Terms & Conditions of Trade

GWT Trading Pty Ltd trading as GWT Critical Infrastructure
ABN 20 670 746 308 | REC 34934 | 1300 905 247 | www.gwtci.com.au

1. Definitions

1.1 "Claim" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

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 "Electrical Safety Regulations" means the *Electrical Safety Act 1998* (Vic) as in force from time to time, any rules or regulations enacted pursuant to or in connection with that act as in force from time to time, and any analogous applicable legislation, rules or regulations in force from time to time in other jurisdictions (as applicable).

1.4 "Immediately Available Funds" means a bank cheque or an electronic funds transfer providing the recipient with immediately available funds during normal banking hours in Melbourne, Victoria.

1.5 "GWT Critical Infrastructure" means GWT Trading Pty Ltd (ABN 20 670 746 308) trading as GWT Critical Infrastructure, its employees, agents, successors and assigns.

1.6 "Loss" means any damage, loss, cost, expense or liability however arising, which a party will be entitled to recover as a matter of law.

1.7 "Non-Stocklist Items" means those items that GWT Critical Infrastructure does not have in physical stock at the time of receiving an order for those items from the Client.

1.8 "Works" or "Materials" means all works or materials supplied by GWT Critical Infrastructure 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).

1.9 "Price" means the Price payable for the Works as agreed between GWT Critical Infrastructure 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 GWT Critical Infrastructure's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and GWT Critical Infrastructure.

2.3 If, during the course of installation when the Works are being conducted within and around switchboards, the Works are found to be defective or deemed to be unsafe by GWT Critical Infrastructure, then GWT Critical Infrastructure shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works to ensure compliance with the Electrical Safety Regulations, including any Materials and labour shall be to the Client's account.

3. Electronic Transactions Act 2000

Electronic signatures shall be deemed to be accepted by either party provided that the parties have complied with Section 9 of the *Electronic Transactions Act 2000* or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

The Client must give GWT Critical Infrastructure not less than 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, email address or fax number/s, or business practice). The Client shall be liable for any loss incurred by GWT Critical Infrastructure as a result of the Client's failure to comply with this clause.

5. Price and Payment

5.1 At GWT Critical Infrastructure's sole discretion the Price shall be either:

(a) As indicated on an invoice provided by GWT Critical Infrastructure to the Client in respect of Works performed or Materials supplied; or

(b) as otherwise quoted by GWT Critical Infrastructure (subject to clause 5.1(b)) which shall be binding upon GWT Critical Infrastructure provided that the Client shall accept GWT Critical Infrastructure's quotation in writing within 30 days.

5.2 GWT Critical Infrastructure 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, obscured building defects, change of design, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc.) which are only discovered on commencement of the Works; or

(d) In the event of increases to GWT Critical Infrastructure in the cost of labour or materials which are beyond GWT Critical Infrastructure's control.

5.3 At GWT Critical Infrastructure's sole discretion, GWT Critical Infrastructure may require the Client to provide a non- refundable deposit in respect of the Works.

5.4 Time for payment for the Works being of the essence, the Price must be paid by the Client on the date/s determined by GWT Critical Infrastructure, which may be:

(a) On completion of the Works; or

(b) By way of progress payments in accordance with GWT Critical Infrastructure's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or

(c) Failing any notice to the contrary, the date which is 7 days following the date of any invoice given to the Client by GWT Critical Infrastructure.

5.5 Payment may be made by cash, cheque, electronic/on-line banking, credit card (plus a surcharge reflective of the relevant credit card provider's service fee charged to GWT Critical Infrastructure), or by any other method as agreed to between the Client and GWT Critical Infrastructure.

5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to GWT Critical

Infrastructure an amount equal to any GST GWT Critical Infrastructure must pay for any supply by GWT Critical Infrastructure 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.

5.7 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of 2.5% per calendar month (and at GWT Critical Infrastructure's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

5.8 If the Client owes GWT Critical Infrastructure any money the Client shall indemnify GWT Critical Infrastructure from and against all costs and disbursements incurred by GWT Critical Infrastructure in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, GWT Critical Infrastructure's contract default fee, and bank dishonour fees).

5.9 Further to any other rights or remedies GWT Critical Infrastructure may have under this contract, if a Client has made payment to GWT Critical Infrastructure by credit card, 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 GWT Critical Infrastructure under this clause 5 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.

6. Delivery of the Works

6.1 Subject to clause 6.2 it is GWT Critical Infrastructure's responsibility to ensure that the Works start as soon as reasonably practicable.

