

1. Definitions

- 1.1 “PAPHAMS®” means JT Young Holdings Pty Ltd T/A PAPHAMS®, its successors and assigns or any person acting on behalf of and with the authority of JT Young Holdings Pty Ltd T/A PAPHAMS®.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting PAPHAMS® to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Works” means all Works (including consultation, auditing, manufacturing and/or installation services) or Materials supplied by PAPHAMS® to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between PAPHAMS® and the Client in accordance with clause 6 below.
- 1.5 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” Cth.

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and PAPHAMS®.
- 2.3 Where PAPHAMS® gives advice, recommendations, information, assistance or service to the Client or the Client’s agent, regarding the Materials or Works then it is given in good faith and PAPHAMS® shall not be liable in any way whatsoever for any damages, losses or costs however arising resulting from the Client relying on the same. In addition, none of PAPHAMS®’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of PAPHAMS® in writing nor is PAPHAMS® bound by any such unauthorised statements.
- 2.4 The Client and/or any third party acting on behalf of the Client accepts that access to the factory premises to inspect the Materials during the process stage must be by **appointment only**.
- 2.5 In the event that PAPHAMS® is required to provide the Works urgently, that may require PAPHAMS®’s staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then PAPHAMS® reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between PAPHAMS® and the Client.
- 2.6 If PAPHAMS® has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.7 The Client acknowledges and accepts that;
- (a) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, PAPHAMS® reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases PAPHAMS® will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order on hold until such time as PAPHAMS and the Client agree to such changes; and
 - (b) regular service checks are recommended to reduce premature breakdowns by identifying deficiencies early that may cause any impending issues with the installed Materials.
- 2.8 These terms and conditions may be meant to be read in conjunction with PAPHAMS®’s Hire Form, and:
- (a) where the context so permits, the terms ‘Works’ or ‘Materials’ 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.
- 2.9 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 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representative

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to PAPHAMS® as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Materials or Works on the Client’s behalf and/or to request any variation to the Works on the Client’s behalf (such authority to continue until all requested Works have been completed or the Client otherwise notifies PAPHAMS® in writing that said person is no longer the Client’s duly authorised representative).
- 3.2 In the event that the Client’s duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise PAPHAMS® in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to PAPHAMS® for all additional costs incurred by PAPHAMS® (including PAPHAMS®’s profit margin) in providing any Materials, Works or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).

4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that PAPHAMS® shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by PAPHAMS® in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by PAPHAMS® in respect of the Works.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of PAPHAMS®; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

5. Change in Control

5.1 The Client shall give PAPHAMS® 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, change of trustees or business practice). The Client shall be liable for any loss incurred by PAPHAMS® as a result of the Client's failure to comply with this clause.

6. Price and Payment

6.1 At PAPHAMS®'s sole discretion the Price shall be either:

- (a) as indicated on invoices provided by PAPHAMS® to the Client in respect of Works performed or Materials supplied; or
- (b) PAPHAMS®'s quoted Price (subject to clause 6.2) which shall be binding upon PAPHAMS® provided that the Client shall accept PAPHAMS®'s quotation in writing within thirty (30) days.

6.2 PAPHAMS® 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 worksite or crawl spaces, availability of machinery, safety conditions including the discovery of asbestos, prerequisite work by any third party not being completed, change of design, hard rock barriers below the surface requiring extra excavation, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works; or
- (d) as a result of an increase to PAPHAMS® in the cost of labour, or due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Works or due to relevant industry awards (e.g. site allowance and severance pay); or
- (e) in the event of fluctuations in currency exchange rates and increases to PAPHAMS® in the cost of materials and which are beyond PAPHAMS®'s control.

6.3 Variations will be charged for on the basis of PAPHAMS®'s quotation, and will be detailed in writing, and shown as variations on PAPHAMS®'s invoice. The Client shall be required to respond to any variation submitted by PAPHAMS® within ten (10) working days. Failure to do so will entitle PAPHAMS® to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

6.4 At PAPHAMS®'s sole discretion a non-refundable deposit may be required.

6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by PAPHAMS®, which may be:

- (a) on completion of the Works; or
- (b) by way of progress payments in accordance with PAPHAMS®'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 worksite but not yet installed; or
- (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) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by PAPHAMS®.

