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## Complete Air Conditioning (Solutions) Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “CA(S)” means Complete Air Conditioning (Solutions) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Complete Air Conditioning (Solutions) 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 CA(S) 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 for the Goods as agreed between CA(S) and the Client in accordance with clause 4 below.

### 2. Acceptance

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

### 3. Change in Control

- 3.1 The Client shall give CA(S) 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 CA(S) as a result of the Client’s failure to comply with this clause.

### 4. Price and Payment

- 4.1 At CA(S)’s sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by CA(S) to the Client; or
  - (b) CA(S)’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 CA(S) reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of Goods, limitations to accessing the site, safety considerations, discovery of asbestos, prerequisite work by any third party not being completed, obscured building defects, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services; or
  - (d) in the event of increases to CA(S) in the cost of labour or Goods which are beyond CA(S)’s control.
- 4.3 At CA(S)’s sole discretion a non-refundable deposit may be required. The deposit amount or percentage of the Price due will be stipulated at the time of the order of the Goods/Services and shall become immediately due and payable.
- 4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by CA(S), which may be:
  - (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with CA(S)’s payment schedule;
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
  - (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 given to the Client by CA(S).
- 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card or by any other method as agreed to between the Client and CA(S).
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to CA(S) an amount equal to any GST CA(S) must pay for any supply by CA(S) 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.

### 5. Delivery

- 5.1 Subject to clause 5.2 it is CA(S)’s responsibility to ensure that the Services start as soon as it is reasonably possible.
- 5.2 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that CA(S) claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond CA(S)’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 Services; or
  - (c) notify CA(S) that the site is ready.

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- 5.3 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that CA(S) (or CA(S)’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 5.4 At CA(S)’s sole discretion the cost of delivery is included in the Price.
- 5.5 CA(S) 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.
- 5.6 Any time or date given by CA(S) to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and CA(S) will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

### 6. Risk

- 6.1 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.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, CA(S) is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by CA(S) is sufficient evidence of CA(S)’s rights to receive the insurance proceeds without the need for any person dealing with CA(S) to make further enquiries.
- 6.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 6.4 Where the Client has supplied materials for CA(S) to complete the Services, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in the materials. CA(S) shall not be responsible for any defects in the materials, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 6.5 The Client acknowledges that CA(S) is only responsible for parts that are replaced by CA(S), and in the event that other Goods, subsequently fail, the Client agrees to indemnify CA(S) against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 6.6 Where the Client is to supply CA(S) with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. CA(S) shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
- 6.7 Any advice, recommendation, information, assistance or service provided by CA(S) in relation to Goods or Services supplied is given in good faith, is based on CA(S)’s own knowledge and experience and shall be accepted without liability on the part of CA(S) 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.

### 7. Installation

- 7.1 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that CA(S), its employees or CA(S)’s reasonably form the opinion that the Client’s premises is not safe for the installation of Goods to proceed then CA(S) shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 5.2 above) until CA(S) is satisfied that it is safe for the installation to proceed. CA(S) may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed but all such works undertaken and any additional Goods supplied shall be treated as a variation and be charged for in addition to the Price.
- 7.2 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 4.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 7.3 The final location of the wall, window or floor unit must be determined on site by the Client.
- 7.4 CA(S) shall upon installation ensure that all installed Goods meet current industry standards applicable to noise levels, however CA(S) cannot guarantee that noise levels will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 7.5 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 7.6 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 7.7 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify CA(S) immediately upon any proposed changes. The Client agrees to indemnify CA(S) against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 4.2.

### 8. Access

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

**9. Underground Locations**

- 9.1 Prior to CA(S) commencing any work the Client must advise CA(S) of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, telephone cables, fibre optic cables, and any other services that may be on site.
- 9.2 Whilst CA(S) will take all care to avoid damage to any underground services the Client agrees to indemnify CA(S) in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.

