1. Definitions

1.1 "Incode" means 'Incode Engineers Pty Ltd (ABN 28 155 020 483)', by its successors assigns or any person acting on behalf of: Incode Engineers Pty Ltd and with the authority.

1.2 "Client" means the person/s buying the ' Goods' or 'Services' as specified in any invoice, document or order, and if there is more one Client is a reference to each Client jointly and severally.

1.3 "Goods" means all 'Goods', and/or 'Services', 'Designs', 'Drawings' supplied by Incode to the Client at the Client's request from time to time (where the context so permits the terms 'Goods', or 'Services', 'Designs', 'Drawings', shall be interchangeable for each other).

1.4 "Price" means the Price payable for the 'Goods' or 'Services' as agreed between Incode and the Client in accordance with clause 4.

2. Acceptance

2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms of engagement when the Client places an order for or accepts delivery of the Goods.

2.2 These terms of engagement may only be amended with Incode consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Incode.

3. Change in Control

3.1 The Client shall give Incode 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 Incode as a result of the Client's failure to comply with this clause.

4. Price and Payment

4.1 At Incode sole discretion the Price shall be either:
a) as indicated on any invoice provided by Incode to the Client; or
b) the Price as at the date of delivery of the Goods according to Incode current price list; or
c) Incode quoted price (subject to clause 5.2) which will be valid for the period stated in the proposal or otherwise for a period of thirty (30) days.

4.2 Incode reserves the right to change the Price if a variation to Incode's proposal is requested. Payment for all variations must be made in full at their time of completion.

4.3 At Incode sole discretion a non-refundable deposit may be required.

4.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Incode , which may be:
a) on delivery of the Goods;
b) before delivery of the Goods;
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 Incode.

4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed between the Client and Incode. Credit card payments add 1.4 % surcharge.

4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Incode an amount equal to any GST Incode must pay for any supply by Incode 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.

5. Delivery of Goods

5.1 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 Incode address; or
b) Incode (or Incode nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.

5.2 At Incode sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

5.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

5.4 The Client must take delivery by receipt or collection of the Goods whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Incode shall be entitled to charge a reasonable fee for redelivery of the Goods and/or the storage of the Goods.

5.5 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:
a) such discrepancy in quantity shall not exceed five percent (5%); and
b) the Price shall be adjusted pro rata to the discrepancy.

5.6 Incode may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms of engagement.

5.7 Any time or date given by Incode to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and Incode will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

6. Risk

6.1 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.

6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Incode is entitled to receive all insurance proceeds payable for the Goods. The production of these terms of engagement by Incode is sufficient evidence of Incode rights to receive the insurance proceeds without the need for any person dealing with Incode to make further enquiries.

7. Access

7.1 The Client shall ensure that Incode has clear and free access to the work site at all times to enable Incode to undertake the works. Incode 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.

8. Dimensions, Plans and Specifications

8.1 All customary industry tolerances shall apply to the dimensions and measurements of the Goods unless Incode and the Client agree otherwise in writing. Incode shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.

8.2 If the giving of an estimate or proposal for the supply of Goods involves Incode estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of Incode estimated measurements and quantities, before the Client places an order based on such estimate or accepts such proposal.

8.3 Should the Client require any changes to Incode estimated measurements and quantities, the Client shall request such changes in writing. In the case of an estimate before placing an order and in the case of a proposal before acceptance.

9. Client's Disclaimer

9.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Client by Incode and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

9.2 Where Incode provides advice to the Client, such advice is given in good faith only. The Client acknowledges that Incode shall not be liable for any claims howsoever arising out of any advice given.

10. Insurance

10.1 Incode shall have public liability insurance of at least $5m. It is the Client's responsibility to ensure they are similarly insured.

11. Retention of Title to Goods

11.1 Incode and the Client agree that ownership of the Goods shall not pass until:
a) the Client has paid Incode all amounts owing to Incode; and
b) the Client has met all of its other obligations to Incode.

