

Supply Terms & Conditions



Commencing 3 April 2017

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Supply Terms and Conditions

Solutions IE Pty Ltd (ABN: 77 079 173194), Solutions in Engineering Pty Limited (NZ 3467694), Solutions in Fire Pty Ltd (ABN: 50 102 735 508), Canadian Solutions in Engineering Limited (Inc Number BC0966581), The Trustee for Building Report Services Trust (ABN: 26 038 831 509), and the above entities where trading as Solutions in Window Safety.

1. Definitions and Interpretation

1.1. In these terms and conditions:

- 1.1.1. **Body corporate** means the entity responsible for management of a strata scheme. Any reference to a body corporate shall be read as referring to an owners corporation, management corporation, strata corporation or the like, as applicable;
- 1.1.2. **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made.
- 1.1.3. **Customer** means the person(s) or entities Receiving Services upon these Terms. For the avoidance of doubt, if the acceptance of services upon these terms is made by a body corporate manager or other agent of the body corporate, the customer is the body corporate;
- 1.1.4. **Receiving Services** means the process of receiving and relying upon services provided by us;
- 1.1.5. **Services** means any report, document, information, product, and any physical inspection or maintenance of property in exchange for consideration, including all preparatory steps for the report, document, information, product, physical inspection or maintenance of property;
- 1.1.6. **Subject Property** means the lot or parcel of land for which we have been engaged to provide a service;
- 1.1.7. **Terms** means these Supply Terms and Conditions; and
- 1.1.8. **We** and **Us** mean Solutions IE Pty. Ltd. (ABN: 77 079 173194), Solutions in Engineering Pty Limited (NZ 3467694), Solutions in Fire Pty. Ltd. (ABN: 50 102 735 508), Canadian Solutions in Engineering Limited. (Incorporation Number BC0966581) and The Trustee for Building Report Services Trust (ABN: 26 038 831 509) jointly and severally, each of 18 Park Road, Milton QLD 4064.

1.2. Parties

- 1.2.1. If a party consists of more than one (1) person, these Terms bind each of them severally and any two (2) or more of them jointly.
- 1.2.2. An obligation, representation or warranty in favour of more than one (1) person is for the benefit of them severally and jointly.
- 1.2.3. A party which is a trustee is bound both personally and in its capacity as a trustee.

1.3. Interpretation

- 1.3.1. The singular includes the plural, and vice versa;
- 1.3.2. Any reference, or use of, legislative terminology encompasses that legislation as amended, repealed, or replaced from time to time. Where this agreement utilises terminology that is specific to one jurisdiction, the analogous terminology in other jurisdictions shall be considered analogously.

Example for clause 1.3.2: clause 20 refers to Sinking Fund Plans, the term utilised in Queensland for a forecast of non-recurrent capital expenditure to be met by the body corporate. New South Wales utilises the term 'capital works fund' for the same forecast. Both terms shall be considered analogously.

2. Binding Terms and Conditions

- 2.1. These Terms are binding upon the Customer.

- 2.2. For the avoidance of doubt, if the acceptance of the Services is made by a Body Corporate Manager or other equivalent agent, they agree that they are duly authorised as the Customer's agent to alter the Customer's legal relations. They hereby agree, as agent of the principal, to bind the Customer to these Terms.
- 2.3. The only warranties, guarantees, conditions and/or obligations which are binding upon Us are:
 - 2.3.1. those set out in these Terms;
 - 2.3.2. those otherwise agreed to in writing by Us; and
 - 2.3.3. those, if any, which are implied at law and which cannot be excluded.
- 2.4. In the event that a provision of the Terms proves to be illegal or unenforceable pursuant to any applicable statute or rule of law, or for any other reason, such provision is deemed severed to the fullest extent possible without affecting the legality of the remaining provisions.

3. General and Applicable Law

- 3.1. In the case of Services provided to Customers who are situated in any Australian State or Territory, or New Zealand, the Terms shall be governed and interpreted according to the laws of Queensland, Australia and each Customer consents to submit to the jurisdiction of the Courts of Queensland and the Commonwealth of Australia.
- 3.2. In the case of Services provided to Customers who are situated in Canada, the Terms shall be governed and interpreted according to the laws of British Columbia, Canada and each Customer consents to submit to the jurisdiction of the Courts of British Columbia and Canada.
- 3.3. In the event that neither clause 3.1 nor 3.2 apply, the Terms shall be governed and interpreted according to the laws of Queensland, Australia and each Customer consents to submit to the jurisdiction of the Courts of Queensland and the Commonwealth of Australia.

