

1. Definitions

- 1.1 “SW&FS” means Lincoln M Shannon & Jacqueline C Shannon T/A Shannon Welding & Fabrication Services, its successors and assigns or any person acting on behalf of and with the authority of Lincoln M Shannon & Jacqueline C Shannon T/A Shannon Welding & Fabrication Services.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by SW&FS to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between SW&FS and the Client in accordance with clause 4 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with SW&FS’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and SW&FS.
- 2.3 These terms and conditions may be meant to be read in conjunction with SW&FS’ Hire Form, and:
 - (a) where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
- 2.4 Dimensions and specifications contained or referred to in any agreement or in any publications maintained or issued by SW&FS are estimates only. Unless otherwise expressly agreed in writing by SW&FS, it is not a condition of any agreement that the Goods will correspond precisely with such dimensions and specifications, and customary or reasonable tolerances will be allowed.
- 2.5 Neither SW&FS, nor any of its employees or agents, warrant or guarantee the accuracy or completeness of any information provided to the Client. The Client undertakes that all matters relevant to the supply of the Goods hereunder are to the Client’s satisfaction, and in doing so, the Client acknowledges that in deciding to purchase the Goods hereunder that:
 - (a) they have relied on their own skill, inspection and judgement;
 - (b) they have not relied on any statement made by SW&FS or its employees or agents;
 - (c) they assume the risk of mistake in relation to the information provided.

3. Change in Control

- 3.1 The Client shall give SW&FS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by SW&FS as a result of the Client’s failure to comply with this clause.

4. Price and Payment

- 4.1 At SW&FS’ sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by SW&FS to the Client; or
 - (b) SW&FS’ quoted price (subject to clause 4.2) which is based upon rates and costs at the date of the quotation, and will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 4.2 SW&FS reserves the right to change the Price:
 - (a) if a variation to the Goods which are to be supplied (including any applicable plans or specifications) is requested; or
 - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Client, change of design, iron reinforcing rods in concrete, or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
 - (c) in the event of increases to SW&FS in the costs of supply and/or production of the Goods (including fluctuations in currency exchange rates), and/or Delivery, due to circumstances beyond the reasonable control of SW&FS.
- 4.3 At SW&FS’ sole discretion, a non-refundable deposit of up to thirty percent (30%) may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by SW&FS, which may be:
 - (a) on or before Delivery;
 - (b) by way of instalments/progress payments in accordance with SW&FS’ payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by SW&FS.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card – MasterCard or Visa (plus a surcharge of up to two percent (2%) of the Price), or by any other method as agreed to between the Client and SW&FS.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to SW&FS an amount equal to any GST SW&FS must pay for any supply by SW&FS under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client 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.
- 4.7 Receipt by SW&FS 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, and until then SW&FS’ rights and ownership in respect of the Goods, and this agreement, shall continue.

5. Delivery

- 5.1 Delivery of the Goods (“**Delivery**”) is taken to occur at the time that:
 - (a) the Client or the Client’s nominated carrier takes possession of the Goods at SW&FS’ premises; or
 - (b) SW&FS (or SW&FS’ nominated carrier) delivers the Goods to the Client’s nominated site, even if the Client is not present thereat.
- 5.2 At SW&FS’ sole discretion, the cost of Delivery is either included in, or in addition to, the Price.

- 5.3 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Client is unable, fails or refuses (or makes any indication of their intention to fail or refuse) to take or accept Delivery as arranged, then the Goods shall be deemed to have been delivered when SW&FS was willing to deliver them, and SW&FS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 SW&FS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by SW&FS to the Client is an estimate only. The Client must still accept Delivery even if late and SW&FS will not be liable for any loss or damage incurred by the Client as a result of the Delivery being late.

