



## TERMS OF TRADE

These are the terms of trade (**Terms**) of all goods and services supplied by Geothermal Industries Australia Pty Ltd ACN 690 631 979 (**GIA**, "**us**", "**we**", "**our**") to you (**Customer**).

### 1. EFFECT OF TERMS AND UPDATES

1. The Terms apply notwithstanding any other provisions to the contrary which may appear on any other document, including a quote, order or invoice.
2. From time to time and at any time, we may update or alter these Terms. Any updated or altered Terms will apply from the date of alteration and alter which we provide notice to you.

### 2. QUOTES

1. All Quotes are exclusive of GST and shall remain valid for acceptance by the Customer for a period of thirty (30) days from the date on the Quote, unless otherwise specified in writing. GIA may, in its sole discretion, withdraw, vary or extend any Quote at any time prior to the formation of a Contract in accordance with clause 2.2.
2. Quotes made by GIA are estimates only and will not be construed as an offer or obligation to supply in accordance with the Quote. GIA reserves the right to accept or reject, at its discretion, any Order. Only written acceptance by GIA of an Order will form a Contract.
3. These Terms will continue to apply on any variations to the Work or future Works.
4. GIA may request for a deposit as a percentage of the price stipulated on the Quote, prior to commencing any work. The deposit amount shall immediately become due and payable upon the formation of a Contract in accordance with clause 2.2. For the purposes of clarity, where a deposit is requested, GIA is under no obligation to supply the Works until the deposit has been received by GIA in cleared funds.
5. By allowing us to commence work, it is implied that you have read our Terms and agree to the Terms, regardless of whether or not a written Quote has been signed.
6. The provision or acceptance of your Quote shall not form a separate agreement between the Parties. Any terms contained in any document will not form part of this agreement and our Terms take priority.

### 3. PAYMENT

1. Where you have an approved credit account with GIA, the terms of payment are strictly thirty (30) days from the end of month of invoice (or such other period as nominated by GIA herein or by GIA's quotation and/or invoices from time to time). GIA may, at any time, vary the terms of payment in accordance with these Terms.
2. Where you do not have an approved credit account with GIA, you are required to make full payment of the Fees within 14 days of the date of the invoice without deduction or set off. Time for payment of the Fees shall be of the essence.
3. The Customer must check all invoices and advise GIA of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice shall be deemed to be accepted by the Customer.
4. Any late payments will result in an interest being charged at a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the due date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by GIA.
5. Any charges incurred by us to recover funds or losses will be passed directly onto you in addition to invoiced amount.
6. The charges under clause 3.3, include but are not limited to debt collection agency fees, solicitor's fees, mediation fees, court fees and handling fees.
7. Title to any goods supplied for the Works does not pass to you until we receive payment in full.
8. The Customer acknowledges that any credit to be provided to the Customer by GIA is to be applied wholly or predominantly for business purposes.

### 2. SET OFF

- 2.1. After having demanded payment of any amount overdue by the Customer, GIA may apply payment already paid by the Customer against GIA's costs and disbursements in recovering the amount due (including any interest accrued).



2.2. GIA may, at any time, set off any amount owed by the Customer to GIA against any amount GIA may then owe to the Customer.

### 3. SITE

3.1. The Works shall be provided at the location that is specified in the Quote, or if no location is specified, a site is to be nominated by GIA (**Site**).

3.2. Where GIA is required to perform Works at a Site, the Customer must:

- (a) provide GIA with access to the Site, as is reasonably required to perform the Works;
- (b) notify GIA of any site-specific requirements in advance;
- (c) ensure that the Site is safe and secure for the GIA; and
- (d) ensure that it complies with all laws with respect to the Site, including occupational health and safety laws.

### 4. VARIATIONS

4.1. The Fees relate exclusively to the Works set out in the Quote.

4.2. Where the Customer, after the commencement of these Terms or the Works, seeks to extend, increase, vary, remove or otherwise alter the Works (**Variation**) to be provided, the Customer shall provide notice of such proposed Variation to GIA and seek GIA's consent to the variation in writing. Such consent may be withheld by GIA in its absolute discretion.

