

GAPRIE AUSTRALIA PTY LTD - GENERAL TERMS AND CONDITIONS

1. CLIENT'S ACKNOWLEDGEMENTS

- 1.1. A legally binding Agreement is established between the two parties (based on these terms and conditions contained herein) and deemed accepted by the Client once the Client placing an order for the supply of the Goods or Services or if the Client accepts delivery of the Goods or Services from the Supplier. In such events, the Client will immediately be bound, jointly and severally, by these terms and conditions.
- 1.2. No amendment of this Agreement will be of any force or effect, unless in writing signed by an authorised representative of each party.
- 1.3. Both parties declare that they have the power to enter this Agreement (at the time of signing this Agreement) and have obtained all necessary authorisations to allow them to do so (including where the Client is to act in the capacity as a trustee of any trust ("Trust"). The Client declares that they are not insolvent and accepts that this Agreement creates a binding and valid legal obligation on them, to meet all their debts as and when they fall due.
- 1.4. If the Client is primarily a Trust entity, the Client declares that the provisions of the Trust does not imply to exclude or remove the right of indemnity of the Client against the Trust. The Client agrees to notify the Supplier forthwith, if there are any substantial changes to the Trust that could affect the business relationship and the Client's obligations under the Agreement, such as removal, replacement, or retirement of the Client as a trustee of the Trust, variations or resettlements of trust assets that may or could be the basis of any security under any contract with the Supplier.
- 1.5. The Client acknowledges and accepts that unless any representation, statement, condition, or agreement is expressed in writing, by the Gaprie Australia Pty Ltd or its authorised representative, the Supplier shall not be bound any such unauthorised statements.
- 1.6. The Supplier acts always, in the best interest of the Client, thereby, any advice, recommendations, information, assistance, or service provided by the Supplier to the Client or the Client's agent/representative, in respect of the Goods or Services is based on the Supplier's knowledge and experience. Where such advice, recommendations are not acted upon, then the Supplier shall require the Client or their agent/representative to authorise commencement of the Services in writing. The Supplier does not accept any liability in any way whatsoever, for any damages or losses that occur, subsequently after the Supplier is instructed to re-commence the Services.
- 1.7. Where the Supplier has been provided with an email address from the Client for e-communications, both parties agree to fully comply with all current requirements by law pertaining to electronic messaging (including but not limited to, Spam Act 2003).
- 1.8. It is further agreed, where electronic signatures are to form part thereof, the acceptance to this Agreement and to be deemed compliant, both parties must consent to same, in accordance with the applicable legislation that applies in the State or Territory of the origin of this Agreement, including any other applicable provisions of that Act or any Regulations referred to in that Act pertaining to electronic transactions.

2. ERROR AND OMISSIONS

- 2.1. The Supplier shall have no liability, unless attributed to negligence and/or willful misconduct by the Supplier, arising from any typographical, clerical, or other error, mistake or omission in any information, communication or other document or information issued by it.

3. PAYMENT TERMS

- 3.1. At the Supplier's sole discretion, the Price shall be:
 - (a) As indicated on any invoice/s furnished by the Supplier to the Client;
 - (b) As per the Supplier's Price list;
 - (c) The Supplier's quoted Price (subject to clause 4) will only be valid for the period stated in the quotation, if no date is stated, then the valid period shall be no less than 30 Business Days.
- 3.2. Deposits due, are at the discretion of the Supplier and the deposit amount may vary due to the nature of the Services or Goods to be supplied. Any deposit required will be stated at the time of quoting and shall become immediately due and payable upon the Supplier's acceptance.
- 3.3. The Price will be payable by the Client on the date determined by the Supplier, which may be:
 - (a) On or before the supply/delivery of the Goods and/or Services; or
 - (b) Credit Approved Client's:
 - (i) By instalments in accordance with the Suppliers payment schedule; or
 - (ii) 20 Business Days following the end of the month in which a statement is posted/emailed to the Client's address for service; or
 - (c) The date specified on any invoice/s or other form as being the date for payment; or
 - (d) If no date is stated, payment will be due within 7 Business Days, following the date of any invoice/s furnished by the Supplier to the Client.
- 3.4. Payment is accepted by either electronic bank transfer, credit card (a surcharge may apply per transaction) or by any other method as agreed to between the Client and the Supplier.
- 3.5. 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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. Where the Client believes that there has been a mistake made, the Supplier requests that the Client contacts the Supplier within 7 Business Days of receipt of the invoice/statement, so that the Supplier may investigate any alleged error. If a mistake has occurred, the Client's subsequent invoice/statement will be adjusted.
- 3.6. Unless otherwise stated, the Price will always be inclusive of GST. In addition, the Client must pay any other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4. VARIATIONS