4. Entire Agreement and Understanding

- 4.1. These Terms, any quotation or work order form, and, in the case of supply of ARM-CC services – the ARM Terms and Conditions of Supply, set out the whole of the agreement and understanding between the Customer and Us with respect to the provision of Services by Us to the Customer and supersede any and all earlier understandings and agreements, whether oral or written, between the Customer and Us.
- 4.2. Subject to clause 5, these Terms may be supplemented, amended or modified only by the mutual agreement of the Customer and Us. No supplementation, amendment or modification of these Terms shall be binding unless it is in writing and signed for or by both the Customer and Us.
- 4.3. By Receiving Services the Customer accepts these Terms without reservation.

5. Modification of Terms

- 5.1. We reserve the right to change these Terms from time to time.
- 5.2. We will take reasonable steps to inform the Customer of changes to the Terms.
- 5.3. The Customer accepts that notification of amendments to the Terms on Our website, or any reference to the Terms in any material provided to the Customer, are reasonable steps to inform the Customer of changes to the Terms.

6. Operational Coverage

- 6.1. The Customer authorises Us to sub-contract or separately engage a third party to produce any part or all of the Services at the absolute discretion of Us and without any requirement to provide notice to the Customer.

7. Cancellations

- 7.1. The Customer has the right to cancel our provision of the service by notifying us.
- 7.2. Cancellation of the service is effective upon our receipt of the Customer's notice.
- 7.3. **Customers' Cancellation – General**
 - 7.3.1. Where the customer notifies us that it wishes to cancel the service and we have not conducted any preparatory work for the purposes of completing the service, a full refund may apply at our discretion.
 - 7.3.2. Where the Customer notifies us that it wishes to cancel the service and we have conducted preparatory work for the purposes of completing the service, a 25% refund may apply at our discretion.
 - 7.3.3. Where the Customer notifies us that it wishes to cancel the service, and we have completed the service in accordance with these terms, no refund shall apply.
- 7.4. **Customers' Cancellation – Window Safety Device Installation Service**
 - 7.4.1. Where the customer notifies us that it wishes to cancel the service and we have not conducted any preparatory work or agreed upon an installation date for the purposes of completing the service, a full refund may apply at our discretion.
 - 7.4.2. Where the customer notifies us that it wishes to cancel the service and we have conducted preparatory work and agreed upon an installation date, a 50% refund shall apply if the service is cancelled at least 14 days before the installation date. No refund shall apply if the service is cancelled less than 14 days before the installation date.
 - 7.4.3. Where the customer notifies us that it wishes to cancel the service, and we have completed the service in accordance with these terms, no refund shall apply.

8. Force Majeure

- 8.1. If a party is prevented or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during that time, but only to the extent that compliance is prevented or delayed.

9. Waiver

- 9.1. Our delay in exercising a power or right shall not operate as a waiver of that power or right.
- 9.2. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 9.3. A waiver is not effective unless in writing.
- 9.4. Waiver of a power or right is effective only in respect of the specific instance to which that waiver relates and for the specific purpose for which that waiver is given.

10. Acceptance

- 10.1. The Customer must inspect and review the Services immediately upon them being delivered, provided or made available, and must within ten (10) Business Days after the date of the Services being delivered, provided, or made available give written notice to Us of any claim that the Services are not in accordance with the Terms or otherwise unsatisfactory.
- 10.2. If the Customer fails to give the notice in Clause 10.1, then to the extent permitted by law, the Services must be treated as being accepted by the Customer.

11. Release and Indemnity

- 11.1. The Customer hereby acknowledges that We will not be responsible for any consequences, damage or injury arising from any matters outside the general Scope of Services listed in clause 14,

or from any matters outside the specific purpose of Services in clauses 15.1, 16.1, 19.1, 21.1 and 23.1, or from any matters subject to a specific limitation within these Terms.

