

The parties agree

Background

- A Cortrols supplies Building Automation and Energy Management Systems.
- B The Customer wishes to buy Goods and Services from Cortrols by orders placed from time to time.
- C Cortrols has agreed to sell, at its discretion, the Goods and Services to the Customer and the Customer has agreed to buy the Goods and Services in accordance with the terms and conditions of this Agreement.

1. Agreement

- 1.1 A legally binding agreement between Cortrols and the Customer for the supply of Goods and Services will be formed upon:
- (a) execution of these Terms by the Customer; or
 - (b) acceptance by the Customer, either orally or in writing, of any quote or tender provided by Cortrols; or
 - (c) the Customer providing an Order Form and Cortrols accepting the Order Form.

- 1.2 This Agreement consists of:
- (a) these Terms;
 - (b) the Credit Application (if applicable);
 - (c) the Order Form, once it is accepted by Cortrols in writing; and
 - (d) the Quotation (if applicable).

- 1.3 If any part of this Agreement conflicts with another part, that part higher in the list specified at 1.2 is to take precedence.

2. Term

This Agreement will commence on the Commencement Date and continues unless earlier terminated in accordance with this Agreement.

3. Supply of Goods and Services

- 3.1 Cortrols is under no obligation to:
- (a) accept an Order Form.
 - (b) supply the Goods and Services to the Customer unless Cortrols accepts an Order Form in writing.
- 3.2 In the event of a dispute between the Customer and Cortrols as to the Goods or Services comprising an order, the Order Form will be conclusive evidence of the Goods or Services ordered.
- 3.3 Additional Services
- (a) The Customer may make a request in writing to Cortrols for Additional Services.
 - (b) Cortrols may, at its sole discretion, accept or refuse to provide the Additional Services and may request an additional fee for providing the Additional Services.

4. Cancellation, variation and recall

- 4.1 Cortrols may refuse, at its absolute discretion, any request to cancel or vary an Order Form after it has been accepted in writing.
- 4.2 Where an order is cancelled by the Customer, the Customer agrees to indemnify Cortrols for any loss, including Consequential Loss, or damage incurred by Cortrols as a result of the cancellation.
- 4.3 In the event of a product recall, the Customer will provide Cortrols and any third party, any assistance as reasonably required by Cortrols.

5. Goods and Services

- 5.1 Obligations of Cortrols
Cortrols will:
- (a) provide the Goods and Services with due care and skill in a timely and professional manner;
 - (b) endeavour to provide the Services in accordance with this Agreement;
 - (c) to the extent possible, control, co-ordinate, supervise, direct and complete all activities necessary to provide the Goods and Services; and
 - (d) comply with all applicable laws.
- 5.2 Obligations of the Customer
The Customer must:
- (a) fully co-operate with and provide all assistance reasonably required by Cortrols to enable it to provide the Goods and Services;
 - (b) provide, and ensure relevant third parties provide, Cortrols with all information and instructions necessary to provide the Goods and Services;
 - (c) not unreasonably impede Cortrols' provision of the Goods and Services;
 - (d) not unreasonably withhold any payments; and
 - (e) comply with all applicable laws.
- 5.3 No Warranty
The Customer acknowledges that Cortrols:
- (a) does not manufacture any products;
 - (b) provides no warranty as to the suitability, merchantability or fitness for purpose of any products used in the provision of the Services or Goods for any purpose other than that specified in the Documentation, which it may interpret, and apply using its experience, skill and judgment.

5.4 Specifications

The Customer acknowledges that any illustration, drawing or specification supplied by Cortrols are drafts, approximates and subject to change.

5.5 Maintenance

The Customer acknowledges that Cortrols does not provide any maintenance for any Goods, unless specified in the Services.

6. Delivery and Delay

6.1 Cortrols will not be responsible for the delivery or installation of any Goods unless expressly included in the Services.

6.2 The Customer may make a request in writing to Cortrols for the delivery or installation of any Goods and Cortrols may, at its sole discretion:

- (a) accept or refuse to deliver or install the Goods; and
- (b) request an additional fee for completing delivery or installation of those Goods.

6.3 Where included in the Services, Cortrols will deliver the Goods and any documentation reasonably required to be provided with the Goods to the Delivery Point within reasonable time of the estimated Delivery Date.

