



## TERMS OF BUSINESS and TRADE

All services undertaken by Harwood are subject to the following Terms of Business and Trade which shall apply to and form part of any quote and/or contract for the supply of services by Harwood to the Customer.

### 1. Interpretation

In these terms

- 1.1 **"Claim"** means any claim, action, demand or proceeding however arising (including under contract, statute, common law, or equity).
- 1.2 **"Contract"** means the contract entered into between Harwood and the Customer for the supply of goods and/or services when the Harwood accepts purchase orders submitted by the Customer whether verbal, written or electronic and these terms and conditions apply to and form part of the entire agreement between the Harwood and the Customer.
- 1.3 **"Customer"** means the person/s, any person/s acting on behalf of and with the authority of the Customer, company, body corporate or any other entity together with any Related Entity, Related Body Corporate or Associate requesting Harwood to provide the Goods as specified in any quotation, proposal, work order, invoice or other documentation; and
  - 1.3.1 if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - 1.3.2 if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - 1.3.3 if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
  - 1.3.4 includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 **"Force Majeure"** means an act, omission, or circumstance over which Harwood could not reasonably have control.
- 1.5 **"GST"** has the meaning given to it in the GST Act.
- 1.6 **"GST Act"** means the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 **"Harwood"** means Harwood Acoustics Pty Ltd ABN 12 654 492 823.
- 1.8 **"Insolvency Event"** means:

- 1.8.1 a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
  - 1.8.2 a liquidator or provisional liquidator is appointed in respect of a person;
  - 1.8.3 any application (that is not withdrawn or dismissed within seven days is made to a court for an order, or an order is made, or a meeting is convened or a resolution is passed, for the purpose of (i) appointing a person referred to in paragraph i) or ii) of this definition; (ii) winding up or deregistering a person; or (iii) proposing or implementing a scheme of arrangement of a person, other than with the prior approval of the Agent under a scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
  - 1.8.4 any action, proceedings, procedure or step is taken for the purpose of implementing or agreeing (i) a moratorium of any indebtedness of a person; (ii) any other composition, compromise, assignment or arrangement with any creditor or creditors of a person; or (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of its creditors or a trustee;
  - 1.8.5 any event occurs in relation to a person in any jurisdiction that is analogous, or has a substantially similar effect, to those set out in paragraphs i) to iv) of this definition (inclusive); or
  - 1.8.6 a person is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts
- 1.9 **"Loss"** includes (without limitation) the following, whether direct or indirect, special or consequential in nature:
- 1.9.1 loss, damage, costs (including legal costs on a solicitor and own client basis), action or expense of any kind; and
  - 1.9.2 to the extent not covered in the preceding subclause, loss of profits, opportunity, use, revenue, goodwill, bargain, production, sales turnover, income, reputation (or damage to it), employment, corruption or destruction of data, customers, loss relating to or in connection with any other contract, business or anticipated savings, reduction in value, any delay or financing costs or increase in operating costs, or any other financial or economic loss; and
  - 1.9.3 anything referred to in the preceding subclauses relating to or arising out of or in connection with:
    - 1.9.3.1 personal injury (including death or disease) to the Customer;
    - 1.9.3.2 personal injury (including death or disease) to any third party; or
    - 1.9.3.3 loss of or damage to the property of Harwood, the Customer or any third party;
    - 1.9.3.4 a breach or non-compliance by Harwood or the Customer with any law.