For example, without limiting the generality of this clause, We will not be responsible for any consequences of an Asbestos Report failing to advise of asbestos in inaccessible locations, as that is subject to a general limitation in clause 14.1 below.

For example, without limiting the generality of this clause, We will not be responsible for any consequences of a Safety Report failing to warn of slip-hazards, as that is subject to a specific limitation in clause 16.3.1.6 below.

- 11.2. In the case of mistakes brought to our attention within 12 months of the Customer Receiving Services, We will amend the report once at no cost. This may include multiple amendments to a single report, where these are processed concurrently. For any amendment or amendments that fall outside the 12 month time frame We will charge a fee of \$110 per hour. If a reinspection is required for this amendment we will charge an additional fee of \$338.
- 11.3. We exclude any warranties, conditions or undertakings, express or implied, that are legally able to be excluded.
- 11.4. In the case that the Customer engages Us as an offsite person(s) responsible for coordinating the evacuation procedures under s38 of the *Building Fire Safety Regulation 2008* (Qld), the Customer holds and keeps indemnified Us for all actions, suits, proceedings, claims, demands, and all expenses whatsoever that occur in the course of, arising out of the performance of, or the failure to coordinate the evacuation procedures.
- 11.5. In the case of breach of those warranties, conditions or undertakings, express or implied, that cannot be excluded by law, the Customer agrees that We have a maximum liability, in relation to loss, damage or injury of any nature howsoever arising, limited to, at Our option:
 - in relation to services:
 - 11.5.1.1. the supply of the Services again;
 - 11.5.1.2. the payment of the cost of having the Services supplied again.
 - in relation to goods:
 - 11.5.1.3. the replacement of the goods or the supply of equivalent goods;
 - 11.5.1.4. the repair of such goods;
 - 11.5.1.5. the payment of the cost of replacing the goods or acquiring equivalent goods; or
 - 11.5.1.6. payment of the cost of having the goods repaired.

12. Restrictions on accessing and using the Services

- 12.1. The Customer agrees that all Services are provided only for the purpose of assisting Our bona fide paying customers, and agrees:
 - 12.1.1. Only to use the Services for the Customer's own bona fide purposes in their capacity as Our customer;
 - 12.1.2. Not to use the Services in any way for the purpose of gaining a competitive advantage over Us;
 - 12.1.3. Not to communicate, broadcast, reproduce, disseminate, disclose, supply or otherwise provide all or any part of the Services to any third party without Our prior written consent;
 - 12.1.3.1. Clause 12.1.3 does not apply to the extent that disclosure is required by law or is to legal professional advisers under a duty of confidentiality;
 - 12.1.4. When using the Services in any way, to only use the whole of the information or report so that the contextual integrity of the information or report is preserved;
 - 12.1.5. Only to apply, use or rely upon the Services for the purpose and within the scope and limitations provided for in these Terms and in any report and/or subject matter comprising the Services;
 - 12.1.6. That the Customer does not hold copyright or any other intellectual property rights in the Services, other than the minimum rights necessary to use the Services for the purposes for which they are provided.

- 12.1.7. Not to do any act which constitutes an infringement of copyright or any other intellectual property right without Our express permission in writing.
- 12.2. No rights in relation to the Services, including but not limited to the rights to use or rely upon the Services pass to the Customer until the money owing for those Services has been paid in full.
- 12.3. The Customer prior to payment takes custody of any such goods and retains them as a bailee of a bailment terminable at will. All liens, equitable and otherwise, are preserved in such circumstances.

13. Customer's Information and Privacy

- 13.1. The Customer authorises Us to retain, organise and use for marketing purposes information about the Customer provided to Us in the context of the Services, for any purpose connected with Our business, and to provide that information to any third party for any purpose associated with the Services.
- 13.2. We will make relevant information in its records about the Customer available to the Customer upon written request, to the full extent required by applicable privacy legislation. Please refer to Our Privacy Policy for further details.

