

1. Definitions

- 1.1 “Exel-Seal” means Exel-Seal (Melbourne) Pty Ltd ATF Smeeton Family Trust T/A Exel-Seal (Melbourne) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Exel-Seal (Melbourne) Pty Ltd ATF Smeeton Family Trust T/A Exel-Seal (Melbourne) Pty Ltd.
- 1.2 “Client” means the person/s ordering the Works 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 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Exel-Seal to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Works as agreed between Exel-Seal and the Client in accordance with clause 5 below.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with Exel-Seal’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Exel-Seal.

3. Electronic Transactions (Victoria) Act 2000

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) 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 Exel-Seal 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 Exel-Seal as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At Exel-Seal’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Exel-Seal to the Client in respect of Works performed or Materials supplied; or
 - (b) Exel-Seal’s Price at the date of delivery of the Works according to Exel-Seal’s current pricelist; or
 - (c) Exel-Seal’s quoted Price (subject to clause 5.2) which shall be binding upon Exel-Seal provided that the Client shall accept Exel-Seal’s quotation in writing within thirty (30) days.
- 5.2 Exel-Seal reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to Exel-Seal in the cost of labour or Materials which are beyond Exel-Seal’s control.
- 5.3 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Exel-Seal, which may be:
- (a) on completion of the Works; or
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Exel-Seal.
- 5.4 Payment may be made by cheque, electronic/on-line banking, credit card, PayPal, or by any other method as agreed to between the Client and Exel-Seal.
- 5.5 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Exel-Seal an amount equal to any GST Exel-Seal must pay for any supply by Exel-Seal under this or any other agreement for the sale of the Materials. 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. Provision of the Works

- 6.1 Subject to clause 6.2 it is Exel-Seal’s responsibility to ensure that the Works start as soon as it is reasonably possible.
- 6.2 The Works’ commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Exel-Seal claims an extension of time where completion is delayed by an event beyond Exel-Seal’s control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Exel-Seal that the site is ready.
- 6.3 At Exel-Seal’s sole discretion, the cost of delivery is included in the Price.
- 6.4 Exel-Seal may deliver the Works by 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 Exel-Seal to the Client is an estimate only. Exel-Seal shall not be liable for any loss or damage whatsoever due to failure by Exel-Seal to deliver the Works (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of Exel-Seal.

7. Risk

- 7.1 If Exel-Seal retains ownership of the Materials under clause 10 then:

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- (a) where Exel-Seal is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
- (i) the Client or the Client's nominated carrier takes possession of the Materials at Exel-Seal's address; or
 - (ii) the Materials are delivered by Exel-Seal or Exel-Seal's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where Exel-Seal is to both supply and install Materials then Exel-Seal shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 7.2 Notwithstanding the provisions of clause 7.1 if the Client specifically requests Exel-Seal to leave Materials outside Exel-Seal's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 7.3 All potential waterproofing surfaces are subject to an inspection by Exel-Seal prior to the commencement of the Works. In the event that the surface is deemed unsuitable, then Exel-Seal reserves the right to halt the Works until such time as it is agreed between Exel-Seal and the Client as to the additional cost in further preparation of the surface in order to make it fit for waterproofing. The additional cost shall be charged as a variation to the quotation as per clause 5.2.
- 7.4 The Client accepts that where the Client requests the Works to be performed outside Exel-Seal's normal working hours that an additional fee and/or minimum fee may apply.

