
A2Z Commercial Refrigeration – Terms & Conditions of Trade

1. Definitions

- 1.1 "A2Z" means Gregory Peter Hickey T/A A2Z Commercial Refrigeration, its successors and assigns or any person acting on behalf of and with the authority of Gregory Peter Hickey T/A A2Z Commercial Refrigeration.
- 1.2 "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by A2Z to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between A2Z and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and A2Z.
- 2.3 Any advice, recommendation, information, assistance or service provided by A2Z in relation to Goods or Services supplied is given in good faith, is based on A2Z's own knowledge and experience and shall be accepted without liability on the part of A2Z and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods and Services.
- 2.4 If A2Z has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.5 The Client 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, A2Z reserves the right to vary the Price with alternative Goods as per clause (5.2) subject to prior confirmation and agreement of both parties.

3. Electronic Transactions Act 2001

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

- 4.1 The Client shall give A2Z 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 A2Z as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At A2Z's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by A2Z to the Client; or
 - (b) A2Z'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 A2Z 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) if during the course of the Services, the Goods cease to be available from A2Z's third party supplier, then A2Z reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (d) in the event of increases to A2Z in the cost of labour or materials which are beyond A2Z's control.
- 5.3 Variations will be charged for on the basis of A2Z's quotation, and will be detailed in writing, and shown as variations on A2Z's invoice. The Client shall be required to respond to any variation submitted by A2Z within ten (10) working days. Failure to do so will entitle A2Z 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 A2Z's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by A2Z, which may be:
 - (a) on delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with A2Z's 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 seven (7) days following the date of any invoice given to the Client by A2Z.
- 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 Client and A2Z.
- 5.7 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 A2Z 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 Client must pay to A2Z an amount equal to any GST A2Z must pay for any supply by A2Z under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

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6. Delivery of Goods

- 6.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
- (a) the Client or the Client’s nominated carrier takes possession of the Goods at A2Z’s address; or
 - (b) A2Z (or A2Z’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 6.2 At A2Z’s sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 6.3 A2Z 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.
- 6.4 Subject to clause 6.5 it is A2Z’s responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.5 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that A2Z claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond A2Z’s control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify A2Z that the site is ready.
- 6.6 Any time specified by A2Z for delivery of the Goods is an estimate only and A2Z will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that A2Z is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then A2Z shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Access

- 7.1 The Client shall ensure that A2Z has clear and free access to the work site at all times to enable them to undertake the Services. A2Z 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 A2Z.

8. Underground Locations

- 8.1 Prior to A2Z commencing any work the Client must advise A2Z of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 8.2 Whilst A2Z will take all care to avoid damage to any underground services the Client agrees to indemnify A2Z in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

9. General Risk

- 9.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, A2Z is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by A2Z is sufficient evidence of A2Z’s rights to receive the insurance proceeds without the need for any person dealing with A2Z to make further enquiries.
- 9.3 If the Client requests A2Z to leave Goods outside A2Z’s premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client’s sole risk.
- 9.4 The Client acknowledges that A2Z is only responsible for parts/Goods that are replaced by A2Z and that in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify A2Z against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising (including, but not limited to, loss of perishables, flooding and/or damage to clothing).

10. Electrical Risk

- 10.1 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 10.2 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring), A2Z reasonably forms the opinion that the Client’s premises is not safe for the installation of Goods to proceed then A2Z shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.5 above) until A2Z is satisfied that it is safe for the installation to proceed.
- 10.3 Where the Client has supplied Goods for A2Z to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the Goods. A2Z shall not be responsible for any defects in the Goods, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of Goods supplied by the Client.

11. Compliance with Laws

- 11.1 The Client and A2Z 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.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 11.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