4.3. A Variation is deemed to include any direction given by the Customer's employees, agents, subcontractors or any other personnel within the Customer's control to GIA's employees, agents and subcontractors where GIA incurs additional costs or expenses because of acting on such direction.

4.4. Where a Variation necessitates additional staff, services or costs by GIA, which shall be determined by GIA acting reasonably, those costs will be charged to the Customer.

4.5. GIA is entitled to increase the Fees to the extent GIA incurs additional costs due to a change (including in any interpretation or application) in any Laws, any statutory requirement or the Customer's policies, processes or procedures that was not reasonably anticipated by GIA at the date the Quote or the Terms came into effect, and the Customer shall be required to pay GIA the reasonable rates and prices (inclusive of profits and overheads), which shall be determined by GIA acting reasonably.

### 5. DELAYS

5.1. You must provide GIA with access to the Site as reasonably as required by GIA to carry out the works.

5.2. You must promptly rectify inadequate access to the Site or interference from other contractors, trades or suppliers.

5.3. Any delay will justify an extension of time to complete the Works as determined by GIA (acting reasonably) as well as an increase in Fees to include any additional costs incurred by GIA as a result of the delay.

### 6. OBLIGATIONS

6.1. The Customer shall be responsible for:

- (a) clearly marking access tracks to a standard that allows for safe positioning of GIA's rig and support equipment;
- (b) providing proper and necessary licences, qualifications, registrations, authorisations, permits or certificates as required by relevant authorities or legislative requirements to allow GIA to provide the Works and/or access and occupy the Site where required; and
- (c) rehabilitation of the Site following the completion of the Works.

### 7. LATENT CONDITIONS

7.1. Where GIA, after the commencement the Works, becomes aware of a Latent Condition, and where such Latent Condition will affect the performance of the Works, including necessitating additional staff, services or costs by GIA, you shall pay GIA the reasonable rates and prices, which shall be determined by GIA acting reasonably.



7.2. Delay caused by a Latent Condition shall justify an extension of time to complete the Works as determined by GIA (acting reasonably).

## 8. DEFECTS

8.1. Within six (6) months of the completion of the Works, the particulars of any defects must be submitted in writing to us within 48 hours of the defect being known to the Customer. Further, the Customer must, upon request from GIA, allow GIA to enter upon any Site to inspect the Works that are subject to the defects notice. If the Customer fails to give notice or refuses to allow GIA to inspect the defects, then to the extent permitted by law, the Works must be treated as having been accepted by the Customer.

8.2. Any defects will not be rectified by us until we have received full payment of the Works completed.

8.3. You will provide us with twenty one (21) Business Days from the date notice was received to rectify any defects.

8.4. It is your responsibility to provide us with current plans, and we take no responsibility for any defects resulting from incorrect or outdated plans supplied by you.

8.5. We take no responsibility to defects resulting from incorrect information supplied by you or design of a third party. The Customer agrees and acknowledges that they are fully responsible for any defects and costs associated with any incorrect information supplied or third-party design.

8.6. You are responsible to obtain all relevant approvals required for the Works to take place and are responsible for all utility services including but not limited to identifying and locating the services for GIA.

## 9. INDEMNITY & LIABILITY

9.1. The Customer releases and indemnifies GIA and its employees, contractors and agents (**the Indemnified Parties**) from and against all actions whatsoever which may be brought or made against the Indemnified Parties by any person, including the Customer, arising directly or indirectly from:

(a) any breach of a duty owed by the Customer or its subcontractors, or any person for whose conduct the Customer is liable;

(b) any contravention of any legislative requirement or any unlawful or negligent act or omission by the Customer, its subcontractors, or any person for whose conduct the Customer is liable;

(c) any unlawful or negligent act or omission of the visitors, invitees or licensees of the Customer;

(d) any death, personal injury, loss or damage suffered by GIA or the Customer (or any of its subcontractors, employees, agents, visitors, invitees or licensees) or any other person, arising from any act or an unlawful or negligent act or omission of the Customer (or any persons for whose conduct the Customer is liable) in the course of the performance (or attempted performance) of these Terms;

(e) any loss of or damage to tangible property caused or contributed to by any act or omission of the Customer or its subcontractors or any persons for whose conduct the Customer is liable;

(f) any breach of these Terms by the Customer or arising from the act or omission of any persons for whose conduct the Customer is liable.