8. Client's Responsibilities

- 8.1 It is the intention of Exel-Seal and agreed by the Client that it is the responsibility of the Client to:
- (a) ensure that any surface requiring waterproofing is suitable for the purpose. In the event that the Client requests Exel-Seal to prepare the surface for waterproofing, then at Exel-Seal's sole discretion a fee shall be charged for the Works, and shall become immediately due and payable.
 - (b) ensure that no other tradesmen work on the membrane applied to the surface, until the membrane is fully dried and cured to manufacturer's specifications. Exel-Seal shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.
- 8.2 It is the intention of Exel-Seal and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding to enable the Works to be undertaken (where in Exel-Seal's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.
- 8.3 The Client agrees to remove any furniture, furnishings or personal goods from the vicinity of the works and agrees that Exel-Seal shall not be liable for any damage caused to those items through the Client's failure to comply with this clause.
- 8.4 It is further agreed that:
- (a) any building/construction sites will comply with all Victorian occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation; and
 - (b) the Company is not responsible for the removal of rubbish from or clean up of the building/construction site/s. This is the responsibility of the Client or the Client's agent.
- 8.5 The Client shall not hold Exel-Seal liable where Exel-Seal fails to comply with the Client's instructions where such instructions may pose a risk to any person or property.

9. Access

- 9.1 The Client shall ensure that Exel-Seal has clear and free access to the work site at all times to enable them to undertake the Works. Exel-Seal shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Exel-Seal.

10. Title

- 10.1 Exel-Seal and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Exel-Seal all amounts owing to Exel-Seal; and
 - (b) the Client has met all of its other obligations to Exel-Seal.
- 10.2 Receipt by Exel-Seal 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.
- 10.3 It is further agreed that:
- (a) until ownership of the Materials passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Exel-Seal on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Exel-Seal and must pay to Exel-Seal the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed.
 - (c) the production of these terms and conditions by Exel-Seal shall be sufficient evidence of Exel-Seal's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Exel-Seal to make further enquiries.
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Exel-Seal and must pay or deliver the proceeds to Exel-Seal on demand.
 - (e) the Client should not convert or process the Materials 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 Exel-Seal and must sell, dispose of or return the resulting product to Exel-Seal as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises Exel-Seal to enter any premises where Exel-Seal believes the Materials are kept and recover possession of the Materials.
 - (g) Exel-Seal may recover possession of any Materials in transit whether or not delivery has occurred.

- (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Exel-Seal.
- (i) Exel-Seal may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

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

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 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 Materials and/or collateral (account) – being a monetary obligation of the Client to Exel-Seal for Works – that have previously been supplied and that will be supplied in the future by Exel-Seal to the Client.
- 11.3 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 Exel-Seal 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 11.2(a)(i) or 11.2(a)(ii);
 - (b) indemnify, and upon demand reimburse, Exel-Seal 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 Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Exel-Seal;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Exel-Seal;
 - (e) immediately advise Exel-Seal of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 11.4 Exel-Seal 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.
- 11.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by Exel-Seal, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client shall unconditionally ratify any actions taken by Exel-Seal under clauses 11.2 to 11.5.
- 11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

- 12.1 In consideration of Exel-Seal agreeing to supply the Materials, 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).
- 12.2 The Client indemnifies Exel-Seal from and against all Exel-Seal's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Exel-Seal's rights under this clause.
- 12.3 The Client irrevocably appoints Exel-Seal and each director of Exel-Seal as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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

- 13.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within five (5) days of delivery notify Exel-Seal 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 Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Exel-Seal to inspect the Materials or to review the Works provided.
- 13.2 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**).
- 13.3 Exel-Seal acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Exel-Seal makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Exel-Seal's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, Exel-Seal's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If Exel-Seal is required to replace any Materials under this clause or the CCA, but is unable to do so, Exel-Seal may refund any money the Client has paid for the Materials.
- 13.7 If Exel-Seal is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Exel-Seal may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 13.8 If the Client is not a consumer within the meaning of the CCA, Exel-Seal's liability for any defect or damage in the Materials is:
 - (a) limited to the value of any express warranty or warranty card provided to the Client by Exel-Seal at Exel-Seal's sole discretion;
 - (b) limited to any warranty to which Exel-Seal is entitled, if Exel-Seal did not manufacture the Materials;
 - (c) otherwise negated absolutely.

- 13.9 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 13.1; and
 - (b) Exel-Seal has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 13.10 Notwithstanding clauses 13.1 to 13.9 but subject to the CCA, Exel-Seal 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 Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without Exel-Seal's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by Exel-Seal;
 - (f) fair wear and tear, any accident, or act of God.
- 13.11 Exel-Seal may in its absolute discretion accept non-defective Materials for return in which case Exel-Seal may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.

