

TERMS OF TRADE

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "FSQ" means Fire Services Queensland Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Fire Services Queensland Pty Ltd.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting FSQ to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by FSQ to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Equipment" means all Equipment including any accessories supplied on hire by FSQ to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by FSQ to the Customer.
- 1.6 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.7 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.8 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between FSQ and the Customer in accordance with clause 7 below.
- 1.9 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods/Equipment.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods/Equipment on credit shall not take effect until the Customer has completed a credit application with FSQ and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods/Equipment request exceeds the Customers credit limit and/or the account exceeds the payment terms, FSQ reserves the right to refuse Delivery.
- 2.6 The Customer acknowledges that no allowance has been made for any testing to be performed outside FSQ's normal working hours.
- 2.7 Services performed outside normal working hours or of a non-continuous nature will incur extra charges.
- 2.8 The Customer accepts that whilst FSQ shall notify the Customer of any defects found during testing, FSQ shall not be held liable for any system pressure loss/increase, worn and/or damaged equipment, or for false alarms that such equipment may generate to the fire brigade, whether or not FSQ has notified you of any defect.
- 2.9 that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

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

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Customer agrees that should the Customer introduce any third party to FSQ as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer to order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies FSQ in writing that said person is no longer the Customer's duly authorised representative).
 - 4.2 In the event that the Customer's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise FSQ in writing of the parameters of the limited authority granted to their representative.
 - 4.3 The Customer specifically acknowledges and accepts that they will be solely liable to FSQ for all additional costs incurred by FSQ (including FSQ's profit margin) in providing any Services, Goods or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
- ### 5. Change in Control
- 5.1 The Customer shall give FSQ not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by FSQ as a result of the Customer's failure to comply with this clause.
- ### 6. Quotations
- 6.1 Quotations are conditional on full access being allowed to FSQ's technician to perform the work.
 - 6.2 No allowance is made for delays due to locked doors, late cancellations or failure to attend appointments, etc.
 - 6.3 Where required and unless otherwise included, the following additional services shall incur an extra charge:
 - (a) all repairs, rectification work and replacement of missing equipment to bring the system up to meet current Australian Standards;
 - (b) the overhaul of associated fire protection equipment, battery replacement, pump servicing and/or repairs;
 - (c) work on equipment not already specified;
 - (d) testing to/and including levels of services other than those already stated;
 - (e) spare parts and fittings, emergency callouts, tri-annual overhauls, diesel fuel and/or lubrication;
 - (f) special access equipment, hire of ladders, scissors lifts, etc. to gain access to detectors or equipment for testing or maintenance; and
 - (g) parts and labour required to repair damaged caused by any event including, but not limited to, those as per clause 26.8, vandalism, misuse, water or electrical transients/surges.
 - 6.4 The Customer acknowledges that additional fees may apply for FSQ to provide:
 - (a) third party accreditations;
 - (b) licence fees
 - (c) provision of Annual Essential Safety Measures Report (AESMR); and
 - (d) logbooks.
- ### 7. Price and Payment
- 7.1 At FSQ's sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by FSQ to the Customer; or
 - (b) FSQ's quoted price (subject to clause 7.2 which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - 7.2 FSQ reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to site accessibility, crawl spaces and/or inspection points, service locations and/or pipes not where indicated on plans, obscured site defects, hidden pipes and/or services in walls and/or cavities, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to FSQ in the cost of labour or Goods which are beyond FSQ's control.
 - 7.3 Variations will be charged for on the basis of FSQ's quotation, and will be detailed in writing, and shown as variations on FSQ's invoice. The Customer shall be required to respond to any variation submitted by FSQ within ten (10) working days. Failure to do so will entitle FSQ to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
 - 7.4 At FSQ's sole discretion a non-refundable deposit may be required.
 - 7.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by FSQ, which may be:
 - (a) on Delivery of the Goods/Equipment;
 - (b) before Delivery of the Goods/Equipment;
 - (c) the date specified on any invoice, specified contract or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by FSQ.
 - 7.6 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and FSQ.
 - 7.7 FSQ may in its discretion allocate any payment received from the Customer towards any invoice that FSQ determines and may do so at the time of receipt or at any time

afterwards. On any default by the Customer FSQ may re-allocate any payments previously received and allocated. In the absence of any payment allocation by FSQ, payment will be deemed to be allocated in such manner as preserves the maximum value of FSQ's Purchase Money Security Interest (as defined in the PPSA) in the Goods/Equipment.

