

1. Definitions

- 1.1 “Q-MAX” means Q-MAX Pumping Systems Pty Ltd, ACN 164 437 914, its successors and assigns or any person acting on behalf of and with the authority of Q-MAX Pumping Systems Pty Ltd.
- 1.2 “Client” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by Q-MAX 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 for the Goods as agreed between Q-MAX and the Client in accordance with clause 4 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 Q-MAX’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Q-MAX.
- 2.3 Goods are supplied by Q-MAX only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3. Change in Control

- 3.1 The Client shall give Q-MAX 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 Q-MAX as a result of the Client’s failure to comply with this clause.

4. Price and Payment

- 4.1 At Q-MAX’s sole discretion the Price shall be either:
 - (a) as indicated on any invoice provided by Q-MAX to the Client; or
 - (b) Q-MAX’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of sixty (60) days.
- 4.2 Q-MAX reserves the right to change the Price if a variation to Q-MAX’s quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties such as hard rock barriers below the surface or iron reinforcing rods in concrete or as a result of increases to Q-MAX in the cost of materials and labour) will be charged for on the basis of Q-MAX’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 Q-MAX reserves the right to charge a non-refundable inspection fee for Goods and/or Services to be provided, upon acceptance of the quotation this inspection fee shall be waived from the overall Price for the Goods and/or Services. In the event that the Client does not accept the quotation, the Client accepts and agrees to pay Q-MAX the inspection fee as detailed in the quotation for Services provided to date.
- 4.4 At Q-MAX’s sole discretion a non-refundable deposit may be required.
- 4.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Q-MAX, which may be:
 - (a) on completion of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with Q-MAX’s payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client’s address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Q-MAX.
- 4.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed to between the Client and Q-MAX.
- 4.7 No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, Q-MAX reserves the right to treat retentions as placing the Client’s account into default.
- 4.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Q-MAX an amount equal to any GST Q-MAX must pay for any supply by Q-MAX 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 Q-MAX’s address; or
 - (b) Q-MAX (or Q-MAX’s nominated carrier) delivers the Goods to the Client’s nominated address even if the Client is not present at the address.
- 5.2 At Q-MAX’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

- 5.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Q-MAX 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.
- 5.5 The Client acknowledges and agrees that the Client must collect/receive Goods once the Client is notified by Q-MAX that the Goods are available for collection/delivery and/or installation regardless of whether or not the Client is ready to receive such Goods.
- 5.6 Any time or date given by Q-MAX to the Client is an estimate only. Q-MAX shall not be liable for any loss or damage whatsoever due to failure by Q-MAX to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of Q-MAX.
- 5.7 The Client acknowledges that their employees may be required to assist in the unloading of Goods when delivered.
- 5.8 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

6. Risk

- 6.1 If Q-MAX retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client immediately once Goods leave Q-MAX's premises irrespective of whose transport is used for delivery.
- 6.2 If any of the Goods are damaged or destroyed following or during delivery but prior to ownership passing to the Client, Q-MAX is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Q-MAX is sufficient evidence of Q-MAX's rights to receive the insurance proceeds without the need for any person dealing with Q-MAX to make further enquiries.
- 6.3 If the Client requests Q-MAX to leave Goods outside Q-MAX'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.

7. Access

- 7.1 The Client shall ensure that Q-MAX has clear and free access to the work site at all times to enable them to undertake the works. Q-MAX shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of Q-MAX.

8. Underground Locations

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

9. Title

- 9.1 Q-MAX and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Q-MAX all amounts owing to Q-MAX; and
 - (b) the Client has met all of its other obligations to Q-MAX.
- 9.2 Receipt by Q-MAX 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.
- 9.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Client in accordance with clause 9.1 that the Client is only a bailee of the Goods and must return the Goods to Q-MAX on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Q-MAX and must pay to Q-MAX 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 Q-MAX and must pay or deliver the proceeds to Q-MAX 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 Q-MAX and must sell, dispose of or return the resulting product to Q-MAX as it so directs.
 - (e) the Client irrevocably authorises Q-MAX to enter any premises where Q-MAX believes the Goods are kept and recover possession of the Goods.
 - (f) Q-MAX 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 Q-MAX.
 - (h) Q-MAX may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

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

- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Q-MAX to the Client.
- 10.3 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 Q-MAX 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 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Q-MAX 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 Q-MAX;
 - (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 Q-MAX;
 - (e) immediately advise Q-MAX of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 10.4 Q-MAX and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Q-MAX, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by Q-MAX under clauses 10.3 to 10.5.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

11. Security and Charge

- 11.1 In consideration of Q-MAX 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).
- 11.2 The Client indemnifies Q-MAX from and against all Q-MAX's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Q-MAX's rights under this clause.
- 11.3 The Client irrevocably appoints Q-MAX and each director of Q-MAX as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Client's behalf.

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

- 12.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify Q-MAX in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Q-MAX to inspect the Goods.
- 12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 12.3 Q-MAX acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Q-MAX makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Q-MAX's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 12.5 If the Client is a consumer within the meaning of the CCA, Q-MAX's liability is limited to the extent permitted by section 64A of Schedule 2.
- 12.6 If Q-MAX is required to replace the Goods under this clause or the CCA, but is unable to do so, Q-MAX may refund any money the Client has paid for the Goods.
- 12.7 If the Client is not a consumer within the meaning of the CCA, Q-MAX's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Q-MAX in Q-MAX's sole discretion;
 - (b) limited to any warranty to which Q-MAX is entitled, if Q-MAX did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 12.8 Subject to this clause 12, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 12.1; and
 - (b) Q-MAX 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.
- 12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA, Q-MAX shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Q-MAX;
 - (e) fair wear and tear, any accident, or act of God.
 - (f) any damage or injury to any property or persons caused by using the Goods to pump and/or transfer hazardous or toxic fluids and/or substances.
- 12.10 Q-MAX may in its absolute discretion accept non-defective Goods for return in which case Q-MAX may require the Client to pay handling fees, transport fees and re-stocking fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 12.11 Notwithstanding anything contained in this clause if Q-MAX is required by a law to accept a return then Q-MAX will only accept a return on the conditions imposed by that law.