9.2. Notwithstanding any other provision in these Terms to the extent permitted by law, GIA's maximum aggregate liability to the Customer for all claims under or relating to these Terms or its subject matter whether in contract, tort (including without limitation negligence), in equity, under statute, under an indemnity or otherwise, is limited to an amount equal to the Fees paid by the Customer under these Terms.

9.3. The Client acknowledges that subsurface and groundwater conditions are inherently variable and may result in the discharge of water or aqueous fluids from a borehole during or after drilling activities.

To the maximum extent permitted by law, GIA is not liable for any loss, damage, cost or expense arising from or in connection with the discharge of water or aqueous fluids from any borehole, where such discharge results from natural subsurface conditions or factors outside GIA's reasonable control.

This includes without limitation:

(a) flooding, saturation or pooling of water on the Site;



(b) runoff, overflow or seepage of water onto any adjacent, neighbouring or otherwise affected properties (collectively, **Properties**);

(c) staining, mineral deposition, erosion or any other deterioration caused by any water on Site to any Properties; and

(d) any costs associated with the cleanup, remediation, drainage or restoration of the Site or any Properties.

Nothing in this clause 11.3 excludes or limits liability:

(i) to the extent such liability cannot be excluded under applicable law, including the Australian Consumer Law; or

(ii) for loss or damage directly caused by GIA's negligence, wilful misconduct, or breach of contract.

## 10. LIMITS AND EXCLUSIONS

10.1. You agree that you have not relied on any inducement, representation or statement made by us or on our behalf other than as contained in these Terms.

10.2. We are not liable to you for any loss of profits, loss of sales, loss of revenue, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.

10.3. To the extent permitted by law, our liability arising from breach of guarantee or warranty will be limited to our choice of:

(a) replacement of the Works, or cost to replace the Works; or

(b) re-supply of the Works, or cost to resupply equivalent Works; or

(c) repair of the Works, or cost to repair the Works; or

(d) reimbursement of some or all of the prices paid by you for the Works.

10.4. We are not liable to you if:

(a) Works have not been paid for;

(b) the Works have been abused, misused or neglected by you;

(c) we cannot establish any defect after inspection;

(d) you have used the Works other than for the purposes for which they were designed or intended;

(e) the Works have been repaired, altered or modified by someone other than us and without our consent;

(f) the Works have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure, stress or similar;

(g) your claim is for general wear and tear; or

(h) the Works are incorrect due to your failure to comply with information and access obligations in these Terms.

## 11. SECURITY AND CHARGE

11.1. In consideration of GIA agreeing to supply the Services, the Customer charges all 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 (including, but not limited to, the payment of any money).

11.2. The Customer indemnifies GIA from and against all GIA's costs and disbursements including legal costs incurring in exercising GIA's rights under this clause.

11.3. The Customer irrevocably appoints GIA and each director of GIA as the Customer's attorney(s) to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

## 12. INTELLECTUAL PROPERTY

12.1. GIA retains ownership of all Intellectual Property Rights in material owned or created by that party independently of these Terms. None of those Intellectual Property Rights is assigned or transferred by way of these Terms.



12.2. The parties agree that all Intellectual Property Rights in the Works and any other material, designs methods or content developed by GIA under these Terms, including modifications, improvements and enhancements will vest in and is owned by GIA upon creation.

12.3. The Customer must not use any Intellectual Property Rights developed by GIA unless expressly authorised in writing.

### 13. FORCE MAJEURE

13.1. If a Party (the **Affected Party**) is prevented, in whole or in part, from carrying out its obligations under these Terms (other than the obligation to pay the Fees) (the **Affected Obligations**) because of a Force Majeure Event, then:

- (a) the Affected Obligations are suspended;
- (b) the Affected Party must: (i) promptly notify the other Party of the Force Majeure Event, specifying the nature, particulars and expected duration; (ii) use reasonable endeavours to overcome the effects of the Force Majeure Event as soon as reasonably practicable; and (iii) take all reasonable steps to mitigate the impact of the Force Majeure Event on the Affected Obligations; and
- (c) unless these Terms are terminated, the Affected Party must resume performance of the Affected Obligations as soon as possible after the Force Majeure ceases.