14. Scope of Services and Limitations

- 14.1. We will only inspect areas within the scope of the Services to which safe, reasonable, appropriate, unobstructed access is available ('accessible areas'). The extent of accessible areas will be determined by Us, based on the conditions encountered at the time of inspection. We will not be able to report on the condition of, or take into account the impact of circumstances existing in areas other than accessible areas and the Customer accepts that all Services are subject to that limitation.
 - 14.1.1. Elevated areas are not usually accessible areas due to occupational health and safety issues.
 - 14.1.2. Where entry to an area is denied to Us, including any area which is locked and for which keys are not provided, and including areas of private property to which access is not expressly permitted, that area will not be an accessible area.
- 14.2. Unless otherwise agreed, We will conduct a visual inspection only as a part of the Services. Therefore:
 - 14.2.1. areas and objects which are obscured or obstructed by finishes or other objects (including but not limited to, wall cavities, beneath floor coverings, integral parts of machinery, obscured and masked areas, etc) will not be inspected.
 - 14.2.2. as We cannot undertake invasive or destructive investigation or testing unless it has been specifically requested and authorised, We will assess the condition of areas and objects based on their superficial condition only (for example, it may be impossible to detect the presence of asbestos-containing materials in many cases without destructive testing, which is often neither practical nor appropriate);
- 14.3. We will not attempt to predict the effect of varying environmental conditions on the findings contained in the Services. The findings contained in the Services will be based on the prevailing conditions at the time of inspection (for example, the adequacy of drainage in wet weather conditions cannot be thoroughly assessed when the inspection occurs in other conditions);
- 14.4. The Services provided do not include services which require specialised trade or other qualifications, or those which are the subject of specific maintenance contractor arrangements. For example:
 - 14.4.1. We do not conduct a thorough assessment of the electrical switchboard or other plant and equipment, as this must be performed by a qualified and licensed electrical or other contractor;

- 14.4.2. We do not conduct an assessment of the operational status of emergency equipment, such as fire safety equipment, as We will be unable to undertake testing of such equipment to assess its operational status;
 - 14.4.3. We do not conduct a thorough inspection of the plumbing, gutters and downpipes and roof, as this must be performed by a qualified and licensed plumbing contractor;
 - 14.4.4. We do not undertake a pest inspection, which must be performed by a qualified and licensed pest inspector;
 - 14.4.5. We do not provide engineering services and do not assess structural adequacy, except as part of our Structural Engineering Service;
 - 14.4.6. While a visual inspection will be made of accessible plant and equipment, including air conditioning units, cooling towers, pumps, motors, and lifts, it is presumed that all essential maintenance, as required by the manufacturer subject to specific on-site factors (such as adverse environmental factors), is being carried out through ongoing maintenance contracts.
- 14.5. In providing the Services, and forming its conclusions as stated in any report or other documentation which is produced as an outcome of the Services, We may rely upon information provided by the Customer and by third parties without independently verifying that information. Therefore, conclusions formed on the basis of such information are qualified and may only be relied upon on the basis that they are formed in reliance upon the completeness and accuracy of information provided to Us.

15. Pool Safety Inspection

- 15.1. A **“Pool safety Inspection”** is a type of Service, provided in accordance Chapter 8 of the *Building Act 1975* (Qld). It includes:
- 15.1.1. inspecting a regulated pool to decide whether to give a certificate (a pool safety certificate) that states the pool is a complying pool and issuing either a pool safety certificate or a non-conformity notice as applicable.
- 15.2. **What we require from You when You order a Pool Safety Inspection**
- 15.2.1. A completed order form, or a work order containing the information listed on our order form.
- 15.3. **Specific Limitations on Pool Safety Inspections**
- 15.3.1. We will not conduct quantitative strength testing of the pool fence as a part of the Service.
 - 15.3.2. We will inspect only those items required to be inspected under MP 3.4 of the Queensland Development Code, and associated instruments.
 - 15.3.3. We will not perform repairs as part of the Service.
 - 15.3.4. Where a non-conformity notice is issued, it is the obligation of the Customer to contact Us to arrange for a subsequent Pool Safety Inspection once the rectification work listed on the non-conformity notice has been completed:
 - 15.3.4.1. Once the Customer has requested a subsequent Pool Safety Inspection, We will conduct that subsequent Pool Safety Inspection within 20 business days, unless otherwise agreed.
 - 15.3.4.2. Without limiting the generality of Clause 11, We are expressly not liable for any consequential loss suffered by the Customer or third party as a result of a Pool Safety Certificate not being issued by a particular date.
 - Example A for Clause 15.3.4.3: We are not liable to the Customer or third party for any loss suffered due to a lease not being executed over a property due to a Pool Safety Certificate not being issued.
 - Example B for Clause 15.3.4.3: We are not liable to the Customer or third party for any loss suffered due to a property settlement not proceeding due to a Pool Safety Certificate not being issued.