6.6 At the agreement of both parties, payment of the Price may be subject to retention by the Client of an amount (hereafter called the "Retention Money"), being a set amount or equal to a percentage of the Price. The Client shall hold the Retention Money for the agreed period following completion of the Works during which time all Works are to be completed and/or all defects are to be remedied. Unless otherwise specified, the Retention Money shall be equivalent to five percent (5%) of the Price with two and a half percent (2.5%) of the amount retained throughout the duration of the Works and the balance to be retained until the completion of the warranty period of twelve (12) months. Retention Money due to be paid to PAPHAMS® after the completion of the warranty defect period shall be due for payment the first business day after such expiry. Failure by the Client to make payment as stated shall allow PAPHAMS® to place such Retention Money due into default.

6.7 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and PAPHAMS®.

6.8 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 PAPHAMS® nor to withhold payment of any invoice because part of that invoice is in dispute.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to PAPHAMS® an amount equal to any GST PAPHAMS® must pay for any supply by PAPHAMS® under this or any other contract 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.

7. Delivery of the Works

7.1 Subject to clause 7.2 it is PAPHAMS®'s responsibility to ensure that the Works start as soon as it is reasonably possible.

7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that PAPHAMS® claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond PAPHAMS®'s control, including but not limited to any failure by the Client to:

- (a) make a selection; or
- (b) have the worksite ready for the Works; or
- (c) notify PAPHAMS® that the worksite is ready.

7.3 At PAPHAMS®'s sole discretion, the cost of delivery is in addition to the Price.

7.4 PAPHAMS® may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

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- 7.5 Any time specified by PAPHAMS® for delivery of the Works is an estimate only and PAPHAMS® will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that PAPHAMS® is unable to supply the Works as agreed solely due to any action or inaction of the Client, then PAPHAMS® shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.
- 8. Risk**
- 8.1 If PAPHAMS® retains ownership of the Materials under clause 17 then:
- (a) where PAPHAMS® is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either;
- (i) the Client or the Client's nominated carrier takes possession of the Materials at PAPHAMS®'s address; or
- (ii) the Materials are delivered by PAPHAMS® or PAPHAMS®'s nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
- (b) where PAPHAMS® is to both supply and install Materials then PAPHAMS® shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Client specifically requests PAPHAMS® to leave Materials outside PAPHAMS®'s premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 8.3 PAPHAMS® shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against PAPHAMS®'s recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to PAPHAMS®. Accordingly, PAPHAMS® offers no warranty in regards to the aforementioned.
- 8.4 PAPHAMS® 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 in the event that any of this information provided by the Client is inaccurate, PAPHAMS® accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.5 The Client warrants that no other tradesmen interfere with any Works and/or Materials supplied under this contract. PAPHAMS® shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.
- 8.6 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any plumbing or electrical connections (including, but not limited to, meter boxes, pipes, couplings and valves) are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective plumbing or dangerous access to crawl spaces) that PAPHAMS®, or employees of PAPHAMS®, reasonably form the opinion that the Client's premises are not safe for the installation of Materials to proceed then PAPHAMS® shall be entitled to delay installation of the Materials (**in accordance with the provisions of clause 7.2 above**) until PAPHAMS® is satisfied that it is safe for the installation to proceed. PAPHAMS® 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 Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 8.7 The Client acknowledges and agree that where PAPHAMS® has performed temporary repairs that:
- (a) PAPHAMS® offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
- (b) PAPHAMS® will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair required.
- 8.8 The Client acknowledges that PAPHAMS® is only responsible for parts that are replaced by PAPHAMS® and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify PAPHAMS® against any loss or damage to the Materials, or caused by the Materials, or any part thereof howsoever arising.
- 8.9 Where the Client has supplied goods for PAPHAMS® to complete the Works, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the goods. PAPHAMS® shall not be responsible for any defects in the goods, any loss or damage to the Materials (or any part thereof), howsoever arising from the use of goods supplied by the Client.
- 8.10 Notwithstanding clause 8.9 and subject to PAPHAMS®'s obligations under clause 20, the Client accepts and acknowledges that any alleged claim made against PAPHAMS® (where the Client has supplied goods) shall be limited only to PAPHAMS®'s workmanship.
- 8.11 The Client acknowledges that Materials supplied may:
- (a) fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances;
- (d) be damaged or disfigured by impact or scratching; and
- (e) create undesirable smells caused by a system as a result of its normal operation.
- 8.12 Notwithstanding the provisions of clause 8.1, where PAPHAMS® requires that Materials, fittings and appliances, or plant and tools required for the Works be stored at the worksite, the Client shall supply PAPHAMS® a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 8.13 PAPHAMS® accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with PAPHAMS®'s and/or the manufacturers' recommendations.
- Air Conditioning Risk**
- 8.14 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 6.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 8.15 The final location of the wall, window or floor unit must be determined on site by the Client. 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.