6.2 The Works commencement date will be postponed and/or the completion date extended by whatever time is reasonable if GWT Critical Infrastructure claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond GWT Critical Infrastructure'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 GWT Critical Infrastructure that the site is ready.

6.3 The Client must take delivery by receipt or collection of the Works whenever they are tendered for delivery. If the Client is unable to take delivery of the Works as arranged, then GWT Critical Infrastructure shall be entitled to charge a reasonable fee for redelivery.

6.4 GWT Critical Infrastructure may deliver the Works by separate instalments. GWT Critical Infrastructure may invoice the Client for each instalment of the Works.

6.5 Any time or date given by GWT Critical Infrastructure to the Client is an estimate only. GWT Critical Infrastructure shall not be liable for any loss or damage whatsoever due to failure by GWT Critical Infrastructure to deliver the Works (or any part of them) promptly or at all, where such failure is due to circumstances beyond the reasonable control of GWT Critical Infrastructure.

7. Risk

7.1 If GWT Critical Infrastructure retains ownership of the Materials under clause 11 then:

(a) Where GWT Critical Infrastructure 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 the Materials are delivered by GWT Critical Infrastructure or GWT Critical Infrastructure's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).

(b) Where GWT Critical Infrastructure is requested by the Client to both supply and install Materials, 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 GWT Critical Infrastructure to leave Materials outside GWT Critical Infrastructure's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at the sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. If such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.

7.3 The Client warrants to GWT Critical Infrastructure that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials 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 Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that GWT Critical Infrastructure, or its employees reasonably form the opinion that the Client's premises is not safe for the installation of Materials to proceed then GWT Critical Infrastructure shall be entitled to delay installation of the Materials (in accordance with the provisions of clause 6.2 above) until GWT Critical Infrastructure is satisfied that it is safe for the installation to proceed.

7.4 Where the Client has supplied materials for GWT Critical Infrastructure to complete the Works, the Client acknowledges that it accepts responsibility for the suitability of purpose, quality and any faults inherent in the Materials. GWT Critical Infrastructure shall not be responsible for any defects in the Works, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.

7.5 The Client acknowledges that GWT Critical Infrastructure is only responsible for parts that are replaced by GWT Critical Infrastructure and that if that other parts/Materials, subsequently fail, the Client agrees to indemnify GWT Critical Infrastructure against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.

7.6 GWT Critical Infrastructure shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that if any of this information provided by the Client is inaccurate, GWT Critical Infrastructure accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

7.7 Any advice, recommendation, information, assistance or service provided by GWT Critical Infrastructure in relation to Materials or Works supplied is given in good faith, is based on GWT Critical Infrastructure's own knowledge and experience and shall be accepted without liability on the part of GWT Critical Infrastructure

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 Materials or Works.

8. Access

The Client shall ensure that GWT Critical Infrastructure has clear and free access to the work site at all times to enable it to undertake the Works. GWT Critical Infrastructure 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 such loss or damage is directly caused by the negligence of GWT Critical Infrastructure.

9. Underground Locations

9.1 Prior to GWT Critical Infrastructure commencing any Works, the Client must advise GWT Critical Infrastructure of the precise location of all underground services on the site and clearly mark those services on a diagram. The underground mains and 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, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site ("Underground Services").

9.2 While GWT Critical Infrastructure will take all care to avoid damage to any Underground Services the Client agrees to indemnify GWT Critical Infrastructure in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to Underground Services not precisely located and notified as per clause 9.1.

10. Compliance with Laws

10.1 The Client must comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.

10.2 The Client must obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.

10.3 The Client must ensure that the site will comply with any work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

10.4 The Client fully indemnifies and holds harmless GWT Critical Infrastructure from any Loss or Claim arising from any breach by the Client of this clause 10.

11. Title

11.1 Ownership of the Materials shall not pass until:

(a) The Client has paid GWT Critical Infrastructure all amounts owing to GWT Critical Infrastructure in connection with those Materials; and

(b) The Client has met all of its other obligations to GWT Critical Infrastructure under this agreement.

11.2 Receipt by GWT Critical Infrastructure of any form of payment other than cash shall not be deemed to be payment until that form of payment has been received by GWT Critical Infrastructure in Immediately Available Funds.

11.3 It is further agreed that:

(a) Until ownership of the Materials passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Materials and unless the Materials have become fixtures, the Client must return the Materials to GWT Critical Infrastructure on request.