- 4.1. The Supplier reserves the right to amend the Price (upon written notice to the Client):
 - (a) If a variation to the Goods, which are to be provided is requested and/or Services (including extra candidates being added to any Training Courses after the initial booking has been made); and
 - (b) Additional machinery hires on Training Courses (depends on numbers on the Course) and Trainer's travel and accommodation costs (more than 250kms from the Supplier's premises an additional fee applies); and
 - (c) As a result of increases beyond the Supplier's reasonable control in the cost of materials or labour (e.g., third-party suppliers' costs, etc.), or due to currency exchange rate; or
- 4.2. Any variations to the Client's original quote, will be described in full as a variation on the invoice. The Client will be required to respond to any variation invoice presented by the Supplier to the Client within 7 Business Days from the date of receipt of the invoice, failure to comply will permit the Supplier to assume that the variation invoice is accepted without dispute. Payment will be due as per the date stated on the said invoice.

5. DELIVERY

- 5.1. Delivery ("Delivery") and/or ("Return") of the Goods is understood to occur when:
 - (a) The designated courier company records a signed receipt of pick-up of the Goods at the Supplier's Our address; or
 - (b) The designated courier company records a signed receipt of pick-up from the Client and return of the Goods to the Supplier's address.

- 5.2. Any Delivery costs associated with the supply of Goods or Services shall be either included or in addition to the Price and as such will be stated on the invoice issued to the Client by the Supplier.
- 5.3. The Supplier reserves the right to Deliver the Goods by instalments subject to stock availability, the quantity may vary by being either greater or less than the quantity purchased, however shall not exceed more than a 5% discrepancy, in such cases the Price will be varied, pro rata to the discrepancy.
- 5.4. If the Client is unable to take Delivery of the Goods as arranged, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.5. Delivery dates for the supply of the Goods and/or Services will only always be an estimate, as delays may occur beyond the Supplier's control i.e., Third Party Suppliers, Force Majeure etc. The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Supplier will not be liable for any loss or damage incurred by the Client because of Delivery being late, however, the Supplier will at every opportunity liaise with the Client to ensure Delivery does take place, as soon as reasonably possible.

6. TRAINING COURSES

- 6.1. In the interest of safety to others and the current health restriction imposed by the Australian Government Department of Health, each candidate must be able to present a valid VACCINE PASS at the time of entry to the Course, access will be denied to those that cannot provide this.
- 6.2. 2-day course – Approved FASET training course in line with Safe Work Australia requirements and provides:
 - (a) Assessment of theory and practical elements to confirm competency in rigging safety nets; and
 - (b) Once the Supplier's trainers have assessed and approved the Client or the Client's employees, they will be accredited for the installation of safety net systems in Australia and New Zealand; This course can be provided at either the Supplier's facility or the Client's work premises.
- 6.3. All bookings for training courses are subject to approval and availability via Our Website only. In all cases the Supplier's booking form must be completed and returned together with the Client's purchase order no. before entry to a Training Course can be granted.
- 6.4. The Client is responsible to ensure that any of their employees enrolled in a Training Course are physically fit, sufficiently mentally equipped to work at elevated heights and has a clear understanding of the English language (both written and verbal) to enable completion of assessments.
- 6.5. The Supplier reserves the right to cancel or alter the dates of the Training Course and the venue. Weather critical Courses may be rearranged, but any costs incurred by the Supplier will be the responsibility of the Client.
- 6.6. Any request for a credit or refund will be, at the discretion of the Supplier. A minimum 7 days' notice in writing must be provided to the Supplier, if the Client or the Client's employee is not to attend a scheduled training course for whatever reason, failure to comply with such notice will mean any course related fees paid will not be subject to a refund.
- 6.7. Training Materials supplied by the Supplier to the Client or the Client's employees partaking in the Training Course remain always the property of the Supplier until payment of the Course is made. Notwithstanding clause 6.5, the Supplier reserves the right to request the return of all Training Material in its entirety, if the Client or the Client's employee/s do not attend or complete the Training Course.