- 1.10 **"Party"** means Harwood and/or the Customer.
- 1.11 **"Plans"** means any drawings, structural or other plans, specifications, documents, instructions, or information (including verbal instructions or descriptions) provided by the Customer to Harwood or otherwise provided by Harwood to the Customer.
- 1.12 **"Price"** means the Price payable (plus any GST where applicable) for the Services as agreed between Harwood and the Customer in accordance with clause 4 and these Terms.
- 1.13 **"Project"** means any project to which the Terms relate or in relation to which the Services are provided by Harwood.
- 1.14 **"Quote"** means any quote provided by Harwood to the Customer.
- 1.15 **"Services"** means any acoustical services supplied by Harwood to the Customer, from time to time and includes without limitation the supply of the Goods (and the Goods themselves), where applicable.
- 1.16 **"Site"** means any site at which the Services and/or Goods are to be provided as specified in the Quote or otherwise agreed in writing.
- 1.17 **"Tax Invoice"** has the same meaning as in the GST Act.
- 1.18 **"Terms"** these Terms of Business and Trade.
- 1.19 **"the Price"** the price payable by the Customer for the Goods and Services as set out in the Quotation or calculated in accordance with the Quotation.
- 1.20 **"the Quotation"** the quotation issued by Harwood Acoustics in respect of the sale of the Goods and Services to the Customer which quotation is deemed to incorporate these conditions.
- 1.21 In these Terms unless inconsistent with the context or subject matter:
- (a) References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.
  - (b) Words denoting the singular include the plural and words denoting the plural include the singular.
  - (c) Words denoting any gender include all genders.
  - (d) The word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association, and any Government Agency.
  - (e) Any promise, agreement, representation, or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.

- (f) Any promise, agreement, representation, or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.
- (g) No provision of these Terms will be construed adversely to a party because that party was responsible for the preparation of that provision or these Terms.
- (h) If a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (i) A reference to time is a reference to time in the capital city of the State.
- (j) A reference to a day is a reference to a day in the capital city of the State.
- (k) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (l) If any act is required to be performed under these Terms on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.
- (m) A reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.
- (n) Where these Terms are agreed on behalf of a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- (o) A reference to writing or written includes email.
- (p) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## **2. Acceptance, Application and Provision of Services**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by the Terms, including any Quote, if:
  - 2.1.1 the Customer returns a signed copy of these Terms to Harwood;
  - 2.1.2 the Customer instructs Harwood to proceed with any Services;
  - 2.1.3 the Customer pays any amount to Harwood in respect of the Services; or
  - 2.1.4 the Customer indicates that they accept the Quote.
- 2.2 These Terms may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Harwood.
- 2.3 Harwood and the Customer agree that Harwood will provide the Services to the Customer on the terms and conditions contained in these Terms.

- 2.4 These Terms apply to all Services provided and any Goods provided by Harwood to the Customer at any time following the time when these Terms become binding on the Customer.
- 2.5 These Terms may be updated by Harwood at any time; however, any changes will not apply retrospectively.
- 2.6 All Quotes are valid for acceptance for 90 days for their date unless otherwise stated in the Quote.
- 2.7 A Quote may contain additional terms which form part of these Terms. In the event of any inconsistency between these Terms and any Quote, the terms contained in the Quote will prevail to the extent of such inconsistency.

### **3. Authorised Representatives**

- 3.1 The Customer agrees that, should the Customer introduce any third party to Harwood as the Customer's duly authorised representative, once introduced that person shall have the full authority of the Customer to instruct or order any Goods or Services on the Customer's behalf and/or to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies Harwood in writing that said person is no longer the Customer's duly authorised representative).
- 3.2 If the Customer's duly authorised representative is to have only limited authority to act on the Customer's behalf, then the Customer must specifically and clearly advise Harwood in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Customer specifically acknowledges and accepts that they will be solely liable to Harwood for all additional costs incurred by Harwood (including Harwood's profit margin) in providing any Goods, Services or variation/s requested by the Customer's duly authorised representative (subject always to the limitations imposed under this clause (if any)).