6.4 Cortrols reserves the right to deliver the Goods by instalments and to invoice the Customer for each instalment of Goods delivered where, in the opinion of Cortrols, it is reasonable to do so. Failure by the Customer to pay for any instalments will entitle Cortrols to withhold delivery of any remaining Goods.

6.5 The Customer acknowledges external factors beyond Cortrols' reasonable control may delay delivery.

6.6 In the event of an unreasonable delay in delivery or attempted delivery of the Goods and Services resulting from external factors beyond Cortrols' reasonable control, Cortrols may request an additional fee for completing delivery or installation.

6.7 In the event of any delay due to external factors, the Customer releases and holds Cortrols harmless from any loss, delay or liability arising from the delay.

7. Acceptance, defects and return of Goods

7.1 This clause does not apply to a Customer who is a Consumer:

- (a) The Customer will not have a claim for shortages or defects in respect of any Goods (**Defective Goods**) unless the Customer provides written notice to Cortrols within seven (7) days of delivery, which notice will:
 - (i) detail the shortage or defect; and
 - (ii) identify the provision of the Agreement which the Goods are not compliant with or have failed to satisfy.
- (b) Cortrols will, at its option, accept the return of, or give a credit for the Defective Goods where:
 - (i) the Customer has complied with this clause 7.1;
 - (ii) Cortrols is satisfied as to the claim by the Customer; and
 - (iii) if the Customer elects to have the Goods returned, the Goods are returned to Cortrols in the same condition as when first delivered to the Customer.
- (c) Where Defective Goods are returned under this clause 7.1, Cortrols is responsible for collecting the Defective Goods from the place at which they are located within such reasonable time as Cortrols determines.

7.2 This clause applies to a Customer who is a Consumer.

- (a) The Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) If the Customer makes a claim under this clause 7.2, the Customer acknowledges Cortrols will need to assess the Goods before repairing or replacing them, or issuing the Customer a refund.
- (c) The Customer is responsible for the initial costs of returning the Goods if they can be posted or easily returned.
- (d) Subject to the Customer providing evidence of costs incurred in returning the Goods, if Cortrols concludes the Goods are defective, Cortrols will compensate the Customer for costs incurred by the Customer in returning the Goods.
- (e) Before the Customer returns the Goods, Cortrols will provide the Customer with an estimate of any transport or inspection costs that will apply if Cortrols determines the Goods are not defective.

7.3 To the fullest extent permitted by the Australian Consumer Law, in the event the:

- (a) Goods fail to comply with a guarantee under the Australian Consumer Law (other than a guarantee under sections 51, 52 or 53); and
 - (b) the Customer acquires the Goods other than for personal, domestic or household use or consumption,
- Cortrols will remedy the non-compliance, by electing to:
- (a) replace the Goods or supply equivalent Goods;
 - (b) repair the Goods;
 - (c) provide payment to the Customer equal to the cost of having the Goods repaired; or
 - (d) provide payment to the Customer equal to the cost of replacing the Goods or acquiring equivalent Goods.

7.4 The Customer acknowledges:

- (a) returns will not be accepted for change of mind; and
- (b) the Customer will only be entitled to exercise rights related to repair, replacement or refund where the Customer provides Cortrols with proof of purchase.

8. Title

8.1 All legal and equitable title to Goods remains with Cortrols until:

- (a) Cortrols has received payment in full for the Goods; and
- (b) Cortrols has received payment in full for all other monies owing by the Customer to Cortrols.

8.2 Until the Customer makes payment of all monies owed to Cortrols, the Customer will indemnify Cortrols against any claim arising out of the possession, use or disposal of the Goods by the Customer.

8.3 If the Goods are resold, the Customer holds all of the book debts owed in respect of such sales and proceeds on trust for Cortrols. Such part of the book debts and proceeds shall be deemed to be equal in dollar terms the amount owed by the Customer to Cortrols at the time of the receipt of such book debts.

8.4 Until title in the Goods passes to the Customer, Cortrols or its agent will be entitled at any time to require the Customer to deliver up the Goods to Cortrols and Cortrols has the right to enter upon any premises where the Goods are located to repossess the Goods (without being liable for any damage caused by doing so).