6. Risk

- 6.1 Risk of damage to, or loss, or deterioration of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, SW&FS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SW&FS is sufficient evidence of SW&FS' rights to receive the insurance proceeds without the need for any person dealing with SW&FS to make further enquiries.
- 6.3 If the Client requests SW&FS to leave Goods outside SW&FS' premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.4 The Client acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish. SW&FS will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 6.5 The Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and SW&FS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 6.6 SW&FS shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 6.7 The Client acknowledges that SW&FS is only responsible for parts that are replaced/supplied by SW&FS and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Client agrees to indemnify SW&FS against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 6.8 Where the Client has supplied materials for SW&FS to complete the Goods, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. SW&FS shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Client.
- 6.9 Any advice, recommendation, information, assistance or service provided by SW&FS in relation to Goods provided is given in good faith, is based on SW&FS' own knowledge and experience and shall be accepted without liability on the part of SW&FS and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods.

7. Accuracy of Client's Plans and Measurements

- 7.1 In the event the Client gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Client):
- (a) it is the Client's responsibility to verify the accuracy of the information before the Client or SW&FS places an order based on the information. SW&FS accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause;
 - (b) SW&FS shall be entitled to rely on the accuracy of such information. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, SW&FS accepts no responsibility for any loss, damages, or costs however resulting therefrom.

8. Title

- 8.1 SW&FS and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid SW&FS all amounts owing to SW&FS; and
 - (b) the Client has met all of its other obligations to SW&FS.
- 8.2 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 8.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to SW&FS on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for SW&FS and must pay to SW&FS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SW&FS and must pay or deliver the proceeds to SW&FS on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SW&FS and must sell, dispose of or return the resulting product to SW&FS as it so directs.
 - (e) the Client irrevocably authorises SW&FS to enter any premises where SW&FS believes the Goods are kept and recover possession of the Goods.
 - (f) SW&FS may recover possession of any Goods in transit whether or not Delivery has occurred.
 - (g) the Client 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 SW&FS.
 - (h) SW&FS may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Client.

9. Personal Property Securities Act 2009 (“PPSA”)

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client 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 that have previously been supplied and that will be supplied in the future by SW&FS to the Client.
- 9.3 The Client 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 SW&FS 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 9.3(a)(i) or 9.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, SW&FS 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 charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of SW&FS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of SW&FS;
 - (e) immediately advise SW&FS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 SW&FS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by SW&FS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by SW&FS under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1 In consideration of SW&FS agreeing to supply Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Client indemnifies SW&FS from and against all SW&FS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SW&FS' rights under this clause.
- 10.3 The Client irrevocably appoints SW&FS and each director of SW&FS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 11.1 The Client must inspect the Goods on Delivery and must within seven (7) days of such time notify SW&FS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SW&FS to inspect the Goods.
- 11.2 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**).
- 11.3 SW&FS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SW&FS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SW&FS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, SW&FS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If SW&FS is required to replace the Goods under this clause or the CCA, but is unable to do so, SW&FS may refund any money the Client has paid for the Goods.
- 11.7 If the Client is not a consumer within the meaning of the CCA, SW&FS' 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 Client by SW&FS at SW&FS' sole discretion;
 - (b) limited to any warranty to which SW&FS is entitled, if SW&FS did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 11.1; and
 - (b) SW&FS has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client'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.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, SW&FS 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 Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;

- (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by SW&FS;
 - (e) fair wear and tear, any accident, or act of God.
- 11.10 SW&FS may in its absolute discretion accept non-defective Goods for return in which case SW&FS may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods, plus any freight costs.
- 11.11 Notwithstanding anything contained in this clause if SW&FS is required by a law to accept a return then SW&FS will only accept a return on the conditions imposed by that law.

12. Intellectual Property

- 12.1 Where SW&FS has designed, drawn or developed Goods for the Client, then the copyright in any designs, specifications, drawings, other technical information and documents shall remain the property of SW&FS.
- 12.2 The Client warrants that all designs, specifications or instructions given to SW&FS will not cause SW&FS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SW&FS against any action taken by a third party against SW&FS in respect of any such infringement.
- 12.3 The Client agrees that SW&FS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SW&FS has created for the Client.