11.2 Receipt by Incode 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.

It is further agreed that:
a) until ownership of the Goods passes to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to Incode on request.
b) the Client holds the benefit of the Client's insurance of the Goods on trust for Incode and must pay to Incode 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 Incode and must pay or deliver the proceeds to Incode 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 Incode and must sell, dispose of or return the resulting product to Incode as it so directs.
e) the Client irrevocably authorises Incode to enter any premises where Incode believes the Goods are kept and recover possession of the goods.
f) Incode 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 Incode .
h) Incode may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 Upon assenting to these terms of engagement in writing the Client acknowledges and agrees that these terms of engagement constitute a security agreement for the purposes of the PPSA and creates a security interest in collateral Designs/Goods/Accounts that has previously been supplied and that will be supplied in the future by Incode to the Client.

12.3 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 Incode may reasonably require to;
   (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
   (ii) register any other document required to be registered by the PPSA; or
   (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
b) indemnify, and upon demand reimburse, Incode 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 Incode ;
d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Incode ;
e) immediately advise Incode of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

12.4 Incode and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms of engagement.

12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3) (d) and 132(4) of the PPSA.

12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

12.7 Unless otherwise agreed to in writing by Incode, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Client must unconditionally ratify any actions taken by the Incode under clauses 12.3 to 12.7.

12.9 Subject to any express provisions to the contrary nothing in these terms of engagement is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

13.1 In consideration of Incode agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, reality 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 of engagement (including, but not limited to, the payment of any money).

13.2 The Client indemnifies Incode from and against all Incode costs and disbursements including legal costs on a solicitor and own Client basis incurred in exercising Incode rights under this clause.

13.3 The Client irrevocably appoints Incode and each director of Incode as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.

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

14.1 The Client must inspect the Goods on delivery and must within thirty (30) days of delivery notify Incode in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote.

14.2 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 Incode to inspect the Goods.

14.3 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 of engagement (Non-Excluded Guarantees).

14.4 Incode acknowledges that nothing in these terms of engagement purports to modify or exclude the Non-Excluded Guarantees.

14.5 Except as expressly set out in these terms of engagement in respect of the Non-Excluded Guarantees, Incode makes no Warranties or other representations under these terms of engagement including but not limited to the quality or suitability of the Goods. Incode liability in respect of these warranties is limited to the fullest extent permitted by law.

14.6 If the Client is a consumer within the meaning of the CCA, Incode liability is limited to the extent permitted by section 64A of Schedule 2.

14.7 If Incode is required to replace the Goods under this clause or the CCA, but is unable to do so, Incode may refund any money the Client has paid for the Goods.

14.8 If the Client is not a consumer within the meaning of the CCA, Incode 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 Incode at the Incode sole discretion;
b) limited to any warranty to which Incode is entitled, if Incode did not manufacture the Goods;
c) otherwise negated absolutely.

14.9 Subject to this clause 14, returns will only be accepted provided that:
a) The Client has complied with the provisions of clause 14.1; and
b) the Incode 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.

14.10 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Incode 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 the 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 the Incode;
e) fair wear and tear, any accident, or act of God.

14.11 Incode may in its absolute discretion accept non-defective Goods for return in which case Incode may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.

15. Intellectual Property

15.1 Where Incode has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Incode.

15.2 The Client warrants that all designs, specifications or instructions given to Incode will not cause Incode to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Incode against any action taken by a third party against Incode in respect of any such infringement.

16. Consequences of Default

16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five percent (5%) per calendar month (and at Incode sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Client owes Incode any money the Client shall indemnify Incode from and against all costs and disbursements incurred by Incode in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Client basis, Incode contract default fee, and bank dishonour fees).

16.3 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars ($20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars ($200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

16.4 Without prejudice to any other remedies Incode may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms of engagement Incode may suspend or terminate the supply of Goods to the Client. Incode will not be liable to the Client for any loss or damage the Client suffers because Incode has exercised its rights under this clause.

16.5 Without prejudice to Incode other remedies at law Incode shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Incode shall, whether or not due for payment, become immediately payable if:
a) any money payable to Incode becomes overdue, or in Incode opinion the Client will be unable to make a payment when it falls due;
b) the Client become insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

17.1 Incode may cancel any contract to which these terms of engagement apply or cancel delivery of Goods at any time before the Goods are due to be delivered by giving written notice to the Client. On giving such notice Incode shall repay to the Client any money paid by the Client for the Goods. Incode shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 In the event that the Client cancels delivery of the Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Incode as a direct result of the cancellation (including, but not limited to, any loss of profits).

