

Supply Terms & Conditions



Commencing October 2023

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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), 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

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 or the like;

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. If a service is accepted by a manager or other agent of the body corporate, the customer is the body corporate;

1.1.4. **'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;

1.1.5. **'Subject property'** means the lot/parcel of land for which our service(s) are being provided;

1.1.6. **'Terms'** means these Supply Terms and Conditions

1.1.7. **'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) and The Trustee for Building Report Services Trust (ABN: 26 038 831 509) jointly and severally, each of 9 Gardner Close, Milton QLD 4064.

1.2. **Parties**

1.2.1. Where a party contains more than one (1) person, every person is bound severally and any two (2) or more of them jointly.

1.2.2. A party which is a trustee is bound personally and in its capacity as a trustee

1.3. **Interpretation**

1.3.1. Any reference or use of, legislative terminology includes that legislation as amended, repealed, or replaced from time to time.

1.3.2. Where this agreement utilises terminology that is specific to one jurisdiction, the analogous terminology in other jurisdictions shall be considered.

2. Binding Terms and Conditions

2.1. These terms are binding upon the customer.

2.2. If acceptance of the services is made by an agent of the body corporate or the like, they agree that they are duly authorised as the customer's agent to bind the customer to the terms.

2.3. We are bound by:

2.3.1. These terms;

2.3.2. Those obligations or the like otherwise agreed to in writing by us; and

2.3.3. Those obligations that are implied by law.

2.4. If 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. The terms shall be governed and interpreted according to the laws of Queensland, Australia. Subject to clause 3.2, every customer consents to submitting to the jurisdiction of the Courts of Queensland and the Australian Commonwealth.
- 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.

4. Entire Agreement

- 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, 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. Any mutual agreement must be signed by the customer and us.
- 4.3. The customer accepts these terms without reservation.

5. Modification of Terms

- 5.1. The customer accepts that we will take reasonable steps to inform the customer of changes to the terms as they happen from time to time.

6. Operational Coverage

- 6.1. The customer accepts that we are authorised to sub-contract or engage a third party to produce any part or all of our services, at our discretion.

7. Cancellations

- 7.1. The customer can cancel our provision of a service by notifying us. Cancellation is effective upon our receipt of the customer's notice.
- 7.2. **Customers' cancellation – general**
 - 7.2.1. If we have not conducted any work towards completing the service, a full refund may apply at our discretion.
 - 7.2.2. If we have conducted any work towards completing the service, a 25% refund may apply at our discretion.
 - 7.2.3. If we have completed the service, no refund shall apply.
- 7.3. **Customers' cancellation – Window Safety Device Installation Service**
 - 7.3.1. If we have not conducted any work towards completing the service or agreed upon an installation date, a full refund may apply at our discretion.
 - 7.3.2. If we have conducted any work towards completing the service and agreed on 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.
 - 7.3.3. If we have completed the service, no refund shall apply.

8. Referral Fees

- 8.1. *Solutions in Engineering* reserves the right to accept commission and/or referral fees from remedial builders and/or other industry specialists that we may refer work to.

9. Force Majeure

- 9.1. If a party is prevented or delayed in complying with an by an event beyond its reasonable control, performance of that obligation is suspended during that time, but only to the extent that compliance is prevented or delayed.

10. Waiver

- 10.1. Our delay in exercising a power or right shall not operate as a waiver of that power or right.
- 10.2. A waiver is not effective unless in writing.

11. Acceptance

- 11.1. The customer 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.
- 11.2. 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.

12. Release and Indemnity

- 12.1. We will not be responsible for any consequences, damage or injury arising from any matters outside the scope of services per cl. 14 or from any matters outside the specific purpose of services listed in the terms, or from any matters subject to a specific limitation within these terms.
- 12.2. Our service includes one free of charge amendment within 12 months of a report being issued. For any amendment(s) required after the 12-month period, we will charge a fee of \$248 plus an additional \$248 per hour or part thereof if a reinspection is requested.
 - 12.2.1. In order to ensure that this service is provided to all clients in an efficient and productive manner we ask that you fully review your report and list anything you would like changed in a single email allowing for the requested amendments to be dealt with in one effort. Due to the extra work involved and inefficiency created by an incomplete initial amendment request further amendments requests will be charged for based on the hours and effort required.
- 12.3. We exclude any warranties, conditions or undertakings, express or implied, that are legally able to be excluded.
- 12.4. Where the customer has engaged 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 us indemnified for all actions, expenses and the like that occur in the course of, arising out of the performance of, or the failure to coordinate the evacuation procedures.
- 12.5. If a warranty or the like is breached, the customer acknowledges that we have a maximum liability limited to:
 - 12.5.1. in relation to services:
 - 12.5.2. The supply of the services again;
 - 12.5.3. The payment of the cost of having the services supplied again.
 - 12.5.4. in relation to goods:

- 12.5.5. The replacement of the goods / supply of equivalent goods;
- 12.5.6. The repair of such goods;
- 12.5.7. The payment of the cost of replacing the goods / acquiring equivalent goods; or
- 12.5.8. Payment of the cost of having the goods repaired.

