

## Terms and Conditions for the Supply of Goods and Services

### CONTENTS

<p>1. Definitions and Interpretation ..... 1</p> <p>2. Acceptance of these Terms and Conditions ..... 3</p> <p>3. Term..... 3</p> <p>4. Credit Facility ..... 3</p> <p>5. Supply of Goods and Services ..... 3</p> <p>6. Variations..... 3</p> <p>7. Fees..... 4</p> <p>8. Disputed Invoices..... 4</p> <p>9. GST..... 4</p> <p>10. ICS' Warranties ..... 4</p> <p>11. Client's Warranties..... 4</p> <p>12. Parties' Obligations..... 5</p> <p>13. Subcontracting..... 5</p> <p>14. Non-Solicitation and Non-Compete ..... 5</p> <p>15. Title to Goods and the PPSA..... 6</p>	<p>16. Intellectual Property ..... 6</p> <p>17. Confidentiality ..... 6</p> <p>18. Security for Payment ..... 7</p> <p>19. Lien ..... 7</p> <p>20. Privacy and Personal Information..... 7</p> <p>21. Indemnity ..... 8</p> <p>22. Liability ..... 8</p> <p>23. Insurance..... 8</p> <p>24. Dispute Resolution ..... 8</p> <p>25. Default and Consequences ..... 9</p> <p>26. Termination ..... 9</p> <p>27. Consequences of Termination ..... 9</p> <p>28. Notices ..... 9</p> <p>29. General..... 9</p>
---	---

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 Definitions

In this Agreement unless the context otherwise requires:

**ADC** means the Australian Disputes Centre (ABN 87 003 042 840) or any successor dispute resolution organisation having similar objects that succeeds it.

**ADI** means an authorised deposit-taking institution, having the meaning given in the *Banking Act 1959* (Cth).

**Agreement** means the agreement for the supply of Goods and/or Services between ICS and the Client and including these Terms and Conditions and any annexures or attachments.

**Business Day** means a day which is not a Saturday, Sunday or public holiday in Western Australia.

**Change in Control** means a change in more than 50% of the shareholding or underlying control or the composition of the board of directors of a person.

**Client** means the entity engaging ICS for the supply of Goods and Services.

**Client Assets** mean the Client's property the subject of the supply of Services and treatments by ICS.

**Confidential Information** in relation to a party means information of a confidential nature including but not limited to information about its business, operations, strategy, administration, technology, affairs, clients, customers, employees, contractors or suppliers, but does not include any information which is in the public domain other than through a breach of confidence.

**Consequential Loss** means any loss of profits, loss of revenue, loss of any contract value, loss of anticipated profit or damages for lost opportunity.

**Credit Facility** means the credit facility ICS may offer to the Client via ICS' Credit Application Form.

**Encumbrance** means security interests, mortgages, pledges, charges, bills of sale, liens, assignments, preferential rights or trust arrangements whether over real or personal property or both, and any other arrangement given or created in each case by way of security.

**Fees** mean the total price of the various amounts payable by the Client under this Agreement for the Goods and/or Services:

- (a) as specified in the Quotation; or
- (b) if there is no Quotation, as per ICS' advertised ad hoc treatment rate.

**Force Majeure Event** means an event which is beyond the reasonable control of a party and includes but is not limited to the following types of events:

- (a) an act of God;
- (b) war or other state of armed hostilities, insurrection, riot, civil commotion, act of public enemies, acts of terrorism, national emergency (whether in fact or in Law) or martial law;
- (c) weather sufficiently inclement to prevent a party from performing an obligation under this Agreement;
- (d) natural catastrophes, fire, earthquake, lightning or explosions;
- (e) pandemic, epidemic or quarantine (including any government-mandated 'lockdown' or imposition of stay-at-home orders; or restrictions on travel, social interaction or access to public spaces);
- (f) strikes, lock outs, slowdowns, stoppages and restraints of labour;
- (g) lawful restraints;
- (h) prolonged energy shortages, prolonged embargoes, or prolonged lack of availability of raw materials;
- (i) changes in Laws; and
- (j) action or inaction by, or orders, judgments, rulings, decisions or enforcement actions of, any government, governmental authority or court of competent jurisdiction whether local, State or Federal (including denial, refusal or failure to grant any permit, authorisation, licence, approval or acknowledgment despite timely endeavours to obtain same),

but does not include:

- (k) financial distress nor the inability of either party to make a profit or avoid a financial loss;
- (l) changes in market prices or conditions; or

(m) a party's financial inability to perform its obligations under this Agreement.

**Goods** mean goods or products supplied by ICS to the Client (and where the context so permits shall include any supply of Services) under this Agreement.

**GST** means a goods and services tax, or a similar value added tax, levied or imposed under the GST Law.

**GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**ICS** means International Corrosion Services Pty Ltd (ACN 111 437 686) of 16 Da Vinci Way, Forrestdale WA 6112, being the entity providing Goods and/or Services to the Client.

**Insolvency Event** means, in respect of a party, any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration or bankruptcy;
- (b) having a Controller or analogous person appointed to it or any of its property;
- (c) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the Corporations Act or any other Law;
- (d) seeking protection from its creditors under any Law, entering into a compromise, moratorium, assignment, composition or arrangement with, or for the benefit of, any of its members or creditors; or
- (e) any analogous event or circumstance to those described in preceding sub-clauses (a) to (d) of this definition.

**Intellectual Property** includes all trademarks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights owned or held by ICS. These rights include but are not limited to:

- (a) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
- (b) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.

**Intellectual Property Rights** means all present and future rights in relation to copyright, trademarks, designs, patents, semiconductor and circuit layout rights, trade, business, company and domain names, confidential and other proprietary rights, and any other rights to registration of such rights whether created before or after the date of this Agreement, and whether in Australia or otherwise.

**Law** means any applicable statute, regulation, by-law, ordinance, policy or subordinate legislation in force from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government, and includes the common law and equity as applicable from time to time, and any mandatory standards or industry codes of conduct.