### **4. Price and payment**

- 4.1 The Price shall be the amount specified on the Quote, subject to any variation in accordance with these Terms.
- 4.2 Harwood reserves the right to change the Price, even after the Customer has accepted a Quote or instructed Harwood to proceed with the Services, if:
  - 4.2.1 variations to the Services are requested by the Customer (including the specifications of any Goods); and
  - 4.2.2 additional Services are requested by the Customer beyond the Services included in the Quote;
  - 4.2.3 during the course of the Services, any necessary Goods cease to be available from Harwood's third-party supplier (if applicable), in which instance Harwood reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties;

- 4.2.4 additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, availability of supplies, limited access to the Site, poor weather conditions, prerequisite work by any third party not being completed, or change of instructions, designs, or Plans, etc) which are only discovered on commencement of the Services; or
- 4.2.5 any variation to Harwood's cost of labour or materials, inaccurate documentation provided by the Customer, or where additional Services are required due to unforeseen circumstances which are beyond Harwood's control.
- 4.3 At the sole discretion of Harwood, Harwood reserves the right to halt all Services until such time as it and the Customer agree to changes to the Services as outlined in the Quote to incorporate any variances. The variances once approved shall be detailed in writing and charged for based on the fees in Harwood's Quote and will be shown as variations on the tax invoice. Payment for all variations must be made in full at their time of completion.
- 4.4 Payment for all Services shall become due prior to dispatch of any report produced by Harwood as part of the Services.
- 4.5 The Customer acknowledges that Harwood may require the Customer to pay 50% of the total fee contained in the Quote to Harwood prior to commencement of the Services.
- 4.6 The Customer acknowledges that a draft report will be provided to the Customer by Harwood along with a tax invoice for the remaining 50% of the fee contained in the Quote and that this invoice is required to be paid prior to the release of the final report.
- 4.7 Payment may be made by cash, bank cheque, electronic/on-line banking, eftpos, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Harwood.
- 4.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Harwood nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.9 If payment is not made in accordance with this clause, Harwood may (without limitation to its other rights):
  - 4.9.1 require the Customer to pay Harwood interest on all outstanding monies from the due date until the date of payment at the rate of 10% per annum accruing daily;
  - 4.9.2 demand payment and all money payable under these Terms or any Quote to Harwood shall immediately become due and payable;
  - 4.9.3 refuse to provide a final report or supply any further part of the Services to the Customer until all outstanding monies, including any accrued interest, is paid in full; or

- 4.9.4 terminate these Terms whereupon the full price for the Services then supplied, whether or not the time for payment under these Terms has arrived, will be immediately due and payable.
- 4.10 Harwood will not be responsible for any fines issued by the Council as a result of any report not being issued due to non-payment by the Customer, in the required timeframe.

## **5. Limitation of Liability**

- 5.1 Subject to these Terms, Harwood shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Harwood of these terms and conditions (alternatively Harwood's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 5.2 Harwood excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies, or other terms in relation to the Services that are not expressly set out in these Terms to the maximum extent permitted by law.
- 5.3 Without limiting the generality of this clause, Harwood expressly excludes any liability in contract, tort or otherwise for any injury, damage, Loss, delay or inconvenience caused directly or indirectly by:
- 5.3.1 any act or omission of the Customer, including any delay caused by the Customer; or
- 5.3.2 any defect in, or problem caused by, documents or other materials supplied by the Customer.
- 5.4 Subject to the other terms of this clause, Harwood's total maximum aggregate liability to the Customer for any Loss or damage or injury arising out of or in connection with the supply of services under these Terms, including any breach by Harwood of these Terms however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by the Customer to Harwood under these Terms in the 6-month period preceding the matter or event giving rise to the claim.
- 5.5 Nothing in these Terms is intended to have the effect of excluding, restricting, or modifying the application of all or any of the provisions of the ACL, or the exercise of a right conferred by such a provision, or any liability of Harwood in relation to a failure to comply with a guarantee that applies under the ACL to a supply of goods or services.
- 5.6 If Harwood is liable to the Customer in relation to a failure to comply with a guarantee that applies under the ACL that cannot be excluded, or is otherwise liable for any matter that cannot be excluded, Harwood's total liability to the Customer for that failure is limited to, at the option of Harwood the costs of the resupply of the relevant Services to which the liability relates or the payment of the costs of resupply of the relevant Services.
- 5.7 Without limitation to the other terms of these Terms, Harwood excludes any liability to the Customer, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential Loss arising under or in connection with these Terms.

