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## Orion Australia Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Orion" means Orion Australia Pty Ltd ATF Orion Australia Unit Trust T/A Orion Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Orion Australia Pty Ltd ATF Orion Australia Unit Trust T/A Orion Australia Pty Ltd.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Orion 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 Orion and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The 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 Orion.
- 2.3 All literature, samples, specifications, dimensions and weights submitted with this quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with products and services Orion supplies, and Orion reserves the right to supply products that have minor modifications in specifications as Orion sees fit.
- 2.4 The descriptions, illustrations and performances contained in catalogues, other advertising material and price lists do not form part of the contract of sale of the products.
- 2.5 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, Orion reserves the right to vary the Price with alternative Goods as per clause 5.2. Orion also reserves the right to halt all Services until such time as Orion and the Client agree to such changes.

### 3. Electronic Transactions Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 7 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Change in Control

- 4.1 The Client shall give Orion 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 Orion as a result of the Client's failure to comply with this clause.

### 5. Price and Payment

- 5.1 At Orion's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Orion to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to Orion's current price list; or
  - (c) Orion's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Orion reserves the right to change the Price if a variation to Orion's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of increases to Orion in the cost of freight, taxes, levies, materials and labour) will be charged for on the basis of Orion's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by Orion within ten (10) working days. Failure to do so will entitle Orion 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.
- 5.3 At the Agent's sole discretion, a non-refundable deposit may be required.
- 5.4 At Orion's sole discretion a 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 Orion, 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 Orion's payment schedule;
  - (d) thirty (30) days following the end of the month in which a statement is 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 seven (7) days following the date of any invoice given to the Client by Orion.
- 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 Orion.
- 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 Orion 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 Orion an amount equal to any GST Orion must pay for any supply by Orion 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:

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- (a) the Client or the Client's nominated carrier takes possession of the Goods at Orion's address; or
  - (b) Orion (or Orion'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 Orion'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 they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Orion shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Orion may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time or date given by Orion to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Orion will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

### 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, Orion is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Orion is sufficient evidence of Orion's rights to receive the insurance proceeds without the need for any person dealing with Orion to make further enquiries.
- 7.3 If the Client requests Orion to leave Goods outside Orion'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.
- 7.4 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish. Orion will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 7.5 Where the Client is to supply Orion with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. Orion shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
- 7.6 Any advice, recommendation, information, assistance or service provided by Orion in relation to Goods or Services supplied is given in good faith, is based on Orion's own knowledge and experience and shall be accepted without liability on the part of Orion and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Services.

### 8. Title

- 8.1 Orion and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Orion all amounts owing to Orion; and
  - (b) the Client has met all of its other obligations to Orion.
- 8.2 Receipt by Orion 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.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 8.1 that the Client is only a bailee of the Goods and must return the Goods to Orion on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Orion and must pay to Orion the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Orion and must pay or deliver the proceeds to Orion on demand.
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Orion and must sell, dispose of or return the resulting product to Orion as it so directs.
  - (e) the Client irrevocably authorises Orion to enter any premises where Orion believes the Goods are kept and recover possession of the Goods.
  - (f) Orion may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Orion.
  - (h) Orion may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 9. Personal Property Securities Act 2009 ("PPSA")

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Orion to the Client.
- 9.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Orion may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, Orion 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;

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- (c) not register a financing change statement in respect of a security interest without the prior written consent of Orion;
  - (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 Orion;
  - (e) immediately advise Orion of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Orion and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Orion, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Client must unconditionally ratify any actions taken by Orion under clauses 9.3 to 9.5.
- 9.9 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 of the PPSA.

### 10. Security and Charge

- 10.1 In consideration of Orion 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).
- 10.2 The Client indemnifies Orion from and against all Orion's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Orion's rights under this clause.
- 10.3 The Client irrevocably appoints Orion and each director of Orion as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Client's behalf.