**Loss or Claim** means, in relation to any person, a claim, action, proceeding, judgment, damage (including but not limited to any damages or compensation and any damage to reputation), loss, cost (including legal costs on a full indemnity basis), expense or liability incurred by or to or made or recovered by or against the person, however arising and whether present, unascertained, immediate, future or contingent.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent, or can be reasonably ascertained, from the information or opinion.

**Personnel** means a party's principals, officers, employees, secondees, agents, consultants, contractors and subcontractors.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**Pre-Existing Materials** means all things, goods, materials, documents, information and items developed by or on behalf of ICS or the Client independently of this Agreement.

**Premises** means ICS' business premises or other premises where ICS carries out Services.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Quotation** means ICS' quotation for the supply of Goods and/or Services under this Agreement.

**Security Agreement, Commingled Goods, Financing Statement, Financing Change Statement, Personal Property, All Present and After Acquired Property, Purchase Money Security Interest, Registration and Security Interest** have the meanings given to them in the PPSA.

**Services** means the provision of ICS':

- (a) services to undertake the contracted activities and works; and
  - (b) any related Goods (and where the context so permits shall include any supply of Goods) supplied by ICS,
- and includes any variations authorised under this Agreement.

**Site** means the Client's premises if ICS is supplying Goods and/or Services to the Client at those premises.

**Start Date** means the date ICS commences supplying the Goods and/or Services.

**Taxes** means all taxes, levies, rates, charges, imposts of any kind whatsoever, including withholding tax.

**Tax Invoice** has the meaning given in the GST Law.

**Taxable Supply** has the meaning given in the GST Law.

**Term** means the period commencing on the Start Date and ending on the later of:

- (a) the date ICS completes the supply of Goods and/or Services; or
- (b) the date on which both parties complete all of the obligations under this Agreement.

**Terms and Conditions** means these terms and conditions for the Supply of Goods and Services.

## 1.2 Interpretation

In this Agreement the following rules of interpretation apply unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) "includes" means without limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a party includes its successors and permitted assigns;
  - (iii) a document includes all amendments or supplements to that document;
  - (iv) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to, this Agreement;
  - (v) this Agreement includes all schedules and attachments to it;
  - (vi) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing; and
  - (vii) a monetary amount is in Australian dollars;

- (g) an agreement on the part of two or more persons binds them jointly and severally;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

## 2. ACCEPTANCE OF THESE TERMS AND CONDITIONS

- 2.1 The Client agrees to purchase the Goods and/or Services from ICS Supplier on these Terms and Conditions.
- 2.2 Any instructions received by ICS from the Client in relation to the following:
  - (a) acceptance of the Quotation;
  - (b) acceptance of the Fees;
  - (c) supply of Goods and/or Services; or
  - (d) the Client's acceptance of Goods and/or Services supplied by ICS, which includes acceptance via any electronic or online portal,

will constitute acceptance of these Terms and Conditions.

- 2.3 Where more than one Client has entered into this Agreement, each Client shall be jointly and severally liable for all payments of the Fees.
- 2.4 The Client shall give ICS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, email address, or business practice). The Client shall be liable for any Loss or Claim incurred by ICS as a result of the Client's failure to comply with this clause 2.

## 3. TERM

This Agreement commences on the Start Date and continues for the Term unless terminated earlier in accordance with this Agreement.

## 4. CREDIT FACILITY

- 4.1 The Client may make an application for a Credit Facility from ICS by completing ICS' Credit Application Form.
- 4.2 The Client is not entitled to any credit facilities from ICS until it receives a written notice from ICS that the credit facilities have been granted.

Until the Client receives a notice that a Credit Facility has been granted, all Goods and/or Services supplied by ICS to the Client must be paid in accordance with clause 7.3(b), or as otherwise agreed between the parties.

- 4.3 Any credit provided to the Client is provided solely for the purpose of allowing the Client to purchase Goods and/or Services from ICS under this Agreement.
- 4.4 ICS may from time to time place a limit on the amount of credit available to the Client and may also amend that limit from time to time.
- 4.5 If the Client orders Goods and/or Services which would result in the Client exceeding its credit limit or if the Client has already exceeded its credit limit, ICS, in its absolute discretion may do one or more of the following:
  - (a) refuse to supply further Goods and/or Services to the Client ;
  - (b) require the Client to pay for all Goods and/or Services on a "cash on delivery" basis; or
  - (c) require the Client to reduce the amount owed to ICS on credit by a specified amount.

## 5. SUPPLY OF GOODS AND SERVICES

### 5.1 Commencement and Performance of the Services

ICS must diligently carry out the work under this Agreement and must not, except as permitted by this Agreement, delay, suspend, or fail to maintain reasonable progress in the delivery of Goods

### 5.2 Delivery of Goods

Unless otherwise agreed between the parties, the Services do not include delivery of Goods, or delivery or return of Client

Assets, to the Client. However, in the event ICS otherwise agrees to deliver Goods, or deliver or return Client Assets, to the Client, such delivery or return will be subject to a separate quote (which may be on the same Quotation or a separate Quotation at ICS' discretion) and in such event, this clause 5.2 will apply to such delivery of Goods, or delivery or return of Client Assets to the Client.

- (a) For the purposes of this clause 5.2, references to delivery of Goods include delivery or return of Client Assets, as the case may be.
- (b) ICS will notify the Client as soon as possible if ICS becomes aware of any delay in the delivery of Goods.
- (c) If ICS delivers the Goods to the Client's Site or other nominated delivery address, the Client must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery and in the event that the Client is unable to take delivery of the Goods as arranged then ICS will be entitled to charge a reasonable fee for re-delivery.
- (d) If applicable, ICS may deliver the Goods by separate instalments and each separate instalment will incur delivery costs and must be invoiced and paid in accordance with the provisions in these Terms and Conditions.
- (e) Any additional Client requirements regarding packaging, including capping, palletising and strapping, will incur additional costs to the Client.
- (f) ICS' failure to deliver up the Goods will not entitle either party to treat the Agreement as repudiated.
- (g) ICS does not warrant for any damage to Goods sustained in transit prior to the Client's receipt of such Goods.
- (h) ICS will not be liable to the Client for any Loss or Claim resulting from late delivery of the Goods for any reason (including but not limited to changes to the Client's requirements or variations to the Agreement).

