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## Aquatrip NZ – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Aquatrip" means Focus Systems NZ Limited T/A Aquatrip NZ, its successors and assigns or any person acting on behalf of and with the authority of Focus Systems NZ Limited T/A Aquatrip NZ.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting Aquatrip to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by Aquatrip 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 Goods and Services Tax ("GST") where applicable) for the Goods as agreed between Aquatrip and the Client in accordance with clause 7 below.

### 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 contract between the Client and Aquatrip.
- 2.3 These terms and conditions are meant to be read in conjunction with the terms and conditions posted on Aquatrip's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 2.4 Any advice, recommendation, information, assistance or service provided by Aquatrip in relation to Goods or Services supplied is given in good faith, is based on Aquatrip own knowledge and experience and shall be accepted without liability on the part of Aquatrip 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 or Services.
- 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, Aquatrip reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 7.2. In all such cases Aquatrip will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order on hold until such time as Aquatrip and the Client agree to such changes.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 22 of the Electronic Transactions Act 2002 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.7 The Client acknowledges:
- (a) all leak detection systems are sold on the understanding that they will be installed by a licenced plumber or electrician, or certified installer and shall indemnify Aquatrip from all loss, damages or costs as a result of issues arising from the Client's failure to comply with this clause;
  - (b) should the Client attempt to make direct communication with Aquatrip's suppliers, then Aquatrip shall reserve the right to claim damages from the Client as being a breach of the Client's contract with Aquatrip.

### 3. Authorised Representatives

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

### 4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that Aquatrip shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Aquatrip in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Aquatrip in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Aquatrip; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

### 5. Change in Control

- 5.1 The Client shall give Aquatrip 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, change of trustees or business practice). The Client shall be liable for any loss incurred by Aquatrip as a result of the Client's failure to comply with this clause.

### 6. Online Ordering

- 6.1 The Client acknowledges and agrees that:
- (a) Aquatrip does not guarantee the website's performance or availability of any of its Goods/Services; and

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- (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
  - (c) there are inherent hazards in electronic distribution and as such Aquatrip cannot warrant against delays or errors in transmitting data between the Client and Aquatrip including orders. The Client agrees that to the maximum extent permitted by law, Aquatrip will not be liable for any losses which the Client suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.
- 6.2 Aquatrip reserves the right to terminate the Client's order in the event that Aquatrip learns that the Client has provided false or misleading information, interfered with other users or the administration of Aquatrip's Services, or violated these terms and conditions.
- 7. Price and Payment**
- 7.1 At Aquatrip's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by Aquatrip to the Client; or
  - (b) Aquatrip's quoted price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 Aquatrip reserves the right to change the Price if a variation to Aquatrip's quotation is requested. Any variation as a result of increases to Aquatrip in the cost of labour, Goods or overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond Aquatrip's control and will be charged for on the basis of Aquatrip's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by Aquatrip within ten (10) working days. Failure to do so will entitle Aquatrip 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.
- 7.3 At Aquatrip's sole discretion a non-refundable deposit may be required.
- 7.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Aquatrip, which may be:
- (a) before delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with Aquatrip's payment schedule;
  - (c) for certain approved Clients, due twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Aquatrip.
- 7.5 Aquatrip reserves the right to change the Price where a bulk discount (quantity pricing) has been offered by Aquatrip, and the Client subsequently reduces the quantity of Goods ordered.
- 7.6 Payment may be made by cash, cheque, electronic/on-line banking, or by any other method as agreed to between the Client and Aquatrip.
- 7.7 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 Aquatrip nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Aquatrip an amount equal to any GST Aquatrip must pay for any supply by Aquatrip under this or any other contract 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.
- 8. Delivery of Goods**
- 8.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that Aquatrip (or Aquatrip's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.2 At Aquatrip's sole discretion the cost of delivery is in addition to the Price.
- 8.3 Any time specified by Aquatrip for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. Aquatrip will not be liable for any loss or damage incurred by the Client as a result of delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged then Aquatrip shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8.4 Aquatrip 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.
- 9. 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, Aquatrip is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Aquatrip is sufficient evidence of Aquatrip's rights to receive the insurance proceeds without the need for any person dealing with Aquatrip to make further enquiries.
- 9.3 If the Client requests Aquatrip to leave Goods outside Aquatrip'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 Aquatrip shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.
- 9.5 The Client shall not reverse engineer any Goods supplied by Aquatrip or modify them in any other way.
- 10. Product Specifications**
- 9.6 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Aquatrip's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Aquatrip.

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### 11. Title

- 11.1 Aquatrip and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Aquatrip all amounts owing to Aquatrip; and
  - (b) the Client has met all of its other obligations to Aquatrip.
- 11.2 Receipt by Aquatrip 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.
- 11.3 It is further agreed that until ownership of the Goods passes to the Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Aquatrip on request.
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Aquatrip and must pay to Aquatrip 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 Aquatrip and must pay or deliver the proceeds to Aquatrip 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 Aquatrip and must sell, dispose of or return the resulting product to Aquatrip as it so directs.
  - (e) the Client irrevocably authorises Aquatrip to enter any premises where Aquatrip believes the Goods are kept and recover possession of the Goods.
  - (f) Aquatrip 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 Aquatrip.
  - (h) Aquatrip 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 1999 ("PPSA")

- 12.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that:
- (a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and
  - (b) a security interest is taken in all Goods and/or collateral (account) – being a monetary obligation of the Client to Aquatrip for Services – that have previously been supplied and that will be supplied in the future by Aquatrip to the Client.
- 12.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Aquatrip may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
  - (b) indemnify, and upon demand reimburse, Aquatrip for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any Goods charged thereby;
  - (c) 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 Aquatrip; and
  - (d) immediately advise Aquatrip of any Goods change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.3 Aquatrip and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 12.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, 131 and 132 of the PPSA.
- 12.5 Unless otherwise agreed to in writing by Aquatrip, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 12.6 The Client shall unconditionally ratify any actions taken by Aquatrip under clauses 12.1 to 12.5.