7. RISK TO GOODS

- 7.1. The Client must insure the Goods on or before Delivery, as risk of damage to, or loss, of the Goods shall pass to the Client on Delivery.
- 7.2. Prior to ownership passing to the Client, if any of the Goods are damaged or destroyed following Delivery, the Supplier is entitled to receive all insurance proceeds payable relating to such Goods. Although the preparation of these terms and conditions is done so by the Supplier, the Supplier shall still be entitled, without prejudice to any other of its rights or remedies under these terms and conditions to use this Agreement with the Client, as sufficient evidence, if an insurance claim is made, without the need for any person dealing with the Supplier to make further investigations.
- 7.3. If the Supplier is instructed to leave Goods outside the Supplier's premises for the Client's collection or to deliver the Goods to an unmanned site, then such Goods shall be left, at the Client's sole risk.

8. DEFECTIVE GOODS/SERVICES & RETURNS/COMPETITIONS AND CONSUMERS ACT 2010 "CCA"

- 8.1. The Client agrees to examine the Goods (Services on completion) on Delivery and shall satisfy itself that they comply with the quote, description, purchase order or any other document applicable to this Agreement, that the Goods are of merchantable quality, fit for purpose and in a useable condition.
- 8.2. If the Client discovers a defect in the quality, or a shortage in the quantity of the Goods, or a failure to comply with the Supplier's quote and these terms and conditions, they must immediately notify the Supplier of that defect. If no notice is received by the Supplier within 7 Business Days from the time of delivery, then the Goods and Services shall be presumed to be free from any defect or damage and thereby the Supplier shall have no liability or responsibility for any indirect or consequential injury, loss, damage, or expense whatsoever and howsoever that arises.
- 8.3. For defective Goods or Services, which the Supplier has agreed in writing that the Client is entitled to reject, the Supplier's liability (subject to clause 22.3 and the Competition and Consumers Act 2010, where applicable) is limited to either (at the Supplier's discretion) replacing the Goods, repairing the Goods, or rectifying the Services.
- 8.4. Returned Goods will only be accepted by the Supplier, provided that:
 - (a) The Client has complied with the provisions of clauses 8.1 & 8.2;
 - (b) The Supplier has confirmed in writing, that they are willing to accept the return of the Goods; and
 - (c) The Goods for return are done so (at the Client's expense) within 7 Business Days of the Delivery date, or any other date as agreed with the Supplier; and
 - (d) Returned Goods are still in good condition (as reasonable possible) together with all the original packaging materials, brochures, and instructions.
- 8.5. At the Supplier's sole discretion, non-defective Goods for return and credit, will be subject to clause 8.4(b) as well as, a handling fee of ten percent (10%) of the value of the returned Goods plus any freight.
- 8.6. All Goods made to the Client's designs, plans or specifications or any Goods that are not deemed stock standard items by the Supplier will not under any circumstances be acceptable for credit or return, unless the Client is entitled to reject under clause 8.2 and the Competition and Consumer Act 2010.
- 8.7. Nothing in this Agreement is intended to exclude, restrict, or modify any of your consumer rights under the CCA, including by limiting the Supplier's liability or imposing liability on the Client in a manner which

would be considered unfair under the Consumer Protection Laws "CCA" or Fair Trading Act Laws "FTA" as applicable in each of the States and Territories of Australia, except to the extent permitted by law by those Acts and nothing in these terms and conditions suggests modification or exclude the Non-Excluded Guarantees that may apply.