13. Default and Consequences of Default

- 13.1 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 SW&FS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes SW&FS any money the Client shall indemnify SW&FS from and against all costs and disbursements incurred by SW&FS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SW&FS' contract default fee, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies SW&FS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions SW&FS may suspend or terminate the supply of Goods to the Client. SW&FS will not be liable to the Client for any loss or damage the Client suffers because SW&FS has exercised its rights under this clause.
- 13.4 Without prejudice to SW&FS' other remedies at law SW&FS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SW&FS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SW&FS becomes overdue, or in SW&FS' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

14. Cancellation

- 14.1 SW&FS may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Client. On giving such notice SW&FS shall repay to the Client any money paid by the Client for the Goods. SW&FS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.2 In the event that the Client cancels Delivery the Client shall be liable for any and all loss incurred (whether direct or indirect) by SW&FS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

15. Privacy Act 1988

- 15.1 The Client agrees for SW&FS 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 Client in relation to credit provided by SW&FS.
- 15.2 The Client agrees that SW&FS may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 15.3 The Client consents to SW&FS being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Client agrees that personal credit information provided may be used and retained by SW&FS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 15.5 SW&FS may give information about the Client 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 Client including credit history.
- 15.6 The information given to the CRB may include:
- (a) personal information as outlined in 15.1 above;
 - (b) name of the credit provider and that SW&FS is a current credit provider to the Client;

- (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client'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 Client no longer has any overdue accounts and SW&FS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of SW&FS, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Client shall have the right to request (by e-mail) from SW&FS:
- (a) a copy of the information about the Client retained by SW&FS and the right to request that SW&FS correct any incorrect information; and
 - (b) that SW&FS does not disclose any personal information about the Client for the purpose of direct marketing.
- 15.8 SW&FS will destroy personal information upon the Client'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.
- 15.9 The Client can make a privacy complaint by contacting SW&FS via e-mail. SW&FS 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 16. Unpaid Seller's Rights**
- 16.1 Where the Client has left any item with SW&FS for repair, modification, exchange or for SW&FS to perform any other service in relation to the item and SW&FS has not received or been tendered the whole of any moneys owing to it by the Client, SW&FS shall have, until all moneys owing to SW&FS are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 16.2 The lien of SW&FS shall continue despite the commencement of proceedings, or judgment for any moneys owing to SW&FS having been obtained against the Client.
- 17. Building and Construction Industry Security of Payments Act 2009**
- 17.1 At SW&FS' sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 17.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of South Australia, except to the extent permitted by the Act where applicable.
- 18. General**
- 18.1 Any dispute or difference arising as to the interpretation of these terms and conditions, or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Arbitration Act 1996 or its replacement(s).
- 18.2 The failure by SW&FS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect SW&FS' 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.
- 18.3 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which SW&FS has its principal place of business, and are subject to the jurisdiction of the Adelaide Courts in that state.
- 18.4 Subject to clause 11, SW&FS shall be under no liability whatsoever to the Client for any incidental, indirect, special and/or consequential loss, damage and/or expense (including loss of profit and any claims, demands or actions against the Client by any third party) suffered by the Client arising out of a breach by SW&FS of these terms and conditions, even if SW&FS should have known the possibility of such damages arising out of, or in relation to its performance or non-performance of this agreement. Alternatively, SW&FS' liability shall be limited to damages which under no circumstances shall exceed the Price).
- 18.5 The Client shall not, without the prior written consent of SW&FS, be entitled to set off against, or deduct from the Price (by way or counterclaim or other legal or equitable claim), any sums owed or claimed to be owed to the Client by SW&FS, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.6 SW&FS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.7 The Client agrees that SW&FS may amend these terms and conditions at any time. If SW&FS makes a change to these terms and conditions, then that change will take effect from the date on which SW&FS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for SW&FS to provide Goods to the Client.
- 18.8 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.
- 18.9 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.