

**1. Definitions**

- 1.1 "KEA" means Firestar Nominees Pty Ltd (ACN: 178 673 588) ATF The Austin Family Trust (ABN: 67 616 539 440) T/A Kentin Engineering Australia, its successors and assigns or any person acting on behalf of and with the authority of Firestar Nominees Pty Ltd (ACN: 178 673 588) ATF The Austin Family Trust (ABN: 67 616 539 440) T/A Kentin Engineering Australia.
- 1.2 "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by KEA to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between KEA and the Customer in accordance with clause 4 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for Goods, or accepts Delivery.
- 2.2 These terms and conditions may only be amended with both parties' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and KEA, including any conflicting terms which shall be set aside and negotiated between the Customer and KEA separately to this agreement.
- 2.3 Dimensions and specifications contained or referred to in any agreement or in any publications maintained or issued by KEA are estimates only. Unless otherwise expressly agreed in writing by KEA, it is not a condition of any agreement that the Goods will correspond precisely with such dimensions and specifications, and customary or reasonable tolerances will be allowed.
- 2.4 Neither KEA, nor any of its employees or agents, warrant or guarantee the accuracy or completeness of any information provided to the Customer. The Customer undertakes that all matters relevant to the supply of the Goods hereunder are to the Customer's satisfaction, and in doing so, the Customer acknowledges that in deciding to purchase the Goods hereunder that:
- (a) they have relied on their own skill, inspection and judgement;
  - (b) they have not relied on any statement made by KEA or its employees or agents;
  - (c) they assume the risk of mistake in relation to the information provided.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2003 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 These terms and conditions may be meant to be read in conjunction with KEA's Hire Form, and:
- (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
  - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.

**3. Change in Control**

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

**4. Price and Payment**

- 4.1 At KEA's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by KEA to the Customer; or
  - (b) KEA's quoted price (subject to clause 4.2) which is based upon rates and costs at the date of the quotation, and will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 KEA reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied (including any applicable plans or specifications) is requested; or
  - (b) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, unavailability of materials from KEA's suppliers, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed, inaccurate structural measurements provided by the Customer, change of design, etc.) which are only discovered on commencement of the Services; or
  - (c) in the event of increases to KEA in the costs of supply and/or production of the Goods (Including fluctuations in currency exchange rates and steel prices, etc.), and/or Delivery, due to circumstances beyond the reasonable control of KEA.
- 4.3 At KEA's sole discretion, a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by KEA, which may be:
- (a) Prior to and/or on Delivery;
  - (b) by way of instalments/progress payments in accordance with KEA's payment schedule;
  - (c) thirty (30) days following the end of the month in which any invoice/s and/or statement is furnished to the Customer by KEA;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice/s furnished to the Customer to KEA.
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and KEA.
- 4.6 The Customer shall not, without the prior written consent of KEA, be entitled to set off against, or deduct from the Price (by way or counterclaim or other legal or equitable claim), any sums owed or claimed to be owed to the Customer by KEA, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to KEA an amount equal to any GST KEA must pay for any supply by KEA under this or any other agreement for the sale of the Goods. The Customer must pay GST,

without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

- 4.8 Receipt by KEA of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then KEA's rights and ownership in respect of the Goods, and this agreement, shall continue.

## **5. Delivery**

- 5.1 Delivery of the Goods ("**Delivery**") is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at KEA's address; or
  - (b) KEA (or KEA's nominated carrier) delivers the Goods to the Customer's nominated site, even if the Customer is not present thereat.
- 5.2 At KEA's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 5.3 Any time specified by KEA for Delivery of the Goods is an estimate only and KEA will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that KEA is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then KEA shall be entitled to charge a reasonable fee for redelivery and/or storage.

## **6. Risk**

- 6.1 Risk of damage to, or loss, or deterioration of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, KEA is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by KEA is sufficient evidence of KEA's rights to receive the insurance proceeds without the need for any person dealing with KEA to make further enquiries.
- 6.3 If the Customer requests KEA to leave Goods outside KEA's premises for collection, or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 6.4 The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish. KEA 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.
- 6.5 The Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and KEA shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 6.6 KEA shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 6.7 The Customer acknowledges that KEA is only responsible for parts that are replaced/supplied by KEA and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the Customer agrees to indemnify KEA against any loss or damage to the Goods, or caused thereby, or any part thereof howsoever arising.
- 6.8 Where the Customer has supplied materials for KEA to complete the Goods, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. KEA shall not be responsible for any defects in the Goods, any loss or damage howsoever arising from the use of materials supplied by the Customer.
- 6.9 Any advice, recommendation, information, assistance or service provided by KEA in relation to Goods provided is given in good faith, is based on KEA's own knowledge and experience and shall be accepted without liability on the part of KEA and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods.

## **7. Accuracy of Customer's Plans and Measurements**

- 7.1 In the event the Customer gives information relating to the Goods (including plans, specifications, measurements, quantities and other information provided by the Customer):
- (a) it is the Customer's responsibility to verify the accuracy of the information before the Customer or KEA places an order based on the information. KEA accepts no responsibility for any loss, damages, or costs however resulting from the Customer's failure to comply with this clause;
  - (b) KEA shall be entitled to rely on the accuracy of such information. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, KEA accepts no responsibility for any loss, damages, or costs however resulting therefrom.

## **8. Dimensions, Plans and Specifications**

- 8.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods, unless KEA and the Customer agree otherwise in writing.

## **9. Compliance and Consents**

- 9.1 The Customer and KEA shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 9.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Goods.