9. WARRANTIES

- 9.1. Where Goods are not manufactured by the Supplier the warranty shall be the current warranty provided by the manufacturer of the Goods. The Supplier shall not be bound by nor be responsible for any term, conditions, representation, or warranty other than that which is given by the manufacturers of the Goods.
- 9.2. The conditions applicable to the warranty given on the Goods supplied by the Supplier are contained in the Warranty Documentation that will be supplied with the Goods at the point of sale and/or installation.

10. COMPLIANCE WITH LAWS

- 10.1. Both parties agreed to comply with the provisions of all statutes, regulations and bylaws of Government, local and other public authorities, that may be applicable to the Goods supplied or Services performed, including without question, all health and safety practices, in accordance with Australian WHS laws as defined by each State and/or Territory.
- 10.2. All permits, licences, consents, or approvals required in the supply of Goods or Services by the Supplier, shall always be the responsibility of the Client, unless agreed otherwise.
- 10.3. If the Client is ever in breach of clause 10.1, then the Client accepts and agrees to indemnify the Supplier against all claims, liability, losses, or costs imposed or incurred by the Supplier, because of such a breach.

11. TITLE

- 11.1. Title in the Goods and/or Services pass to the Client when payment for those Goods and/or Services (together with any additional interest or charges as set out in these terms of Trade) have been made in full by way of cleared funds and the Client's obligations have been fulfilled.
- 11.2. Until such time as title passes to the Client:
 - (a) The Client holds the Goods on trust for the Supplier as bailee and must return the Goods to the Supplier on request and irrevocably authorises the Supplier to enter any property where the Supplier believes the Goods are kept and recover possession of them, without the Supplier being liable for any loss or damage caused to the Client;
 - (b) The Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier, and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged, or destroyed;
 - (c) If the Client sells, disposes, parts with possession of the Goods or does anything to the Goods which changes its form, then the Client must hold the proceeds of any such act on trust for the Supplier, and if the Goods are sold, must pay, or deliver the proceeds to the Supplier on demand; and
 - (d) 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 Supplier's property.

12. PERSONAL PROPERTY SECURITIES ACT 1999 ("PPSA")

- 12.1. The Client will provide such information and do such acts and execute such further documents as in the opinion of the Supplier may be necessary or desirable to enable the Supplier to perfect a security interest "Security Interest" (which also gives rise to a Purchase Money Security Interest "PMSI") on the Personal Properties Security Register "PPSR" and for the purpose of the PPSA legislation, these terms and conditions create the "Security Agreement" between the two parties.
- 12.2. The Supplier may do all things which it thinks desirable to remedy any default by the Client or otherwise protect all Goods or the Security Interest in favour of the Supplier, created by these terms and conditions, pertaining to the supply of Goods, including Services, previously supplied (if any) and present and after acquired Goods "Collateral" (including all related proceeds) supplied by the Supplier to the Client.
- 12.3. The Client irrevocably appoints the Supplier to be the Client's attorney to do anything which the Supplier agrees to do under these terms and conditions and anything which the attorney thinks desirable to protect the Supplier's interests under these terms and conditions and the Client agrees to ratify anything done by an attorney under this clause.
- 12.4. The Client waives the Client's right to receive a copy of the verification statement confirming registration of a financing statement (section 157) or a financing change statement (section 153) relating to the Security Interest created by these terms and conditions. In addition, the Client waives their rights to notifications, disclosures or other documentation detailed in sections 95, 121(4), 123, 130, 132, 135 of the PPSA, these sections will not apply to the Security Interest created by these terms and conditions.
- 12.5. Both parties agree to contracting out of the provisions of sections 96, 125, 129, 137(2), 142 and 143 of the PPSA to the extent that they impose obligations upon the Supplier. Notwithstanding, section 275(6) of the PPSA and subject to section 275(7) of the PPSA, neither the Client nor the Supplier will disclose information in response to a request pursuant to section 257(1) about the Security Interest.
- 12.6. The Client also agrees, in addition to the Client's rights under Chapter 4 (Enforcements of Security Interests) of the PPSA, to irrevocably grant the Supplier the right of entry to the Client's property, premises, warehouse or storage facility, at which the Supplier's Goods may be stored for the purposes of taking possession of these Goods (in the event the Client is in default of clause 3 or an administrator, liquidator or trustee in bankruptcy is appointed) without notice and without being in any way liable to the Client or to any third party, and the Client agrees to indemnify the Supplier from any claims made by any third party because of exercising this right.
- 12.7. The Client must not change the Client's name without first notifying the Supplier of the new name not less than 7 Business Days before the change takes effect.
- 12.8. The Client must not allow or permit the creation of a lien over any of the Goods.
- 12.9. This clause 12, will survive the termination of any Supplier's agreement or contract to the extent permitted by law.