## 5.3 Times for Performance

- (a) ICS will provide the Client with the Services during the Term at such times as may be reasonably required by the Client.
- (b) Unless otherwise agreed by the parties, ICS will provide the Services to the Client during normal business hours on each Business Day during the Term.

## 5.4 Equipment and Materials

- (a) ICS, except as agreed in writing between the Client and ICS, shall supply at its cost and expense all materials (if any) necessary for the completion of the supply of Goods and/or Services.
- (b) The equipment and materials and the uses to which they are put by ICS shall comply with all relevant Laws and all applicable Australian or International Standards.
- (c) All materials supplied by ICS shall, unless otherwise specified, be new and unused, of current manufacture and of the highest grade, free from all imperfections affecting performance and suitable for its purposes.

## 6. VARIATIONS

- 6.1 The Client may by written notice to ICS request ICS to vary the scope of the Services to be supplied under this Agreement ("Variation Notice").
- 6.2 Without limiting the generality of clause 6.1, the Client may vary the Services, to:
  - (a) omit any part of the Services;
  - (b) increase or decrease the frequency and/or duration of performance of all or any part of the Services; or
  - (c) perform additional work.
- 6.3 Within five (5) Business Days of receiving a Variation Notice, ICS will provide to the Client a written quotation ("Variation Quotation") which details:
  - (a) the variation requested by the Variation Notice;
  - (b) the variation (if any) to the Fees; and
  - (c) all relevant specifications, time frames and operational requirements relating to the varied Services additional to but not inconsistent with those in the Variation Notice.

- 6.4 The Client may by written notice to ICS:
- accept the Variation Quotation within five (5) Business Days of receiving it; or
  - reject the Variation Quotation within five (5) Business Days of receiving it if that Variation Quotation has not already been accepted.
- 6.5 If the Client does not reject the Variation Quotation within five (5) Business Days of receiving it pursuant to clause 6.4(b), the Client will be deemed to have accepted the Variation Quotation.
- 6.6 The Client is not required to pay any additional fees unless and until:
- the Client accepts the Variation Quotation under clause 6.4(a);
  - the Client is deemed to have accepted the Variation Quotation under clause 6.5; or
  - the parties otherwise agree in writing to the varied terms and fees.
- 7. FEES**
- 7.1 Fees and Invoicing**
- The Fees:
- payable by the Client to ICS under this Agreement are specified in ICS' invoice; and
  - are inclusive of all costs and expenses incurred by ICS and no further amounts are payable by the Client unless otherwise agreed in writing by the Client.
- 7.2 Invoicing**
- ICS shall invoice the Client for the Fees to its nominated address.
  - An invoice is correctly rendered if:
    - ICS has complied with its obligations under this Agreement as at the date of the invoice; and
    - the invoice is a Tax Invoice in the proper form for the purposes of GST.
  - If any part of any invoice is found to have been rendered incorrectly after payment has been made by the Client, then to the extent that it has been incorrectly rendered, any underpayment or overpayment will be recoverable by or from ICS, as the case may be.
- 7.3 Payment of Fees**
- Subject to clauses 7.2(b) and 8, the Client must pay any correctly rendered undisputed invoice:
- if a Credit Facility is in place, pursuant to the Credit Facility and these Terms and Conditions; or
  - in all other cases, within thirty (30) days of the invoice date.
- 7.4 Storage Costs**
- ICS reserves the right to make a reasonable charge for the storage and associated administrative costs ICS incurs for providing storage for Goods and/or Client Assets if the Client fails to collect or take delivery of such Goods and/or Client Assets within a reasonable time following completion of the supply of Goods and/or Services.
- 8. DISPUTED INVOICES**
- 8.1 If the Client disputes the amount of any invoice, the Client may, on written notice to ICS, withhold or suspend payment of any disputed part of the invoice until the dispute is resolved.
- 8.2 ICS must continue to perform its obligations under this Agreement in the event of a dispute about an invoice, while that dispute is resolved.
- 8.3 The Client must:
- pay any non-disputed amounts in accordance with clause 7.1(a); and
  - promptly pay any disputed amounts that are subsequently found to be correctly payable.
- 9. GST**
- 9.1 The Fees are exclusive of GST.

- 9.2 If any supply under this Agreement is a Taxable Supply, then the party making the supply may, at the same time that an invoice is rendered for the agreed consideration for the Taxable Supply, recover the amount of GST payable on that Taxable Supply, subject to the issue of a valid Tax Invoice.

## **10. ICS' WARRANTIES**

### **10.1 Warranties**

ICS warrants, and it is a condition of this Agreement, that:

- it will supply the Services in a good, proper and workmanlike manner and to the best practice and standard of care, skill, judgment and diligence expected of a contractor experienced in supplying the same or similar services;
- it will comply with all Laws relating to the supply of the Services, and obtain all necessary consents and approvals to supply the Services;
- all Services will be performed by suitably qualified and experienced Personnel;
- the supply of Goods and their use will not:
  - contravene any Laws; or
  - infringe the rights of a third party (including any Intellectual Property Rights); and
- it will ensure that the Client will obtain the benefit of all warranties given by all manufacturers, subcontractors, contractors and other relevant third parties in relation to the Goods.

### **10.2 Exclusions**

Notwithstanding the provisions of clause 10.1, ICS has no obligation under the warranties it gives in these Terms and Conditions for defects or non-conformance to the extent that the defect or non-conformance is caused by or occurs because of:

- misuse of, an accident to, improper storage of, or negligent or wrongful use of, the Goods, or the Client Assets;
- inadequate or insufficient maintenance of the Goods and/or Client Assets;
- failure by the Client to conduct normal maintenance on the Client Assets, including regular inspections;
- incorrect handling of material as applied to the Client Assets;
- prior repairs or maintenance to the Client Assets where those repairs or maintenance were performed by a person other than ICS;
- modifications, alterations or welded additions to the Client Assets;
- the base metal properties or other materials used in the manufacture of the Client Assets; or
- damage or corrosion to the Client Assets resulting from a deficiency in design, use, materials or workmanship, normal wear and tear, installation or placement in an incompatible corrosive environment, or repairs or maintenance by third parties.

