

Skyspan Australia Pty Ltd T/A Skyspan – Terms & Conditions of Trade

1. Definitions

- 1.1 "Skyspan" means Skyspan Australia Pty Ltd T/A Skyspan, its successors and assigns or any person acting on behalf of and with the authority of Skyspan Australia Pty Ltd T/A Skyspan.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting Skyspan to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by Skyspan to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between Skyspan and the Customer 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 Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for 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 agreement between the Customer and Skyspan.
- 2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Skyspan and it has been approved with a credit limit established for the account.
- 2.4 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, Skyspan reserves the right to refuse delivery.
- 2.5 The Customer acknowledges and agrees where the Customer does not elect to control their purchases by a Purchase Order and/or a Letter of Authority, then all purchases made by Customer and/or any other third party acting on behalf of the Customer to which the Goods are charged to the Customer's credit account, shall remain at all times payable by the Customer. All said notices of restrictions pertaining to purchases must be in writing and will remain in place until such time as the Customer revokes.
- 2.6 The Customer agrees to notify Skyspan in writing immediately upon the departure of the Customer employee if an authorised account user. Failure to advise Skyspan of such departures, then the Customer acknowledges they will be bound by all purchase orders made by that account user.
- 2.7 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, Skyspan reserves the right to vary the Price with alternative Goods as per clause 5.2.
- 2.8 These terms and conditions may only be amended with Skyspan's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Skyspan.
- 2.9 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on Skyspan website. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.10 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. Errors & Omissions

- 3.1 The Customer acknowledges and accepts that Skyspan 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 Skyspan in the formation and/or administration of this contract; and/or
 - (b) contained/omitted in/from any literature (hard copy and/or electronic) supplied by Skyspan 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 Skyspan; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

- 5.1 At Skyspan's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by Skyspan to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to Skyspan's current price list; or
 - (c) Skyspan'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 Skyspan 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, inclement weather, obscured site defects, required prerequisite work not completed, limited access to the roof, etc.) which are only discovered on commencement of the Services; or
 - (d) if during the course of the Services, the Goods cease to be available from Skyspan's third party suppliers, then Skyspan reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or

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- (e) as a result of an increase in Skyspan's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services, increases to Skyspan in the cost of labour or Goods or due to relevant industry awards (e.g. site allowance and severance pay), which are outside the control of Skyspan.
- 5.3 Variations will be charged for on the basis of Skyspan's quotation, and will be detailed in writing, and shown as variations on Skyspan's invoice. The Customer shall be required to respond to any variation submitted by Skyspan within ten (10) working days. Failure to do so will entitle Skyspan 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.
- 5.4 At Skyspan's sole discretion, a deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Skyspan, 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 Skyspan's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Skyspan.
- 5.6 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 Customer and Skyspan.
- 5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Skyspan nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Skyspan an amount equal to any GST Skyspan must pay for any supply by Skyspan under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Delivery of Goods**
- 6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at Skyspan's address; or
 - (b) Skyspan (or Skyspan's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Skyspan's sole discretion, the cost of delivery is in addition to the Price.
- 6.3 Subject to clause 6.4 it is Skyspan's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.4 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Skyspan claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Skyspan's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Skyspan that the site is ready.
- 6.5 Skyspan may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 Any time specified by Skyspan for delivery of the Goods is an estimate only and Skyspan will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Skyspan is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Skyspan shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. On-Line Ordering**
- 7.1 The Customer acknowledges and agrees that:
- (a) Skyspan does not guarantee the website's performance;
 - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by Skyspan
 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such Skyspan cannot warrant against delays or errors in transmitting data between the Customer and Skyspan including orders, and you agree that to the maximum extent permitted by law, Skyspan will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
 - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Skyspan shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 7.2 Skyspan reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Skyspan's business, or violated these terms and conditions.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Skyspan is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Skyspan is sufficient evidence of Skyspan's rights to receive the insurance proceeds without the need for any person dealing with Skyspan to make further enquiries.

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- (e) as a result of an increase in Skyspan's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services, increases to Skyspan in the cost of labour or Goods or due to relevant industry awards (e.g. site allowance and severance pay), which are outside the control of Skyspan.
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 - (c) by way of instalments/progress payments in accordance with Skyspan's payment schedule;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Skyspan.
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 - (b) have the site ready for the Services; or
 - (c) notify Skyspan that the site is ready.
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- 6.6 Any time specified by Skyspan for delivery of the Goods is an estimate only and Skyspan will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Skyspan is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Skyspan shall be entitled to charge a reasonable fee for redelivery and/or storage.
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 - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
 - (d) there are inherent hazards in electronic distribution, and as such Skyspan cannot warrant against delays or errors in transmitting data between the Customer and Skyspan including orders, and you agree that to the maximum extent permitted by law, Skyspan will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
 - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences;
 - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, Skyspan shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 7.2 Skyspan reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of Skyspan's business, or violated these terms and conditions.
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- 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Skyspan is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Skyspan is sufficient evidence of Skyspan's rights to receive the insurance proceeds without the need for any person dealing with Skyspan to make further enquiries.