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

- 11.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Orion 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 Orion to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 Orion acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Orion makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Orion's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Client is a consumer within the meaning of the CCA, Orion's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Orion is required to replace the Goods under this clause or the CCA, but is unable to do so, Orion may refund any money the Client has paid for the Goods.
- 11.7 If the Client is not a consumer within the meaning of the CCA, Orion'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 Orion at Orion's sole discretion;  
(b) limited to any warranty to which Orion is entitled, if Orion did not manufacture the Goods;  
(c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:  
(a) the Client has complied with the provisions of clause 11.1; and  
(b) Orion has agreed that the Goods are defective; and  
(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and  
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Orion shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:  
(a) the Client failing to properly maintain or store any Goods;  
(b) the Client using the Goods for any purpose other than that for which they were designed;  
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;  
(d) the Client failing to follow any instructions or guidelines provided by Orion;  
(e) fair wear and tear, any accident, or act of God.
- 11.10 Orion may in its absolute discretion accept non-defective Goods for return in which case Orion 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.
- 11.11 Notwithstanding anything contained in this clause if Orion is required by a law to accept a return then Orion will only accept a return on the conditions imposed by that law.

### 12. Intellectual Property

- 12.1 Where Orion has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Orion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Orion.

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- 12.2 The Client warrants that all designs, specifications or instructions given to Orion will not cause Orion to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Orion against any action taken by a third party against Orion in respect of any such infringement.
- 12.3 The Client agrees that Orion may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Orion has created for the Client.

### 13. Default and Consequences of Default

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Orion's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Client owes Orion any money the Client shall indemnify Orion from and against all costs and disbursements incurred by Orion in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Orion's contract default fee, and bank dishonour fees).
- 13.3 Further to any other rights or remedies Orion may have under this contract, if a Client has made payment to Orion, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Orion under this clause 13 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 13.4 Without prejudice to any other remedies Orion may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Orion may suspend or terminate the supply of Goods to the Client. Orion will not be liable to the Client for any loss or damage the Client suffers because Orion has exercised its rights under this clause.
- 13.5 Without prejudice to Orion's other remedies at law Orion shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Orion shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Orion becomes overdue, or in Orion'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 Orion;
  - (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.

### 14. Cancellation

- 14.1 Without prejudice to any other remedies Orion may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Orion may suspend or terminate the supply of Goods to the Client. Orion will not be liable to the Client for any loss or damage the Client suffers because Orion has exercised its rights under this clause.
- 14.2 Orion may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Orion shall repay to the Client any money paid by the Client for the Goods. Orion shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 14.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Orion as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 14.4 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.

### 15. Privacy Act 1988

- 15.1 The Client agrees for Orion 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 Orion.
- 15.2 The Client agrees that Orion 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 (2) years.
- 15.3 The Client consents to Orion being given a consumer credit report to collect overdue payment on commercial credit.
- 15.4 The Client agrees that personal credit information provided may be used and retained by Orion for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 15.5 Orion may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 15.6 The information given to the CRB may include:
- (a) personal information as outlined in 15.1 above;
  - (b) name of the credit provider and that Orion 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);

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- (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 Orion has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of Orion, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 15.7 The Client shall have the right to request (by e-mail) from Orion:
- (a) a copy of the information about the Client retained by Orion and the right to request that Orion correct any incorrect information; and
  - (b) that Orion does not disclose any personal information about the Client for the purpose of direct marketing.
- 15.8 Orion will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 15.9 The Client can make a privacy complaint by contacting Orion via e-mail. Orion 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).

### 16. Service of Notices

- 16.1 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.
- 16.2 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.

### 17. Dispute Resolution

- 17.1 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.

### 18. General

- 18.1 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.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Tasmania, the state in which Orion has its principal place of business, and are subject to the jurisdiction of the courts in Tasmania.
- 18.3 Subject to clause 11 Orion 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 Orion of these terms and conditions (alternatively Orion's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 18.4 Orion may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 18.5 The Client cannot licence or assign without the written approval of Orion.
- 18.6 Orion 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 Orion's sub-contractors without the authority of Orion.
- 18.7 The Client agrees that Orion 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 Orion to provide Goods to the Client.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.9 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.