- 5.8 The Customer is solely responsible for ensuring that the provision of the Services is suitable or adequate for its purposes.
- 5.9 The Customer acknowledges that, prior to execution, it has satisfied itself by independent investigation as to the suitability of Harwood and the Services for its intended purposes and as to the requirements of any applicable legislation or any relevant government authority.
- 5.10 To the fullest extent permitted by law all warranties as to suitability and as to adequacy otherwise applicable are expressly negated by Harwood.

## **6. Disclaimer**

- 6.1 Harwood provides the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. The Customer relies on the Services at its own risk.
- 6.2 Without limiting the other terms of this clause, the Customer acknowledges and agrees that:
- 6.2.1 any report, advice, recommendation, information, assistance, or service provided by Harwood in relation to the Services supplied is given in good faith, is based on Harwood's own knowledge and experience, and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the project and the use to which the Customer makes or intends to make of the Services. Such reports, advice, recommendations, information and assistance are followed or acted upon entirely at the Customer's own risk, and accordingly Harwood shall not be liable for any such advice or recommendation;
- 6.2.2 Harwood reserves the right to make any changes to any report or other documents prepared in relation to the Services which are required to conform with any applicable safety or other statutory or regulatory requirements; and
- 6.2.3 Harwood prepares its report based on its inspection of the Site and information and documents provided to it by the client. Harwood will not be responsible for any loss or damage suffered by the Customer should the project or the intended use change following the provision of any report and the Services.

## **7. Access**

- 7.1 The Customer shall ensure that Harwood has always clear and free access to the Site to enable them to undertake the Services.
- 7.2 Harwood shall not be liable for any loss or damage to the Site (including, without limitation, damage to pathways, driveways, flooring, and concreted or paved or grassed areas) unless due to the negligence of Harwood.
- 7.3 Where the Site has limited access, (including, but no limited to, pets, construction sites, or no elevator access in apartment buildings) which will delay or interrupt the Services, any additional costs will be invoiced to the Customer as a variation in accordance with these Terms.



## **8. GST**

- 8.1 Unless otherwise stated, the Price does not include GST.
- 8.2 In addition to the Price, the Customer must pay to Harwood an amount equal to any GST Harwood must pay for any supply by Harwood under these Terms or any other agreement for the sale of the Goods.
- 8.3 The Customer must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Customer pays the Price.

## **9. Default**

- 9.1 Should the Customer:
  - 9.1.1 fail to pay any amounts to Harwood when due and payable in accordance with any Quote;  
or
  - 9.1.2 default in the performance of any of its obligations under a Contract: or
  - 9.1.3 commit an act of bankruptcy, or if a company become subject to external administration within the meaning of the Corporations Law or pass a resolution to wind up, then,  
  
Harwood may refuse to supply the Services to the Customer.

## **10. Advice**

- 10.1 Any report, advice, recommendation, information, assistance, or service provided by Harwood is given in good faith and shall be accepted without liability on the part of Harwood and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same considering the Project and the use to which the Customer makes or intends to make of the Services.

## **11. Compliance with laws**

- 11.1 The Customer and Harwood shall comply with all statutes, regulations, codes, and bylaws of government, local and other public authorities that may be applicable to the Services, including any applicable work health and safety (WHS) laws and any other relevant safety standards or legislation.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Site and the Services.

## **12. Security and Charge**

- 12.1 In consideration of Harwood agreeing to provide the Services, the Customer charges all its rights, title, and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Terms (including, but not limited to, the payment of any money).

- 12.2 The Customer indemnifies Harwood from and against all Harwood's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising Harwood's rights under this clause.
- 12.3 The Customer irrevocably appoints Harwood and each director of Harwood as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on the Customer's behalf.

