

**1. Definitions**

- 1.1 "LGAS" means Lincoln Glass & Aluminium Service Pty Ltd (as trustee for the Robert and Susan Taylor Family Trust) T/A Lincoln Glass & Aluminium Service, its successors and assigns or any person acting on behalf of and with the authority of Lincoln Glass & Aluminium Service Pty Ltd (as trustee for the Robert and Susan Taylor Family Trust) T/A Lincoln Glass & Aluminium Service.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting LGAS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by LGAS to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between LGAS and the Customer in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and LGAS.
- 2.3 In the event that the Goods supplied by LGAS are the subject of an insurance claim that the Customer has made, then the Customer shall be responsible for the payment of any monies payable to the insurance company and agrees to honour their obligation for payment for such transactions invoiced by LGAS and shall ensure payment is made by the due date irrespective of whether the insurance claim is successful.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3. Errors and Omissions**

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

**4. Change in Control**

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

**5. Price and Payment**

- 5.1 At LGAS' sole discretion the Price shall be either:
  - Account & Non Account Customers**  
LGAS's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
    - Account Customers**  
25 days following end of month
    - Non Account Customers**
      - (a) 30% Deposit required on placement of order
      - (b) 40% payment of completion of manufacture
      - (c) 30% payable on day of delivery
- 5.2 LGAS reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied (including any applicable plans, specifications or measurements) is requested, or required due to incorrect information supplied by the Customer; 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, obscured site defects, safety considerations (such as the discovery of asbestos, etc.), prerequisite work by any third party not being completed, 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 LGAS in the cost of labour or materials, or due to fluctuations in currency exchange rates, which are beyond LGAS' control.
- 5.3 Variations will be charged for on the basis of LGAS' quotation, and will be detailed in writing, and shown as variations on LGAS' invoice. The Customer shall be required to respond to any variation submitted by LGAS within ten (10) working days. Failure to do so will entitle LGAS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At LGAS' sole discretion, a deposit may be required. The deposit amount or percentage of the Price due will be stipulated at the time of the order of the Goods/Services and shall become immediately due and payable.

- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by LGAS, which may be:
- (a) on, or before, Delivery; or
  - (b) by way of instalments/progress payments in accordance with LGAS' payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed; or
  - (c) twenty-five (25) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by LGAS.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and LGAS.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by LGAS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to LGAS an amount equal to any GST LGAS must pay for any supply by LGAS under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**6. Delivery**

- 6.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at LGAS' address; or
  - (b) LGAS (or LGAS' nominated carrier) delivers the Goods to the Customer's nominated site, even if the Customer is not present at the site.
- 6.2 At LGAS' sole discretion, the cost of Delivery is either included in, or in addition to, the Price.
- 6.3 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged then LGAS shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Any time specified by LGAS for Delivery is an estimate only and LGAS will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be supplied at the time and place as was arranged between both parties. In the event that LGAS is unable to supply the Goods as agreed solely due to any action or inaction of the Customer then LGAS shall be entitled to charge a reasonable fee for re-supplying the Goods at a later time and date.
- 6.5 The Customer shall ensure that LGAS has clear and free access to the site at all times to enable them to make Delivery. LGAS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of LGAS.

**7. Risk**

- 7.1 If LGAS retains ownership of the Goods under clause 9 then:
- (a) where LGAS is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
  - (b) where LGAS is to both supply and install Goods, then LGAS shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk shall immediately pass to the Customer.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, LGAS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by LGAS is sufficient evidence of LGAS' rights to receive the insurance proceeds without the need for any person dealing with LGAS to make further enquiries.
- 7.3 If the Customer requests LGAS to leave Goods outside LGAS' premises for collection or to deliver the Goods to an unattended site then such Goods shall be left at the Customer's sole risk.
- 7.4 Holes, cut outs and cutting of the Goods may weaken the strength of the Goods and although it's unlikely, cracking may occur. LGAS accepts no responsibility against cracks occurring after such Goods (that are subject to holes and cut outs) are installed unless a toughened glass is used.
- 7.5 The Customer acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
  - (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (c) mark or stain if exposed to certain substances; and
  - (d) be damaged or disfigured by impact or scratching.

**8. Compliance with Laws**

- 8.1 The Customer and LGAS shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, including AS/NZS requirements (where applicable) and any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 8.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Goods.

**9. Title**

- 9.1 LGAS and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid LGAS all amounts owing to LGAS; and
  - (b) the Customer has met all of its other obligations to LGAS.

- 9.2 Receipt by LGAS 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 LGAS' rights and ownership in relation to the Goods, and this agreement, shall continue.
- 9.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 9.1 that the Customer is only a bailee of the Goods and must return the Goods to LGAS on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for LGAS and must pay to LGAS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for LGAS and must pay or deliver the proceeds to LGAS on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of LGAS and must sell, dispose of or return the resulting product to LGAS as it so directs.
  - (e) the Customer irrevocably authorises LGAS to enter any premises where LGAS believes the Goods are kept and recover possession of the Goods.
  - (f) LGAS may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of LGAS.
  - (h) LGAS may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.
- 10. Personal Property Securities Act 2009 ("PPSA")**
- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to LGAS for Services – that have previously been supplied and that will be supplied in the future by LGAS to the Customer.
- 10.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which LGAS 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 10.3(a)(i) or 10.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, LGAS 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 registration made thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of LGAS;
  - (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 LGAS;
  - (e) immediately advise LGAS 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.
- 10.4 LGAS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by LGAS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Customer must unconditionally ratify any actions taken by LGAS under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of LGAS agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Customer indemnifies LGAS from and against all LGAS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising LGAS' rights under this clause.
- 11.3 The Customer irrevocably appoints LGAS and each director of LGAS as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.
- 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of such time notify LGAS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow LGAS to inspect/review the Goods.

