

**1. Definitions**

- 1.1 “GS (SA)” means Growers Supplies (SA) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Growers Supplies (SA) Pty Ltd.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting GS (SA) to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by GS (SA) 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 (plus any GST where applicable) for the Goods as agreed between GS (SA) and the Client in accordance with clause 5 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 or accepts delivery of the Goods.
- 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 agreement between the Client and GS (SA).
- 2.3 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 & Omissions**

- 3.1 The Client acknowledges and accepts that GS (SA) 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 GS (SA) in the formation and/or administration of this contract; and/or
  - (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by GS (SA) 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 GS (SA); the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

**4. Change in Control**

- 4.1 The Client shall give GS (SA) 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 GS (SA) as a result of the Client’s failure to comply with this clause.

**5. Price and Payment**

- 5.1 At GS (SA)’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by GS (SA) to the Client; or
  - (b) GS (SA)’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 seven (7) days.
- 5.2 GS (SA) 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 (including, but not limited to, where required due to the unavailability of Goods, safety considerations, change of design, etc.) which are only discovered after an order has been placed; or
  - (b) in the event of increases to GS (SA) in the cost of labour or materials, or fluctuations in currency exchange rates, which are beyond GS (SA)’s control.
- 5.3 Variations will be charged for on the basis of GS (SA)’s quotation, and will be detailed in writing, and shown as variations on GS (SA)’s invoice. The Client shall be required to respond to any variation submitted by GS (SA) within ten (10) working days. Failure to do so will entitle GS (SA) 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 GS (SA)’s sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by GS (SA), which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with GS (SA)’s payment schedule;
  - (d) twenty-five (25) days following the date of the statement posted to the Client’s address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by GS (SA).
- 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 Client and GS (SA).
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by GS (SA) 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 Client must pay to GS (SA) an amount equal to any GST GS (SA) must pay for any supply by GS (SA) 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.

**6. Delivery of Goods**

- 6.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Client or the Client’s nominated carrier takes possession of the Goods at GS (SA)’s address; or
  - (b) GS (SA) (or GS (SA)’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 6.2 At GS (SA)’s sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 The Client must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then GS (SA) shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 6.5 Any time or date given by GS (SA) to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and GS (SA) will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 6.6 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, GS (SA) reserves the right to vary the Price with alternative Goods as per clause 5.2. GS (SA) also reserves the right to place the order on hold until such time as GS (SA) and the Client agree to such variation.

**7. Risk**

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, GS (SA) is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by GS (SA) is sufficient evidence of GS (SA)’s rights to receive the insurance proceeds without the need for any person dealing with GS (SA) to make further enquiries.
- 7.3 If the Client requests GS (SA) to leave Goods outside GS (SA)’s premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client’s sole risk.

**8. Access**

- 8.1 The Client shall ensure that GS (SA) has clear and free access to the work site at all times to enable them to undertake the works. The GS (SA) 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 GS (SA).

**9. Title**

- 9.1 GS (SA) and the Purchaser agree that ownership of the Goods shall not pass until:
- (a) the Purchaser has paid GS (SA) all amounts owing to GS (SA); and
  - (b) the Purchaser has met all of its other obligations to GS (SA).
- 9.2 Receipt by GS (SA) 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.
- 9.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Purchaser in accordance with clause 9.1 that the Purchaser is only a bailee of the Goods and must return the Goods to GS (SA) on request.
  - (b) the Purchaser holds the benefit of the Purchaser’s insurance of the Goods on trust for GS (SA) and must pay to GS (SA) the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Purchaser 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 Purchaser sells, disposes or parts with possession of the Goods then the Purchaser must hold the proceeds of any such act on trust for GS (SA) and must pay or deliver the proceeds to GS (SA) on demand.
  - (d) the Purchaser should not convert or process the Goods or intermix them with other goods but if the Purchaser does so then the Purchaser holds the resulting product on trust for the benefit of GS (SA) and must sell, dispose of or return the resulting product to GS (SA) as it so directs.
  - (e) the Purchaser irrevocably authorises GS (SA) to enter any premises where GS (SA) believes the Goods are kept and recover possession of the Goods.
  - (f) GS (SA) may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Purchaser 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 GS (SA).
  - (h) GS (SA) may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Purchaser.