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12. Title

- 12.1 A2Z and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid A2Z all amounts owing to A2Z; and
 - (b) the Client has met all of its other obligations to A2Z.
- 12.2 Receipt by A2Z 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.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to A2Z on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for A2Z and must pay to A2Z the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for A2Z and must pay or deliver the proceeds to A2Z on demand.
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of A2Z and must sell, dispose of or return the resulting product to A2Z as it so directs.
 - (e) the Client irrevocably authorises A2Z to enter any premises where A2Z believes the Goods are kept and recover possession of the Goods.
 - (f) A2Z may recover possession of any Goods in transit whether or not delivery has occurred.
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of A2Z.
 - (h) A2Z may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to A2Z for Services – that have previously been supplied and that will be supplied in the future by A2Z to the Client.
- 13.3 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 A2Z 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 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, A2Z 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 A2Z;
 - (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 A2Z;
 - (e) immediately advise A2Z 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.
- 13.4 A2Z 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.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by A2Z, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by A2Z under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of A2Z agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies A2Z from and against all A2Z's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising A2Z's rights under this clause.
- 14.3 The Client irrevocably appoints A2Z and each director of A2Z as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

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

- 15.1 The Client must inspect the Goods on delivery and must within two (2) days of delivery notify A2Z in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow A2Z to inspect the Goods.

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- 15.2 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**).
- 15.3 A2Z acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, A2Z makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. A2Z's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, A2Z's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If A2Z is required to replace the Goods under this clause or the CCA, but is unable to do so, A2Z may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, A2Z's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by A2Z at A2Z's sole discretion;
 - (b) limited to any warranty to which A2Z is entitled, if A2Z did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) A2Z has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, A2Z shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by A2Z;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 Notwithstanding anything contained in this clause if A2Z is required by a law to accept a return then A2Z will only accept a return on the conditions imposed by that law.

16. Intellectual Property

- 16.1 Where A2Z has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of A2Z. Under no circumstances may such designs, drawings and documents be used without the express written approval of A2Z.
- 16.2 The Client warrants that all designs, specifications or instructions given to A2Z will not cause A2Z to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify A2Z against any action taken by a third party against A2Z in respect of any such infringement.
- 16.3 The Client agrees that A2Z may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which A2Z has created for the Client.

17. Default and Consequences of Default

- 17.1 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 A2Z's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes A2Z any money the Client shall indemnify A2Z from and against all costs and disbursements incurred by A2Z in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, A2Z's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies A2Z may have under this contract, if a Client has made payment to A2Z, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by A2Z under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 17.4 Without prejudice to A2Z's other remedies at law A2Z shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to A2Z shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to A2Z becomes overdue, or in A2Z's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by A2Z;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

- 18.1 Without prejudice to any other remedies A2Z may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions A2Z may suspend or terminate the supply of Goods to the Client. A2Z will not be liable to the Client for any loss or damage the Client suffers because A2Z has exercised its rights under this clause.
- 18.2 A2Z may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice A2Z shall repay to the Client any money paid by the Client for the Goods. A2Z shall not be liable for any loss or damage whatsoever arising from such cancellation.

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- 18.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by A2Z as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Act 1988**
- 19.1 The Client agrees for A2Z to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by A2Z.
- 19.2 The Client agrees that A2Z may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.3 The Client consents to A2Z being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Client agrees that personal credit information provided may be used and retained by A2Z for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.5 A2Z may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.6 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
 - (b) name of the credit provider and that A2Z is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and A2Z has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of A2Z, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Client shall have the right to request (by e-mail) from A2Z:
- (a) a copy of the information about the Client retained by A2Z and the right to request that A2Z correct any incorrect information; and
 - (b) that A2Z does not disclose any personal information about the Client for the purpose of direct marketing.
- 19.8 A2Z will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Client can make a privacy complaint by contacting A2Z via e-mail. A2Z will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 20. Unpaid Seller's Rights**
- 20.1 Where the Client has left any item with A2Z for repair, modification, exchange or for A2Z to perform any other service in relation to the item and A2Z has not received or been tendered the whole of any monies owing to it by the Client, A2Z shall have, until all monies owing to A2Z are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 20.2 The lien of A2Z shall continue despite the commencement of proceedings, or judgment for any monies owing to A2Z having been obtained against the Client.
- 21. Dispute Resolution**
- 21.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

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22. Service of Notices

- 22.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this contract;
 - (c) by sending it by registered post to the address of the other party as stated in this contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. General

- 23.1 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which A2Z has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in that state.
- 23.3 Subject to clause 15 A2Z 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 A2Z of these terms and conditions (alternatively A2Z's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). A2Z may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of A2Z's sub-A2Zs without the authority of A2Z.
- 23.5 The Client agrees that A2Z may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for A2Z to provide Goods to the Client.
- 23.6 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.
- 23.7 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.