16. Safety Reports

16.1. Purpose

- 16.1.1. The purpose of a Safety Report is to identify physical hazards that give rise to risks on the Subject Property, to assess those risks, and to recommend control measures.
- 16.1.2. The Safety Report will be conducted in accordance with the relevant Work Health and Safety or Occupational Health and Safety Legislation ('Safety Legislation') for the Subject Property.
- 16.1.3. A Safety Report is not a comprehensive audit in compliance with the relevant Safety Legislation. An audit may include additional requirements such as the incorporation of manual handling, job task analysis, training, air space and lighting measurements, asbestos analysis, chemical management, a safety management system and policies and procedures for safe work.

16.2. What we require from You when You order a Safety Report

- 16.2.1. A completed order form, or a work order containing the information listed on our order form;
- 16.2.2. Plans for the Subject Property showing the common areas and private areas.

16.3. Specific Limitations on Safety Reports

- 16.3.1. A Safety Report will not address certain issues, including:
 - 16.3.1.1. any assessment of the structural adequacy of any of the elements of the Subject Property;
 - 16.3.1.2. issues relating to asbestos, including the identification and assessment of the condition of asbestos;
 - 16.3.1.3. issues relating to fire safety, including the adequacy of fire safety measures, emergency response planning or maintenance or training regimes;
 - 16.3.1.4. a glass assessment;
 - 16.3.1.5. structural rigidity of balustrades or handrails;
 - 16.3.1.6. quantitative slip testing to AS 4663 and AS 4586;
 - 16.3.1.7. the provision or adequacy of lighting on the Subject Property; or
 - 16.3.1.8. risks which the inspector deems to be insignificant, far-fetched or fanciful.
- 16.3.2. Any comments contained in a Safety Report in relation to the issues listed in Clause 16.3.1. will be incidental in nature and qualitative, and do not imply that any further issues of that type were considered.
- 16.3.3. A Safety Report may contain comments regarding the condition or nature of balustrades on the Subject Property, however the balustrades will not be comprehensively inspected and tested as part of this Service.
 - 16.3.3.1. We do offer a specific Service of Balustrade Testing. The scope of the Services provided in the context of that Balustrade Testing is more comprehensive. Balustrade Testing is recommended where there are any visible signs of corrosion or other deterioration on or in the vicinity of the balustrade (including fixings), or whenever the balustrades are over 10 years old.
 - 16.3.3.2. Balustrade Testing will only be conducted when specifically requested.
- 16.3.4. It is the responsibility of the Customer to:
 - 16.3.4.1. ensure that the recommendations contained in the Services are adopted; and
 - 16.3.4.2. to ensure ongoing compliance with relevant safety standards.
- 16.3.5. The customer acknowledges that receiving and acting in reliance upon the Services will not necessarily ensure compliance with safety legislation – rather the Services recommend methods of managing or minimising the risks associated with relevant site-specific, physical hazards at the time of inspection.

17. Asbestos Reports

17.1. Purpose

17.1.1. The purpose of an asbestos report is to determine if asbestos is present on the subject property.

17.1.2. Where an asbestos report has identified asbestos or asbestos containing material on the subject property, We will prepare an asbestos register and asbestos management plan in accordance with the provisions of applicable legislative instruments (and associated regulations made under those instruments), as amended and replaced from time to time.

17.2. Identification and Sampling of Asbestos

17.2.1. We identify asbestos in accordance with the provisions of the *Code of Practice: How to Manage and Control Asbestos in the Workplace*, as published by Safe Work Australia and adopted by State and Territory Government agencies.

17.2.2. Where safe and practicable, We will take a sample of a material to conclusively determine if the material contains asbestos.

17.2.3. In some instances, asbestos may be present in areas that cannot be assessed without implementing destructive sampling techniques. We will not take samples in these circumstances.