**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 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 has previously been supplied and that will be supplied in the future by GS (SA) to the Client.
- 10.3 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 GS (SA) 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, GS (SA) 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 GS (SA);
  - (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 GS (SA);
  - (e) immediately advise GS (SA) of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 GS (SA) 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.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client 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 GS (SA), the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by GS (SA) under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 9) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.
- 11. Security and Charge**
- 11.1 In consideration of GS (SA) agreeing to supply the 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).
- 11.2 The Client indemnifies GS (SA) from and against all GS (SA)'s costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising GS (SA)'s rights under this clause.
- 11.3 The Client irrevocably appoints GS (SA) and each director of GS (SA) as the Client'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 Client's behalf.
- 12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 12.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify GS (SA) 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 GS (SA) to inspect 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 GS (SA) 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, GS (SA) makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. GS (SA)'s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, GS (SA)'s liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If GS (SA) is required to replace the Goods under this clause or the CCA, but is unable to do so, GS (SA) may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, GS (SA)'s liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by GS (SA) at GS (SA)'s sole discretion;
  - (b) limited to any warranty to which GS (SA) is entitled, if GS (SA) 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 Client has complied with the provisions of clause 12.1; and
  - (b) GS (SA) 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.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, GS (SA) 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 the 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 GS (SA);
  - (e) fair wear and tear, any accident, or act of God.
- 12.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second-hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by GS (SA) as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that GS (SA) has agreed to provide the Client with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 12.10.
- 12.11 GS (SA) may in its absolute discretion accept non-defective Goods for return in which case GS (SA) may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.

- 12.12 Notwithstanding anything contained in this clause if GS (SA) is required by a law to accept a return then GS (SA) will only accept a return on the conditions imposed by that law.

**13. Intellectual Property**

- 13.1 Where GS (SA) has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of GS (SA). Under no circumstances may such designs, drawings and documents be used without the express written approval of GS (SA).
- 13.2 The Client warrants that all designs, specifications or instructions given to GS (SA) will not cause GS (SA) to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify GS (SA) against any action taken by a third party against GS (SA) in respect of any such infringement.
- 13.3 The Client agrees that GS (SA) may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which GS (SA) has created for the Client.

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

**15. Cancellation**

- 15.1 Without prejudice to any other remedies GS (SA) may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions GS (SA) may suspend or terminate the supply of Goods to the Client. The GS (SA) will not be liable to the Client for any loss or damage the Client suffers because GS (SA) has exercised its rights under this clause.
- 15.2 GS (SA) may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are due to be delivered by giving written notice to the Client. On giving such notice GS (SA) shall repay to the Client any money paid by the Client for the Goods. GS (SA) shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.3 In the event that the Client cancels delivery of the Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by GS (SA) 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 Client'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 Client agrees for GS (SA) 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 GS (SA).
- 16.2 The Client agrees that GS (SA) 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.
- 16.3 The Client consents to GS (SA) being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by GS (SA) 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.
- 16.5 GS (SA) 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.
- 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 GS (SA) 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 GS (SA) has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of GS (SA), 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).
- 16.7 The Client shall have the right to request (by e-mail) from GS (SA):
- (a) a copy of the information about the Client retained by GS (SA) and the right to request that GS (SA) correct any incorrect information; and
  - (b) that GS (SA) does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 GS (SA) 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.
- 16.9 The Client can make a privacy complaint by contacting GS (SA) via e-mail. GS (SA) 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](http://www.oaic.gov.au).

## **17. Unpaid Seller's Rights**

- 17.1 Where the Client has left any item with GS (SA) for repair, modification, exchange or for GS (SA) to perform any other service in relation to the item and GS (SA) has not received or been tendered the whole of any moneys owing to it by the Client, GS (SA) shall have, until all moneys owing to GS (SA) 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 GS (SA) shall continue despite the commencement of proceedings, or judgment for any moneys owing to GS (SA) having been obtained against the Client.

## **18. Service of Notices**

- 18.1 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.
- 18.2 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.

## **19. Trusts**

- 19.1 If the Client 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 GS (SA) may have notice of the Trust, the Client covenants with GS (SA) as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client 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 Client against the Trust or the trust fund. The Client 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 Client will not without consent in writing of GS (SA) (GS (SA) will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Client 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.

## **20. Dispute Resolution**

- 20.1 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.

**21. General**

- 21.1 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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which GS (SA) has its principal place of business, and are subject to the jurisdiction of the Adelaide Courts in South Australia.
- 21.3 Subject to clause 12 GS (SA) shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by GS (SA) of these terms and conditions (alternatively GS (SA)'s liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 The GS (SA) may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of GS (SA).
- 21.6 The GS (SA) 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 Client agrees and understands that they have no authority to give any instruction to any of GS (SA)'s sub-contractors without the authority of GS (SA).
- 21.7 The Client agrees that GS (SA) may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for GS (SA) to provide Goods to the Client.
- 21.8 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.
- 21.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.