(b) The Client holds the benefit of the Client's insurance of the Materials on trust for GWT Critical Infrastructure and must pay to GWT Critical Infrastructure 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 GWT Critical Infrastructure shall be sufficient evidence of GWT Critical Infrastructure's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with GWT Critical Infrastructure 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 GWT Critical Infrastructure and must pay or deliver the proceeds to GWT Critical Infrastructure 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 GWT Critical Infrastructure and must sell, dispose of or return the resulting product to GWT Critical Infrastructure as it so directs.

(f) Unless the Materials have become fixtures the Client irrevocably authorises GWT Critical Infrastructure to enter any premises where GWT Critical Infrastructure believes the Materials are kept and recover possession of the Materials.

(g) GWT Critical Infrastructure 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 GWT Critical Infrastructure.

(i) GWT Critical Infrastructure may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials 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 Materials and/or collateral (account) – being a monetary obligation of the Client to GWT Critical Infrastructure for Works – that have previously been supplied and that will be supplied in the future by GWT Critical Infrastructure 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 GWT Critical Infrastructure 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, GWT Critical Infrastructure 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 GWT Critical Infrastructure;

(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 GWT Critical Infrastructure; and

(e) Immediately advise GWT Critical Infrastructure 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.

12.4 GWT Critical Infrastructure 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 hereby waives its 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 its 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 GWT Critical Infrastructure, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Client shall unconditionally ratify any actions taken by GWT Critical Infrastructure under clauses 12.3 to 12.5.

12.9 GWT Critical Infrastructure may, from time to time, notify the Client in writing of other provisions of the PPSA that do not apply to this agreement. Upon receipt of such notice, the relevant provisions of the PPSA will cease to apply to this agreement.

12.10 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 GWT Critical Infrastructure 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).

13.2 The Client indemnifies GWT Critical Infrastructure from and against all GWT Critical Infrastructure's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GWT Critical Infrastructure's rights under this clause.

13.3 The Client irrevocably appoints GWT Critical Infrastructure and each director of GWT Critical Infrastructure 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 all Materials on delivery (or the Works on completion) and must within 7 days of delivery notify GWT Critical Infrastructure 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 GWT Critical Infrastructure to inspect the Materials or to review the Works provided.

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 GWT Critical Infrastructure 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, GWT Critical Infrastructure makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. GWT Critical Infrastructure'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, GWT Critical Infrastructure's liability is limited to the extent permitted by section 64A of Schedule 2.

14.6 If GWT Critical Infrastructure is required to replace any Materials under this clause or the CCA, but is unable to do so, GWT Critical Infrastructure may refund any money the Client has paid for the Materials.

14.7 If GWT Critical Infrastructure 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 GWT Critical Infrastructure 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.

14.8 If the Client is not a consumer within the meaning of the CCA, GWT Critical Infrastructure'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 GWT Critical Infrastructure at GWT Critical Infrastructure's sole discretion;

(b) Limited to any warranty to which GWT Critical Infrastructure is entitled, if GWT Critical Infrastructure did not manufacture the Materials; and

(c) Otherwise negated absolutely.

14.9 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) GWT Critical Infrastructure 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.

14.10 Notwithstanding clauses 14.1 to 14.9 but subject to the CCA, GWT Critical Infrastructure 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 GWT Critical Infrastructure's prior approval;

(e) The Client failing to follow any instructions or guidelines provided by GWT Critical Infrastructure; and

(f) Fair wear and tear, any accident, or act of God.

14.11 Notwithstanding anything contained in this clause if GWT Critical Infrastructure is required by a law to accept a return then GWT Critical Infrastructure will only accept a return on the conditions imposed by that law.

15. Intellectual Property

15.1 Where GWT Critical Infrastructure has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in GWT Critical Infrastructure, and shall only be used by the Client at GWT Critical Infrastructure's discretion.

15.2 The Client warrants to GWT Critical Infrastructure that all designs, specifications or instructions given to GWT Critical Infrastructure will not cause GWT Critical Infrastructure to infringe any patent, registered design or trade mark in the execution of the Client's order and the Client agrees to indemnify GWT Critical Infrastructure against any action taken by a third party against GWT Critical Infrastructure in respect of any such infringement.

15.3 GWT Critical Infrastructure may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which GWT Critical Infrastructure has created for the Client.

16. Default and Consequences of Default

16.1 Without prejudice to any other remedies GWT Critical Infrastructure may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions GWT Critical Infrastructure may suspend or terminate the supply of Works to the Client. GWT Critical Infrastructure will not be liable to the Client for any loss or damage the Client suffers because GWT Critical Infrastructure has exercised its rights under this clause.

