we suffer arising from your supply of non-compliant or defective materials or specifications.

13. Extension of time to supply

- 13.1 If we are delayed in the supply of Goods and Services, we will notify you as soon as we are aware of an actual or expected delay.
- 13.2 We will give you details of the circumstances giving rise to the delay, the anticipated duration of the delay, and the steps that we intend to take to minimise the delay.
- 13.3 On receipt of a notice of delay, you will extend the time for the supply of the Goods and Services by a reasonable period if the delay is beyond our reasonable control and we have used (or are using) all reasonable efforts to minimise the delay.

14. How we will charge

- 14.1 We will invoice you for the Goods and Services at the rates and in the manner set out in our quote and/or specified in our Proposal.
- 14.2 We may also agree that you will pay us a General Retainer, calculated at the rates and in the manner set out in our quote and/or specified in our Proposal.
- 14.3 In consideration of us agreeing to provide the Goods and Services, you agree to promptly pay our Supply Charges within our Trading Terms.
- 14.4 If you have not paid our Supply Charges within our Trading Terms, we will immediately cease to provide further goods and services to you until such time as all our Supply Charges have been fully paid.
- 14.5 Our Supply Charges are, unless otherwise explicitly stated, quoted exclusive of applicable goods and services tax (GST). GST will, where applicable, be added to our Supply Charges.
- 14.6 The making of a payment by you will, in the absence of prior written notice to us, constitute approval of the Goods and Services supplied by us.

14.7 Dispute Resolution for Daily Work Claims

The works outlined in the daily claims sheet are deemed to apply exclusively to the date specified on the sheet.

- The client shall have 24 hours from receipt of the daily claims sheet to dispute any details regarding the works performed or charges incurred.
 - Any dispute must be submitted in writing to D&S Resources within this 24-hour period, clearly specifying the nature of the dispute.
 - If no dispute is raised within 24 hours, the claim sheet shall be deemed accepted in full, and any corresponding charges will be payable in accordance with the agreed credit terms.
 - Once accepted, the claim sheet shall be final and binding for invoicing and payment purposes.
- 14.8 If you dispute any Supply Charge made by us, in whole or in part, you must promptly notify us of the dispute, but must not delay in paying the Supply Charge within the agreed terms.
 - 14.9 We will give you advance notice of any changes to our Supply Charges. You must pay for the Goods and Services at our current Supply Charges as notified by us.
 - 14.10 Any allegation of overcharging or undercharging must be notified to the other party within 6 months of the date of invoice.

14.11 Default Payment Terms

Unless the Proposal or a specific Trading Terms schedule states otherwise, you must pay all Supply Charges within 30 days of the date of our invoice. Time is of the essence in respect of your obligation to pay all Supply Charges and other amounts due under these Terms.

15. Progress Claims

15.1 Right to Progress Claims

Where the Goods and Services are supplied progressively, in stages, or by reference to milestones (including but not limited to design phases, fabrication stages, deliverables, or separable portions of work), D&S Resources is entitled to submit progress claims for payment for any part of the Goods and Services that has been completed or partially completed.

15.2 Basis of Progress Claims

Progress claims may be made:

- in accordance with any milestone breakdown, schedule, or staging set out in the Proposal, Quote, or Project Schedule; or
- where no express milestone schedule exists, by reference to the reasonable value of the Goods and Services performed up to the date of the claim.

15.3 Evidence of Completion

Each progress claim may be accompanied by reasonable supporting information, including descriptions of work completed, delivery records, timesheets, inspection records, or other evidence of progress. Failure by the Customer to request further information within a reasonable time does not invalidate the progress claim.

15.4 Deemed Payment Claim (SOPA)

Each invoice issued by D&S Resources for a progress claim constitutes a valid payment claim for the purposes of the Building and Construction Industry Security of Payment Act 2009 (SA) (or equivalent legislation in any other applicable jurisdiction).

15.5 Payment Obligations

The Customer must pay each progress claim in accordance with the Trading Terms, irrespective of:

- whether the entire scope of the Goods and Services has been completed; or
- whether subsequent stages or deliverables remain outstanding.

15.6 No Conditional Payment

Payment of a progress claim is not conditional upon:

- completion of the entire Works;
- final delivery;
- acceptance of all Goods and Services; or
- payment by any third party to the Customer.