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- 8.16 PAPHAMS® shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however PAPHAMS® cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc. Accordingly, PAPHAMS® offers no warranty in regards to noise levels post installation unless it is evident that there is inherent fault in the Materials or that the installation process was defective.
- 8.17 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.18 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 PAPHAMS® immediately upon any proposed changes. The Client agrees to indemnify PAPHAMS® against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- Plumbing Risk**
- 8.19 The installation of some appliances can cause water hammer or damage to existing pipe work. The Client agrees to indemnify PAPHAMS® against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the Materials.
- 8.20 The Client acknowledges that the presence of plant or tree root growth and/or other blockages may indicate damaged pipe work and therefore where PAPHAMS® is requested to merely clear such blockages, PAPHAMS® can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, PAPHAMS® will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work.
- 8.21 In the event that the Client requests PAPHAMS® to use drain/pipe unblocking equipment, and PAPHAMS® does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, PAPHAMS® may require the Client or their agent to authorise commencement of the Works in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the Client shall be responsible for the cost of repair, replacement and/or retrieval of said equipment.
- Roofing Risk**
- 8.22 The Client accepts and acknowledges that:
- where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims or drainage components used due to the difference in metal alloys available and manufacturing standards and tolerances shall not deemed to be a defect in the Materials; and
 - PAPHAMS®'s quotation for repairs to existing tile roofs shall be based only on the replacement of damaged tiles and shall not include the replacement of tiles with slight imperfections unless authorised by the Client prior to the commencement of the Works. If the Client requests the replacement of tiles that have slight imperfections but which PAPHAMS® does not deem to be defective or that will affect the integrity of the roof, then this shall be a variation to the original quotation and clause 6.2 will apply; and
 - no persons other than those authorised or employed by PAPHAMS® are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the Works. PAPHAMS® shall not be liable for any loss, damages, injuries, or costs however arising resulting from the Client's failure to comply with this clause; and
 - PAPHAMS® accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Client's property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks; and
 - PAPHAMS® gives no implied or express warranty on pre-existing leaks and or causes of the same; and
 - accepts any liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the Client's property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks; and
 - PAPHAMS® gives no guarantee (expressed or implied) against crazing, cracking, chipping or scratching that may occur that is beyond PAPHAMS®'s control due to the nature of the product at the time of installation, therefore it is recommended that the Client allows for extra product for such breakages.
- Painting Risk**
- 8.23 PAPHAMS® shall not be liable for:
- inferior existing paintwork where PAPHAMS®'s paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack or blemish; and
 - the quality of the works if the Client does not follow PAPHAMS®'s recommendations as to the number of coats of paint required to obtain the final finish if the Client chooses to accept a reduced Price based on fewer coats of paint; and
 - any loss or damage to the works (including, but not limited to, painted surfaces) that is caused by any other tradesmen.
- Concreting Risk**
- 8.24 The Client acknowledges that variations of colour and texture are inherent in concrete. PAPHAMS® shall not be liable for any loss, damages or costs howsoever arising resulting from any variation of the colour or texture between different batches of product.
- 8.25 Detailed drawings of any services that will be embedded in the concrete are to be provided to PAPHAMS® prior to commencement of any Works. Whilst all due care will be taken no liability will be accepted by PAPHAMS® for damage to the services or any other element embedded in the concrete.
- 8.26 PAPHAMS® gives no guarantee (expressed or implied) as to the length of time the curing process will take and/or against cracking of concrete that may occur naturally in the Works such as:
- hairline cracking of paving and grout; or
 - damage caused by contact with chemicals, solvents, oils or any other substances; or
 - the affects by elements such as heat exposure or wet weather conditions that prolong the curing process.
- 8.27 The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the concrete and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the concrete is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.
- 8.28 PAPHAMS® shall not be liable for any defect in the Works if the Client does not follow PAPHAMS®'s recommendations, including:
- to water the concrete periodically to limit the risk of possible cracking due to weather conditions;
 - that no foot traffic and/or any vehicles on the concrete for a minimum of forty-eight (48) hours but preferably seven (7) days;
 - that no heavy furniture is to be placed on the concrete area for a minimum of twenty-four (24) hours.
- 8.29 Where PAPHAMS® gives advice or recommendations to the Client, or the Client's agent, regarding the suitability of the worksite for the laying of concrete pavers or similar works and such advice or recommendations are not acted upon then PAPHAMS® shall require the Client

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or their agent to authorise commencement of the Works in writing. PAPHAMS® shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Works.