13. Intellectual Property

- 13.1 Where Q-MAX has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of Q-MAX.
- 13.2 The Client warrants that all designs, specifications or instructions given to Q-MAX will not cause Q-MAX to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Q-MAX against any action taken by a third party against Q-MAX in respect of any such infringement.
- 13.3 The Client agrees that Q-MAX may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Q-MAX has created for the Client.

14. Default and Consequences of Default

- 14.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two percent (2%) per calendar month (and at Q-MAX's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 If the Client owes Q-MAX any money the Client shall indemnify Q-MAX from and against all costs and disbursements incurred by Q-MAX in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Q-MAX's collection agency costs, and bank dishonour fees).
- 14.3 Without prejudice to any other remedies Q-MAX may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Q-MAX may suspend or terminate the supply of Goods to the Client. Q-MAX will not be liable to the Client for any loss or damage the Client suffers because Q-MAX has exercised its rights under this clause.
- 14.4 Without prejudice to Q-MAX's other remedies at law Q-MAX shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Q-MAX shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Q-MAX becomes overdue, or in Q-MAX's opinion the Client will be unable to make a payment when it falls due;
 - (b) 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

15. Compliance with Laws

- 15.1 The Client and Q-MAX 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.
- 15.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the works.
- 15.3 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.

16. Cancellation

- 16.1 Q-MAX 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 Q-MAX shall repay to the Client any money paid by the Client for the Goods. Q-MAX shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by Q-MAX as a direct result of the cancellation (including, but not limited to, any loss of profits, cartage, bank charges and other incidental expenses).
- 16.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed unless otherwise agreed between Q-MAX and the Manufacturer in the first instance.

17. Privacy Act 1988

- 17.1 The Client agrees for Q-MAX to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Q-MAX.
- 17.2 The Client agrees that Q-MAX 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.
- 17.3 The Client consents to Q-MAX being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Client agrees that personal credit information provided may be used and retained by Q-MAX for the following purposes (and for other purposes as shall be agreed between the Client and Q-MAX or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by Q-MAX, 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 Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 17.5 Q-MAX 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 a credit information file containing information about the Client.
- 17.6 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 Q-MAX 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 outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Q-MAX, the Client has committed a serious credit infringement (that is, fraudulently or 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 Q-MAX has been paid or otherwise discharged.

18. Unpaid Q-MAX's Rights

- 18.1 Where the Client has left any item with Q-MAX for repair, modification, exchange or for Q-MAX to perform any other service in relation to the item and Q-MAX has not received or been tendered the whole of any moneys owing to it by the Client, Q-MAX shall have, until all moneys owing to Q-MAX are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 18.2 The lien of Q-MAX shall continue despite the commencement of proceedings, or judgment for any moneys owing to Q-MAX having been obtained against the Client.

19. Building and Construction Industry (Security of Payment) Act 2009 ACT

- 19.1 At Q-MAX's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry (Security of Payment) Act 2009 ACT may apply.
- 19.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry (Security of Payment) Act 2009 ACT, except to the extent permitted by the Act where applicable.

20. Building and Construction Industry Security of Payments Act 1999 (Applicable to New South Wales Clients Only)

- 20.1 At Q-MAX's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 20.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

- 21. Building and Construction Industry Security of Payment Act 2002 (Applicable to Victoria Clients Only)**
- 21.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.
- 21.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
- 22. Construction Contracts Act 2004 (Applicable to Western Australia Clients Only)**
- 22.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.
- 22.2 Nothing in this agreement is intended to have the affect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.
- 23. Building and Construction Industry Payments Act 2004 (Applicable to Queensland Clients Only)**
- 23.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply.
- 23.2 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 2004 of Queensland, except to the extent permitted by the Act where applicable.
- 24. Construction Contracts (Security of Payments) Act (Applicable to Northern Territory Clients Only)**
- 24.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts (Security of Payments) Act may apply.
- 24.2 Nothing in this agreement is intended to have the affect of contracting out of any provisions of the Construction Contracts (Security of Payments) Act of the Northern Territory of Australia, except to the extent permitted by the Act where applicable.
- 25. Building and Construction Industry Security of Payments Act 2009 (Applicable to Tasmania Clients Only)**
- 25.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 25.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of Tasmania, except to the extent permitted by the Act where applicable.
- 26. Building and Construction Industry Security of Payments Act 2009 (Applicable to South Australia Clients Only)**
- 26.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.
- 26.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of South Australia, except to the extent permitted by the Act where applicable.
- 27. General**
- 27.1 The failure by Q-MAX to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Q-MAX'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.
- 27.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Q-MAX has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 27.3 Subject to clause 12 Q-MAX 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 Q-MAX of these terms and conditions (alternatively Q-MAX's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.4 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 Q-MAX nor to withhold payment of any invoice because part of that invoice is in dispute.
- 27.5 Q-MAX may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 27.6 The Client agrees that Q-MAX may amend these terms and conditions at any time. If Q-MAX makes a change to these terms and conditions, then that change will take effect from the date on which Q-MAX notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Q-MAX to provide Goods to the Client.
- 27.7 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.
- 27.8 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, it is not insolvent and that this agreement creates binding and valid legal obligations on it.