15.7 Undisputed Portion Payable

If the Customer disputes any part of a progress claim, the undisputed portion must be paid in full within the applicable payment period. Any dispute must be notified in writing and dealt with in accordance with these Terms and applicable security of payment legislation.

15.8 Suspension Rights

Without limiting any other rights, D&S Resources may suspend further supply of Goods and Services if a progress claim is not paid when due, in accordance with its statutory and contractual rights.

16. Application of payments

Any payments tendered by you will be applied as follows:

- 16.1 First as reimbursement for any collection costs incurred by us;
- 16.2 Secondly, to satisfy any other obligation that is not secured;
- 16.3 Thirdly, in payment of any interest charged to you under these Terms;
- 16.4 Fourthly, to satisfy an obligation that is secured, but not by a PMSI;
- 16.5 Fifthly, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI; and
- 16.6 Sixthly, to satisfy or partly satisfy the oldest portion of our Supply Charges that is secured by a PMSI using funds or proceeds from any source, or, despite the foregoing, any manner we see fit.

17. No withholding or offset

You may not withhold from any payment, or offset against any payment, due to us any amount in respect of any amount owed by or claim against us.

18. Payments and interest charges

- 18.1 If you fail to pay us any amount under these Terms, then all monies which would become payable by the Customer to D&S at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and D&S may, without prejudice to any other remedy available to it:
 - (a) Immediately terminate the supply arrangement between us by providing you with written notice of termination;
 - (b) Terminate any credit facilities extended to you;
 - (c) Initiate legal action for recovery of any outstanding amounts owed by you and the costs incurred (including but not limited to legal costs on a solicitor and own client basis); and
 - (d) Cease or suspend for such period as D&S thinks fit, supply of any further goods or services to the Customer without liability to the Customer or any third party for any loss or damage whether of a direct or consequential nature.
- 18.2 Time is of the essence for the payment of amounts due to us by you.
- 18.3 You will pay interest on amounts due to us that are over the payment terms at the rate of **2% per month** accrued daily and compounded monthly from the date payment is due to the date on which payment is received by us.
- 18.4 You will be liable to us for all costs and expenses (including legal costs) incurred by us in collecting any overdue account, or incurred by us due to any breach or default of these terms, and must pay the same to us immediately upon notice or demand.

19. Disclose all relevant information

- 19.1 You must disclose all relevant information to us relating to the terms, conditions and circumstances in which we are to supply the Goods and Services. Without limitation, you will disclose to us:
 - (a) Accurate, complete and sufficient information concerning the Goods and Services to allow us to comply with all laws and regulations concerning the supply of the Goods and Services; and
 - (b) All foreseeable hazards associated with the supply of the Goods and Services by us.
- 19.2 You confirm that all information provided by you, including the Reference Materials, are true, accurate and complete in all material respects, and may be relied upon by us in the supply of the Goods and Services.
- 19.3 You indemnify us against all losses, costs, penalties and expenses which we pay or incur as a result of you failing to fully discharge the obligations in this clause 19.

19.4 Acceptance and Amendment of Information Disclaimer

The information contained in MDRs supplied by D&S Resources is provided on an “as-is” basis and will be deemed accepted by you 30 days from the date of issue by D&S Resources.

Any changes or amendments to the MDRs must be requested before the conclusion of this 30-day period. D&S Resources reserves the right to charge for any additional time and expenses incurred for amendments made after the cessation of this period.

D&S Resources accepts no liability for any errors or omissions in the content of the MDRs.

20. Retention of title to Goods

- 20.1 All rights, title and interest in all Goods supplied by us remain with us, and do not pass to you, until all monies payable by you to us (including any interest, freight or insurance charges) have been paid in full.