16.2 To the extent permissible at law and without prejudice to GWT Critical Infrastructure's other remedies at law, GWT Critical Infrastructure shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GWT Critical Infrastructure shall, whether or not due for payment, become immediately payable if:

(a) any money payable to GWT Critical Infrastructure becomes overdue, or in GWT Critical Infrastructure'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.

17. Cancellation

17.1 GWT Critical Infrastructure 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 GWT Critical Infrastructure shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to GWT Critical Infrastructure for Works already performed. GWT Critical Infrastructure shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 If the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by GWT Critical Infrastructure as a direct result of the cancellation (including, but not limited to, any loss of profits).

17.3 Cancellation of orders for products made to the Client's specifications, or for Non-Stocklist Items, will not be accepted once production has commenced, or an order has been placed.

18. Privacy Act 1988

18.1 The Client agrees to GWT Critical Infrastructure obtaining 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 GWT Critical Infrastructure

18.2 GWT Critical Infrastructure 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.

18.3 The Client consents to GWT Critical Infrastructure being given a consumer credit report to collect overdue payment on commercial credit.

18.4 The Client agrees that personal credit information provided may be used and retained by GWT Critical Infrastructure for the following purposes (and for other agreed purposes or required by):

(a) The provision of Works; and/or

(b) Analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or

(c) Processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

(d) Enabling the collection of amounts outstanding in relation to the Works.

18.5 GWT Critical Infrastructure may give information about the Client to a CRB for the following purposes:

(a) To obtain a consumer credit report;

(b) Allow the CRB to create or maintain a credit information file about the Client including credit history.

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 GWT Critical Infrastructure is a current credit provider to the Client;

(c) Whether the credit provider is a licensee;

(d) Type of consumer credit;

(e) Details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

(f) Advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than 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 GWT Critical Infrastructure has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) Information that, in the opinion of GWT Critical Infrastructure, the Client has committed a serious credit infringement;

(h) Advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

18.7 The Client shall have the right to request (by e-mail) from GWT Critical Infrastructure:

(a) A copy of the information about the Client retained by GWT Critical Infrastructure and the right to request that GWT Critical Infrastructure correct any incorrect information; and

(b) That GWT Critical Infrastructure does not disclose any personal information about the Client for the purpose of direct marketing.

18.8 GWT Critical Infrastructure 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 fulfill the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

18.9 GWT Critical Infrastructure must comply with its obligations under the *Privacy Act 1988* (Cth) and with GWT Critical Infrastructure's Privacy Policy, which can be found at the following link: GWT Critical Infrastructure Privacy Policy.

18.10 The Client can make a privacy complaint by contacting GWT Critical Infrastructure via e-mail. GWT Critical Infrastructure will respond to that complaint within 7 days of receipt and will take all reasonable steps to make a decision as to the complaint within 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.

19. Electronic delivery of document

If a party delivers an executed counterpart of this document or any other document executed in connection with it ("Relevant Document") by facsimile or other electronic means:

(a) the delivery will be deemed to be an effective delivery of an originally executed counterpart; and

(b) the party will still be obliged to deliver an originally executed counterpart, but the failure to do so will not affect the validity or effectiveness of the Relevant Document.

20. Building and Construction Industry Security of Payment Act 2002

20.1 At GWT Critical Infrastructure'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* may apply.

20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the *Building and Construction Industry Security of Payment Act 2002* of Victoria, except to the extent permitted by the Act where applicable.

21. General

21.1 The failure by GWT Critical Infrastructure to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect GWT Critical Infrastructure'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.

21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which GWT Critical Infrastructure has its principal place of business, and are subject to the jurisdiction of the Melbourne courts in that state.

21.3 Subject to clause 14 GWT Critical Infrastructure 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 GWT Critical Infrastructure of these terms and conditions (alternatively GWT Critical Infrastructure's liability shall be limited to damages which, to the extent permissible at law, shall not 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 GWT Critical Infrastructure nor to withhold payment of any invoice because part of that invoice is in dispute.

21.5 GWT Critical Infrastructure may license or sub-contract all or any part of its rights and obligations without the Client's consent.

21.6 GWT Critical Infrastructure may amend these terms and conditions at any time. If GWT Critical Infrastructure makes a change to these terms and conditions, then that change will take effect from the date on which GWT Critical Infrastructure notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for GWT Critical Infrastructure 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 to GWT Critical Infrastructure 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.