8.30 The Client shall supply an area suitable for washing out PAPHAMS®'s equipment and for depositing all unused concrete and slurry.

9. Measurement of Concreting Works

9.1 At the completion of the Works the Client or the representative of the Client shall be in attendance and the Works shall then be duly measured. In the absence of either the Client or their representative PAPHAMS® shall carry out the necessary measurements and forward to the Client their calculations. If the Client does not object to the calculations within seven (7) days of receipt of the same then it shall be deemed acceptance of the same and the Works completed.

10. Specifications

10.1 The Client acknowledges that:

- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in PAPHAMS®'s or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by PAPHAMS®;
- (b) while PAPHAMS® may have provided information or figures to the Client regarding the performance of the Materials, the Client acknowledges that PAPHAMS® has given these in good faith, and are estimates based on Clean Energy Council (CEC), Water Efficiency Labelling and Standards (WELS) scheme and/or industry prescribed estimates. The water efficiency may be less than estimates due to factors out of PAPHAMS®'s control (including, but not limited to, water pressure, water source, the mineral content of water based on geographical location, etc.).

10.2 The Client shall be responsible for ensuring that the Materials ordered are suitable for their intended use. At no time shall the Materials purchased under this contract by the Client be subject of a sale by sample or description.

11. Client's Responsibilities

11.1 It is the intention of PAPHAMS® and agreed by the Client that it is the responsibility of the Client to provide and have erected scaffolding to enable the Works to be undertaken (where in PAPHAMS®'s opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed.

11.2 The Client acknowledges that they shall:

- (a) not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party;
- (b) be responsible for any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable PAPHAMS® to carry out the Works;
- (c) remove any furniture or personal items from the vicinity of the Works, and agrees that PAPHAMS® shall not be liable for any damage caused to those items through the Client's failure to comply with this clause;
- (d) be wholly responsible for animals and/or children on the worksite;
- (e) be wholly responsible for the removal of rubbish from or clean-up of the worksite;
- (f) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required.

12. Surplus Materials

12.1 Unless otherwise stated elsewhere in this contract:

- (a) demolished Materials remain the Client's property; and
- (b) Materials which PAPHAMS® brings to the worksite which are surplus remain the property of PAPHAMS®.

13. Access

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

13.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other equipment as may be deemed necessary by PAPHAMS®.

14. Underground Locations

14.1 Prior to PAPHAMS® commencing any work the Client must advise PAPHAMS® of the precise location of all underground services on the worksite and clearly mark the same. 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 worksite.

14.2 Whilst PAPHAMS® will take all care to avoid damage to any underground services the Client agrees to indemnify PAPHAMS® 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 14.1.

15. Compliance with Laws

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

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

15.3 The Client agrees that the worksite will comply with any work health and safety (WHS) laws relating to building/construction worksites and any other relevant safety standards or legislation.

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- 15.4 Prior to commencement of any Works PAPHAMS® shall carry a routine soundness test of the worksite to ensure there are not any gas leaks in the existing pipework. In the event of such a discovery PAPHAMS® where necessary will have the gas supply capped-off until the fault is found and repaired at the Client's expense.
- 15.5 The Client acknowledges that in instances where the gas supply is turned off at the meter or bottles by PAPHAMS® in order to carry out the soundness test that parts within a gas appliance maybe subject to fail due to not being turned off and serviced for a long period of time including, thermocouples, blocked pilot tubes, and SIT valves on pilot assemblies any costs associated with such an event shall be at the Client's expense.
- 15.6 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.
- 15.7 The Client warrants that any existing plumbing, gasfitting and/or associated services in or upon the worksite that is subject to the Materials and/or Works is in compliance with regulations. PAPHAMS® reserves the right to halt all Works (in accordance with the provisions of clause 7.2 above) if in their opinion the worksite is unsafe and/or the current positioning of the unit is illegal due to not meeting the required clearances then the Client will be informed of this and will be given a revised quotation or estimate to install the new appliance in a safe and legal position. Should the Client not wish to proceed PAPHAMS® will charge a standard fee for the time spent on worksite based on PAPHAMS® quotation.