21. PPSA further assurances

- 21.1 The PPSA applies to these Terms.
- 21.2 You agree that a Security Interest arises under these Terms in all present and future Goods supplied by us to you and all proceeds from the disposal of Goods in the form of a PMSI.
- 21.3 The Security Interest arising under this clause 21 attaches to the Goods when the Goods are collected by you or are dispatched from our premises.
- 21.4 You must:
- (a) Take whatever action is reasonably necessary (including making amendments to these Terms or executing a new security document) to:
 - (i) ensure that a Security Interest created under, or provided for by, these Terms attaches to the collateral that is intended to be covered by that Security Interest, is enforceable, perfected, maintained and otherwise effective, and has the priority contemplated by these Terms;
 - (ii) enable us to prepare and register a financing statement or financing change statement if we in our absolute discretion consider it necessary; and
 - (iii) enable us to exercise any of our powers in connection with any Security Interest created under or provided by these Terms; and
 - (b) Provide any information requested by us in connection with these Terms to enable us to exercise any of our powers or perform our obligations under the PPSA.
- 21.5 You must not change your name (or trading name), your address or place of incorporation or any other details required to be contained in a financing statement under the PPSA without our prior written consent.
- 21.6 Except if section 275(7) of the PPSA applies, we and you agree not to disclose any information of the kind referred to in section 275(1) of the PPSA that is not publicly available and you agree not to provide any authorisation for the disclosure of such information.
- 21.7 You agree that:
- (a) We are under no obligation to dispose of or retain any PPSA personal property we seize within a reasonable time under section 125 of the PPSA;
 - (b) You must not complain of any damage, cost or inconvenience caused by us in taking apparent possession of any PPSA personal property under section 126 of the PPSA;
 - (c) Following a default, you have no rights to redeem the PPSA personal property under section 142 of the PPSA; and
 - (d) You have no rights to reinstate these Terms following a default under section 143 of the PPSA.
- 21.8 You waive your rights to receive:
- (a) A notice of our proposal to remove PPSA personal property which has become an accession under section 95 of the PPSA;

- (b) A notice of our proposal to exercise its rights in accordance with land law under section 118(1)(b) of the PPSA;
- (c) A notice of our action (such action arising under section 120(2) of the PPSA) in relation to an interest in collateral under section 121(4) of the PPSA;
- (d) A notice of our seizure of certain PPSA personal property under section 123(2) of the PPSA;
- (e) A notice of our proposal to dispose of any PPSA personal property under section 130 of the PPSA;
- (f) Details of the amounts paid to other secured parties in a statement of account provided by us under section 132(3)(d) of the PPSA;
- (g) A statement of account under section 132(4) of the PPSA;
- (h) A notice of our proposal to retain PPSA personal property under section 135 of the PPSA; and
- (i) A copy of, or notice of, any verification statement confirming registration of a financing statement or a financing change statement relating to any Security Interest under, or provided for by these Terms.

21.9 You waive any rights you may have to object to our proposal to:

- (a) Purchase PPSA personal property under section 129(2)(b) of the PPSA; and
- (b) Retain PPSA personal property under section 134(2)(b) of the PPSA.

21.10 Anything that is required by us to be done under this clause 21 must be done by you at your own expense. You agree to reimburse our costs in connection with any action taken by us under or in connection with this clause 21.

21.11 The terms ***attaches***, ***collateral***, ***financing change statement***, ***financing statement***, ***perfected*** and ***personal property*** as used in this clause 21 have the meaning given to them in the PPSA.

22. Security for payments legislation

22.1 The provisions of the Building and Construction Industry Security of Payment Act, 2009 (SA) (SOPA), and any equivalent state legislation, apply to all supply of goods and services under these Terms. D&S Resources is entitled to exercise all rights under SOPA, including but not limited to, the right to claim progress payments, suspend work, and recover interest on overdue payments, as applicable.

22.2 Nothing in these Terms is to be construed as limiting any of our rights under the SOPA.

22.3 You agree that any invoice rendered for a Supply Charge is deemed to be a payment claim for the purposes of the SOPA.

22.4 Payment Claim Endorsement

Where we issue an invoice that is intended to be a payment claim under the Building and Construction Industry Security of Payment Act 2009 (SA) (the "SOPA"), that invoice will include the following statement: "This is a payment claim made under the Building and Construction Industry Security of Payment Act 2009 (SA)".

22.5 Effect of Omission

The absence of the endorsement in clause 22.4 on any particular invoice does not affect our contractual right to payment for Goods and Services supplied. However, you acknowledge that our statutory rights to adjudication under the SOPA are only available for invoices bearing that endorsement.

22.6 Reference Dates

For the purposes of the SOPA, the "reference date" is the date specified in the Proposal. If no date is specified in the Proposal, the reference date is the last day of each calendar month in which Goods and Services were supplied or work was performed.