### 13. Security and Charge

- 13.1 In consideration of Aquatrip 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).
- 13.2 The Client indemnifies Aquatrip from and against all Aquatrip's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Aquatrip's rights under this clause.
- 13.3 The Client irrevocably appoints Aquatrip and each director of Aquatrip 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

- 14.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify Aquatrip of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Aquatrip an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Aquatrip has agreed in writing that the Client is entitled to reject, Aquatrip's liability is limited to either (at Aquatrip's discretion) replacing the Goods or repairing the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above, and provided that:
- (a) Aquatrip has agreed in writing to accept the return of the Goods; and
  - (b) the Goods are returned at the Client's cost within ten (10) days of the delivery date; and
  - (c) Aquatrip will not be liable for Goods which have not been stored or used in a proper manner; and
  - (d) the Goods are returned in the condition in which they were delivered and with all packaging Goods, brochures and instruction Goods in as new condition as is reasonably possible in the circumstances.

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### 15. Warranty

- 15.1 Aquatrip reserves the right to refuse a claim where the Goods have not been installed by a certified professional as per clause 2.7.
- 15.2 For Goods not manufactured by Aquatrip, the warranty shall be the current warranty provided by the manufacturer of the Goods. Aquatrip shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 15.3 The Client accepts that if the origin of a fault is unclear, then Aquatrip reserves the right to engage an independent plumber to investigate such fault to determine the cause. Where the fault is deemed not to be a result of defective Goods, all costs associated by such investigation shall be borne by the Client.

### 16. Consumer Guarantees Act 1993

- 16.1 If the Client is acquiring Goods for the purposes of a trade or business, the Client acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by Aquatrip to the Client.

### 17. Intellectual Property

- 17.1 Where Aquatrip has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Aquatrip. Under no circumstances may such designs, drawings and documents be used without the express written approval of Aquatrip.
- 17.2 The Client warrants that all designs, specifications or instructions given to Aquatrip will not cause Aquatrip to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Aquatrip against any action taken by a third party against Aquatrip in respect of any such infringement.

### 18. Default and Consequences of Default

- 18.1 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 Aquatrip's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes Aquatrip any money the Client shall indemnify Aquatrip from and against all costs and disbursements incurred by Aquatrip in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Aquatrip's collection agency costs, and bank dishonour fees).
- 18.3 Further to any other rights or remedies Aquatrip may have under this contract, if a Client has made payment to Aquatrip, 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 Aquatrip under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 18.4 Without prejudice to Aquatrip's other remedies at law Aquatrip shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Aquatrip shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Aquatrip becomes overdue, or in Aquatrip'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 Aquatrip;
  - (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.

### 19. Cancellation

- 19.1 Without prejudice to any other remedies Aquatrip may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Aquatrip may suspend or terminate the supply of Goods to the Client. Aquatrip will not be liable to the Client for any loss or damage the Client suffers because Aquatrip has exercised its rights under this clause.
- 19.2 Aquatrip 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 Aquatrip shall repay to the Client any money paid by the Client for the Goods. Aquatrip shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 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.

### 20. Privacy Act 1993

- 20.1 The Client authorises Aquatrip or Aquatrip's agent to:
- (a) access, collect, retain and use any information about the Client;
    - (i) (including any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client's creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by Aquatrip from the Client directly or obtained by Aquatrip from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 20.2 Where the Client is an individual the authorities under clause 20.1 are authorities or consents for the purposes of the Privacy Act 1993.
- 20.3 The Client shall have the right to request Aquatrip for a copy of the information about the Client retained by Aquatrip and the right to request Aquatrip to correct any incorrect information about the Client held by Aquatrip.

### 21. Construction Contracts Act 2002

- 21.1 The parties agree that for the purposes of the Construction Contracts Act 2002 where Aquatrip is a commercial provider this contract is not a commercial construction contract or a construction contract whether for work on a commercial or residential property and liability under this

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contract shall be in no way limited by any contract that the Client may have entered into with a third party in relation to the supply of Goods and/or Services to that third party or the payment by the third party to the Client of any monies whether by progress payments or otherwise.

### 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. Trusts

- 23.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Aquatrip may have notice of the Trust, the Client covenants with Aquatrip as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) The Client will not without consent in writing of Aquatrip (Aquatrip will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

### 24. General

- 24.1 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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Tauranga courts of New Zealand.
- 24.3 Aquatrip 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 Aquatrip of these terms and conditions (alternatively Aquatrip's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 Aquatrip may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 24.5 The Client cannot licence or assign without the written approval of Aquatrip.
- 24.6 Aquatrip 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 Aquatrip's sub-contractors without the authority of Aquatrip.
- 24.7 The Client agrees that Aquatrip 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 Aquatrip to provide Goods to the Client.
- 24.8 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.
- 24.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.