## **11. CLIENT'S WARRANTIES**

- 11.1 The Client warrants that it will comply with all applicable Laws in storing, operating or using the Goods, including without limitation any relevant equipment operating codes, work, health and safety Laws, or software licence requirements, and that it will comply with all applicable equipment operating standards, good equipment operating practice and the manufacturer's manual.
- 11.2 The Client declares and warrants that the information contained in the Application for Credit is true, complete and correct.
- 11.3 The Client will indemnify ICS and hold it harmless in respect of any Loss or Claim which ICS may incur or suffer arising out of any failure or default in respect of the Client's obligations under this clause 11 including without limitation any remedial or rectification action in respect of improper or unlawful storage, operation, or installation of the Goods.
- 11.4 Where the Client is a trustee, the Client:

- (a) warrants that it has full power and authority for the benefit purposes and objects of the trust to enter the Agreement on behalf of the trust and that it shall be bound by these Terms and Conditions both personally and as trustee; and
- (b) confirms that the trustee shall be liable for the account and that in addition the assets of the trust shall be available to meet payment of the Fees.

## 12. PARTIES' OBLIGATIONS

### 12.1 ICS' Obligations

ICS will, subject to clause 12.3 below:

- (a) supply the Goods and/or Services having regard to Laws and prevailing standards, and in a competent and professional manner;
- (b) ensure that all ICS Personnel who are involved in delivering Goods and/or Services are competent and capable of performing their respective tasks;
- (c) take reasonable care to properly supervise or direct the ICS Personnel who are involved in delivering the Goods and/or Services, in the manner required or permitted by Law in respect of each such person;
- (d) supply Goods, that are, to ICS reasonable knowledge, of correct specifications and quality for the relevant purpose as determined by ICS in its absolute discretion; and
- (e) where it participates in the design or manufacture of any Good, exercise due care and apply appropriate skill when doing so.

### 12.2 Client's Obligations

The Client will:

- (a) pay all Fees to ICS when they are due and owing;
- (b) if Goods are being delivered to Site by ICS:
  - (i) ensure that the Site is in a safe condition at all times when the Goods are being delivered, and when ICS Personnel are present at the Site;
  - (ii) ensure that the Site is clean and suitable for the delivery of Goods at all relevant times;
  - (iii) not deliberately, negligently or recklessly expose any ICS Personnel to any hazards or unreasonable dangers; or harass or be discourteous to any of those persons;
  - (iv) not interfere with delivery of the Goods in any manner, nor allow anyone else to do so;
  - (v) take reasonable steps to prevent loss or theft of the Goods while present at the Site;
  - (vi) while any ICS Personnel are present on the Site, maintain the Site as a safe working environment, in accordance with all applicable work, health and safety Laws;
  - (vii) ensure that the Site is adequately secured during any period when Goods are left unattended at the Site, including that the relevant part of the Site must be capable of being locked properly;
- (c) provide all relevant and necessary information required by ICS to successfully supply the Goods and/or Services, and ensure that such information is complete, correct and not misleading in any respect;
- (d) where the services of third-party contractors or suppliers are required before ICS can supply the Goods and/or Services, procure those third parties' services, at the Client's own cost;
- (e) if the Client alleges that any improper damage has been sustained at the Site as a result of the acts or omissions of ICS' Personnel, report that loss or damage to ICS as soon as reasonably possible after the event, and provide all reasonable assistance that may be necessary for ICS to make an insurance claim in relation to that loss or damage;
- (f) ensure that its Personnel understand, and comply with, all warning labels, plates or signs attached to any Goods by its Personnel during the performance of the supply of Good and/or Services; and

- (g) ensure that no person, in particular any of its Personnel, interferes with or removes any warning labels, tags, or other notifications from any Goods; and

### 12.3 Suspension

The parties agree that:

- (a) ICS may suspend the whole or part of the supply of the Goods and/or Services because:
  - (i) of a personal accident, serious illness or death of any ICS Personnel or Client Personnel associated with the supply of Goods and/or Services;
  - (ii) there is, in ICS' sole opinion, circumstances which present actual or potential risk of life or serious injury at the Site;
  - (iii) in ICS' sole opinion, the condition of the Site is not adequate for the supply of Goods and/or Services;
  - (iv) of the acts or omissions of any third party that materially affect the supply of Goods and/or Services;
  - (v) a breach has occurred which requires notification under the *Work Health and Safety Act 2020* (WA); or
  - (vi) of any dispute between the parties regarding Intellectual Property, Confidential Information or the supply of Goods and/or Services; and
- (b) in such circumstances, except where the suspension is attributable to ICS' gross negligence, ICS will not be liable to pay the Client any compensation, besides refunding any relevant part of the Fees in the sole discretion of ICS, and the Client hereby releases ICS from liability for any Loss or Claim that the Client may experience as a result of such suspension.

## 13. SUBCONTRACTING

- 13.1 ICS may subcontract any of its rights or obligations under this Agreement providing such subcontractor has the requisite skills, knowledge, Personnel, authorisations and licences to supply the Goods and/or Services.
- 13.2 ICS must ensure that its subcontractors comply with all Laws and all standards, and have all requisite skills, knowledge, Personnel, authorisations and licences applicable to the performance of ICS' obligations under this Agreement.
- 13.3 To the extent that ICS subcontracts any of its obligations under this Agreement to a third party, ICS will remain liable to the Client for each act and omission of that third party (including its Personnel) in connection with the performance of such obligations as if it were an act or omission of ICS.