16. Insurance

- 16.1 PAPHAMS® shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.

17. Title

- 17.1 PAPHAMS® and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid PAPHAMS® all amounts owing to PAPHAMS®; and
 - (b) the Client has met all of its other obligations to PAPHAMS®.
- 17.2 Receipt by PAPHAMS® 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.
- 17.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 17.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to PAPHAMS® on request.
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for PAPHAMS® and must pay to PAPHAMS® 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 PAPHAMS® shall be sufficient evidence of PAPHAMS®'s rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with PAPHAMS® 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 PAPHAMS® and must pay or deliver the proceeds to PAPHAMS® 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 PAPHAMS® and must sell, dispose of or return the resulting product to PAPHAMS® as it so directs.
 - (f) unless the Materials have become fixtures the Client irrevocably authorises PAPHAMS® to enter any premises where PAPHAMS® believes the Materials are kept and recover possession of the Materials.
 - (g) PAPHAMS® 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 PAPHAMS®.
 - (i) PAPHAMS® may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

18. Personal Property Securities Act 2009 ("PPSA")

- 18.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 18.2 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 PAPHAMS® for Works – that have previously been supplied and that will be supplied in the future by PAPHAMS® to the Client.
- 18.3 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 PAPHAMS® 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 6.1(a)(i) or 6.1(a)(ii);
 - (b) indemnify, and upon demand reimburse, PAPHAMS® 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 PAPHAMS®;
 - (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 PAPHAMS®;

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- (e) immediately advise PAPHAMS® 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.
- 18.4 PAPHAMS® 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.
- 18.5 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.
- 18.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 18.7 Unless otherwise agreed to in writing by PAPHAMS®, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 18.8 The Client shall unconditionally ratify any actions taken by PAPHAMS® under clauses 18.3 to 18.5.
- 18.9 Subject to any express provisions to the contrary (including those contained in this clause 18) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 19. Security and Charge**
- 19.1 In consideration of PAPHAMS® 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).
- 19.2 The Client indemnifies PAPHAMS® from and against all PAPHAMS®'s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising PAPHAMS®'s rights under this clause.
- 19.3 The Client irrevocably appoints PAPHAMS® and each director of PAPHAMS® as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 19 including, but not limited to, signing any document on the Client's behalf.
- 20. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 20.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify PAPHAMS® 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 PAPHAMS® to inspect the Materials or to review the Works provided.
- 20.2 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**).
- 20.3 PAPHAMS® acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 20.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, PAPHAMS® makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. PAPHAMS®'s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 20.5 If the Client is a consumer within the meaning of the CCA, PAPHAMS®'s liability is limited to the extent permitted by section 64A of Schedule 2.
- 20.6 If PAPHAMS® is required to replace any Materials under this clause or the CCA, but is unable to do so, PAPHAMS® may refund any money the Client has paid for the Materials.
- 20.7 If PAPHAMS® 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 PAPHAMS® 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.
- 20.8 If the Client is not a consumer within the meaning of the CCA, PAPHAMS®'s liability for any defect or damage in the Materials is:
- limited to the value of any express warranty or warranty card provided to the Client by PAPHAMS® at PAPHAMS®'s sole discretion;
 - limited to any warranty to which PAPHAMS® is entitled, if PAPHAMS® did not manufacture the Materials;
 - otherwise negated absolutely.
- 20.9 Subject to this clause 20, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 20.1; and
 - PAPHAMS® has agreed that the Materials are defective; and
 - the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 20.10 Notwithstanding clauses 20.1 to 20.9 but subject to the CCA, PAPHAMS® shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store any Materials;
 - the Client using the Materials for any purpose other than that for which they were designed;
 - the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Works by the Client or any third party without PAPHAMS®'s prior approval;
 - the Client failing to follow any instructions or guidelines provided by PAPHAMS®;
 - fair wear and tear, any accident, or act of God.
- 20.11 PAPHAMS® may in its absolute discretion accept non-defective Materials for return in which case PAPHAMS® may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Materials plus any freight costs.
- 20.12 Notwithstanding anything contained in this clause if PAPHAMS® is required by a law to accept a return then PAPHAMS® will only accept a return on the conditions imposed by that law.
- 21. Intellectual Property**
- 21.1 Where PAPHAMS® 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 PAPHAMS®, and shall only be used by the

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Client at PAPHAMS®'s discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of PAPHAMS®.