Example for clauses 17.2.2 and 17.2.3: The core of a fire door constructed before 1990 commonly contains asbestos, yet drilling into the core of that door to take a sample poses an unacceptable risk of releasing unsafe asbestos fibers. Drilling into the core would also compromise the integrity of the door, and the door would have to be replaced as a result of this sampling technique. We do not sample in this way.

17.2.4. Where we have taken a sample, We will seal the leading edge of the sampled material in accordance with the Code of Practice, however we will not otherwise repair any damage caused by sampling techniques. We will take reasonable steps to take samples in unobtrusive locations, yet this is not always possible.

17.2.5. Customers hold Us indemnified from any damage that a sample causes.

17.3. Testing of Asbestos

17.3.1. All testing of asbestos is carried out by a NATA accredited laboratory as we cannot conclusively assess the presence or absence of asbestos, and we rely on the results of these tests.

17.3.2. We will forward to the recipient of the Asbestos Survey any report or findings of the independent testing agency, in the form provided by the independent testing agency, when they become available, but we do not adopt or make any representations, guarantees or warranties as to the accuracy of the findings of the independent testing agency.

18. Structural Engineering Reports

18.1. Structural Engineering Reports are offered subject to the terms given within this document.

18.2. 'Desktop Reviews' are a form of Structural Engineering Report, offered subject to the following limitations:

18.2.1. Desktop Reviews are conducted with permission of both parties.

18.2.2. Opinions and recommendations are only given in circumstances where the inspector feels such opinions and recommendations are appropriate.

18.2.3. Opinions and recommendations are made with the information and documentation provided by the Customer. Any liability based on incomplete or false information rests entirely with the Customer.

18.2.4. By accepting this version of the report, the Customer accepts that they are responsible for providing all information necessary to draw an opinion

18.2.5. We reserve the right to make an opinion that no determination can be reached on the available evidence presented over desktop.

18.3. Structural Engineering Reports are visual inspections only. No invasive testing is within the scope of the report.

19. Window Safety Device Installation Service

19.1. Purpose

19.1.1. The purpose of the Window Safety Device Installation Service is to install Window Safety Devices, and test them against the requirements of section 118 *Strata Schemes Management Act 2015* (NSW) and Regulation 30 of the *Strata Schemes Management Regulation 2016* (NSW).

19.1.2. The Window Safety Device Installation Service warrants compliance only with the abovementioned legislative provisions, except as specified in cl 19.5 below, and makes no representations as to the safety of the windows.

19.2. What We require from You when You order a Window Safety Device Installation

19.2.1. A completed order form, or a work order containing the information listed on Our order form;

19.2.2. Plans for the Subject Property showing the common areas and private areas;

19.2.3. Details about any windows which have an opening of more than two meters above the surface beneath.

19.3. Specific Limitations on the Service

19.3.1. The Window Safety Device Installation Service will not address certain issues, including:

19.3.1.1. any assessment of the structural adequacy of any of the elements of the Subject Property, including the windows;

19.3.1.2. a glass assessment;

19.3.1.3. issues relating to asbestos, including the identification and assessment of the condition of asbestos;

19.3.1.4. issues relating to fire safety, including the adequacy of fire safety measures, emergency response planning or maintenance or training regimes;

19.3.1.5. structural rigidity of balustrades or handrails; or

19.3.1.6. risks which the inspector deems to be insignificant, far-fetched or fanciful.

19.3.2. The Service only warrants compliance with the legislative provisions at the time of inspection, and that the device met the required force and measurements at the time of inspection. It does not include an assessment of corrosion or any other form of deterioration.

19.3.3. We will not be responsible for any damage, loss or liability resulting from the Customer or any other person removing the device, deactivating the device, disabling the child resistant functionality of the device, or failing to store the keys to the device out of the reach of the children.

19.3.4. It is the responsibility of the Customer to:

19.3.4.1. ensure that the recommendations contained in the Services are adopted;

19.3.4.2. to ensure ongoing compliance with relevant safety standards; and

19.3.4.3. have the Window Safety Devices reinspected annually.

19.4. Specific Exclusions

19.4.1. We will not be responsible for any loss or damage caused by the Installation Service. This includes, but is not limited to, loss or damage to the window, glass or hinges.

19.4.2. We exclude, to the fullest extent permitted by law, liability for any loss, injury or damage at the Subject Property following the Installation Service.