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

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

8. Delivery of Goods/Provision of Services

- 8.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that FSQ (or FSQ's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 At FSQ's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 8.3 Any time specified by FSQ for Delivery of the Goods/Equipment is an estimate only and FSQ will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods/Equipment to be delivered at the time and place as was arranged between both parties. In the event that FSQ is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then FSQ shall be entitled to charge a reasonable fee for redelivery and/or storage.

9. Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, FSQ is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by FSQ is sufficient evidence of FSQ's rights to receive the insurance proceeds without the need for any person dealing with FSQ to make further enquiries.
- 9.3 If the Customer requests FSQ to leave Goods outside FSQ's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 9.4 The Customer accepts that FSQ shall not accept responsibility for false alarms unless it can be proven to have been caused by faulty workmanship provided by FSQ's technician.
- 9.5 The Customer shall indemnify FSQ from any liability whatsoever arising from the Customer electing to have hydrants inspected on an annual basis rather than monthly with the exception of sites that are serviced in accordance with AS1851-2005 or its replacement standard.
- 9.6 FSQ shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, FSQ accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 9.7 FSQ shall upon installation ensure that all installed Goods meet current industry standards applicable, however FSQ cannot guarantee that condition will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 9.8 The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 9.9 Where FSQ is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is structurally sound and will sustain the installation and work incidental thereto and FSQ shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 9.10 The Customer acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
 - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (c) mark or stain if exposed to certain substances; and
 - (d) be damaged or disfigured by impact or scratching.
- 9.11 Where the Customer has supplied materials for FSQ to complete the Services, the Customer acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. FSQ shall not be responsible for any defects in the Services, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 9.12 The Customer acknowledges that FSQ is only responsible for parts that are replaced by FSQ and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify FSQ against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 9.13 In the event that FSQ discovers asbestos/hazardous materials whilst undertaking any Services FSQ shall immediately advise the Customer of the same and shall be entitled to suspend the Services pending a risk assessment in relation to those materials. The Customer shall be liable for all additional costs (howsoever arising) incurred by FSQ as a result of the discovery of asbestos/hazardous materials and/or any suspension of Services in relation thereto.
- 9.14 The Customer accepts that electronic fire systems, smoke, heat and like detectors installed to/at their premises:

- (a) are for monitoring and detection purposes and should not be seen as a life saving device; and
- (b) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.

9.15 It shall be the Customer's responsibility:

- (a) to ensure the system equipment is tested and maintained to full operational condition; and for all phone calls or data transmissions emanating from the system control panel; and to ensure all electronically protected areas are free from obstacles which may impair the operation of the system.

9.16 The Customer acknowledges and agrees that:

- (a) FSQ does not guarantee the performance or transmission speed or quality of any data; and
- (b) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, software applications, servers or networks by third parties; and
- (c) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc.) and as such FSQ cannot warrant against delays or errors in transmitting data between the Customer and any person or entity the Customer conducts communications with including monitoring data, and you agree that FSQ will not be liable for any losses which the Customer suffers as a result of delays or errors in transmitting data or other communications and/or documents.

9.17 Where the Customer updates or upgrades any software or hardware that may interface with FSQ's alarm or monitoring applications without advising FSQ, the Customer shall indemnify FSQ of any loss or damage the Customer or the Customer's property or possessions may incur as a result of the Customer's failure to advise FSQ of any such update or upgrade that may affect the effectiveness of the alarm or monitoring.

9.18 The Customer accepts that during testing, water may cause water or mechanical damage during prescribed testing where system failure occurs. FSQ shall not be held liable to the Customer, the property owner or other third party for any damages, losses or costs, (including, but not limited to, down time, damage to the fire services(s) and other system(s) connected to or that form part of the hydrant service) resulting from such an event. The Customer also accepts, that in some situations, it may be necessary to have the installation shut down for the duration of the Services and would occur during daylight hours only.