### 14. DEFAULT AND TERMINATION

14.1. The Customer will be in default if the Customer:

- (a) fails to pay any amount to GIA by its due date;
- (b) provides GIA information which it knows or has reasonable grounds to suspect is false incomplete or misleading;
- (c) undergoes an Insolvency Event; or
- (d) breaches any provision of these Terms of Trade and fails to remedy the breach within ten (10) days.

14.2. If the Customer is in default, then GIA, without limiting its other rights, may:

- (a) demand all monies owed by the Customer to GIA become immediately payable whether or not they are due for payment;
- (b) recover from the Customer any equipment which may remain at the Site. The Customer shall indemnify GIA against any claim arising from such entry;
- (c) withhold further performance of any Works or other obligations under any agreement by the Customer and GIA;
- (d) immediately cancel any agreement with the Customer without an obligation to refund the Customer any money in respect of the cancellation;
- (e) enforce any Security Interests against the Customer.

14.3. GIA may terminate these Terms or any other agreement with the Customer immediately by written notice to GIA if the Customer:

- (a) is in material breach of these Terms; or
- (b) is in default for more than ten (10) days.

14.4. Termination of these Terms does not affect the Customer's obligation to pay outstanding amounts or other amounts as a result of Works provided to the Customer by GIA.

14.5. If either party fails to remedy a material breach of these Terms within seven (7) days of notice, the other party may terminate these Terms.

14.6. Either party may immediately terminate these Terms by written notice to the other party, if the breach is incapable of remedy or an Insolvency Event occurs with respect to the other party.

### 15. CANCELLATION OF TERMS OF CREDIT

15.1. GIA reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.

**15.2.** Upon the withdrawal of credit in accordance with clause 17.1, or upon termination of these Terms in accordance with clause 16.2, all liabilities incurred by the Customer become immediately due and payable to GIA.

## **16. PROVISION OF FURTHER INFORMATION**

**16.1.** The Customer undertake to comply with all reasonable written requests by GIA to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.

**16.2.** If the Customer is a corporation (with the exception of a public listed company), it must advise GIA of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders, the Customer must arrange for any new directors to sign a guarantee or indemnity on the same terms as any entered between the existing directors and GIA on or around the time of the credit application.

## **17. PRIVACY ACT 1988 (CTH)**

**17.1.** The Customer agrees for GIA to obtain from a Credit Reporting Body (**CRB**) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to any credit that is provided by GIA, which shall only be provided at the absolute discretion of GIA.

**17.2.** The Customer agrees that GIA may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.

**17.3.** The Customer consents to GIA being given a consumer credit report to collect overdue payment on commercial credit.

**17.4.** The Customer agrees that personal credit information provided may be used and retained by GIA for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Works; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Works; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Works.

**17.5.** GIA 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.

**17.6.** The information given to the CRB may include:

- (a) personal information as outlined in 17.1 above;
- (b) name of the credit provider and that GIA is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer or commercial 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);





interest of the Customer to or in each of those assets at any time.

(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 GIA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of GIA, 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).

(b) **PPS Law** means the *Personal Property Securities Act 2009* (Cth) and the regulations made under that Act, as amended from time to time;

(c) **PPSR** means the register established under section 147 of the PPSA; and

(d) a word or phrase which is defined in PPSA has the same meaning as given to it in the PPSA.

## 18.2. The Customer:

17.7. The Customer shall have the right to request (by e-mail) from GIA:

(a) a copy of the information about the Customer retained by GIA and the right to request that GIA correct any incorrect information; and

(b) that GIA does not disclose any personal information about the Customer for the purpose of direct marketing.