- 12.2 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**).
- 12.3 LGAS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, LGAS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. LGAS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Customer is a consumer within the meaning of the CCA, LGAS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If LGAS is required to replace or repair the Goods under this clause or the CCA, but is unable to do so, LGAS may refund any money the Customer has paid for the Goods.
- 12.7 If the Customer is not a consumer within the meaning of the CCA, LGAS' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by LGAS at LGAS' sole discretion;
  - (b) limited to any warranty to which LGAS is entitled, if LGAS did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 12.1; and
  - (b) LGAS has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, LGAS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store the Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by LGAS;
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 LGAS may in its absolute discretion accept non-defective Goods for return in which case LGAS may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if LGAS is required by a law to accept a return then LGAS will only accept a return on the conditions imposed by that law.
- 13. Intellectual Property**
- 13.1 The Customer warrants that all designs, specifications or instructions given to LGAS will not cause LGAS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify LGAS against any action taken by a third party against LGAS in respect of any such infringement.
- 13.2 The Customer agrees that LGAS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which LGAS has created for the Customer, or digital media thereof.
- 14. Default and Consequences of Default**
- 14.1 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 LGAS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Customer owes LGAS any money the Customer shall indemnify LGAS from and against all costs and disbursements incurred by LGAS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, LGAS' contract default fee, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies LGAS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions LGAS may suspend or terminate the supply of Goods to the Customer. LGAS will not be liable to the Customer for any loss or damage the Customer suffers because LGAS has exercised its rights under this clause.
- 14.4 Without prejudice to LGAS' other remedies at law LGAS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to LGAS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to LGAS becomes overdue, or in LGAS' opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by LGAS;
  - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15. Cancellation**
- 15.1 Without prejudice to any other remedies LGAS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions LGAS may suspend or terminate the supply of Goods to the Customer. LGAS will not be liable to the Customer for any loss or damage the Customer suffers because LGAS has exercised its rights under this clause.
- 15.2 LGAS 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 Customer. On giving such notice LGAS shall repay to the Customer any money paid by the Customer for the Goods. LGAS shall not be liable for any loss or damage whatsoever arising from such cancellation.

- 15.3 In the event that the Customer cancels Delivery the Customer shall be liable for any and all loss incurred (whether direct or indirect) by LGAS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 16. Privacy Act 1988**
- 16.1 The Customer agrees for LGAS 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 credit provided by LGAS.
- 16.2 The Customer agrees that LGAS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 16.3 The Customer consents to LGAS being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Customer agrees that personal credit information provided may be used and retained by LGAS 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 Customer'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 Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.5 LGAS 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.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
  - (b) name of the credit provider and that LGAS is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and LGAS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of LGAS, 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).
- 16.7 The Customer shall have the right to request (by e-mail) from LGAS:
- (a) a copy of the information about the Customer retained by LGAS and the right to request that LGAS correct any incorrect information; and
  - (b) that LGAS does not disclose any personal information about the Customer for the purpose of direct marketing.
- 16.8 LGAS 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.
- 16.9 The Customer can make a privacy complaint by contacting LGAS via e-mail. LGAS 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).
- 17. Unpaid Seller's Rights**
- 17.1 Where the Customer has left any item with LGAS for repair, modification, exchange or for LGAS to perform any other service in relation to the item and LGAS has not received or been tendered the whole of any monies owing to it by the Customer, LGAS shall have, until all monies owing to LGAS 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.
- 17.2 The lien of LGAS shall continue despite the commencement of proceedings, or judgment for any monies owing to LGAS having been obtained against the Customer.
- 18. Building and Construction Industry Security of Payments Act 2009**
- 18.1 At LGAS' 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.
- 18.2 Nothing in this agreement is intended to have the affect 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.
- 19. Service of Notices**

- 19.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

**20. Trusts**

- 20.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not LGAS may have notice of the Trust, the Customer covenants with LGAS as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) The Customer will not without consent in writing of LGAS (LGAS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

**21. Dispute Resolution**

- 21.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

**22. General**

- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which LGAS has its principal place of business, and are subject to the jurisdiction of the courts in South Australia.
- 22.3 Subject to clause 12 LGAS shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by LGAS of these terms and conditions (alternatively LGAS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 LGAS may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 22.5 The Customer cannot licence or assign without the written approval of LGAS.
- 22.6 LGAS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of LGAS' sub-contractors without the authority of LGAS.
- 22.7 The Customer agrees that LGAS may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for LGAS to provide Goods to the Customer.
- 22.8 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.
- 22.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.