23. Ownership of work product

23.1 Subject to clause 23.2 and unless otherwise explicitly agreed by us in writing, all Work Product, including but not limited to any intellectual property rights designed, developed, or produced by us in connection with the supply of the Goods and Services, will at all times remain our sole and exclusive property, irrespective of whether such products are sold, distributed, or transferred to you or any third party.

- 23.2 Subject to any overriding rights or obligations imposed by law, you are entitled to retain one copy of the Work Product for your internal use and records, as well as such additional copies as may be required by laws or regulations applicable to the Goods and Services. Such retention does not grant any ownership or licensing rights beyond the limited use expressly allowed by us.
- 23.3 If you fail to pay our Supply Charges in full, any actual or implied license to retain, use, or distribute any Work Product automatically terminates. Upon request, you must return all originals and copies of the Work Product to us within 5 Business Days.
- 23.4 All file notes, work papers, technical documentation, and any other supporting materials created by us during the supply of the Goods and Services remain our property, and you have no right to access, use, or claim ownership of these materials.
- 23.5 Our ownership and rights to the intellectual property in any Work Product will not be affected by the sale, distribution, or transfer of any product incorporating the Work Product. You are not permitted to modify, reverse-engineer, sublicense, or create derivative works from the Work Product or its underlying intellectual property without our prior written consent.
- 23.6 To the extent permitted by law and subject to any express written agreement to the contrary, our IP terms take precedence.
- 23.7 All information, technical details, specifications, and proprietary processes provided by D&S Resources to the customer in the course of the agreement are deemed confidential. The customer agrees not to disclose, share, or use this information for any purpose other than the agreed-upon work without prior written consent.
- 23.8 Any breach of the intellectual property clauses, including unauthorized use, modification, distribution, or disclosure of our Work Product, will result in immediate termination of all licenses and entitle D&S Resources to seek damages and injunctive relief.
- 23.9 The customer agrees to indemnify and hold D&S Resources harmless from any claims, losses, or damages arising out of the customer's unauthorized use, modification, or distribution of our intellectual property.
- 23.10 D&S Resources reserves the right to audit the customer's use of the Work Product to ensure compliance with these IP terms, and the customer agrees to cooperate fully with such audits.

24. Consumables

- 24.1 We agree to procure and provide to you such Consumables as may reasonably be required by you or us in connection with the supply of the Goods and Services.
- 24.2 You agree to reimburse us at our cost, or on the other basis agreed between us, for all Consumables procured by us in the supply of the Goods and Services.
- 24.3 Unless specifically incorporated into our Supply Charges, you will reimburse us for any other out-of-pocket costs and expenses reasonably incurred by us in connection with the provision of the Goods and Services.

25. Duration of this agreement

- 25.1 We will supply the Goods and Services to you from the Commencement Date and until Termination. However, we may accept or reject any order from you (at our discretion).
- 25.2 If these Terms are stated to be for a fixed period, or in respect of the supply of certain discrete Goods or Services, then these Terms will terminate on the expiry of that period or completion of the supply.
- 25.3 Subject to clause 25.2, either of us may terminate these Terms by giving the other party written notice of termination of no less than the Termination Notice Period. On expiry of the Termination Notice Period these Terms terminates without prejudice to our respective rights accruing or accrued to the date of Termination.
- 25.4 If you ask us to supply further Goods and Services after the Termination of these Terms, and we commence to supply the Goods and Services without first agreeing with you different terms to these Terms, then the terms of these Terms will regulate the supply of those further Goods and Services.
- 25.5 Either of us may terminate these Terms immediately by written notice to the other party, if that other party:

- (a) Commits a breach of any of the material provisions of these Terms, or is in default of any warranty or obligation under these Terms, and the defaulting party fails to remedy such breach or default within 15 Business Days of receiving written notice specifying such breach or default;
- (b) Commits any act constituting an act of bankruptcy; or
- (c) Suffers a receiver, administrator or liquidator to be appointed to any of its assets or property or any part thereof,
unless that default is waived by the other party, but without prejudice to any other rights or remedies available to the other party.

25.6 The expiry or termination of these Terms is without prejudice to any rights that have already accrued to either of us under these Terms.