**10. Compliance with Laws**

- 10.1 The Client and CA(S) shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 10.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 10.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

**11. Title**

- 11.1 CA(S) and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid CA(S) all amounts owing to CA(S); and
  - (b) the Client has met all of its other obligations to CA(S).
- 11.2 Receipt by CA(S) 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.
- 11.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to CA(S) on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for CA(S) and must pay to CA(S) 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 CA(S) and must pay or deliver the proceeds to CA(S) 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 CA(S) and must sell, dispose of or return the resulting product to CA(S) as it so directs.
  - (e) the Client irrevocably authorises CA(S) to enter any premises where CA(S) believes the Goods are kept and recover possession of the Goods.
  - (f) CA(S) 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 CA(S).
  - (h) CA(S) may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

**12. Personal Property Securities Act 2009 ("PPSA")**

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 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 CA(S) to the Client.
- 12.3 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 CA(S) 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 12.3(a)(i) or 12.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, CA(S) for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of CA(S);
  - (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 CA(S);
  - (e) immediately advise CA(S) 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.

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- 12.4 CA(S) 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.
- 12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by CA(S), the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by CA(S) under clauses 12.3 to 12.5.
- 12.9 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.

### 13. Security and Charge

- 13.1 In consideration of CA(S) 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).
- 13.2 The Client indemnifies CA(S) from and against all CA(S)'s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CA(S)'s rights under this clause.
- 13.3 The Client irrevocably appoints CA(S) and each director of CA(S) as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

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

- 14.1 The Client must inspect the Goods on delivery and must within thirty (30) days of delivery notify CA(S) 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 CA(S) to inspect the Goods.
- 14.2 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**).
- 14.3 CA(S) acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CA(S) makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. CA(S)'s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, CA(S)'s liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If CA(S) is required to replace the Goods under this clause or the CCA, but is unable to do so, CA(S) may refund any money the Client has paid for the Goods.
- 14.7 If the Client is not a consumer within the meaning of the CCA, CA(S)'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 CA(S) at CA(S)'s sole discretion;
  - (b) limited to any warranty to which CA(S) is entitled, if CA(S) did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
  - (a) the Client has complied with the provisions of clause 14.1; and
  - (b) CA(S) 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.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, CA(S) 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 CA(S);
  - (e) fair wear and tear, any accident, or act of God.
- 14.10 Notwithstanding anything contained in this clause if CA(S) is required by a law to accept a return then CA(S) will only accept a return on the conditions imposed by that law.

### 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 CA(S)'s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

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- 15.2 If the Client owes CA(S) any money the Client shall indemnify CA(S) from and against all costs and disbursements incurred by CA(S) in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CA(S)'s contract default fee, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies CA(S) may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions CA(S) may suspend or terminate the supply of Goods to the Client. CA(S) will not be liable to the Client for any loss or damage the Client suffers because CA(S) has exercised its rights under this clause.
- 15.4 Without prejudice to CA(S)'s other remedies at law CA(S) shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to CA(S) shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to CA(S) becomes overdue, or in CA(S)'s opinion the Client will be unable to make a payment when it falls due;
  - (b) 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
  - (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 CA(S) 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 CA(S) shall repay to the Client any money paid by the Client for the Goods. CA(S) shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 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 CA(S) as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.3 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.

### 17. Privacy Act 1988

- 17.1 The Client agrees for CA(S) to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by CA(S).
- 17.2 The Client agrees that CA(S) may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess 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.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 17.3 The Client consents to CA(S) being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Client agrees that personal credit information provided may be used and retained by CA(S) for the following purposes (and for other purposes as shall be agreed between the Client and CA(S) or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by CA(S), its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 17.5 CA(S) may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 17.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that CA(S) is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

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- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of CA(S), the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by CA(S) has been paid or otherwise discharged.

**18. Building and Construction Industry Security of Payments Act 1999**

- 18.1 At CA(S)'s sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 18.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

**19. General**

- 19.1 The failure by CA(S) to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect CA(S)'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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which CA(S) has its principal place of business, and are subject to the jurisdiction of the Gosford Courts in that state.
- 19.3 Subject to clause 14 CA(S) 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 CA(S) of these terms and conditions (alternatively CA(S)'s liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 19.4 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 CA(S) nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 CA(S) may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 19.6 The Client agrees that CA(S) may amend these terms and conditions at any time. If CA(S) makes a change to these terms and conditions, then that change will take effect from the date on which CA(S) notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for CA(S) to provide Goods to the Client.
- 19.7 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.
- 19.8 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.