19.4.3. We will not be responsible for any loss, injury or damage as a consequence of any manufacturing defect in the window lock unit. Liability for any loss, injury or damage as a consequence of any manufacturing defect is the full responsibility of the manufacturer.

- 19.5. Where a window has a screen which, but for the wording of Regulation 31, would be consistent with the purpose of the legislative provisions and the requirements of the Building Code of Australia clause D2.24, we will not install a device unless expressly requested by the Customer.
- 19.5.1. We are not liable for any adverse consequences, including, but not limited to, statutory fine for non-compliance with the Regulations, resulting from not installing a Window Safety Device in these circumstances.
- 19.6. Where there is a discrepancy between the number of windows requested on the work order form and the number of windows which require devices under Regulation 30 of the *Strata Schemes Management Regulation 2016* (NSW), We may install additional devices to ensure compliance, or may test existing devices for compliance. We reserve the right to charge the Customer for any additional devices or testing required.

20. Sinking Fund Forecast

- 20.1. A “sinking fund forecast” is a forecast of non-recurrent capital expenditure on strata scheme assets, prepared in accordance with the provisions of applicable legislative instruments (and associated regulations made under those instruments), as amended and replaced from time to time.
- 20.2. Notwithstanding clause 20.1, when requested by the Customer or an agent of the Customer, We will include items in the forecast that are not prescribed by the applicable legislative instruments, including items that are not scheme assets or items with no connection to the scheme.
- 20.2.1. The Customer accepts that We are not liable for any and all liability resulting from the inclusion of these items as requested by the Customer.
- 20.2.2. The Customer indemnifies Us against any and all liability resulting from including these items as requested by the Customer.

Example for clause 20.2: The scheme consists of a number of detached lots with an external wall shared amongst a number of lots, but not on common property (in Queensland, this is referred to as a Standard Format Plan). The painting and maintenance of these walls is an individual responsibility for the proportion that each individual occupies, yet for convenience the body corporate requests that the sinking fund forecast includes a forecast of the expenditure required to repaint the entire wall. If the scheme then spends money on the wall, or passes a resolution authorising the body corporate to maintain the wall, in breach of a legislative prohibition, by law or the like, We are not liable for including these items upon the Customer’s request.

21. Access to Private Units or Lots

- 21.1. Where the provision of the Services requires access to individual private units or lots, the Customer is responsible for arranging access for these inspections.
- 21.2. Where We require a key or keys to access an individual private unit or lot in order to provide a Service, the Customer acknowledges that if a key is not provided by the Customer, We have the power, where permitted by law, to obtain a key or keys from an agent, including but not limited to a Body Corporate Manager (or other equivalent agent) or Letting Agent.
- 21.2.1. Where a key or keys have been obtained from an agent, We shall not be liable from any adverse consequences, including, but not limited to, theft, damage or loss resulting from depositing the key or keys at a mutually agreed location.
- 21.3. A separate Tax Invoice may (where appropriate) be issued for the inspection of the common property and individual private units or lots and payment of the Tax Invoice is the responsibility of the Customer.
- 21.4. A single report will be supplied which includes all details of common property and relevant private units or lots. It is the responsibility of the Customer or their agent to supply this report to the owners of relevant private units or lots or to any further intended recipients.
- 21.5. Clause 21.3 does not apply to Our Pool Safety Inspection Service. We will provide a separate pool safety certificate or non-conformity notice for each pool that is the subject of the Service.

21.6. For clarity, a key includes an alpha-numerical combination for opening electronically locked doors.

22. Insurance Valuations

22.1. Purpose

22.1.1. The purpose of an insurance valuation is to provide an indication of a property's value. The purpose of a heritage valuation is to provide an indication of how a property's age, historical significance, location, materials, architectural significance, and any other matter of relevance affects its value.

22.2. Disclosure

22.2.1. The Customer must, when ordering the Services, notify Us of, and disclose to Us any matters which the Customer knows to be a matter which may materially affect the valuation, and a reasonable person in the circumstances could be expected to know to be a matter so relevant. This includes a matter which may diminish, as well as increase, the value of the property. We are not liable for an inaccurate valuation which would have been reasonably accurate but for the failure to disclose a matter which materially affects the valuation.