13. SECURITY AND CHARGE

- 13.1. The Client acknowledges and accepts that by accepting these terms and conditions, it charges all its rights, title, and interest (whether joint or several) in any land, realty, or other assets capable of being charged (including, but not limited to, the payment of any money), 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.
- 13.2. The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.

NOTE: A larger print version of the terms and conditions is available upon request from the Supplier. Page - 1 - of 2

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- 13.3. The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 0 including, but not limited to, signing any document on the Client's behalf.
- 14. INTELLECTUAL PROPERTY**
- 14.1. All right, title, and interests in and to all Intellectual Property always will remain the exclusive property of the Supplier.
- 14.2. The Client agrees to indemnify the Supplier against any claims by third parties for any breach of the Intellectual Property caused by the Client. Furthermore, where the Client has supplied any Intellectual Property to the Supplier, the Client warrants that the supply of such Intellectual Property does not breach any patent, trademark, design, or copyright.
- 14.3. The parties agree, unless the Client is to make purchase to the rights of any Intellectual Property created for them by the Supplier, that the Supplier retains all rights, to the use of said Intellectual Property for the Supplier's own benefit, such as, in the use of promoting their business or marketing thereof, or for entry use, in any competition.
- 15. DEFAULT**
- 15.1. In any event, the Supplier reserves the right to charge the Client interest in respect of the late payment of any sums due under this Agreement, which will be calculated and cumulated monthly, at the rate of two and a half percent (2.5%) per month, from the due date until receipt of payment and shall accrue at such a rate, after as well as before, any judgement.
- 15.2. The Supplier shall be entitled to suspend or cancel all or any part of this Agreement and/or any other contract or contracts with the Client, in addition to its other remedies, upon the happening of any of the following events of default:
- (a) If any amounts payable by the Client to the Supplier are overdue; or
 - (b) If the Client breaches, or fails to comply or repudiates, any obligation under this Agreement or any other subsequent contract with the Supplier; or
 - (c) The Client intimating that they will not pay any sum by the due date; or
 - (d) Any Goods seized by any other creditor of the Client or any other creditor intimates that it intends to seize the Goods; or
 - (e) Any Goods in the possession of the Client are materially damaged while any sum due from the Client to Supplier remains unpaid; or
 - (f) The Client dies, becomes insolvent or subject to bankruptcy laws, calls a meeting of creditors, or if a company – enters into an arrangement with creditors or makes an assignment/compromise for the benefit of its creditors, or receivers, managers, liquidations (provisional or otherwise), administrators or any similar party is appointed in respect of the Client (or any asset of the Client), has any winding up petition presented against, or ceases to carry on business; or
 - (g) if the Client ceases or threatens to cease carrying on business; or
 - (h) if the ownership or effective control of the Client is transferred, or the nature of the Client's business is materially altered.
- 15.3. Upon cancellation of this Agreement all sums owing by the Client to the Supplier shall become immediately due and payable.
- 15.4. Where any event of default occurs, the Supplier may appoint a receiver in respect of all Goods (including their proceeds) supplied to the Client and any such receiver may take possession of the Goods and sell them and otherwise exercise all rights and powers conferred on a receiver by law.
- 15.5. Notwithstanding clause 15.1, it is further agreed that if the Client owes the Supplier any money, the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt, such as, any legal costs on a solicitor and own client basis or internal administration fee (which may include bank dishonour charges that the Supplier has incurred from their banking institute for dishonours or chargebacks) or any collection fees if a debt is passed to a recognised Debt Collection Recovery Agency.
- 16. CANCELLATION**
- 16.1. By the Supplier:**
- (a) May occur at any time before the Services are carried out by giving 7 Business Days written notice; and
 - (b) The Supplier will repay to the Client any money paid by the Client for the Goods or Services, less any amounts owing to the Supplier for any Goods purchased on the Client's behalf where credits or refunds cannot be obtained from the Supplier's third-party suppliers; and