9. Risk

Risk in Goods

Risk in the Goods will pass to the Customer on the earliest of:

- (a) delivery of the Goods to the Delivery Point; or
- (b) delivery of the Goods to the Customer's nominated carrier.

10. Fee

10.1 The Fee provided in any Quotation is fixed for a period of sixty days unless otherwise specified in the Quotation. After sixty days (or any longer period specified) the Fee will be subject to confirmation by Cortrols prior to acceptance.

10.2 Unless otherwise provided in the Order Form, the Fee does not include:

- (a) any taxes, duties and charges levied in connection with the supply of the Goods and Services;
- (b) costs related to freight, packing and delivery fees; or
- (c) any other additional costs, fees, charges or expenses incurred by Cortrols on account of:
 - (i) a variation or direction from the Customer; or
 - (ii) any other matter or event arising outside of Cortrols' reasonable control.

10.3 Any discount to the Fee will be offered at Cortrols' absolute discretion and, if applicable, will be stated on the relevant Invoice. Cortrols is under no obligation to offer a discount.

10.4 The Customer acknowledges that the Fee may be subject to increase after the Fee has been accepted by the Customer or during the term of supply of the Goods/Services where it incurs an increase in costs to its production or cartage.

11. Taxes and GST

11.1 Liability for Taxes

The Customer is liable for all Taxes arising from or relating to this Agreement and must pay:

- (a) Taxes which are imposed on Cortrols, directly to the relevant government agency; and
- (b) Taxes which are imposed on the Customer, directly to the relevant government agency, on behalf of Cortrols, on or before the latest date that the Tax is due for payment without incurring any penalty, interest or additional Tax for late payment.

11.2 GST

- (a) The Customer acknowledges that the Fee is exclusive of any GST.
- (b) If GST is payable in respect of a supply made under or in relation to this Agreement, the Customer must pay to the supplier an amount equal to the GST payable on the supply (**GST Amount**). The GST Amount is payable by the Customer in addition to and at the same time as any consideration for the supply, provided the supplier has given the Customer an Invoice.

12. Credit

12.1 If the Customer has applied for credit, then this clause 12 and any additional terms set out in the Credit Application Form (**Credit Application**) apply.

12.2 If the Customer intends to apply for credit from Cortrols, then it must submit the Credit Application provided at Appendix A (or another form as indicated by Cortrols). If the Customer has applied for and Cortrols has agreed to provide credit on the terms of the Credit Application, then Cortrols may at any time and without notice or reason, vary or withdraw any credit granted to the Customer, without any liability to the Customer or to any third party.

12.3 On cancellation or withdrawal of credit, all outstanding costs and liabilities incurred by the Customer become immediately due and payable to Cortrols.

13. Payment and invoicing

13.1 In consideration for Cortrols providing the Goods and Services, the Customer must pay Cortrols the Fee in accordance with these Terms.

13.2 Unless otherwise agreed, the Customer will pay for all Goods and Services supplied by Cortrols within thirty (30) calendar days' after the issue of the Invoice or any credit period granted in writing by Cortrols (**Due Date**).

13.3 Cortrols may require the Customer to pay a credit surcharge of up to 3% plus GST of the payment amount where the Customer pays by credit card.

13.4 A payment dishonour fee may be charged by Cortrols if a payment is dishonoured in any way. This fee will be in addition to any fees the Customer's financial institution or credit provider may charge the Customer.

13.5 If the Customer disputes payment of an invoiced amount, it will:

- (a) notify Cortrols of the amount in dispute and the reason for the dispute by the Due Date;
- (b) pay any undisputed amount while the dispute is being resolved; and
- (c) attempt to resolve the dispute in accordance with these Terms.

13.6 If it is resolved that some or all of the amount in dispute should have been paid when due at the time it was invoiced, then the Customer will pay the amount finally resolved, together with any interest.