## 14. NON-SOLICITATION AND NON-COMPETE

- 14.1 In consideration of this Agreement, the Client expressly agrees and undertakes to ICS that, for any breach of the non-solicitation and non-compete provisions in this clause 14, damages alone may not be an adequate remedy. Therefore, the Client, in addition to any claims for Loss or damages on a full indemnity basis for any breach of this clause 14, consents to and indemnifies ICS in obtaining any injunctions, specific performance and any other remedies available at Law and in equity.
- 14.2 During the Term and after this Agreement ceases for any reason, the Client agrees that:
  - (a) within the areas of:
    - (i) Australia, but if a Court deems that unenforceable then;
    - (ii) Western Australia, but if a Court deems that unenforceable then;
    - (iii) 500 km radius from the Client's business premises (and any other then-premises of the Client), but if a Court deems that unenforceable then;
    - (iv) 100 km radius from the parties' business premises (and any other then-premises of the parties), but if a Court deems that unenforceable then;
    - (v) the Perth metropolitan area,
  - (b) for the periods from the Start Date until:
    - (i) 2 years after the expiry of the Term, but if a Court deems that unenforceable then;

- (ii) 12 months after the expiry of the Term, but if a Court deems that unenforceable then;
- (iii) 6 months after the expiry of the Term,
- (c) the Client will not:
  - (i) solicit, canvass, induce or encourage any Personnel of ICS to leave the employment of ICS;
  - (ii) solicit, canvass, approach any person or entity who is/was a client, customer or patron of ICS, with a view to establishing a relationship with or obtaining the custom of that person or entity in a business which carries on a business similar to ICS' business; or
  - (iii) interfere or seek to interfere, directly or indirectly, with the relationship between ICS' business and its Personnel or clients in the conduct of its business,
 without ICS' prior written consent (which may be held in its absolute discretion).
- 14.3 Clause 14.2 is construed and has effect as if it were a number of separate sub-clauses which results from combining each such sub-clause with each other sub-clause and each combination being severable from the others. If any such separate sub-clause is invalid or unenforceable for any reason, such invalidity or unenforceability does not in any way affect the validity or enforceability of other such related sub-clauses.
- 15. TITLE TO GOODS AND THE PPSA**
- 15.1 Title to and ownership of Goods remains with ICS until all the amounts owing by the Client to ICS (including without limitation the Fees and other debts owing to ICS) have been paid in full.
- 15.2 If payment of Fees is not received as and when due, ICS reserves the right to enter the place where the Goods are stored without further notice and remove and repossess the Goods (even if they have been installed). ICS is entitled to recover, in addition to any other damages, the costs of so doing from the Client.
- 15.3 Until all the amounts owing by the Client have been paid in full, the Client may sell the Goods in the ordinary course of its business but only as trustee and agent of ICS. The Client must store the Goods in such a manner that they are readily distinguishable from other goods held by the Client, so they clearly show that they are the property of ICS. The Client must not represent to any third party that it is acting for ICS, and ICS will not be bound by any contracts with third parties to which the Client is a party.
- 15.4 The Client must hold the sale proceeds it receives from any sale of the Goods as trustee and agent for ICS. All such sale proceeds must be placed in an ADI account separate from its own monies and the Client must not allow any person to have control of, or grant a Security Interest over, the proceeds or the accounts in which they are held. The Client must make immediate payment to ICS from the accounts in which the sale proceeds are held of all amounts which may be owing by the Client to ICS.
- 15.5 The Client acknowledges that the Agreement and these Terms and Conditions constitute a Security Agreement, and the Client grants a Security Interest in favour of ICS in all the Goods supplied by ICS to the Client from time to time. The Client grants to ICS a Purchase Money Security Interest. Further, the Client grants to ICS a Security Interest in the Client's All Present and After Acquired Property to secure the as security for the Goods and performance of its obligations under this Agreement.
- 15.6 The Client accepts, acknowledges and agrees that:
  - (a) ICS can, without notice to the Client, affect and maintain a Registration (in any manner that ICS considers appropriate) of its Security Interest on the PPSR in relation to any Security Interest contemplated or constituted by the Agreement including but not limited to ICS' Goods, Services, contract rights or Intellectual Property; and
  - (b) Pursuant to section 275(6) of the PPSA, the Client agrees ICS is not required to disclose to an interested person information pertaining to ICS' Security Interest unless required to do so pursuant to the PPSA or at Law generally.
- 15.7 The Client will:
  - (a) sign any documents and/or provide any further information (which information the Client warrants to be complete, accurate and up to date in all respects) and/or assistance which ICS may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR;
  - (b) not register a Financing Change Statement or make a demand to alter the Financing Statement pursuant to section 178 of the PPSA in respect of the Goods, including any Services, without the prior written consent of ICS;
  - (c) give ICS not less than fourteen (14) days' written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business activities);
  - (d) indemnify ICS against any costs ICS incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs ICS may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at Law generally; and
  - (e) procure from any persons considered by ICS to be relevant to its security position, such agreement and waivers as ICS may at any time reasonably require.
- 15.8 The Client undertakes not to register, or permit to be registered, a Financing Statement or a Financing Change Statement in respect of a Security Interest contemplated or constituted by this Agreement in favour of a third party without ICS' prior written consent.
- 15.9 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Client agrees that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
  - (a) Section 95 (notice of removal of accession), to the extent that it requires ICS to give a notice to the Client;
  - (b) Section 96 (when a person with an interest in the whole may retain an accession);
  - (c) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
  - (d) Section 125 (obligation to dispose of or retain collateral);
  - (e) Section 129 (disposal by purchase);
  - (f) Section 130 (notice of disposal of collateral), to the extent that it requires ICS to give a notice to the Client;
  - (g) Section 132(3)(d) (contents of statement of account after disposal);
  - (h) Section 132(4) (statement of account if no disposal);
  - (i) Section 135 (notice of retention of collateral);
  - (j) Section 142 (redemption of collateral); and
  - (k) Section 143 (reinstatement of security agreement).
- 15.10 Notices or documents required or permitted to be given to ICS for the purposes of the PPSA must be given in accordance with the PPSA.
- 16. INTELLECTUAL PROPERTY**
- 16.1 The Client expressly agrees and acknowledges that:
  - (a) any Intellectual Property in ICS' Goods and/or Services (whether unregistered, registered or registrable) is ICS' property and not the Client's property; and
  - (b) nothing in the Agreement is intended to provide the Client with any interest in the Intellectual Property in ICS' Goods and/or Services.
- 16.2 The Client agrees that it must not copy, alter, modify or in any other way interfere with (including but not limited to reverse engineering) the Goods, the Services, or the Intellectual Property in the Goods or Services. The Client must not do anything that may infringe on the ICS' Intellectual Property Rights.
- 17. CONFIDENTIALITY**

17.1 Each party (“**Recipient**”) must keep confidential, and not disclose, any Confidential Information of the other party (“**Discloser**”) except:

- (a) as permitted under this Agreement;
- (b) with the prior written consent of the Discloser;
- (c) to the Recipient’s officers, agents, professional advisers, auditors, employees, contractors, sub-contractors and insurers; or
- (d) where the Recipient is compelled to do so by Law, provided that it gives the other party written notice prior to disclosure.