(a) grants and creates, and agrees to grant and create, a security interest within the meaning of, and as defined in, PPS Law over or in relation to; and

(b) additionally and separately, charges by way of equitable mortgage;

the Collateral to and in favour of GIA as continuing security for payment of any Fees, and the performance of any liability comprised in the Fees, by the Customer for the benefit of GIA:

(c) by way of a PPSA Security Interest, in relation to any PPSA Personal Property;

(d) by way of specific or fixed charge, in relation to any fixtures as defined in PPS Law; and any other Excluded PPSA Property;

(e) by way of a floating charge, in relation to any other Collateral, comprising any: book debts or other debts; and money, funds or sums of any form or nature, representing any credit or balance, whether denominated in Australian or foreign currency, deposited, applied or held on behalf of the Customer, in or into any current, term, deposit or other account held at any time by the Customer, whether alone or jointly, severally or jointly and severally with any other person, and whether under a single contract or any number of separate contracts

17.8. GIA 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 agreement or is required to be maintained and/or stored in accordance with the law.

17.9. The Customer can make a privacy complaint by contacting GIA via e-mail. GIA 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](http://www.oaic.gov.au).

## 18. PPSA

18.1. In this clause 18:

(a) **Collateral** means all the present and future assets, and all present and after-acquired property, of the Customer of any nature or description, situated anywhere in Australia or overseas; and all the legal and beneficial rights, title and

(Security Interest).

18.3. The Customer agrees that the Security Interest where possible, will enable but not oblige GIA to register a Purchase Money Security Interest.



**18.4.** If GIA requests that the Customer does anything to ensure these Terms and any Security Interest granted pursuant to it is fully effective, enforceable and perfected with the priority required by GIA, it must be done immediately by the Customer at the Customer's own cost. This may include, but is not limited to:

- (a) doing what is required to make, procure or obtain consent, authorisation, registration or approval in respect of anything, or to facilitate it;
- (b) creating or executing a document, including any form, notice, consent or agreement; and
- (c) delivering documents or evidence of title or otherwise giving possession or control in respect of any personal property or other asset.

**18.5.** The Customer shall:

- (a) ensure that the Security Interest held by GIA is enforceable against third parties, perfected or otherwise effective;
- (b) ensure that the Security Interest has the appropriate priority required;
- (c) not register or permit any other Security Interest to be registered over the personal property that comprises the collateral in respect of that Security Interest, unless it has been consented to by GIA;
- (d) not give control of the collateral to a person other than GIA;
- (e) not allow the collateral to become an accession to or comingled with the other property that is not comprised in the collateral;
- (f) not give anyone an interest in or Security Interest over the collateral; and
- (g) not alter or diminish the value of the collateral.

**18.6.** The Customer agrees that sections 96, 115 and 125 of the PPSA do not apply to the Security Agreement created by these Terms.

**18.7.** The Customer waives their right to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

**18.8.** The Customer waives any rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.

**18.9.** The Customer irrevocably grants to GIA the right to enter upon the Site, without notice, and without being in any way liable to the Client or any third party, if GIA has cause to exercise any of its rights under section 123 and/or 128 of the PPSA, and the Customer shall indemnify GIA from any claims made by any third party as a result of such exercise.

**18.10.** Nothing in these Terms or the provisions of the PPSA set out above shall derogate from the terms in these Terms. If relevant, GIA may choose to exercise a right under a provision of these Terms or under the PPSA.

## **19. DISPUTE RESOLUTION**

**19.1.** If a dispute arises, the disputing party must:

- (a) provide the other party a notice of the dispute;
- (b) must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this clause 19;
- (c) must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this clause.

**19.2.** At our sole discretion, we may elect to resolve any dispute by mediation via the Australian Commercial Disputes Centre (**ACDC**) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The ACDC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

**19.3.** This clause survives termination of these Terms.





19.4. The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation).

19.5. The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

## 20. ELECTRONIC TRANSACTIONS

20.1. Electronic signatures shall be deemed accepted by either party pursuant to the *Electronic Transactions Act 2000* (Cth).

## 21. NOTICES

21.1. If we make changes to the Quote, we will use reasonable attempts to notify you of this change before the change comes into effect (**Notice**). We may provide notice by calling you at the last number you provided to us and/or writing to you at the last email address you provided us.

21.2. In addition to any other method of service provided by law, a notice may be sent by prepaid post, email or courier to the address of a party as that address set out in the agreement or subsequently notified.