13.7 If the Customer does not make payment by the Due Date, Cortrols is entitled to:

- (a) charge the Customer interest on amounts not paid by the Due Date at a rate of 3% per annum plus the cash rate set by the Reserve Bank of Australia, calculated daily from the due date to the day of payment of the debt;
- (b) suspend provision of the Goods and Services until such time as payment is received;
- (c) terminate this agreement in accordance with clause 24.3 and exercise any and all rights under clause 24.4;
- (d) refer any overdue amounts to a debt collection agency, credit reporting agency or a solicitor; and
- (e) take any action necessary to recover the full amount owed

Customer must pay all reasonable costs, charges and expenses associated with collecting overdue amounts, including legal fees on an indemnity basis and internal costs and expenses as a debt due and payable under this Agreement.

13.9 The suspension or termination of this Agreement by either party does not affect the Customer's payment obligations under this Agreement.

14. Charge over Customer's property

14.1 As security for payment to Cortrols of all moneys payable by the Customer, the Customer charges in favour of Cortrols the whole of the Customer's undertaking, property and assets (including all of the Customer's legal and beneficial interests in freehold and leasehold property) both current and later acquired.

14.2 The Customer irrevocably appoints each officer or director of Cortrols as its attorney to do all things necessary to create and register each such charge.

15. Security interests

15.1 Terms that are defined in the *Personal Property Securities Act 2009* (Cth) (**PPSA**) have the same meaning in this clause.

15.2 The Agreement is a security agreement for the purposes of the PPSA.

15.3 Cortrols may register its security interest in all and any Goods under this Agreement.

15.4 The Customer must do anything (such as obtaining consents and signing documents) Cortrols requires for the purposes of ensuring that Cortrols' security interest in the Goods charged and, if applicable, a Purchase Money Security (**PMSI**), has first perfected and is otherwise effected under the PPSA.

15.5 Cortrols may recover from the Customer the cost of doing anything under this clause, including, registration fees.

15.6 Cortrols' rights are in addition to and not in substitution for Cortrols' rights under any other law and Cortrols may choose whether to exercise rights under the Agreement and/or under any other law as it sees fit.

15.7 If the Customer sells or otherwise disposes of the Goods, the proceeds of such sale or other disposal are the property of Cortrols and must be immediately paid to Cortrols and, until they are paid, will be held by the Customer on trust for Cortrols.

15.8 The Customer agrees that, if Chapter 4 of the PPSA applies to the enforcement of Cortrols' security interests, the following provisions of the PPSA will not apply to that enforcement:

- (a) section 95, to the extent it requires Cortrols to give a notice to the Customer;
- (b) section 96;
- (c) section 130, to the extent that it requires Cortrols to give a notice to the Customer;
- (d) subsection 132(3)(d);
- (e) subsection 132(4);
- (f) section 135;
- (g) section 142; and
- (h) section 143.

15.9 The Customer waives its right to receive a verification statement under the PPSA.

15.10 Subject to section 275(7), Cortrols and the Customer agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. The clause is made solely for the purposes of allowing Cortrols the benefit of section 275(6)(a) and Cortrols will not be liable to pay damages or any other compensation or be subject to injunction if Cortrols breaches this clause 15.10.

16. Building & Construction Industry Security for Payment Act

If the *Building & Construction Industry Security for Payment Act 2002* (Vic) (**the B&C Act**) (or its equivalent or any substitute) applies:

- (a) the Customer must comply with the B&C Act in all respects;
- (b) any invoice or claim by Cortrols will be deemed a proper progress payment claim under the B&C Act and satisfactory to the Customer in all respects including as to the value of the work carried out;
- (c) the Customer will determine the value of each such deemed claim within 10 days of receipt thereof and issue a payment schedule to Cortrols;
- (d) the Customer will pay the amount of each payment schedule not later than 14 days thereafter subject only to any lawful and permitted deductions under the B&C Act;
- (e) if the Customer gives or receives any notice under the B&C Act, it must immediately provide a copy to Cortrols; and
- (f) the Customer agrees that the Authorised Nominating Authority under the B&C Act shall be any person authorised by the Institute of Australian Arbitrators and Mediators to so nominate a person or persons to adjudicate any matter.

17. Goods - Representations

17.1 This clause 17 does not apply to a Customer who is a Consumer.

17.2 The Customer acknowledges it has not relied on any representation made by Cortrols which has not been expressly stated in this Agreement.