 - (c) The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2. By the Client:**
- (a) Prior to Delivery of the Goods and/or Services, by giving no less than 7 Business Days written notice, the Client remains liable for any costs incurred by the Supplier (including, but not limited to, loss of profit) up to the time of cancellation; or
 - (b) Where the Client cancels an order that has been commenced:
 - (i) The initial notification may be by telephone or email but must be confirmed in writing within 7 Business Days; and
 - (ii) The Client shall be invoiced for all work completed up until the date of cancellation. Any deposit paid prior to the commencement of the Services will be forfeited in lieu of monies due, however, the Client remains liable for any monies due over and above any deposit paid; or
 - (iii) At the Supplier's discretion, where failure of clause 16.2(b)(i) occurs, the Client may be required to pay the full quoted Price.
 - (c) Cancellation is **not accepted** by the Supplier if the new Goods have been used, if the Client later changes their mind, unless the cancellation is subject to the CCA.
- 17. PRIVACY POLICY**
- 17.1. The Client authorises the Supplier to collect, retain and use Personal Information about the Client for the following purposes:
- (a) Assessing the Client's creditworthiness;
 - (b) Administering the Client orders;
 - (c) Receiving information from one or more credit reference agencies, concerning the credit history of the Client including consumer credit information (Section 18K(1)(b), Privacy Act 1988) in relation to Client's application for commercial credit;
 - (d) Disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Client's credit worthiness in accordance with (Section 18N(1)(b) Privacy Act 1988).
- 17.2. For the avoidance of doubt, all authorities given above are continuing authorities, to apply throughout the duration of the term of the Supplier and Client's trading relationship.
- 17.3. The Client, if an individual, has a right of access to Personal Information about the Client held by the Supplier and may request correction of the information.
- 17.4. For the purposes of this clause 17, Personal Information has the meaning given to it in the Privacy Act 1988, full disclosure of how Personal Information is collected, handled, stored and/or shared by the Supplier in Australia or overseas (including Client's that may be located with the European Union, GDPR regulations may apply) can be viewed on the Supplier's website at www.gaprie.nz.
- 18. NOTICES**
- 18.1. If either party gives or is required to give notice to the other party under this Agreement, it must be:
- (a) In writing;
 - (b) Directed to the recipient's address for service of notices specified in the quotation or, proposal (Agreement details) or as advised from time to time; and
 - (c) Hand-delivered or sent by pre-paid post or by email to that address.
- 18.2. **Notice is taken as received when:**
- (a) A notice given in accordance with clause 18.1 is taken to be received; or
 - (b) If hand-delivered on delivery; or
 - (c) If sent by prepaid post, 5 Business Days after the date of posting for local or regional mail and 10 Business Days after the date of posting for international mail; or
 - (d) If sent by registered mail, immediately upon signed receipt thereof; or
 - (e) If sent by email, at the time denoted in an automated receipt notification received by the sender (in the absence of manifest error or tampering) or, if that function is not enabled, upon acknowledgement of receipt by the other party by return email or otherwise.
- 19. DISPUTE RESOLUTION**
- 19.1. If a dispute arises between the parties to this Agreement, then either party shall send to the other party a notice of dispute in writing detailing the grounds of said dispute. Within 14 days after service of a notice of dispute, the parties shall use their reasonable efforts, to attempt to resolve the dispute (each party shall bear their own costs associated with any mediation method). If the dispute cannot be so resolved either party may by further notice in writing delivered by hand, electronic transmission or sent by registered mail to the other party stating that such dispute is now to be referred to arbitration in accordance with Article 11 (Appointment of a Sole Arbitrator) of the ACICA Arbitration Rules. The arbitration hearing shall be held in Melbourne, Australia and shall be English in the first instance, where an interpreter is requested, such additional costs will be borne by the Client.
- 19.2. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.