21.3. A notice is deemed to have been delivered and received on the day if by hand, courier, email, or otherwise on the second Business Day after posting.

## 22. NOTICE PERIOD

22.1. The Customer must notify GIA of any claim, right, obligations or liability under or in connection with these Terms within 6 months of completion of the Works. Any failure to do so, releases GIA from all liability in connection with that claim and its subject matter.

## 23. WAIVER

23.1. A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further

exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

## 24. GENERAL

24.1. Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.

24.2. If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.

24.3. These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.

24.4. These Terms are governed by the laws of New South Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts having jurisdiction in New South Wales, and the courts appeal from them.

24.5. If any part of a provision of these Terms are unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction only and the remaining provisions retain their full effect.

## 25. DEFINITIONS AND INTERPRETATION

### 25.1. Definitions

(a) The following definitions shall, unless otherwise specified, apply to these Terms:

**Affected Party** means the party whose obligations of performance under these Terms are affected due to the commission and/or omission of actions of the opposite party and/or Force Majeure.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in New South Wales.

**Contract** means a contract between GIA and the Customer for the supply of Works.

**Customer** means any person or company placing an order with us to arrange the services of Works pursuant to these Terms of Trade and includes your agents and



permitted assigns (all of which are referred to as “You” and “Your”).

**Fees** means the price of the Works identified in the Quote, or, where no price has been quoted, the price determined by GIA.

**Force Majeure Event** means an event or circumstance which is beyond the reasonable control of the party affected and includes, without limitation, acts of God, war, terrorism, mobilisation, civil commotion, riots, embargoes, orders or regulations of government of any relevant jurisdiction, fires, storms, floods, strikes, lockouts or other labour difficulties, shortages of or inability to obtain shipping space or land transportation.

**Insolvency Event** means any circumstances where a party is unable to pay their debts as and when they fall due.

**Intellectual Property Rights** means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), domain names, licences, know-how, trade secrets, and includes the right to register any intellectual property rights.

**Latent Conditions** means physical conditions on or near the site that could not reasonably have been anticipated by GIA at the time of submitting the Quote, or if no Quote has been submitted, before commencing the Works.

**Order** means a written order from the Customer requesting the supply of Works.

**PPSA** means the *Personal Property Securities Act 2009* (Cth), and the regulations made under that Act, as amended from time to time.

**Quote** means a written description of the Works to be provided by GIA to you.

**Security Interest** means any security for payment of money, performance of obligations, or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements) and any ‘security interest’ as defined in the PPSA.

**Works** means all services supplied by GIA to the Customer.

(c) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;

(d) **(including)** including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;

(e) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;

(f) **(singular and plural)** the singular includes the plural and the plural includes the singular;

(g) **(gender)** words importing one gender include all other genders;

(h) **(legislation)** a reference to legislation or any legislative provision includes: a. any modification or substitution of that legislative provision; and b. any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as modified or substituted;

(i) **(GST)** words or expressions used which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in these Terms;

(j) **(time and date)** a reference to a time or date is to the time and date in Sydney, Australia;

(k) **(consents)** in the case of any consent being required under these Terms, such consent may be given or withheld in the absolute discretion of the party required to grant any such consent and subject to any conditions, unless specified otherwise;

(l) **(relevance of timing)** in these Terms, any reference to a date or time is to be considered as time of the essence unless specified otherwise;

(m) **(joint and several)** an agreement, representation, covenant, warranty, right or obligation:

## 25.2. Interpretation

(a) **(documents)** a reference to a document is to the document as varied, amended, supplemented, novated or replaced from time to time;

(b) **(headings)** clause headings are inserted for convenience only and do not affect the interpretation of these Terms;



- (a) in favour of two or more persons is for the benefit of them jointly and severally; and
- (b) on the part of two or more persons binds them jointly and severally;
- (n) **(replacement bodies)** a reference to a body that ceases to exist or whose powers or functions are transferred to another body is to the body that replaces it or that substantially succeeds to its powers or functions; and
- (o) **(Australian currency)** a reference to dollars or \$ is to Australian currency.