17.3 Cortrols does not warrant and does not make any representation as to the suitability or fitness for purpose of any of the Goods for any particular use and the Customer acknowledges it has satisfied itself as to the appropriate use or application of the Goods and that the Goods are suitable for any particular purpose.

17.4 The Customer will not make any representation or give any warranties about the Goods to a third party unless the representation or warranty is specifically approved by Cortrols.

17.5 The Customer indemnifies Cortrols against all loss, cost, expense, demand, claim or liability suffered or sustained by Cortrols resulting from any unauthorised representation or warranty given by the Customer in connection with the Goods.

18. Warranties

18.1 Each party represents and warrants to the other party as at the Commencement Date and during the Term that:

- (a) it has full corporate power and authority to enter into, perform and observe its obligations under this Agreement, and that its execution, delivery and performance of this Agreement has been duly and validly authorised by all necessary corporate action; and
- (b) its obligations under this Agreement are valid, binding and enforceable.

18.2 Additionally, the Customer represents and warrants to Cortrols that as at the Commencement Date each of the following statements is true:

- (a) all information provided to Cortrols under this Agreement is true, accurate and complete;
- (b) each order placed by the Customer is deemed to be a representation by the Customer at the time that it is solvent and able to pay debts as and when they fall due;
- (c) there is no litigation, arbitration, mediation or administrative proceedings taking place, pending or threatened, to which the Customer is a party or to which the Customer is reasonably likely to be a party;
- (d) it has disclosed all information concerning it which could reasonably be regarded as affecting Cortrols' decision to enter into this Agreement;
- (e) it will immediately notify Cortrols if any circumstances arise that could reasonably be regarded as affecting Cortrols' decision to accept an Order Form;
- (f) no statement made by the Customer leading up to the Commencement Date has been misleading or deceptive in any material respect;

(g) it will

perform all obligations under this Agreement; and

- (h) it will immediately notify Cortrols in writing of any change of ownership within seven days of the change of ownership (**Restructure**) and the Customer agrees it will:
 - (i) cause any new entity created by virtue of a Restructure (**New Entity**) to be bound by this Agreement and any Order Forms;
 - (ii) continue to be bound by this Agreement notwithstanding a Restructure; and
 - (iii) indemnify Cortrols against any loss or damage incurred by Cortrols as a result of the Customer's failure to comply with this clause.

19. Confidentiality and privacy

19.1 Mutual Confidentiality

Each party must:

- (a) keep the Confidential Information confidential and not disclose it or allow it to be disclosed to a third party except with the prior written consent of the other party; and
- (b) take and cause to be taken all reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information.

19.2 Exceptions

The obligations of confidentiality do not extend to information (whether before or after the Commencement Date):

- (a) disclosed to a party but, at the time of disclosure, is rightfully known or in the possession or control of that party and not subject to an obligation of confidentiality on the party;
- (b) that is public knowledge (other than because of a breach of this Agreement or any other obligation of confidence);
- (c) required to be disclosed by Law or any order of a Governmental Agency or in connection with the enforcement of this Agreement or by the rules of a recognised stock exchange.

19.3 Privacy

Each party must comply with all applicable Privacy Laws in relation to Personal Information.

20. Insurance

The Customer will keep the Goods insured against all risks for Goods of that kind from the time the risk in the Goods passes to the Customer until the time that title in the Goods passes to the Customer under clause 8.

21. Intellectual Property

21.1 The Customer acknowledges that:

- (a) Cortrols is the owner of all Intellectual Property in the Goods and reserves all Intellectual Property rights not expressly granted to the Customer in this Agreement;
- (b) it will not copy or otherwise deal with or use the Intellectual Property subsisting in the Goods without Cortrols' written permission; and
- (c) no right or licence is granted to the Customer except the right to re-sell the Goods in the ordinary course of business.

21.2 The Customer will indemnify and keep indemnified Cortrols for any claims, demands, losses, expenses it may incur as a result of a breach of clause 21.1(b) by the Customer.