- 21.2 The Client warrants that all designs, specifications or instructions given to PAPHAMS® will not cause PAPHAMS® to infringe any patent, registered design or trademark (including but not limited to Trademark numbers 157 9105 and 747 757) in the execution of the Client's order and the Client agrees to indemnify PAPHAMS® against any action taken by a third party against PAPHAMS® in respect of any such infringement.
- 21.3 The Client agrees that PAPHAMS® may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which PAPHAMS® has created for the Client.

22. Default and Consequences of Default

- 22.1 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 PAPHAMS®'s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the Client owes PAPHAMS® any money the Client shall indemnify PAPHAMS® from and against all costs and disbursements incurred by PAPHAMS® in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, PAPHAMS®'s contract default fee, and bank dishonour fees).
- 22.3 Further to any other rights or remedies PAPHAMS® may have under this contract, if a Client has made payment to PAPHAMS®, 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 PAPHAMS® under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 22.4 Without prejudice to PAPHAMS®'s other remedies at law PAPHAMS® shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to PAPHAMS® shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to PAPHAMS® becomes overdue, or in PAPHAMS®'s opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by PAPHAMS®;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Cancellation

- 23.1 Without prejudice to any other remedies PAPHAMS® may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions PAPHAMS® may suspend or terminate the supply of Works to the Client. PAPHAMS® will not be liable to the Client for any loss or damage the Client suffers because PAPHAMS® has exercised its rights under this clause.
- 23.2 PAPHAMS® 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 PAPHAMS® shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to PAPHAMS® for Works already performed. PAPHAMS® shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 23.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by PAPHAMS® as a direct result of the cancellation (including, but not limited to, any loss of profits, freight costs etc).
- 23.4 Cancellation of orders for products 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.

24. Privacy Act 1988

- 24.1 The Client agrees for PAPHAMS® to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by PAPHAMS®.
- 24.2 The Client agrees that PAPHAMS® may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 24.3 The Client consents to PAPHAMS® being given a consumer credit report to collect overdue payment on commercial credit.
- 24.4 The Client agrees that personal credit information provided may be used and retained by PAPHAMS® 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.
- 24.5 PAPHAMS® 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.
- 24.6 The information given to the CRB may include:
- (a) personal information as outlined in 24.1 above;
 - (b) name of the credit provider and that PAPHAMS® is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;

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- (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 sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and PAPHAMS® has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of PAPHAMS®, 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).
- 24.7 The Client shall have the right to request (by e-mail) from PAPHAMS®:
- (a) a copy of the information about the Client retained by PAPHAMS® and the right to request that PAPHAMS® correct any incorrect information; and
 - (b) that PAPHAMS® does not disclose any personal information about the Client for the purpose of direct marketing.
- 24.8 PAPHAMS® will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 24.9 The Client can make a privacy complaint by contacting PAPHAMS® via e-mail. PAPHAMS® will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 25. Building and Construction Industry Security of Payments Act 2009**
- 25.1 At PAPHAMS®'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 Payments Act 2009 may apply.
- 25.2 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 Payments Act 2009 of South Australia, except to the extent permitted by the Act where applicable.
- 26. Service of Notices**
- 26.1 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.
- 26.2 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.
- 27. Trusts**
- 27.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not PAPHAMS® may have notice of the Trust, the Client covenants with PAPHAMS® as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) The Client will not without consent in writing of PAPHAMS® (PAPHAMS® will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 28. General**
- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia, the state in which PAPHAMS® has its principal place of business, and are subject to the jurisdiction of the Adelaide Courts in South Australia.
- 28.3 Subject to clause 20 PAPHAMS® 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 PAPHAMS® of these terms and conditions (alternatively PAPHAMS®'s liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 28.4 PAPHAMS® may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 28.5 The Client cannot licence or assign without the written approval of PAPHAMS®.
- 28.6 PAPHAMS® may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of PAPHAMS®'s sub-contractors without the authority of PAPHAMS®.
- 28.7 The Client agrees that PAPHAMS® may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for PAPHAMS® to provide Works to the Client.

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- 28.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 28.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.