### **13. Intellectual Property**

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

### **14. Cancellation**

- 14.1 Harwood may cancel delivery of the Services at any time before the Services are delivered by giving written notice to the Customer. On giving such notice, Harwood shall repay to the Customer any money paid by the Customer for the Services which are cancelled. Harwood shall not be liable for any Loss or damage whatsoever arising from such cancellation.
- 14.2 Harwood may in its absolute discretion, by written notice to the Customer, immediately terminate these Terms or one or more Quotes (and shall have no liability for any Loss suffered by the Customer due to the termination):
- 14.2.1 if the Customer fails to make payment of any amount due under these Terms on time or otherwise in accordance with these Terms;
- 14.2.2 if the Customer suffers an Insolvency Event;
- 14.2.3 if the Customer breaches these Terms or a Quote and fails to rectify the breach within 7 days of being given a notice to do so; or
- 14.2.4 in the event of Force Majeure.

- 14.3 Upon termination of these Terms, the Customer shall be liable to pay Harwood for all Services or Goods supplied by Harwood up until the date of termination, and such amounts shall be a debt immediately due and owing.
- 14.4 If Harwood terminates these Terms except for due to an event of Force Majeure, then the Customer will also be liable to pay Harwood all amounts which would have otherwise been payable under the Quote had it not been terminated, and such amount shall be a debt immediately due and owing.
- 14.5 The Customer may not cancel the Services except where expressly permitted by these Terms.

## **15. Indemnity and release**

- 15.1 Except as provided under these Terms and to the extent permitted by law, the Customer releases Harwood and its officers, employees, and agents from any and all Claims by the Customer or any of its officers, employees, agents or invitees, except to the extent that the Loss the subject of the Claim is caused by the fraudulent act or omission of Harwood (if any).
- 15.2 The Customer indemnifies Harwood against, and holds Harwood harmless from, any Losses (including any direct, indirect, special, or consequential Losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by Harwood arising out of or in connection with:
- 15.2.1 any Claim made against Harwood and/or the Customer by a third party arising out of or in connection with the provision of the Services and/or these Terms;
  - 15.2.2 the Customer's breach or negligent performance or non-performance of these Terms, including any failure to pay any fees on time;
  - 15.2.3 any event or cause, beyond the control of Harwood including a Force Majeure;
  - 15.2.4 any reliance by the Customer or a third party on the Services or any advice, information or deliverable provided in connection with the provision of the Services and/or these Terms;
  - 15.2.5 the enforcement of these Terms; and
  - 15.2.6 any act, omission or wilful misconduct of the Customer or the Customer's Personnel (including any negligent act or omission).
- 15.3 The indemnities in this clause:
- 15.3.1 are continuing obligations of the Customer, independent from its other obligations under these Terms and survive termination or expiry of these Terms; and
  - 15.3.2 are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging, or affecting the liability of the Customer.

## **16. Notices**

16.1 Any written notice given under these Terms shall be deemed to have been given and received:

16.1.1 by handing the notice to the other party, in person;

16.1.2 by leaving it at the address of the other party as stated in the Quote;

16.1.3 by sending it by registered post to the address of the other party as stated in this Quote; or

16.1.4 if sent by email to the other party's last known email address.

16.2 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.

## **17. No Waiver**

17.1 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.

## **18. Governing law**

18.1 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which Harwood has its principal place of business and are subject to the jurisdiction of the Courts in that state.

## **19. Assignment**

19.1 The Customer acknowledges and agrees that Harwood may transfer, assign or otherwise dispose of its interest in these Terms upon giving written notice to the Customer.

19.2 The Customer must not transfer or assign its rights under these Terms to anyone else, without the prior written consent of Harwood, which may be granted or withheld by Harwood in its absolute discretion.

## **20. Amendment**

20.1 The Customer agrees that Harwood may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Harwood to provide Goods to the Customer.

20.2 An amendment to any terms of these Terms must be in writing and signed by each party.

## **21. Counterparts**

21.1 These Terms may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute these Terms by signing any counterpart. The date on which the last counterpart is executed is the date of these Terms. Communication of the fact of execution to the other parties may be made by sending evidence of execution by email.

## **22. Costs**

22.1 The parties must bear their own costs of and incidental to the negotiation, preparation, and execution of these Terms.