18. Privacy Act 1988 – Australian Privacy Principals (APPs) 2014

18.1 The Client agrees for Incode to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Incode .

18.2 The Client agrees that Incode may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
a) to assess an application by the Client; and/or
b) to notify other credit providers of a default by the Client: and/or
c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
d) to assess the creditworthiness of the Client. The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

18.3 The Client consents to Incode being given a consumer credit report to collect overdue payment on commercial credit (Section 18K (1) (h) Privacy Act 1988).

18.4 The Client agrees that personal credit information provided may be used and retained by Incode for the following purposes (and for other purposes as shall be agreed between the Client and Incode or required by law from time to time):
a) the provision of Goods; and/or

b) the marketing of Goods by Incode, its agents or distributors; and/or
c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
e) enabling the daily operation of the Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.

18.5 Incode may give information about the Client to a credit reporting agency for the following purposes:
a) to obtain a consumer credit report about the Client;
b) allow the credit reporting agency to create or maintain credit or maintain credit information file containing information about the Client.

18.6 The information given to the credit reporting agency may include:
a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
b) details concerning the Client's application for credit or commercial credit and the amount requested;
c) advice that Incode is a current credit provider to the Client;
d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
e) that the Client's overdue accounts, loan repayments and/or any default that has been listed;
f) information that in the opinion of Incode, the Client has committed a serious credit infringement (that is, fraudulently shown an intention not to comply with the Client's credit obligations);
g) advice that cheques drawn by the Client for one hundred dollars ($100) or more, have been dishonoured more than once;
h) that credit provided to the Client by Incode has been paid or otherwise discharged.

19. Credit Reporting Policy

19.1 Incode Credit Reporting Policy applies specifically to credit related personal and business information which is credit information, credit eligibility information or credit reporting body derived information about an individual or business ("Credit Related Information") and sets out how Incode and its related Australian entities, manages that information. Incode is bound by the Privacy Act 1988 (Cth) ("Act") and the Credit Reporting Privacy Code ("Code") to the extent applicable in relation to that Credit Related Information. This Incode Credit Reporting Policy applies in our Australian Privacy Principals 2014 (APPs) which applies to other personal information. A copy of Incode Credit Reporting Policy in APPs Privacy Policy can be obtained on Incode website.

19.2 By completing the Incode Credit Application or entering into contracts with Incode or otherwise providing Incode with your Credit Related Information, you agree to the terms of this Incode Credit Reporting Policy. Depending on the matter in which you communicate with Incode, further privacy information may apply in addition to the matters discussed in this Incode Credit Reporting Policy. From time to time Incode may update this Incode Credit Reporting Policy. When changes are made, we will revise the date of the last update listed at the end of this Policy. We encourage you to check our website regularly for any updates to our Incode Credit Reporting Policy and the Incode Privacy Policy.

20. Dispute Resolution

20.1 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.

21. Compliance with Laws

21.1 The Client and Incode shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.

21.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.

21.3 The Client agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

22. Building and Construction Industry Payments Act (Qld) 2004

22.1 At Incode sole discretion, if there are any disputes or claims for unpaid, Goods then the provisions of the Building and Construction Industry Payments Act (QLD) 2004 may apply.

22.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act (Qld) 2004, except to the extent permitted by the Act where applicable.

23. General

23.1 The failure by Incode to enforce any provision of these terms of engagement shall not be treated as a waiver of that provision, nor shall it affect Incode right to subsequently enforce that provision. If any provision of these terms of engagement 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 of engagement and any contract to which they apply shall be governed by the laws of in which Incode has its principal place of business, and are subject to the jurisdiction of the courts in that state.

23.3 Subject to clause 14, Incode 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 Incode of these terms of engagement (alternatively Incode liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

23.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Incode nor to withhold payment of any invoice because part of that invoice is in dispute.

23.5 Incode may license or sub-contract all or any part of its rights and obligations without the Client's consent.

23.6 The Client agrees that Incode may amend these terms of engagement at any time. If Incode makes a change to these terms of engagement, then that change will take effect from the date on which Incode notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Incode to provide Goods to the Client.

23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

23.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, is not insolvent and that this agreement creates binding and valid legal obligations on it.