25.7 Default Termination Notice Period

Unless a different Termination Notice Period is specified in the Proposal, D&S Resources may terminate this Agreement for convenience by providing the other party with at least 20 Business Days' written notice. Termination of this Agreement does not affect any accrued rights or the obligation to pay any outstanding Supply Charges, which remain due and payable notwithstanding the Termination.

26. Materials management

- 26.1 You may collect your Reference Materials within the period of 15 Business Days following Termination of these Terms.
- 26.2 We may destroy or discard any of your Reference Materials that you do not collect from us on Termination of these Terms.
- 26.3 If we are required to store any of your Reference Materials, you will be charged the costs of storage. You will also be charged any costs of retrieving your Reference Materials from storage.
- 26.4 All Reference Materials in our possession, both during and following the term of these Terms, are held by us at your risk. You are strongly encouraged to make your own insurance arrangements to cover the perceived value of your Reference Materials.

27. Risk of loss

- 27.1 Unless otherwise agreed between us, you are responsible for:
 - (a) Any loss or damage to all Goods supplied by us as from the time of supply; and
 - (b) Any loss or damage to your property during the supply of the Goods and Services.
- 27.2 You warrant to us that you have insurance to cover any loss or damage to property subject to clause 27.1.

28. Privacy and naming

- 28.1 Our privacy policy is incorporated into these Terms and binds us both. We may update our privacy policy from time to time by posting a new version on our website. The updated privacy policy will be binding on you and us from the date it is posted on our website. To the extent of any inconsistency between these Terms and our privacy policy, these Terms prevail.
- 28.2 In some circumstances, we may be compelled by law to disclose your information. You authorise us to disclose your information when required by law and where necessary in furtherance of the supplies that we make to you under these Terms.
- 28.3 Except as you may otherwise instruct us, you agree that we may mention your name as a customer of our business in our promotional material and include a summary of the nature of our supply of Goods and/or services to you.
- 28.4 If you provide your email address, mailing address or mobile phone number to us, you agree that we may, from time to time, send you information regarding offers, services or promotions, copies of our newsletter or related newsletters, invitations to events, or other publications relating to our business. If you wish to opt-out of receiving

such information, or wish to access your personal information, please contact us. We will not provide your contact details to third parties for marketing purposes, except with your prior consent.

- 28.5 Where Goods or Services are supplied to you on credit, you irrevocably authorise us to make such enquiries as we deem necessary to investigate your credit worthiness from time to time, including the making of enquiries of persons nominated as trade referees, your bankers or any other credit providers (the **Information Sources**). You hereby authorise the Information Sources to disclose to us such information concerning you which is within their possession, and which is requested by us.
- 28.6 All personal information collected by us, including credit reference reports obtained from third parties, is collected to be used for the purposes of account establishment, payment and administration, and for the other purposes set out above. It is not otherwise to be disclosed to any third party, except for our agents and advisors involved in our credit provision and debt collection processes. Your personal information may also be used by us for account servicing and our own direct marketing purposes.

29. Nature of our relationship

We will supply the Goods and Services as an independent contractor and neither us nor any of our personnel will (unless otherwise agreed by us) be, or be deemed to be in partnership or in a joint venture relationship with you, or your employee, servant or agent.

30. Competition and Consumer Act 2010 (Cth)

- 30.1 These Terms must be read subject to the Competition and Consumer Act 2010 (Cth) and to any implied terms, conditions or warranties imposed by that Act or any other Commonwealth, Territory or State legislation insofar as such legislation may be applicable and prevents the exclusion or modification of any such term, condition or warranty.
- 30.2 You agree that you have inspected and tested any Goods supplied by us to you prior to purchase, and that at the time of purchase you agreed the Goods were of acceptable quality.
- 30.3 You accept that facilities for the repair of Goods will not be available unless otherwise notified by us, and that you were aware of this fact at the time of purchase of the Goods.
- 30.4 We will agree a time for the provision of our Services with you. You agree that the time within which we provide Services to you is reasonable.

31. Force majeure

- 31.1 Neither of us is liable for any delay or failure to perform our obligations under these Terms if such delay is due to Force Majeure.
- 31.2 If a delay or failure of a party to perform its obligations is caused or anticipated due to Force Majeure, the performance of that party's obligations will be suspended during the Force Majeure.
- 31.3 If a delay or failure by a party to perform its obligations due to Force Majeure exceeds 60 Business Days, either party may then terminate these Terms with notice to the other party.