9.19 The Customer acknowledges that:

- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in FSQ's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by FSQ;
- (b) while FSQ may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that FSQ has given these in good faith, and are estimates industry prescribed estimates under optimal operating conditions.

9.20 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

10. Customer's Responsibilities

10.1 The Customer shall:

- (a) provide documentation of all dispensations granted by authorities at time of occupancy or later;
- (b) provide to FSQ with building permit drawings or system drawings and access to onsite knowledge must be available; and
- (c) notify FSQ of any malfunction or failure of the equipment or if the equipment has been used.

11. Access

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

11.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, hoists or other lifting equipment as may be deemed necessary by FSQ.

12. Underground Locations

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

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

13. Compliance with Laws

13.1 The Customer and FSQ shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities, the Building Code, and Australian Safety Standards or special conditions that may be applicable to the Services. In the absence of any statutes, regulations, bylaws, codes or standards, then FSQ shall use accepted industry practices.

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

13.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

13.4 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the

- Electrical Safety Regulations, applicable Act, and/or Codes of Practice. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 13.5 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by FSQ, then FSQ shall notify the Customer immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Customer accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Customer's account.
- 13.6 Any live Services or Services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". FSQ's live Services procedures are designed to eliminate risk of injury to FSQ's employees, damage to the Customer's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This shall be invoiced in accordance with clause 7.2.
- 14. Title to Goods**
- 14.1 FSQ and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid FSQ all amounts owing to FSQ; and
 - (b) the Customer has met all of its other obligations to FSQ.
- 14.2 Receipt by FSQ of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3 It is further agreed that until ownership of the Goods passes to the Customer in accordance with clause 14.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to FSQ on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for FSQ and must pay to FSQ the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for FSQ and must pay or deliver the proceeds to FSQ on demand;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of FSQ and must sell, dispose of or return the resulting product to FSQ as it so directs;
 - (e) the Customer irrevocably authorises FSQ to enter any premises where FSQ believes the Goods are kept and recover possession of the Goods;
 - (f) FSQ may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of FSQ;
 - (h) FSQ may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 15. Personal Property Securities Act 2009 ("PPSA")**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment and/or collateral (account) – being a monetary obligation of the Customer to FSQ for Services – that have previously been supplied and that will be supplied in the future by FSQ to the Customer.
- 15.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which FSQ may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, FSQ for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of FSQ;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of FSQ;
 - (e) immediately advise FSQ of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.4 FSQ and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by FSQ, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Customer must unconditionally ratify any actions taken by FSQ under clauses 15.2 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 15 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 15 will apply generally for the purposes of the PPSA.
- 16. Security and Charge**
- 16.1 In consideration of FSQ agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Customer indemnifies FSQ from and against all FSQ's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising FSQ's rights under this clause.
- 16.3 The Customer irrevocably appoints FSQ and each director of FSQ as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1 The Customer must inspect the Goods/Equipment on Delivery and must within seven (7) days of Delivery notify FSQ in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow FSQ to inspect the Goods/Equipment.
- 17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 17.3 FSQ acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, FSQ makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. FSQ's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Customer is a consumer within the meaning of the CCA, FSQ's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If FSQ is required to replace the Goods under this clause or the CCA, but is unable to do so, FSQ may refund any money the Customer has paid for the Goods.
- 17.7 If the Customer is not a consumer within the meaning of the CCA, FSQ's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by FSQ at FSQ's sole discretion;
 - (b) limited to any warranty to which FSQ is entitled, if FSQ did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 17.8 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 17.1; and
 - (b) FSQ has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, FSQ shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods/Equipment;
 - (b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by FSQ;
 - (e) fair wear and tear, any accident, or act of God.
- 17.10 Notwithstanding anything contained in this clause if FSQ is required by a law to accept a return then FSQ will only accept a return on the conditions imposed by that law.
- 18. Intellectual Property**
- 18.1 Where FSQ has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of FSQ. Under no circumstances may such designs, drawings and documents be used without the express written approval of FSQ.
- 18.2 The Customer warrants that all designs, specifications or instructions given to FSQ will not cause FSQ to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify FSQ against any action taken by a third party against FSQ in respect of any such infringement.
- 18.3 The Customer agrees that FSQ may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which FSQ has created for the Customer.
- 19. Default and Consequences of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at FSQ's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes FSQ any money the Customer shall indemnify FSQ from and against all costs and disbursements incurred by FSQ in recovering the debt (including