## **23. Severability**

23.1 If the whole or any part of a provision of these Terms are or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

## **24. No Merger**

24.1 On completion or termination of these Terms, the rights and obligations of the parties set out in these Terms will not merge and any provision that has not been fulfilled remains in force.

## **25. Relationship of the parties**

25.1 Nothing in these Terms gives a party authority to bind any other party in any way. Nothing in these Terms imposes any fiduciary duties on a party in relation to any other party.

## **26. Entire agreement**

26.1 These Terms states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations, and discussions in respect of its subject matter.

## **27. No reliance**

27.1 No party has relied on any statement, representation, assurance, or warranty made or given by any other party, except as expressly set out in these Terms.

## **28. Services, Documents, and variations**

28.1 The Customer acknowledges that Harwood is reliant upon information and/or documents provided by the Customer to Harwood for the purposes of Harwood providing any Quote for the Services.

28.2 The scope of the Services being provided will be as agreed upon in the Quote and where documents and/or instructions are provided by the Customer, all fees quoted or calculated are based on such instructions and/or documents.

- 28.3 Harwood shall be entitled to rely on the accuracy of any instructions and/or documents provided by the Customer.
- 28.4 Where Harwood prepares any documents, including any report/s, the Customer is solely responsible for reviewing them, seeking any further advice from appropriate consultants, and ensuring that they are fit for the Customer's purposes, suitable, and correct.
- 28.5 If Harwood determines that additional Services are required to be carried out, or if for any reason there is a defect or error in the documents and/or instructions provided by the Customer, then Harwood reserves the right to increase the fees payable for the Services by providing the Customer with written notice and such increases in the fees are payable immediately on demand by Harwood (unless otherwise agreed by Harwood).
- 28.6 Despite this, Harwood shall be under no obligation to vary the Services set out in a Quote even if Harwood becomes aware of the requirement for additional Services or a defect or error in the Plans. The Customer is solely responsible for ensuring the Plans and scope of Services are suitable.
- 28.7 Any variation to the information and/or documents provided after the Quote is prepared or the Services have commenced may result in a variation to the fees included in the Quote; this includes responding to requests from regulatory bodies.
- 28.8 The Customer is solely liable for the payment of any additional Services outside of the scope as agreed upon in the Quote.
- 28.9 Any dates stipulated by Harwood for the provision of the Services are approximate only and Harwood shall not be liable for any delay in delivery or provision howsoever caused.

## **29. Warranties**

- 29.1 The Customer warrants to Harwood that as at the date of these Terms and for the duration of these Terms:
- 29.1.1 the Plans are true and correct and do not contain errors or defects and contain all information that any reasonable person in Harwood's position would need to know in order to quote and supply the Services;
  - 29.1.2 the information contained in these Terms are true and correct and it has disclosed all relevant information to Harwood to assess the credit-worthiness of the Customer;
  - 29.1.3 it has the legal right and power to enter into these Terms;
  - 29.1.4 the execution, delivery and performance of these Terms by the Customer has been duly and validly authorised by all necessary corporate action on its part;
  - 29.1.5 these Terms are a valid and binding agreement on the Customer, enforceable in accordance with its terms;
  - 29.1.6 the Customer is not suffering an Insolvency Event and no Insolvency Event is imminent;

29.1.7 it has the capacity to make the payment in accordance with these Terms;

29.1.8 that Harwood will have access to the Site, including but not limited to ensuring that all areas are free from obstructions, clean and clear to enable scheduled Services to be completed by Harwood; and

29.1.9 that it will fully disclose any information in writing, prior to any scheduled Services, that may affect Harwood's procedures.

29.2 Harwood warrants that the Services will be fit for the purpose that they are generally used and any other special purpose the Customer have specified in writing to Harwood and which Harwood has accepted in writing, and that the Services are of merchantable quality.

### **30. Change in control**

30.1 The Customer shall give Harwood not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice).

30.2 The Customer shall be liable for any loss incurred by Harwood because of the Customer's failure to comply with this clause.