22. Exclusions and limitation of liability

22.1 Limitation of Liability

- (a) To the fullest extent permitted by law, Cortrols excludes all liability for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by Cortrols, its employees, contractors or agents, except that nothing in this Agreement limits any liability imposed by any statute unless or to the extent that it is lawful to do so.
- (b) To the fullest extent permitted at law, Cortrols is not liable to the Customer in any circumstances whatsoever for Consequential Loss.
- (c) To the fullest extent permitted by law, Cortrols excludes all liability for any loss or damage whatsoever suffered by the Customer in relation to Goods that are:
 - (i) modified from designs, drawings, specifications or measurements, or by materials which are provided by or on behalf of the Customer; and/or
 - (ii) stored, handled or used incorrectly or inappropriately.
- (d) Notwithstanding any other provision of the Agreement and except to the extent that liability cannot be limited or excluded, the total aggregate liability of Cortrols is limited:
 - (i) in relation to the supply of Goods by Cortrols, to the cost of the replacement of the Goods;
 - (ii) in relation to the supply of Services by Cortrols, to the cost of having the equivalent services supplied; and
 - (iii) in any event, to the amount paid by the Customer under this Agreement in the preceding 12 months.

22.2 Implied terms

- (a) Subject to clause 22.2(b), any condition or warranty which would otherwise be implied in this Agreement is excluded.
- (b) Pursuant to s64A of the Australian Consumer Law, this clause applies regarding any services that are not of a kind ordinarily acquired for personal, domestic or household use or consumption. Liability for breach of a guarantee conferred by the Australian Consumer Law is limited:
 - (i) to re-supplying the Services; or
 - (ii) making full payment for the cost of having the services supplied again.

22.3 Exclusions

Nothing in this Agreement operates to limit or exclude:

- (a) liability, rights or remedies that cannot be limited or excluded by law, including the Australian Consumer Law; and/or
- (b) Cortrols' liability resulting from its fraudulent, reckless or unlawful act or omission.

23. Indemnity

23.1 The Customer indemnifies Cortrols against all loss, cost, expense, demand, claim or liability suffered or sustained by Cortrols in connection with any act or omission of the Customer.

23.2 This provision remains in force after the termination of this Agreement.

24. Termination

24.1 Termination on Notice

A party may terminate this Agreement without cause by giving the other party thirty days' notice.

24.2 Termination for Breach

A party may terminate this Agreement with immediate effect by notice to the other party if the other party:

- (a) commits a material breach that is not capable of remedy;
- (b) commits a material breach that is capable of remedy, and has not remedied that breach within ten business days after receipt of notice of the breach; or
- (c) suffers an Insolvency Event.

24.3 Termination by Cortrols for the Customer's Default

Cortrols may immediately terminate this Agreement by notice to the Customer, if:

- (a) the Customer fails to pay one or more undisputed amounts that are due and payable; or
- (b) Cortrols issues a notice to the Customer that it intends to terminate this Agreement pursuant to this clause if payment of the outstanding amount, plus interest, is not received within 10 business days of the Customer receiving the notice and the Customer fails to make payment of the outstanding amount plus interest within that period.

24.4 Consequences of Termination

On termination of this Agreement, in addition to any other rights or remedies provided by law:

- (a) Cortrols shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies;
- (b) the Customer will immediately pay Cortrols all outstanding monies;
- (c) the Customer will cease using all Confidential Information in its possession, power or control and at the option of Cortrols:
 - (A) return;
 - (B) destroy and certify in writing to Cortrols the destruction of; or
 - (C) destroy and permit a representative of Cortrols to witness the destruction of,all such Confidential Information.

24.5 Preservation of rights

Expiry or termination of this Agreement for any reason does not affect any rights of either party against the other which arose prior to the time at which such termination or expiry occurred, or which otherwise relate to or which may arise at any future time for any breach or non-observance of obligations under this Agreement occurring prior to the termination or expiry.

24.6 The provisions of this clause 24 survive termination of this Agreement.

25. Dispute resolution

25.1 The parties must use reasonable endeavours to resolve any dispute, controversy or claim arising out of, relating to or in connection with the Agreement through negotiation between them.

25.2 If a dispute arises out of or relates to this Agreement (**Dispute**) a party to the Agreement may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with this clause, except where the party seeks urgent interlocutory relief.

25.3 A party claiming that a Dispute has arisen must give a Notice (**Dispute Notice**) to the other party or parties to this Agreement specifying the nature of the Dispute. The parties must then negotiate in good faith to resolve the Dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or similar techniques agreed to by them.