22.2.2. The Customer must, when ordering the Services, notify Us of, and disclose to Us any heritage listings related to a property. Failure to disclose that a building is heritage listed may result in an inaccurate valuation, and We are not liable for an inaccurate valuation that would have been reasonably accurate but for the failure to disclose a heritage listing.

22.3. Specific Limitations for Insurance Valuations

22.3.1. Where ascertaining the exact value of particular elements would require specialised qualifications other than those of a suitably qualified insurance valuer, We will not be liable for an inaccurate valuation of those elements.

22.3.2. The Insurance Valuation should not be construed as a definitive statement of the market value of a property, and contains assumptions based on Our valuer's experience in the valuation industry, the information provided to Us by the Customer, and, where relevant, a visual inspection of the premises only.

22.3.3. Our valuation does not account for future fluctuations in the property market.

22.4. Use of Insurance Valuation by Third Parties

22.4.1. This valuation is prepared for the purpose of assisting Our bona fide paying customers.

22.4.2. This valuation may be communicated, broadcasted, reproduced, disseminated, disclosed, supplied or otherwise provided by the client only to bona fide third party insurers, and We hereby consent only to the communication of these services to bona fide third party insurers.

22.4.2.1. This is subject to the general restrictions on accessing and using the services in clause 12.

22.4.2.2. "Bona fide third party insurers" means insurance companies (including brokers) with a privacy policy which adequately protects that information from access by other third parties.

22.4.3. The Customer indemnifies Us against any loss, injury or damage suffered by third parties caused by a failure to comply with clause 22.4.2.

23. Provision of Plans With Order

23.1. The Customer must, when ordering the Services, provide Us with any relevant building or other plans requested by Us.

23.2. If the Customer does not provide requested or relevant building plans under clause 23.1, We may order the building or other relevant plans ten business days after the Customer orders the

Services, but only after We attempt to contact the Customer three times (twice by email and once by phone), to obtain the requested building plans.

- 23.3. If the Customer cannot be contacted or has not provided Us with the building or other relevant plans within ten business days after the Customer orders the Services, then We presume that permission has been granted to order building or other relevant plans on behalf of the customer at Our own discretion.
- 23.4. The Customer must pay any costs associated with Us ordering the requested building or other relevant plans, including an administration charge of \$33. The administration charge and cost of the building or other relevant plans will be added to the cost of the Services.

24. Compliance Subscription Package

24.1. Purpose

24.1.1. The purpose of the compliance subscription package is to provide, for a minimum term and continually following the conclusion of that term, with the fee increasing annually as specified, those Safety Reports, Asbestos Services, Fire Safety Services, Pool Safety Services, Structural Engineering Reports, Sinking Fund Forecasts, Insurance Valuations and Window Safety Devices that are, from time to time, required or requested by the Customer at the Subject Property.

24.2. Minimum Term

24.2.1. The minimum term is that specified in Schedule 1 to the Quotation.

24.3. Fee Escalation

24.3.1. The fee shall escalate as specified in Schedule 1 to the Quotation.

24.4. Termination

24.4.1. Where the Customer notifies Us that it wishes to terminate the agreement prior to the end of the minimum term specified in the quote, and the Customer has no cause for termination under any existing statute or rule of law, the Customer must:

24.4.1.1. For all Services which have been prepared prior to the termination date, whether or not they have been delivered to the Customer, the Customer must pay to us the difference between the discounted fees charged under the Subscription Package Agreement and the retail fees at the time of contracting for all relevant Services;

24.4.1.2. The Customer is not obliged to any refund for prepared reports, documents, certificates, information, products, goods or the like constituting the Services, whether or not they have been delivered to the Customer.

24.4.2. Where the Customer notifies Us that it wishes to terminate the agreement at the conclusion of the minimum term, termination is effective:

24.4.2.1. If notification is prior to the end of the minimum term, at the end of the minimum term, or;

24.4.2.2. If notification is received after the end of the minimum term, upon Our receipt of notification of termination from the Customer.

24.4.2.3. The Customer is not obliged to any refund for prepared reports, documents, certificates, information, products, goods or the like constituting the Services, whether or not they have been delivered to the Customer.

- 24.5. For each individual provision of Services, the relevant Term or Terms of these Supply Terms and Conditions applies.