## **10. Title**

- 10.1 KEA and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid KEA all amounts owing to KEA; and
  - (b) the Customer has met all of its other obligations to KEA.
- 10.2 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 10.1:

- (a) the Customer is only a bailee of the Goods and must return the Goods to KEA on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for KEA and must pay to KEA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for KEA and must pay or deliver the proceeds to KEA on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of KEA and must sell, dispose of or return the resulting product to KEA as it so directs.
- (e) the Customer irrevocably authorises KEA to enter any premises where KEA believes the Goods are kept and recover possession of the Goods.
- (f) KEA may recover possession of any Goods in transit whether or not Delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of KEA.
- (h) KEA may commence proceedings to recover the Price notwithstanding that ownership of the Goods has not passed to the Customer.

#### **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 Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by KEA to the Customer.
- 11.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which KEA 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 11.3(a)(i) or 11.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, KEA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of KEA;
  - (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 KEA;
  - (e) immediately advise KEA 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.
- 11.4 KEA and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their 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 KEA, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by KEA under clauses 11.3 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 KEA agreeing to supply Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer indemnifies KEA from and against all KEA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising KEA's rights under this clause.
- 12.3 The Customer irrevocably appoints KEA and each director of KEA as the Customer'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 Customer's behalf.

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

- 13.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of such time notify KEA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow KEA to inspect the Goods.
- 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 KEA 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, KEA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. KEA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Customer is a consumer within the meaning of the CCA, KEA's liability is limited to the extent permitted by section 64A of Schedule 2.

- 13.6 If KEA is required to replace the Goods under this clause or the CCA, but is unable to do so, KEA may refund any money the Customer has paid for the Goods.
- 13.7 If the Customer is not a consumer within the meaning of the CCA, KEA'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 Customer by KEA at KEA's sole discretion;
  - (b) limited to any warranty to which KEA is entitled, if KEA did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 13.1; and
  - (b) KEA has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, KEA shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by KEA;
  - (e) fair wear and tear, any accident, or act of God.
- 13.10 In the case of second-hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the Goods prior to Delivery and accepts them with all faults, and that to the extent permitted by law no warranty is given by KEA as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that KEA has agreed to supply the Customer with the Goods, and calculated the Price thereof, in reliance of this clause 13.10.
- 13.11 Notwithstanding anything contained in this clause if KEA is required by a law to accept a return then KEA will only accept a return on the conditions imposed by that law.

#### **14. Intellectual Property**

- 14.1 Where KEA has designed, drawn or developed Goods for the Customer, then the copyright in any designs, specifications, drawings, other technical information and documents shall remain the property of KEA.
- 14.2 The Customer warrants that all designs, specifications or instructions given to KEA will not cause KEA to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify KEA against any action taken by a third party against KEA in respect of any such infringement.
- 14.3 The Customer agrees that KEA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which KEA has created for the Customer.

#### **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 KEA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Customer owes KEA any money the Customer shall indemnify KEA from and against all costs and disbursements incurred by KEA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, KEA's contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies KEA may have under this agreement, if the Customer has made payment to KEA by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by KEA under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 15.4 Without prejudice to KEA's other remedies at law KEA shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to KEA shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to KEA becomes overdue, or in KEA's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer has exceeded any applicable credit limit provided by KEA;
  - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

#### **16. Cancellation**

- 16.1 Without prejudice to any other remedies KEA may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions KEA may suspend or terminate the supply of Goods to the Customer. KEA will not be liable to the Customer for any loss or damage the Customer suffers because KEA has exercised its rights under this clause.
- 16.2 KEA may cancel any contract to which these terms and conditions apply or cancel Delivery at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice KEA shall repay to the Customer any money paid by the Customer for the Goods. KEA shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Customer cancels Delivery the Customer shall be liable for any and all loss incurred (whether direct or indirect) by KEA as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

**17. Unpaid Seller's Rights**

- 17.1 Where the Customer has left any item with KEA for repair, modification, exchange or for KEA to perform any other service in relation to the item and KEA has not received or been tendered the whole of any moneys owing to it by the Customer, KEA shall have, until all moneys owing to KEA are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 17.2 The lien of KEA shall continue despite the commencement of proceedings, or judgment for any moneys owing to KEA having been obtained against the Customer.

**18. Privacy Act 1988**

- 18.1 The Customer agrees for KEA to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by KEA.
- 18.2 The Customer agrees that KEA may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 18.3 The Customer consents to KEA being given a consumer credit report to collect overdue payment on commercial credit.
- 18.4 The Customer agrees that personal credit information provided may be used and retained by KEA for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 18.5 KEA may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 18.6 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above;
  - (b) name of the credit provider and that KEA is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and KEA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of KEA, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.7 The Customer shall have the right to request (by e-mail) from KEA:
- (a) a copy of the information about the Customer retained by KEA and the right to request that KEA correct any incorrect information; and
  - (b) that KEA does not disclose any personal information about the Customer for the purpose of direct marketing.
- 18.8 KEA will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Customer can make a privacy complaint by contacting KEA via e-mail. KEA will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

**19. Construction Contracts Act 2004**

- 19.1 At KEA's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.
- 19.2 Nothing in this agreement is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.

**20. Service of Notices**

- 20.1 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.

20.2 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.

**21. General**

- 21.1 Any dispute or difference arising as to the interpretation of these terms and conditions, or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Commercial Arbitration Act 2010 or its replacement(s).
- 21.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which KEA has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 21.4 Subject to clause 13, KEA shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by KEA of these terms and conditions (alternatively KEA's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 21.5 KEA may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 21.6 The Customer cannot licence or assign without the written approval of KEA.
- 21.7 KEA may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of KEA's sub-contractors without the authority of KEA.
- 21.8 The Customer agrees that KEA may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for KEA to provide Goods to the Customer.
- 21.9 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.
- 21.10 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.