25.4 If the parties do not resolve the Dispute 14 days of receipt of the Dispute Notice (or such further period as agreed in writing by them) any party to the Dispute may refer the Dispute to mediation by a mediator nominated by the President or the nominee of the President for the time being of the Law Institute of Victoria.

25.5 Each party must bear its own costs in connection with resolving the Dispute and the parties must bear equally the costs of any mediator engaged.

25.6 Any information or documents disclosed by a party under this clause must be kept confidential and may not be used except to attempt to resolve the dispute.

25.7 Cortrols reserves the right to issue debt and/or recovery proceedings against the Customer and the Customer acknowledges and accepts it is liable for Cortrols' indemnity costs of any proceedings.

25.8 This clause will survive termination or expiry of this Agreement.

26. Force Majeure

26.1 Where a Force Majeure Event prevents or hinders Cortrols from supplying the Goods and Services in accordance with the Agreement, Cortrols will provide the Customer a written notice of the Force Majeure Event and the anticipated impact on Cortrols' supply of the Goods and Services.

26.2 If a Force Majeure Event continues for a period of more than 30 calendar days following receipt of the notice referenced at 26.1, either party may terminate the Agreement by written notice to the other without liability for damages of any kind, including for Consequential Loss.

27. General

27.1 Notices

Unless this Agreement expressly states otherwise, a notice, consent, approval, waiver or other communication must be in writing. A notice may be given by hand delivery, post or by email.

27.2 Relationship between parties

Unless provided to the contrary in this Agreement, no party is authorised to bind another party and nothing in this agreement is to be construed as creating an employment, agency, partnership, fiduciary or joint venture relationship between any of the parties.

27.3 Entire Agreement

This Agreement represents the entire agreement between the parties and supersedes all prior discussions, negotiations, understandings and agreements in relation to the Goods and the supply of Goods.

27.4 Assignment

- (a) Cortrols may assign or otherwise deal with all or any part of its rights or obligations under this Agreement at its discretion.
- (b) In the event of an assignment under clause 27.4(a), Cortrols will notify the Customer of the assignment once the assignment has taken place.

(C) The Customer may not assign, novate, sell, transfer, licence, mortgage, charge or otherwise encumber any right or obligation under this Agreement without the prior written consent of Cortrols, which consent must not be unreasonably withheld.

27.5 Waiver

- (a) Waiver of any provision of, or right created under, this Agreement is only effective if made in writing and signed by the waiving party.
- (b) Failure or delay in exercising any right under this agreement does not constitute or imply a waiver of that right.

27.6 Variation

- (a) The provisions of this Agreement may be varied by Cortrols at any time on written notice to the Customer.
- (b) In the event the terms of this Agreement are so varied, the varied terms will apply to all subsequent Order Forms relating to the supply of Goods.

27.7 Counterparts

This Agreement may be signed in any number of counterparts. All signed counterparts taken together constitute one agreement.

27.8 Rights, powers and remedies cumulative

The rights, powers and remedies given in this Agreement are in addition to, and do not exclude or limit, any rights, powers or remedies provided by law or equity.

27.9 Severability

If any provision of this Agreement is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid, without affecting the validity or enforceability of the remaining provisions of this Agreement.

27.10 No merger

On expiry or termination of this Agreement, the rights and obligations of the parties will not merge and any provision that has not been fulfilled remains in force.

27.11 Further steps

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Agreement and the transactions contemplated by it.

27.12 No set off

The Customer must not set off any money owing or alleged to be owing by Cortrols against money due by the Customer to Cortrols.

27.13 Legal costs and expenses

Each party must pay its own costs of negotiating, preparing and executing this Agreement and performing its obligations under this Agreement.

27.14 Governing law and jurisdiction

This Agreement is governed by the laws in force in Victoria, Australia. The parties submit to the exclusive jurisdiction of the courts of Victoria.