- but not limited to internal administration fees, legal costs on a solicitor and own client basis, FSQ's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies FSQ may have under this Contract, if a Customer has made payment to FSQ, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by FSQ under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 19.4 Without prejudice to FSQ's other remedies at law FSQ shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to FSQ shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to FSQ becomes overdue, or in FSQ's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by FSQ;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20. Cancellation**
- 20.1 Without prejudice to any other remedies FSQ may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions FSQ may suspend or terminate the supply of Goods/Equipment to the Customer. FSQ will not be liable to the Customer for any loss or damage the Customer suffers because FSQ has exercised its rights under this clause.
- 20.2 FSQ may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice FSQ shall repay to the Customer any money paid by the Customer for the Goods/Equipment. FSQ shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Customer cancels Delivery of the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by FSQ as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by FSQ is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. FSQ acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part III C of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). FSQ acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by FSQ that may result in serious harm to the Customer, FSQ will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to FSQ in respect of Cookies where transactions for purchases/orders transpire directly from FSQ's website. FSQ agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to FSQ when FSQ sends an email to the Customer, so FSQ may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via FSQ's website.
- 21.3 The Customer agrees for FSQ to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by FSQ.
- 21.4 The Customer agrees that FSQ may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 21.5 The Customer consents to FSQ being given a consumer credit report to collect overdue payment on commercial credit.
- 21.6 The Customer agrees that personal credit information provided may be used and retained by FSQ for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods/Equipment; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 21.7 FSQ may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that FSQ is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and FSQ has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of FSQ, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Customer shall have the right to request (by e-mail) from FSQ:
- (a) a copy of the Personal Information about the Customer retained by FSQ and the right to request that FSQ correct any incorrect Personal Information; and
 - (b) that FSQ does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 21.10 FSQ will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.11 The Customer can make a privacy complaint by contacting FSQ via e-mail. FSQ will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 22. Equipment Hire**
- 22.1 Equipment shall at all times remain the property of FSQ and is returnable on demand by FSQ. In the event that Equipment is not returned to FSQ in the condition in which it was delivered FSQ retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all FSQ shall have right to charge the Customer the full cost of replacing the Equipment.
- 22.2 The Customer shall:
- (a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment;
 - (b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
 - (c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by FSQ to the Customer.
- 22.3 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, FSQ's interest in the Equipment and agrees to indemnify FSQ against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.
- 22.4 Notwithstanding the above clauses, immediately on request by FSQ the Customer shall pay:
- (a) any lost hire charges FSQ would have otherwise been entitled to for the Equipment, under this, or any other hire Contract; and
 - (b) any insurance excess payable in relation to a claim made by either the Customer or FSQ in relation to any damage caused by, or to, the hire Equipment whilst the same is hired by the Customer and irrespective of whether charged by the Customer's insurers or FSQ.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 24. Trusts**
- 24.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not FSQ may have notice of the Trust, the Customer covenants with FSQ as follows:

- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Customer will not without consent in writing of FSQ (FSQ will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

25. Building and Construction Industry Payments Act 2004

- 25.1 At FSQ's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 25.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.

26. General

- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of Queensland in which FSQ has its principal place of business, and are subject to the jurisdiction of the courts of Brisbane in that state.
- 26.3 Subject to clause 17, FSQ shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by FSQ of these terms and conditions (alternatively FSQ's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 26.4 FSQ may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 26.5 The Customer cannot licence or assign without the written approval of FSQ.
- 26.6 FSQ may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of FSQ's sub-contractors without the authority of FSQ.
- 26.7 The Customer agrees that FSQ may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for FSQ to provide Goods/Equipment to the Customer.
- 26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.