17.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed in connection with this Agreement.

17.3 The Recipient must:

- (a) maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;
- (b) notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of this Agreement by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient’s expense; and
- (c) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.

17.4 The following are exceptions to clauses 17.1 and 17.2:

- (a) that at the time of disclosure, the information is in the public domain;
- (b) information that is required by Law to be communicated to a person who is authorised by law to receive it;
- (c) disclosure to a court, arbitrator, expert, board of enquiry or administrative tribunal in the course of proceedings or determinations by before him or it;
- (d) disclosure to any person who is required or authorised by this Agreement to perform any function under this Agreement;
- (e) information that is necessary to be disclosed to any bank or other financial institution in connection with the organisation of that party’s financial affairs;
- (f) information that is necessary to be disclosed to any legal counsel, accountant or other professional adviser in connection with the party’s affairs provided that the disclosee is bound by an obligation of confidentiality in regard to the information disclosed; or
- (g) information that is necessary to be disclosed to the party’s officers, employees, agents, contractors, consultants, auditors and other persons for the purpose of all or any of the matters pertaining to this Agreement.

17.5 All records, documents (electronic or otherwise) and other papers (and any copies or extracts and including, but not limited to Confidential Information) made or acquired by the Client in relation to ICS is and remains the sole property of ICS. These items must be delivered-up to ICS when the Agreement is terminated.

## 18. SECURITY FOR PAYMENT

As security for the Client’s obligations and liabilities under this Agreement:

- (a) the Client charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all real and personal property;
- (b) without limiting the generality of the charge in this clause, the Client agrees, on ICS’ request, to execute any documents and do all things necessary required by ICS to register a mortgage, absolute caveat, Security Interest or other instrument of charge over any real property or personal property, or both, and against the event the Client fails to do so within a reasonable time of being so

requested, the Client irrevocably and by way of security, appoints any credit manager or solicitor engaged by ICS to be the Client’s true and lawful attorney to execute and register such instruments; and

- (c) the Client will indemnify ICS on a full indemnity basis against all costs and expenses incurred by ICS in connection with the preparation and registration of any such security interest, charge, caveat or mortgage document.

## 19. LIEN

19.1 The Client acknowledges and understand that ICS has a lien (under general law or equity) over all property in ICS’ possession belonging to the Client, including all Client Assets, Goods and all goods in or attached to any Client Assets or Goods (“**Lien**”), to secure payment of any or all amounts outstanding from time to time.

19.2 The Client agrees that ICS may, at its sole and absolute discretion, exercise the Lien in respect of any due and unpaid amounts outstanding by the Client and may retain the Client’s property, including Client Assets, Goods and all goods in or attached to any Client Assets or Goods and serve notice on the Client requiring immediate payment of the amounts outstanding by the Client, including all Fees and ICS’ reasonable storage and administrative costs pursuant to clause 7.4.

## 20. PRIVACY AND PERSONAL INFORMATION

20.1 The Client must:

- (a) in relation to the discharge of its obligations under this Agreement, comply with the relevant provisions of the Privacy Act;
- (b) ensure that Personal Information is protected against loss and against unauthorised access, use, modification, disclosure or other misuse;
- (c) not use Personal Information other than for the purpose of performing its obligations under this Agreement, unless required or authorised by Law;
- (d) not disclose Personal Information without the prior written consent of ICS, unless required or authorised by Law;
- (e) not transfer any Personal Information outside of Australia without the prior written consent of ICS;
- (f) ensure that access to Personal Information is restricted to those of its Personnel who require access in order to perform their duties under this Agreement;
- (g) ensure that its Personnel are aware of the Client’s obligations under this clause 18 and comply with the same obligations imposed on the Client under this clause;
- (h) fully cooperate with ICS to enable ICS to respond to applications for access to, or amendment of, a document containing a person’s Personal Information and to privacy complaints;
- (i) immediately notify ICS if the Client becomes aware that a disclosure of Personal Information is or may be required or authorised by Law; and
- (j) comply with such other privacy and security measures as ICS reasonably advises the Client in writing from time to time.

20.2 The Client agrees for ICS to obtain from a credit reporting agency a credit report containing credit information and Personal Information about the Client in relation to the Credit Facility.

20.3 The Client agrees that ICS may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess any application for a Credit Facility 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 the Credit Facility, where the Client is in default with other credit providers; and/or
- (d) to assess the credit worthiness of the Client.