14. Intellectual Property

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

15. Default and Consequences of Default

- 15.1 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 Exel-Seal's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes Exel-Seal any money the Client shall indemnify Exel-Seal from and against all costs and disbursements incurred by Exel-Seal in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Exel-Seal's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies Exel-Seal may have under this contract, if a Client has made payment to Exel-Seal, 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 Exel-Seal under this clause 15 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.
- 15.4 Without prejudice to any other remedies Exel-Seal may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Exel-Seal may suspend or terminate the supply of Works to the Client. Exel-Seal will not be liable to the Client for any loss or damage the Client suffers because Exel-Seal has exercised its rights under this clause.
- 15.5 Without prejudice to Exel-Seal's other remedies at law Exel-Seal shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Exel-Seal shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Exel-Seal becomes overdue, or in Exel-Seal's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Cancellation

- 16.1 Exel-Seal may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Exel-Seal shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Exel-Seal for Works already performed. Exel-Seal shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Exel-Seal as a direct result of the cancellation (including, but not limited to, any loss of profits). The Client is required to give at least four (4) working hours' notice of cancellation.

17. Privacy Act 1988

- 17.1 The Client agrees for Exel-Seal 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 Exel-Seal.
- 17.2 The Client agrees that Exel-Seal may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 17.3 The Client consents to Exel-Seal being given a consumer credit report to collect overdue payment on commercial credit.

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- 17.4 The Client agrees that personal credit information provided may be used and retained by Exel-Seal for the following purposes (and for other agreed purposes or required by):
- the provision of Works; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the collection of amounts outstanding in relation to the Works.
- 17.5 Exel-Seal may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.6 The information given to the CRB may include:
- personal information as outlined in 17.1 above;
 - name of the credit provider and that Exel-Seal is a current credit provider to the Client;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - 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);
 - 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 Exel-Seal has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - information that, in the opinion of Exel-Seal, the Client has committed a serious credit infringement;
 - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.7 The Client shall have the right to request (by e-mail) from Exel-Seal:
- a copy of the information about the Client retained by Exel-Seal and the right to request that Exel-Seal correct any incorrect information; and
 - that Exel-Seal does not disclose any personal information about the Client for the purpose of direct marketing.
- 17.8 Exel-Seal 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.
- 17.9 The Client can make a privacy complaint by contacting Exel-Seal via e-mail. Exel-Seal 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.
- 18. Unpaid Seller's Rights**
- 18.1 Where the Client has left any item with Exel-Seal for repair, modification, exchange or for Exel-Seal to perform any other service in relation to the item and Exel-Seal has not received or been tendered the whole of any monies owing to it by the Client, Exel-Seal shall have, until all monies owing to Exel-Seal are paid:
- a lien on the item; and
 - the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 18.2 The lien of Exel-Seal shall continue despite the commencement of proceedings, or judgment for any monies owing to Exel-Seal having been obtained against the Client.
- 19. Dispute Resolution**
- 19.1 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:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 20. Other Applicable Legislation**
- 20.1 At Exel-Seal's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 20.1 (each as applicable), except to the extent permitted by the Act where applicable.
- 21. General**
- 21.1 The failure by Exel-Seal to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Exel-Seal'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.

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- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which Exel-Seal has its principal place of business, and are subject to the jurisdiction of the courts in Victoria.
- 21.3 Subject to clause 13, Exel-Seal 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 Exel-Seal of these terms and conditions (alternatively Exel-Seal's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 21.4 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 Exel-Seal nor to withhold payment of any invoice because part of that invoice is in dispute.
- 21.5 Exel-Seal may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 21.6 The Client agrees that Exel-Seal may amend these terms and conditions at any time. If Exel-Seal makes a change to these terms and conditions, then that change will take effect from the date on which Exel-Seal notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Exel-Seal to provide any Works to the Client.
- 21.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.