32. Dispute resolution

- 32.1 All disputes or differences that may arise between us about the construction or effect of these Terms, or our respective rights, duties and liabilities, or any matter or event connected with or arising out of these Terms, must initially be referred on notice to each other party.
- 32.2 Either of us may give notice to the other that this clause 32 applies to any dispute arising between us.
- 32.3 The notice in clause 32.2 must include a summary of the issues in dispute and notification of a time within 10 Business Days beginning 4 Business Days after the service of the notice, and a place in the capital of the State at which our representatives are to meet to try to resolve the dispute.
- 32.4 Our representatives must meet at the time and place specified in the notice to try to resolve the dispute and must, if necessary, continue to negotiate for 2 consecutive Business Days unless they otherwise agree to reconvene.

- 32.5 If the dispute has not been resolved by our representatives by the end of the meeting then either party may within 10 Business Days thereafter apply to the President of the Law Society or professional governing body of the legal profession of the State to appoint a neutral adviser to assist in a further attempt by us in good faith to resolve the dispute by structured negotiations. Such person must act as an expert and not as an arbitrator, and is entitled to appoint such technical experts as he or she considers necessary to assist in seeking to resolve the matter referred to them.
- 32.6 If we fail to appoint a neutral adviser within the 10 Business Days referred to in clause 32.5 or we fail to reach agreement in the structured negotiations within 20 Business Days of the neutral adviser being appointed, then any dispute may be referred to a court of competent jurisdiction. Neither party is precluded from taking such interim formal steps as may be considered necessary to protect the party's position while the mediation or other procedure is pending or continuing.
- 32.7 The costs of the neutral adviser must be borne equally between us.

33. Special Conditions

- 33.1 The Special Conditions (if any) form part of these Terms.
- 33.2 To the extent there is any conflict between these Terms and a Special Condition, the Special Condition prevails.

34. Capacity

For the purposes of these Terms each party:

- (a) Expressly acts, covenants and binds on behalf of itself and on behalf of its related parties (including heirs, successors, permitted assigns, associated entities and legal personal representatives); and
- (b) Covenants to procure (to the best of its abilities) the performance by each of its related parties of the terms and conditions contained herein.

35. Waiver

- 35.1 Any waiver or forbearance by us in regard to the performance of these Terms operates only if in writing and applies only to the specified instance, and does not affect the existence and continued applicability of these Terms.
- 35.2 No failure or delay on our part in exercising any right, power or privilege under these Terms (and no course of dealing between or among any of the parties) operates as a waiver of any such right, power or privilege.
- 35.3 No waiver of any default on our part on any one occasion constitutes a waiver of any subsequent or other default. No single or partial exercise or any such right, power or privilege precludes the further or full exercise of such right, power or privilege.

36. Invalid provisions

If any provision of these Terms is held to be illegal, invalid or unenforceable, these Terms must be considered divisible and inoperative as to such provision to the extent it is illegal, invalid or unenforceable. In all other respects these Terms remains in full force and effect.

37. Costs

You will bear your own costs in reviewing, executing and performing these Terms.

38. Notices

- 38.1 All notices must be in writing and must be given by any one of the following means by:
- (a) Delivering it to the address of the party specified in these Terms on a Business Day during normal business hours;
 - (b) Sending it to the address of the party by pre-paid post; or
 - (c) Sending it by email transmission to the email address of the party.

38.2 A notice is given and received:

- (a) If given in accordance with clause 38.1(a) – on the next Business Day after the delivery in the place of delivery;
- (b) If given in accordance with clause 38.1(b) – 5 Business Days after the day of posting in the place of delivery;
- (c) If given in accordance with clause 38.1(c) – upon receipt of electronic confirmation of delivery of the message.

39. Entire agreement

- 39.1 Our Proposal, these Terms, and any other terms incorporated into our Proposal (collectively, the **Agreement**) constitute the sole and entire understanding with respect to the subject matter of the Agreement and supersede all prior discussions, proposals, representations and understandings, written or oral.
- 39.2 To the extent there is any conflict between these Terms and our Proposal, these Terms prevail, in each case except to the extent that our Proposal specifically states that it overrides or modifies these Terms, and then only in the context of that Proposal.