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- (e) immediately advise Skyspan 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.
- 12.4 Skyspan and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Skyspan, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by Skyspan under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12) 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 Skyspan agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies Skyspan from and against all Skyspan's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Skyspan's rights under this clause.
- 13.3 The Customer irrevocably appoints Skyspan and each director of Skyspan as the Customer'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 Customer's behalf.
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Skyspan in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Skyspan to inspect the Goods.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 14.3 Skyspan 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, Skyspan makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Skyspan's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, Skyspan's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If Skyspan is required to replace the Goods under this clause or the CCA, but is unable to do so, Skyspan may refund any money the Customer has paid for the Goods.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, Skyspan's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Skyspan at Skyspan's sole discretion;
 - (b) limited to any warranty to which Skyspan is entitled, if Skyspan did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 14.1; and
 - (b) Skyspan has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Skyspan shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Skyspan;
 - (e) fair wear and tear, any accident, or act of God.
- 14.10 Skyspan may in its absolute discretion accept non-defective Goods for return in which case Skyspan may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 14.11 Notwithstanding anything contained in this clause if Skyspan is required by a law to accept a return then Skyspan will only accept a return on the conditions imposed by that law.
- 15. Intellectual Property**
- 15.1 Where Skyspan has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Skyspan. Under no circumstances may such designs, drawings and documents be used without the express written approval of Skyspan.
- 15.2 The Customer warrants that all designs, specifications or instructions given to Skyspan will not cause Skyspan to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Skyspan against any action taken by a third party against Skyspan in respect of any such infringement.
- 15.3 The Customer agrees that Skyspan may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Skyspan has created for the Customer.

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- 8.3 If the Customer requests Skyspan to leave Goods outside Skyspan's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 The Customer acknowledges that Goods supplied may exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Skyspan will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 8.5 The Customer acknowledges that Goods 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; and
 - (d) be damaged or disfigured by impact or scratching.
- 9. Access**
- 9.1 The Customer shall ensure that Skyspan has clear and free access to the worksite at all times to enable the Services to be undertaken. Skyspan shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Skyspan.
- 9.2 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by Skyspan.
- 9.3 The Customer agrees to be present at the worksite when and as reasonably requested by Skyspan and its employees, Skyspan's and/or agents.
- 10. Compliance with Laws**
- 10.1 The Customer and Skyspan shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 10.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11. Title**
- 11.1 Skyspan and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Skyspan all amounts owing to Skyspan; and
 - (b) the Customer has met all of its other obligations to Skyspan.
- 11.2 Receipt by Skyspan of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 11.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Skyspan on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Skyspan and must pay to Skyspan the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Skyspan and must pay or deliver the proceeds to Skyspan on demand.
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Skyspan and must sell, dispose of or return the resulting product to Skyspan as it so directs.
 - (e) the Customer irrevocably authorises Skyspan to enter any premises where Skyspan believes the Goods are kept and recover possession of the Goods.
 - (f) Skyspan may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Skyspan.
 - (h) Skyspan may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 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 Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to Skyspan for Services – that have previously been supplied and that will be supplied in the future by Skyspan to the Customer.
- 12.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Skyspan 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, Skyspan 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 Skyspan;
 - (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 Skyspan;

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- (b) that Skyspan does not disclose any personal information about the Customer for the purpose of direct marketing.
- 18.8 Skyspan will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 18.9 The Customer can make a privacy complaint by contacting Skyspan via e-mail. Skyspan will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 19. Building and Construction Industry Security of Payments Act 1999**
- 19.1 At Skyspan's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 19.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 20. General**
- 20.1 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.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws New South Wales the state in which Skyspan has its principal place of business, and are subject to the jurisdiction of the Blacktown Courts in that state.
- 20.3 Subject to clause 14 Skyspan shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Skyspan of these terms and conditions (alternatively Skyspan's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.4 Skyspan may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 20.5 The Customer cannot licence or assign without the written approval of Skyspan.
- 20.6 Skyspan may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Skyspan's sub-contractors without the authority of Skyspan.
- 20.7 The Customer agrees that Skyspan may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Skyspan to provide Goods to the Customer.
- 20.8 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.
- 20.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.