- 20.4 The Client consents to ICS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) of the Privacy Act).
- 20.5 The Client agrees that credit information and Personal Information provided may be used and retained by ICS for the following purposes and for other purposes as shall be agreed between the Client and ICS or required by law from time to time:
- provision of Goods and/or Services; and/or
  - marketing of Goods and/or Services by ICS, its agents or distributors in relation to the Goods and/or Services; and/or
  - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods and/or Services; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
  - enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods and/or Services.
- 20.6 ICS may give information about the Client to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Client; and/or
  - allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 20.7 The Client must immediately notify ICS upon becoming aware of a breach of this clause 20.
- 20.8 Nothing in this clause 20 is intended to limit any obligation of the Client under the Privacy Act, that the Client may have as an organisation with respect to Personal Information.
- 21. INDEMNITY**
- The Client continually indemnifies ICS and its Personnel from and against any Claim or proceeding that is made, threatened or commenced, and against any Loss or Claim, liability, expense or damage ((including commissions payable to commercial agents, mercantile agents or debt collectors to pursue or recover outstanding monies pursuant to this Agreement and the liability to pay this commission arises at the time the recovery is placed in the hands of such agents or debt collectors; and legal costs on a full indemnity basis including legal proceedings for enforcement) any of ICS or its Personnel incurs or suffers, as a direct or indirect result of any of the following:
- any breach of this Agreement by the Client;
  - the death or personal injury of any person to the extent caused or contributed to by any act or omission of the Client or its Personnel;
  - loss of, or damage to, any property to the extent caused or contributed to by any act or omission of the Client or its Personnel;
  - any breach of Law by the Client or its Personnel;
  - any infringement, or alleged infringement, of a third party's rights (including Intellectual Property Rights); and
  - any act or omission of fraud, dishonesty, reckless or wilful misconduct or misrepresentation by the Client or its Personnel.
- 22. LIABILITY**
- 22.1 To the maximum extent permitted by Law and save for the limitation in clause 22.2, ICS maximum aggregate liability to the Client (whether under contract, tort, statute or in equity) arising out of or in connection with this Agreement is limited to the total amount of the Fees paid under this Agreement.
- 22.2 Notwithstanding clause 22.1, to the maximum extent permitted by Law, ICS maximum aggregate liability to the Client (whether under contract, tort, statute or in equity) for any loss, theft, damage or destruction to the Client's property that is stored or held at ICS' Premises is limited to One hundred Thousand Dollars (\$100,000).
- 22.3 This clause 22 will apply regardless of the form of Loss or Claim whether in contract, statute or tort (including without limitation to negligence) or otherwise.
- 22.4 Neither party will be liable to the other party for any Consequential Loss suffered or incurred by the other party arising out of or in connection with this Agreement, whether arising under contract, in tort (including negligence) or otherwise.
- 22.5 The Client acknowledges, understands and agrees that, notwithstanding any other provision of this Agreement:
- ICS is not responsible for any plant, equipment, material or item treated using ICS' Goods, products or Services;
  - ICS is not a metallurgist and the Client warrants that the steel provided for the purpose of the Services is stainless steel;
  - it must ensure and accepts responsibility for the compatibility of the stainless steel supplied and the stainless steel reaction with the chemical, electro-chemical, laser or mechanical metal treatment products ICS uses for supplying the Services;
  - the Services relating to the treatment of stainless steel is an imprecise process and the quality of the result cannot be guaranteed;
  - ICS provides no warranties concerning the Goods and/or Services or the treatments used for the Services and there is no defects warranty period, as the Service is a cleaning process and brings the stainless steel back to its original property, and to that extent, ICS cannot warrant the base metal performance or the cleanliness of the stainless steel once the Services are complete, as ICS cannot control the environment, care of handling or cleanliness; and
  - the collection, storage and provision of data on local and remote servers presents inherent security risks and risk of loss. It agrees that it will not hold ICS liable for any loss, theft or corruption of any data collected, stored or provided by ICS or any damage that the Goods and/or Services may cause to any of the Client's existing infrastructure that does not directly result from ICS' gross negligence.
- 23. INSURANCE**
- 23.1 Each party must effect and maintain insurances in the form or forms appropriate to that party's activities and with insurers approved by the Australian Prudential Regulation Authority.
- 23.2 Each party must provide, on the party's request, certificates of currency and such other evidence satisfactory to the other party of insurance coverage specified in this clause 23.
- 23.3 Each party must, if so required:
- effect the workers' compensation and public liability insurance before the Start Date and maintain them until this Agreement is terminated or expired; and
  - effect the professional indemnity insurance before the Start Date and maintain it for not less than 3 years after this Agreement is terminated or expired
- 24. DISPUTE RESOLUTION**
- 24.1 If any dispute arises out of or in connection with this Agreement or the interpretation of its terms (a "Dispute"), a party may not commence any court proceedings relating to the Dispute unless this clause 24 has first been complied with, except where that party seeks urgent interlocutory relief.
- 24.2 The parties must attempt to resolve any Dispute as follows:
- Either party may notify the other party in writing of the occurrence of a Dispute and the parties must meet within seven (7) days or such other time as agreed to discuss and attempt to resolve the Dispute.
  - On receipt of the notice specified in clause 24.2(a), the parties must use their reasonable efforts to expeditiously resolve the Dispute.
  - If the parties cannot resolve the Dispute within fourteen (14) days after the first meeting between the parties specified in clause 24.2(a), or any further period as the parties may agree to in writing, the Dispute must (at the instigation of any party) go to mediation.



