

1. Definitions

- 1.1 “AWS” shall mean AWS Global which comprises of the following divisions - AWS Global Pty Ltd ATF The Cornish Trust T/A Australian Welding Solutions (ACN 122 282 624 / ABN 39 801 835 643) and AWS In-Service Inspection Pty Ltd (ABN 68 143 448 257) and AWS Centre of Excellence Pty Ltd (ABN 54 137 436 385) and AWS Sales Pty Ltd (ABN 22 151 429 364) or each of their successors or assigns or any person acting on behalf of and with the authority of AWS Global or any of the divisions specified.
- 1.2 “Client” shall mean the person/s requesting AWS to provide the Services as specified in any invoice, document or order, and if there is more than one person requesting the Services is a reference to each person jointly and severally.
- 1.3 “Incidental Items” means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by AWS in the course of it conducting, or supplying to the Client, any Services.
- 1.4 “Services” shall mean all Services supplied by AWS to the Client at the Client’s request from time to time.
- 1.5 “Price” means the price payable for the Services as agreed between AWS and the Client in accordance with clause 3 of this contract.

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 Services provided by AWS.
- 2.2 These terms and conditions may only be amended with AWS’ consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and AWS.
- 2.3 The Client acknowledges that AWS acts only in the role of a consultant and does not certify any works undertaken by the Client. The Client agrees that it is their responsibility to ensure that all works are certified by a suitably qualified person or authority.

3. Change in Control

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

4. Price and Payment

- 4.1 At AWS’ sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by AWS to the Client; or
 - (b) AWS’ quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 AWS reserves the right to change the Price if a variation to AWS’ quotation is requested.
- 4.3 At AWS’ sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by AWS, which may be:
 - (a) on delivery of the Services;
 - (b) by way of instalments/progress payments in accordance with AWS’ payment schedule;
 - (c) the date specified on any invoice or other form as being the date for payment; or
 - (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by AWS.
- 4.5 At AWS’ sole discretion a discount may be offered on accounts paid within the above payment terms.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed to between the Client and AWS.
- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to AWS an amount equal to any GST AWS must pay for any supply by AWS under this or any other agreement for providing AWS’ Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

5. Delivery of Services

- 5.1 At AWS’ sole discretion delivery of the Services shall take place when:
 - (a) the Services are supplied to the Client at AWS’ address; or
 - (b) the Services are supplied to the Client at the Client’s nominated address.
- 5.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.3 AWS may deliver the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.4 Any time specified by AWS for delivery of the Services is an estimate only and AWS 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 Services to be supplied at the time and place as was arranged between both parties. In the event that AWS is unable to supply the Services as agreed solely due to any action or inaction of the Client then AWS shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.

6. Risk

- 6.1 Irrespective of whether AWS retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as AWS may repossess the Incidental Items. The Client must insure all Incidental Items on or before delivery.
- 6.2 AWS reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client’s failure to insure in accordance with clause 6.1.

7. Title

- 7.1 AWS and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
- (a) the Client has paid AWS all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to AWS in respect of all contracts between AWS and the Client.
- 7.2 Receipt by AWS 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 and until then AWS' ownership or rights in respect of the Incidental Items shall continue.
- 7.3 It is further agreed that:
- (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to AWS immediately upon request by AWS;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for AWS and must pay to AWS the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for AWS and must pay or deliver the proceeds to AWS on demand.
 - (d) the Client should not convert or process the Incidental Items 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 AWS and must dispose of or return the resulting product to AWS as AWS so directs.
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of AWS;
 - (f) the Client irrevocably authorises AWS to enter any premises where AWS believes the Incidental Items are kept and recover possession of the Incidental Items.

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

- 8.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 8.2 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 Incidental Items that have previously been supplied and that will be supplied in the future by AWS to the Client.
- 8.3 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 AWS 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 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, AWS 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 Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of AWS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items in favour of a third party without the prior written consent of AWS.
- 8.4 AWS 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.
- 8.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 8.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.7 Unless otherwise agreed to in writing by AWS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.8 The Client must unconditionally ratify any actions taken by AWS under clauses 8.3 to 8.5.
- 8.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

9. Security and Charge

- 9.1 In consideration of AWS agreeing to supply Services, 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).
- 9.2 The Client indemnifies AWS from and against all AWS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising AWS' rights under this clause.
- 9.3 The Client irrevocably appoints AWS and each director of AWS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 9 including, but not limited to, signing any document on the Client's behalf.

10. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 10.1 The Client must inspect AWS' Services on completion of the Services and must within seven (7) days notify AWS in writing of any evident defect in the Services or Incidental Items provided (including AWS' workmanship) or of any other failure by AWS to comply with the description of, or quote for, the Services which AWS was to supply. The Client must notify any other alleged defect in AWS' Services or Incidental Items as soon as is reasonably possible

- after any such defect becomes evident. Upon such notification the Client must allow AWS to review the Services or Incidental Items that were provided.
- 10.2 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**).
- 10.3 AWS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 10.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, AWS makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. AWS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 10.5 If the Client is a consumer within the meaning of the CCA, AWS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 10.6 If AWS is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then AWS may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Client which were not defective.
- 10.7 If the Client is not a consumer within the meaning of the CCA, AWS' liability for any defective Services or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by AWS in AWS' sole discretion;
 - (b) otherwise negated absolutely.
- 10.8 Notwithstanding clauses 10.1 to 10.7 but subject to the CCA, AWS 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 Incidental Items;
 - (b) the Client using the Incidental Items for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Incidental Item after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Services by the Client or any third party without AWS' prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by AWS; or
 - (f) fair wear and tear, any accident, or act of God.
- 11. Intellectual Property**
- 11.1 The Client acknowledges that advice, procedures, methods and recommendations supplied by AWS to the Client remain AWS' Intellectual Property (IP) and that the Client shall not be entitled to use that IP until AWS has been paid for that IP in full. In the event that the Client wishes to immediately utilise such IP then AWS shall be entitled to charge a licencing fee (in addition to the Price paid for the provision of the IP) for the period between the provision of the IP and when payment is received. The Client further acknowledges that the IP is provided only for use in the Client's own business and that the IP remains AWS' copyright and that the Client shall not be entitled under any circumstances to pass the IP on to any third party.
- 11.2 The Client warrants that all designs, specifications or instructions given to AWS will not cause AWS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify AWS against any action taken by a third party against AWS in respect of any such infringement.
- 11.3 The Client agrees that AWS may (at no cost) use for the purposes of marketing or entry into any competition, any Incidental Items which AWS has created for the Client.
- 12. Default and Consequences of Default**
- 12.1 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 AWS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2 If the Client owes AWS any money the Client shall indemnify AWS from and against all costs and disbursements incurred by AWS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, AWS' collection agency costs, and bank dishonour fees).
- 12.3 Without prejudice to any other remedies AWS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions AWS may suspend or terminate the supply of Services to the Client. AWS will not be liable to the Client for any loss or damage the Client suffers because AWS has exercised its rights under this clause.
- 12.4 Without prejudice to any other remedies AWS may have, if at any time the Client is in breach of any obligation (including those relating to payment), then any discount, markdown, reduction or special price, previously offered by AWS to the Client may be withdrawn, or cancelled, and the Price shall become AWS' standard Price as at the date of the original sale.
- 12.5 Without prejudice to AWS' other remedies at law AWS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to AWS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to AWS becomes overdue, or in AWS' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

13. Cancellation

- 13.1 AWS may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice AWS shall repay to the Client any money paid by the Client for the Services. AWS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by AWS as a direct result of the cancellation (including, but not limited to, any loss of profits).

14. Privacy Act 1988

- 14.1 The Client agrees for AWS to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by AWS.
- 14.2 The Client agrees that AWS may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 14.3 The Client consents to AWS being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 14.4 The Client agrees that personal credit information provided may be used and retained by AWS for the following purposes (and for other purposes as shall be agreed between the Client and AWS or required by law from time to time):
- (a) the provision of Services; and/or
 - (b) the marketing of Services by AWS, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 14.5 AWS may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 14.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that AWS is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of AWS, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - (h) that credit provided to the Client by AWS has been paid or otherwise discharged.

15. General

- 15.1 The failure by AWS to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AWS' 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.
- 15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which AWS has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 15.3 Subject to clause 10 AWS 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 AWS of these terms and conditions (alternatively AWS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 15.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by AWS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 15.5 AWS may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 15.6 The Client agrees that AWS may amend these terms and conditions at any time. If AWS makes a change to these terms and conditions, then that change will take effect from the date on which AWS notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for AWS to provide Services to the Client.

- 15.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 15.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.