28. Definitions and interpretation

28.1 Definitions

In this Agreement:

Agreement means the documents as specified in clause 2.1 and (if applicable) the Guarantee and Indemnity;

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Commencement Date means the date the parties enter this Agreement pursuant to clause 1;

Confidential Information means all information of a confidential nature including financial, customer and employee information, supplier information, product specifications, processes, statements, formulae, trade secrets, Intellectual Property, drawings and data, which is not in the public domain, except as a result of a breach of the confidentiality obligations under this Agreement;

Consequential Loss means any of the following, however arising and even if it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of the Agreement:

- (a) incidental, special, remote or unforeseeable loss or damage;
- (b) loss of revenue, profit, income, bargain, opportunity, use, production, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing, but excluding loss of any amounts that would, but for the act or omission of a party, have otherwise been payable under this agreement;
- (c) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; and
- (d) loss or damage of the nature set out above in clauses (a) to (c) (inclusive) that is incurred or suffered by or to a third party.

Consumer has the meaning given to it in the Australian Consumer Law;

Credit Application means a completed credit application by the Customer;

Delivery Date means the date for delivery of the Goods and Services as set out in the Order Form or as otherwise agreed by the parties in writing;

Delivery Point means the location for delivery of the Goods and Services as set out in the Order Form or as otherwise agreed by the parties in writing;

Documentation means any documentation about the products used in the provision of the Goods and Services including any user manuals.

Fee means the amount quoted by Cortrols in writing; **Quotation** means the quote provided by Cortrols to the Customer and includes any schedule or annexure to it.

Force Majeure Event means an act or occurrence beyond the reasonable control of a party, including, acts of nature, acts of war or riots, weather occurrences, labour disputes or government action, unavailability of shipping services, mis-delivery or non-delivery, other than through the negligence of a party, or the acts of a government agency, which delays or prevents a party from meeting its obligations under this Agreement;

Goods means the goods supplied, or to be supplied, by Cortrols to the Customer from time to time, as described in an Order Form;

GST means the goods and services tax imposed by *A New Tax System (Goods and Services) Act 1999*, the rate of which (currently 10%) is multiplied to any payment;

Guarantee means a guarantee or indemnity to do any one or more of the following in respect of an obligation of another person (whether or not it involves the payment of money):

- (a) provide funds or make property available in or towards payment or discharge of that obligation;
- (b) indemnify against the consequences of default in the payment or performance of that obligation; or
- (c) be responsible in any other way for that obligation;

Guarantee and Indemnity means the Guarantee given by the Guarantor;

Guarantor means the person or persons identified in the Guarantee and Indemnity as the Guarantor;

Insolvency Event means a bankruptcy, liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or the occurrence of any event that has a substantially similar effect to any of the above events;

Intellectual Property means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967;

Invoice means a tax invoice displaying payment owed to Cortrols for the supply of Goods and Services by the Customer;

Cortrols means **Cortrols Pty Ltd ACN 005 756 516** and its Related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth)) and their respective officers, employees, agents and representatives;

Order Form means a purchase order form as specified by Cortrols from time to time, or a form otherwise agreed by the parties in writing requesting the provision of Goods and Services;

Personal Information means data by which a person may be personally identified, including a person's name, postal address, email address, telephone number and any other information a party collects, including that which is defined as personal or personally identifiable information under applicable Privacy Laws.

Privacy Laws means all domestic and international privacy data protection and anti-spam laws, rules, regulations and regulatory guidance relating to privacy, data security, cybersecurity, anti-spam and the collection, storage, use and disclosure of Personal Information, as applicable to either party.

Services means the services to be provided by Cortrols to the Customer, as more particularly described in any Order Form, Quotation, scope of works, tender or proposal provided by Cortrols.

Term has the meaning given to it in clause 2; and

Terms means the terms and conditions outlined in this document.

28.2 Interpretation

In this Agreement:

- (a) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (b) words such as including or for example do not limit the meaning of the words preceding them;
- (c) a reference to a document or instrument, including this Agreement, includes all of its clauses, paragraphs, recitals, parts, schedules and annexures;
- (d) a party includes the party's successors and permitted transferees and assigns and if a party is an individual, includes executors and personal legal representatives;
- (e) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly;
- (f) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in this Agreement;
- (g) all monetary amounts are expressed in Australian Dollars (\$AUD); and
- (h) parties will perform their obligations on the dates and times fixed by reference to Victoria, Melbourne.