40. Legal effect

The parties intend the provisions of these Terms to be legally binding and enforceable against us.

41. Execution in counterparts

These Terms may be executed in two or more counterparts and execution by each of the parties of any one of such counterparts constitutes due execution of these Terms.

42. Applicable law and jurisdiction

- 42.1 These Terms are governed by and construed in accordance with the laws of the State.
- 42.2 The parties irrevocably submit to the non-exclusive jurisdiction of the Courts of the State in respect of any claim, dispute or difference arising out of or in connection with these Terms.

43. Interpretation

- 43.1 In these Terms unless the context indicates a contrary intention:
- (a) The singular includes the plural and conversely;
 - (b) A gender includes all genders;
 - (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
 - (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
 - (e) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, these Terms;
 - (f) A reference to an agreement or document (including these Terms) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by these Terms or that other agreement or document;
 - (g) A reference to a party to these Terms or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
 - (h) A reference to 'us' or 'you' includes a reference to our or your employees, servants and/or agents, as the context permits or requires;
 - (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
 - (j) A reference to conduct includes, an omission, statement or undertaking, whether or not in writing;

- (k) A reference to an agreement includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing;
- (l) A reference to dollars and \$ is to Australian currency;
- (m) A reference to a month is to a calendar month (or part thereof);
- (n) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (o) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (p) References to agree, approve or consent are references to agreement, approval or consent (as the case may be) in writing; and
- (q) Nothing in this agreement is to be interpreted against a party solely on the ground that the party put forward this agreement or any part of it.

44. Dictionary

In these Terms the following expressions have the meanings assigned to them respectively unless those meanings are repugnant to the context or subject matter:

Acceptance means the acceptance by you of a Proposal from us, or our acceptance of a Proposal from you;

Business Day means a weekday (excluding a public holiday) in the State;

Commencement Date means the date of Acceptance, or the other date (if any) agreed between us to be the date of commencement of these Terms;

Confidential Information means any information coming to a party by virtue of being a party to these Terms, except so far as that information is then in the public domain other than as a result of a breach by the party of these Terms;

Force Majeure means a circumstance beyond the reasonable control of the parties that result in a party being unable to observe or perform on time an obligation under these Terms. Such circumstances include but are not be limited to: (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and (c) strikes;

General Retainer means the general periodic retainer set out in our Proposal;

Goods and Services means the goods, advice, recommendations, information, rights and services to be supplied under these Terms;

Intellectual Property means all industrial and intellectual property rights including, without limitation, any copyright, patents, trademarks, service marks, design rights or eligible layout rights (whether registered or not), rights to apply for registration of any of these rights, innovations, drawings, discoveries, inventions, improvements, trade secrets, technical data, formulae, computer programs, data bases, logos, domain names, business and trade names, Confidential Information, know-how and advertising material;

Our Representative means the person nominated by us to represent us under these Terms;

PMSI means a purchase money security interest as that term is defined in the PPSA;

PPSA means the Personal Property Securities Act 2009 (Cth);

Proposal means our offer to supply you with Goods and/or Services, or if we have not made you an offer, your order to us for us to supply you with Goods and/or Services;

Reference Materials means the materials provided by you to us for the purposes of us supplying the Goods and Services, including those materials listed in our Proposal;

Security Interest means: (a) any security for the payment of money or performance of obligations including a mortgage, charge, lien, pledge, trust or power, or title retention arrangement; (b) a security interest as defined in the PPSA; or (c) any document to grant or create anything referred to in either (a) or (b), and any other thing which gives a creditor priority to any other creditor with respect to any asset or an interest in any asset;

Supply Charges means our fees and charges for the supply of the Goods and Services, including the fees and charges set out in our Proposal, together with our General Retainer (if any);

State means South Australia;

Trading Terms/Schedule means the period within or the basis on which you are required to pay our Supply Charges, as set out in our Proposal or invoice;

Termination means the termination or expiry of these Terms;

Termination Notice Period means the termination notice period specified in our Proposal;

Work Product means all Intellectual Property in and associated with the Goods and Services, and the product or outcome of our supply of the Goods and Services; and

Your Representative means the person nominated by you to represent you under these Terms.

END OF TERMS
