
Support Vehicles Australia – Terms & Conditions of Trade

1. Definitions

- 1.1 "SVA" means Support Vehicles Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Support Vehicles Australia.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting SVA to provide the Services 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 "Goods" means all Goods or Services supplied by SVA to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between SVA and the Client in accordance with clause 5 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 the Goods.
- 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 SVA.
- 2.3 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that SVA 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 SVA 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 SVA in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of SVA; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 At SVA's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by SVA to the Client; or
 - (b) SVA's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 SVA reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, unknown faults found during disassembly, etc) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to SVA in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in steel market price fluctuations, foreign currency rates of exchange and/or international freight and insurance charges) which are beyond SVA's control.
- 5.3 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by SVA, which may be:
- (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with SVA's payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by SVA.
- 5.4 Payment may be made by cash, 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 SVA.
- 5.5 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 SVA nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to SVA an amount equal to any GST SVA must pay for any supply by SVA under this or any other contract for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

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- 6.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Client or the Client’s nominated carrier takes possession of the Goods at SVA’s address; or
 - (b) SVA (or SVA’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 6.2 At SVA’s sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 Any time specified by SVA for delivery of the Goods is an estimate only and SVA 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that SVA is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then SVA shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, SVA is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SVA is sufficient evidence of SVA’s rights to receive the insurance proceeds without the need for any person dealing with SVA to make further enquiries.
- 7.3 If the Client requests SVA to leave Goods outside SVA’s premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client’s sole risk.
- 7.4 The Client accepts that where SVA has modified or altered parts or machinery at the Client’s request, SVA shall not be held liable for any damages, losses or costs that may arise from the modified parts or machinery changing the usable nature of the machinery.

8. Dimensions, Plans and Specifications

- 8.1 Unless SVA and the Client agree otherwise in writing, all customary industry tolerances shall apply to the dimensions and measurements of the Goods.
- 8.2 SVA shall be entitled to rely on the accuracy of any plans, specifications and other information (including, but not limited to CAD drawings provided by the Client, and it shall be the responsibility of the Client to verify the accuracy of the any estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.
- 8.3 Where the Client supplies SVA with any specifications (including, but not limited to design, measurements or quantities) or requests SVA to obtain any Goods according to the Client’s specifications, the Client shall be responsible for providing accurate data. SVA shall not be liable whatsoever for any loss as a result of any incorrect or inaccurate information being supplied by the Client that may also result in errors in the Goods, and all costs in rectifying such Goods shall be the responsibility of the Client.

9. Title

- 9.1 SVA and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid SVA all amounts owing to SVA; and
 - (b) the Client has met all of its other obligations to SVA.
- 9.2 Receipt by SVA 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.
- 9.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 9.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to SVA on request.
 - (b) the Client holds the benefit of the Client’s insurance of the Goods on trust for SVA and must pay to SVA the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for SVA and must pay or deliver the proceeds to SVA on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of SVA and must sell, dispose of or return the resulting product to SVA as it so directs.
 - (e) the Client irrevocably authorises SVA to enter any premises where SVA believes the Goods are kept and recover possession of the Goods.
 - (f) SVA may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of SVA.
 - (h) SVA may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to SVA for Services – that have previously been supplied and that will be supplied in the future by SVA to the Client.
- 10.3 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 SVA 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 10.3(a)(i) or 10.3(a)(ii);

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- (b) indemnify, and upon demand reimburse, SVA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of SVA;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of SVA;
 - (e) immediately advise SVA of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 SVA 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.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by SVA, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by SVA under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary (including those contained in this clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

11. Security and Charge

- 11.1 In consideration of SVA agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 11.2 The Client indemnifies SVA from and against all SVA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SVA's rights under this clause.
- 11.3 The Client irrevocably appoints SVA and each director of SVA as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

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

- 12.1 The Client must inspect the Goods on delivery and must within fourteen (14) days of delivery notify SVA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow SVA to inspect the Goods.
- 12.2 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**).
- 12.3 SVA acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SVA makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SVA's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, SVA's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If SVA is required to replace the Goods under this clause or the CCA, but is unable to do so, SVA may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, SVA's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by SVA at SVA's sole discretion;
 - (b) limited to any warranty to which SVA is entitled, if SVA did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
 - (b) SVA has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, SVA shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by SVA;
 - (e) fair wear and tear, any accident, or act of God.
- 12.10 SVA may in its absolute discretion accept non-defective Goods for return in which case SVA may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if SVA is required by a law to accept a return then SVA will only accept a return on the conditions imposed by that law.

13. Intellectual Property

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- 13.1 Where SVA has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of SVA. Under no circumstances may such designs, drawings and documents be used without the express written approval of SVA.
- 13.2 The Client warrants that all designs, specifications or instructions given to SVA will not cause SVA to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify SVA against any action taken by a third party against SVA in respect of any such infringement.
- 13.3 The Client agrees that SVA may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SVA has created for the Client.

14. Default and Consequences of Default

- 14.1 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 SVA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes SVA any money the Client shall indemnify SVA from and against all costs and disbursements incurred by SVA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SVA's contract default fee, and bank dishonour fees).
- 14.3 Further to any other rights or remedies SVA may have under this contract, if a Client has made payment to SVA, 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 SVA under this clause 14 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.
- 14.4 Without prejudice to SVA's other remedies at law SVA shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to SVA shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to SVA becomes overdue, or in SVA'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 SVA;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

15. Cancellation

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

16. Privacy Act 1988

- 16.1 The Client agrees for SVA 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 SVA.
- 16.2 The Client agrees that SVA 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.
- 16.3 The Client consents to SVA being given a consumer credit report to collect overdue payment on commercial credit.
- 16.4 The Client agrees that personal credit information provided may be used and retained by SVA for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 16.5 SVA 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.
- 16.6 The information given to the CRB may include:
- (a) personal information as outlined in 16.1 above;
 - (b) name of the credit provider and that SVA 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 SVA has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of SVA, 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).
- 16.7 The Client shall have the right to request (by e-mail) from SVA:
- (a) a copy of the information about the Client retained by SVA and the right to request that SVA correct any incorrect information; and
 - (b) that SVA does not disclose any personal information about the Client for the purpose of direct marketing.
- 16.8 SVA 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.
- 16.9 The Client can make a privacy complaint by contacting SVA via e-mail. SVA 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.

17. Service of Notices

- 17.1 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.
- 17.2 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.

18. Trusts

- 18.1 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 SVA may have notice of the Trust, the Client covenants with SVA 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 SVA (SVA 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.

19. General

- 19.1 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.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which SVA has its principal place of business, and are subject to the jurisdiction of the Perth Courts in western Australia.
- 19.3 Subject to clause 12 SVA 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 SVA of these terms and conditions (alternatively SVA's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 19.4 SVA may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 19.5 The Client cannot licence or assign without the written approval of SVA.
- 19.6 SVA may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of SVA's sub-contractors without the authority of SVA.
- 19.7 The Client agrees that SVA 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 SVA to provide Goods to the Client.
- 19.8 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.
- 19.9 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.