- 19.3. Furthermore, the Client agrees not to contract any third party to replace the Supplier as their provider of the Services to be supplied under this Agreement until the dispute resolution process in clause 19.1 has been completed, and then only if arbitration has found against the Supplier in its determination, and the Supplier is unable or unwilling to resolve, rectify or correct the issues that have led the arbitrator to find against the Supplier.
- 20. ASSIGNMENT**
- 20.1. The Client shall not assign, sub-license or otherwise transfer this Agreement or any part of it to any other person without the prior written consent of the Supplier.
- 20.2. The Supplier may assign (including but not limited to, subcontracting out any part of the Services), encumber, declare a trust over or otherwise deal with its rights under this Agreement without the Client's consent and the Client must do, and must ensure, that the Client's personnel do anything necessary (including execute any document), that the Supplier may reasonably require to give full effect to this clause, nonetheless, in doing so the Supplier shall not be relieved from any liability or obligation under this Agreement.
- 21. FORCE MAJEURE**
- 21.1. Neither party shall be liable if a Force Majeure event occurs:
- (a) The obligations of a party under this Agreement will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under this Agreement by Force Majeure; and
 - (b) A party affected by Force Majeure must notify the other party as soon as practicable of the Force Majeure and the extent to which that party is unable to comply with its obligations; and
 - (c) If a failure or delay in performance exceeds 60 Business Days, either party may immediately terminate this Agreement by written notice to the other party.
- 21.2. Nothing in clause 21.1 shall excuse payment of any amount owing due or which becomes due under the terms of this Agreement.
- 22. MISCELLANEOUS**
- 22.1. If any term or provision of this Agreement is at any time held by any jurisdiction to be void, invalid or unenforceable, then it shall be treated as changed or reduced, only to the extent minimally necessary to bring it within the laws of that jurisdiction and to prevent it from being void and it shall be binding in that changed or reduced form. Subject to that, each provision shall be interpreted as severable and shall not in any way affect any other of these terms and conditions.
- 22.2. The legality, construction and performance of this Agreement shall be governed by the State or Territory laws in which the sale was made. Notwithstanding clause 19, the Client further agrees that any dispute arising from this Agreement that cannot reasonably be resolved by mediation or arbitration, shall then be litigated only, by the jurisdiction of Melbourne Courts of Victoria, the State in which the Supplier's business premises are located.
- 22.3. The Supplier shall be under no liability whatsoever to the Client for any expenses, claims, costs (including but not limited to, legal fees and commissions), damages suffered or incurred by the Supplier or indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions, caused by any failure by the Client to comply with their obligations under this Agreement, or that arise from any claim relating to the Services by any person that the Client authorises to use the Services, (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services supplied under this Agreement).
- 22.4. The Supplier (at the Supplier's discretion) may from time to time amend their general terms and conditions and shall notify such changes to the Client, in writing and/or by posting the updated terms and conditions on the Supplier's website. The amended terms and conditions will take effect for all future contracts from the date on which the Client either accepts such changes or the Client continues to do business with the Supplier for the supply of further Goods or Services.
- 23. DEFINITIONS AND INTERPRETATION**
- 23.1. In this Agreement, unless the context otherwise requires capitalised terms have the meaning set out below:
- (a) **"Agreement"** means this Agreement, inclusive of its terms and conditions contained herein, its schedules and annexes or any quotation, proposal, invoice, or document that forms part thereof and/or is deemed to be supplementary to this Agreement.
 - (b) **"Business Days"** means a day on which banks are open for business in Australia other than a Saturday, Sunday, or public holiday.
 - (c) **"Client"** means the person/s, entities (including but not limited to, partnerships and/or a trust and where applicable shall include the Client's executors, administrators, successors and permitted assigns) or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation.
 - (d) **"Confidential Information"** means any information:
 - (i) Relating to this Agreement;
 - (ii) Relating to a quotation, order or proposal or its contents;
 - (iii) Relating to a Client of the Supplier
 - (iv) Disclosed by either party to the other party on the express basis that such information is confidential; or
 - (v) Which might reasonably be expected by either party to be confidential in nature.
- Provided that, where information relates exclusively to one party, nothing in this Agreement will require that party to maintain confidentiality in respect of that information.
- (e) **"Force Majeure"** means an event outside the reasonable control of either party, including an act of God, earthquake, adverse weather conditions, flood, storm, fire, explosion, war, rebellion, terrorism, strike, lock-out, industrial action national or global epidemics or pandemic and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government quarantine restrictions for Goods or individuals.
 - (f) **"Goods"** means any goods, equipment, parts, or Services of any kind that the Supplier provides to the Client as specified in any Agreement, quotation, proposal, order, or any other documentation.
 - (g) **"GST"** means Goods and Services Tax, as defined within the A New Tax System (Goods and Services Tax) Act 1999.
 - (h) **"Intellectual Property"** means and includes (whether invisible, electronic or any other form) all brands, and symbols, names and images used in commerce, goodwill, logos, formulae, techniques, know-how, specifications, designs, drawings, copyright, manufacturing processes, patents, and trademarks (if any) whether registered or not, software (and source and object code), business strategies and contracts, confidential business information including marketing strategies.
 - (i) **"Personal Information"** means information about an identifiable individual by ways of their name, address, D.O.B., occupation, driver's license details, electronic contact type details, such as, email, IP Address, Facebook, or Twitter, or next of kin and any other contact information (if applicable) and were deemed relevant shall include any previous credit applications or credit history details. By the nature of such information, it shall always be considered, Confidential Information.
 - (j) **"PPSA"** means Personal Property Securities Act 2009.
 - (k) **"Price"** means the Price due under this Agreement for the supply of Goods and/or Services as agreed between the Supplier and the Client and (if applicable) shall include any GST payable.
 - (l) **"Services"** means all Services (including any documentation, advice, consultancy, training, or recommendations and where these terms and conditions give allowance to, the terms 'Goods' or 'Services' may be identified and substitutable for the other) supply of, by the Supplier to the Client, and are as described on the invoices, quotation, authorisation form or any other forms as provided by the Supplier to the Client.
 - (m) **"Supplier"** means Gaprie Australia Pty Ltd, its successors, and assigns.
 - (n) **"Training Course"** means a 2-day course run by Gaprie Australia Pty Ltd for the purpose of use in the rigging of safety nets, accreditation in the course will be issued by Gaprie Australia Pty Ltd upon the Client or the Client's employee's completion of the scheduled Training Course and where relevant Course modules apply, these will be provided to Safe Work Australia.
 - (o) **"Training Materials"** means any booklets, brochures, or any other document relevant to the Training Course supplied by the Supplier.
- 23.2. In this Agreement, unless the context requires otherwise:
- (a) **Headings:** Headings shall be ignored in construing this document;
 - (b) **Joint obligations:** An obligation incurred in favours of two or more parties shall be enforceable by them jointly or severally;
 - (c) **Parts of Agreement:** References to this Agreement including its clauses, schedules, annexes;
 - (d) **Plurals:** This singular shall include the plural and vice versa and word importing one gender shall include every gender and a reference to a person shall include any other legal entity of whatsoever kind and vice versa;
 - (e) **Price:** A reference to dollars or \$ is to an amount in Australian currency;
 - (f) **Statutory Requirements:** A reference to a statute, ordinance code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments, or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).
- 23.3. **Neutral Interpretation** - nothing in this Agreement is to be interpreted against a party solely on the ground that that party put forward this Agreement or a relevant part of it.

NOTE: A larger print version of the terms and conditions is available upon request from the Supplier. Page - 2 - of 2