- (d) The mediation is to be conducted in accordance with the ADC's Mediation Guidelines with a mediator as agreed by the parties or, failing agreement, as appointed by the ADC or its nominee.
- (e) The mediation will be confidential, and the parties must equally bear the mediator's costs to the Dispute, and each party must also bear their own legal costs.
- (f) If the Dispute is not resolved at mediation within fourteen (14) days of the first mediation meeting then any party is at liberty to claim their costs against the other parties, including the costs referred to in clause 24.2(e), and either party may commence legal proceedings.
- 24.3 The parties must continue to perform their obligations under this Agreement, including the payment of any Fees, while any Dispute is being resolved in accordance with this clause 24.
- 25. DEFAULT AND CONSEQUENCES**
- 25.1 Neither party shall take any action (including legal action) against the other party for a default of the Agreement without first giving the defaulting party written notice specifying the default and providing the defaulting party with seven (7) days to rectify such.
- 25.2 Interest on overdue payments of any invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of twelve percent (12%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
- 25.3 If the Client defaults in payment (including by way of dishonoured cheque) of any invoice when due, the Client will indemnify ICS from and against all costs and disbursements incurred by ICS in pursuing the debt including legal costs (on a solicitor and own Client basis) and ICS' debt recovery costs.
- 25.4 Without prejudice to any other remedies ICS may have, if at any time the Client is in breach of any obligation (including those relating to payment), ICS may suspend or terminate the supply of Goods and/or Services to the Client and any of its other obligations under these Terms and Conditions. ICS will not be liable to the Client for any Loss or Claim the Client suffers because ICS has exercised its rights under this clause.
- 25.5 Without prejudice to ICS' other remedies at Law, ICS is entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to ICS shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to ICS becomes overdue, or in ICS' opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client is the subject of an Insolvency Event.
- 26. TERMINATION**
- 26.1 Either party may terminate this Agreement by giving the other party not less than thirty (30) days' written notice.
- 26.2 **Default by the Client**  
ICS may terminate this Agreement immediately by written notice to the Client if the Client:
- (a) does anything that materially damages or is likely to materially damage ICS' brand or reputation;
- (b) breaches this Agreement and does not remedy the breach within fourteen (14) days of receipt of written notice from ICS specifying the breach and requiring it to be remedied;
- (c) commits a breach of this Agreement which is incapable of remedy;
- (d) or its Personnel commit any act of fraud or dishonesty in relation to this Agreement; or
- (e) is the subject of an Insolvency Event.
- 26.3 **Default by ICS**  
The Client may terminate this Agreement immediately by written notice to ICS if ICS:
- (a) ceases to hold any applicable licence relating to the class of Goods and Services it provides to the Client, or has conditions or restrictions imposed on such licence or licences which are unacceptable to the Client, acting reasonably;
- (b) does anything that materially damages or is likely to materially damage the Client's brand or reputation;
- (c) breaches this Agreement and does not remedy the breach within fourteen (14) days of receipt of written notice from the Client specifying the breach and requiring it to be remedied;
- (d) commits a breach of this Agreement which is incapable of remedy;
- (e) or its Personnel commit any act of fraud or dishonesty in relation to this Agreement; or
- (f) is the subject of an Insolvency Event.
- 26.4 **Credit Facility**
- (a) ICS may terminate the Credit Facility at its discretion for any reason upon twenty-four (24) hours' notice.
- (b) Upon the Credit Facility terminating:
- (i) all amounts owing under the Credit Facility now or in the future become immediately due and payable and recoverable as a debt payable by the Client to ICS; and
- (ii) ICS may retake possession of all Goods that have been delivered which are in the Client's possession.
- 26.5 This clause 25 does not limit ICS' rights to receive its Fee for all Goods and Services provided by ICS to the Client up to the date of termination for any reason.
- 27. CONSEQUENCES OF TERMINATION**
- 27.1 As soon as practicable after expiry or termination of this Agreement, each party (the "First Party") must:
- (a) return to the other party all the other party's equipment, records, documents and materials provided by the First Party for the purposes of this Agreement, including any security passes and keys; and
- (b) return to the other party all copies of all Confidential Information and Personal Information of the other party in its possession or control.
- 27.2 Clauses 14.3, 15, 16.1, 21, 21, 23.3(b), 24, 27 and 28 continue after termination or expiry of this Agreement.
- 28. NOTICES**
- 28.1 Notices under this Agreement may be delivered by hand, by mail or by email to:
- (a) ICS at the address or email address shown on the Quotation; and
- (b) the Client at the addresses it nominates in writing to ICS.
- 28.2 Notices will be deemed to be served:
- (a) upon delivery – if delivered by hand;
- (b) on the fourth (4th) Business Day after the date on which it was posted – if sent by ordinary pre-paid or registered post addressed to a party;
- (c) on the day it was sent – if sent by email transmission before or during normal business hours on a Business Day; or
- (d) on the next Business Day following the day on which it was sent – if it is sent by email transmission after 4.00 pm on a Business Day or on a day other than a Business Day.
- 28.3 Each party must promptly notify the other party of any change to their addresses (including email addresses), or any other such information supplied by them.
- 29. GENERAL**
- 29.1 **Governing Law**  
This Agreement is governed by the laws of Western Australia and each party submits to the exclusive jurisdiction of the courts of Western Australia.
- 29.2 **Assignment**  
Neither party may assign any of its rights or obligations under this Agreement without the other party's prior written consent.
- 29.3 **Relationship**  
Nothing in this Agreement gives rise to any relationship of agency, partnership, employment or otherwise between the parties.

#### 29.4 Force Majeure

If ICS is delayed, hindered, or otherwise prevented from complying with its obligations under this Agreement by reason of events or circumstances beyond the reasonable control of ICS including by reason of a Force Majeure Event, or any other circumstances affecting the supply of Goods and/or Services, ICS is not liable to the Client for any loss or damage which is or may be suffered by the Client whether as a direct or indirect result of any such events or circumstances.

Client buying or selling goods and services other than the representations or warranties expressed here.

#### 29.15 Counterparts

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

#### 29.5 Set Off

- (a) The Client shall not be entitled to set off against or deduct from the Fees any sums owed or claimed to be owed to the Client by ICS.
- (b) ICS may by notice in writing set off against or deduct from any amounts owing to the Client under this Agreement by any fee, credit, rebate or other amount which is payable to ICS under or in connection with this Agreement.

#### 29.6 Entire Agreement

This Agreement constitutes the entire agreement between the parties in connection with their respective subject matter and supersedes all previous agreements or understandings between the parties in connection with the relevant subject matter.

#### 29.7 Further Assurance

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Agreement and to perform its obligations under this Agreement.

#### 29.8 Inconsistency

In the event of any inconsistency between:

- (a) these Terms and Conditions; and
- (b) any schedules, annexures or other attachments to this Agreement (if any),

these Terms and Conditions will prevail to the extent of the inconsistency.

#### 29.9 Severability

If any provision of this Agreement at any time is or becomes void or voidable or unenforceable, the remaining provisions, if any, will continue in full force and effect and any void, voidable or unenforceable provision will be replaced by a lawful and enforceable provision which, so far as possible achieves the same economic and other benefits for the Client and ICS, as the void, unlawful or unenforceable provision, was intended to achieve.

#### 29.10 Conflict

Where any conflict occurs between the provisions contained in these Terms and Conditions, such provisions will be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from these Terms and Conditions without otherwise diminishing the enforceability of the remaining provisions of these Terms and Conditions.

#### 29.11 Limitation and Breach

In the event of any breach of the Agreement or any of these Terms and Conditions by ICS the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Fees.

#### 29.12 Waiver

No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it.

#### 29.13 Variation

No variation of this Agreement is effective unless made in writing and signed by each party.

#### 29.14 No Representations or Warranties

The Client acknowledges ICS does not make under this Agreement, or these Terms and Conditions, or outside of them, any representations or warranties regarding goods and services or any matter (including but not limited to descriptions, illustrations and performance contained in any ICS' catalogues, price lists or any other advertising or marketing materials) which is or might be relevant to the