13. Restrictions on use of the services

- 13.1. The customer agrees:
 - 13.1.1. Not to use the services to gain a competitive advantage over us;
 - 13.1.2. Not to provide any part of the services to any third party without our prior written consent, unless disclosure is required by law or is to professional advisers under a duty of confidentiality.
 - 13.1.3. To only use the whole of any information or report received by us to preserve contextual integrity.
 - 13.1.4. To only use the services for the purpose and within the scope and limitations provided for in these terms and/or report.
 - 13.1.5. 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.
 - 13.1.6. That no rights in relation to the services are granted to the customer until the money owing for those services is paid in full.

14. Debt Collection

- 14.1. Solutions in Engineering reserves the right to send a Letter of Demand to the debtor for the purpose of collecting any payments for the outstanding debt from the debtor. The debtor must respond with full payment within 14 days from the date of the Letter of Demand.
- 14.2. Solutions in Engineering reserves the right to collect any legal costs or other costs associated with debt recovery and/or collection from the party owing the debt, in addition to the debt owed.
- 14.3. Solutions in Engineering reserves the right to charge a daily interest rate of up to 11.15% on the outstanding debt if the debt is outstanding for longer than 30 days past the payment due date listed on the Tax Invoice. This interest rate is in line with the General interest charge (GIC) rates published quarterly by the Australian Taxation Office.

15. Customer's information

- 15.1. We are authorised 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.
 - 15.1.1. Please refer to our Privacy Policy for further details.

16. General Inspection Information

- 16.1. If the inspection requires that a key is to be collected from a location that is more than 30 minutes from the site inspection, a key collection fee of \$198 (including GST) may be requested.
- 16.2. We request that a parking space is made available for the inspector at the site location. If parking is not available, we reserve the right to request reimbursement for the parking fee.

17. Scope of Services and Restrictions

- 17.1. We will only inspect and report on areas to which safe and/or unobstructed access is available ('accessible areas'). The extent of accessible areas will be determined by us.
 - 17.1.1. Elevated areas are not usually accessible areas.
 - 17.1.2. Where entry to an area is denied to us or an area cannot be accessed that area will not be an accessible area.
- 17.2. We will conduct a visual inspection only as part of the services, unless otherwise agreed. As such:
 - 17.2.1. Areas and objects which are obscured or obstructed (i.e. wall cavities, beneath floor coverings, parts of machinery, masked areas etc.) will not be inspected.
 - 17.2.2. We will assess the condition of areas and objects based on superficial condition only as we cannot undertake invasive or destructive testing.
- 17.3. The findings contained in the services are based on prevailing environmental conditions at the time of the inspection.
- 17.4. The services do not include services which require specialised trade or other qualifications, or those which are the subject of specific maintenance contractor arrangements. Such services, for example plumbing work, go beyond our scope of services.
 - 17.4.1. We assess structural adequacy only as part of our structural engineering service.
 - 17.4.2. It is presumed that all essential maintenance of plant and equipment is being carried out, and we will only provide a visible inspection of accessible plant and equipment.
- 17.5. In providing the services we may rely upon information provided by the customer and by third parties without independently verifying that information. 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.

18. Pool Safety Inspection

- 18.1. A 'pool safety inspection', provided per Chapter 8 of the *Building Act 1975* (QLD) includes:
 - 18.1.1. Inspecting a pool to give either a pool safety certificate or a non-conformity notice as applicable.
- 18.2. **We require:** a completed work order form or a work order containing the information listed on our order form.
- 18.3. **Limitations on pool safety inspections**
 - 18.3.1. There will be no strength testing of the pool fence.
 - 18.3.2. We will only inspect those items required to be inspected under MP 3.4 of the Queensland Development Code, and associated instruments.
 - 18.3.3. We will not perform repairs.
- 18.4. If a non-conformity notice is issued, it is the customer's obligation to contact us to arrange for a subsequent inspection once the rectification work listed on the non-conformity notice has been completed.
 - 18.4.1. Once a subsequent inspect is requested, we will conduct the inspection within 20 business days unless otherwise agreed.
 - 18.4.2. Without limiting the generality of Clause 11, we are expressly not liable for any consequential loss suffered by the customer or third party if a pool safety certificate not being issued by a particular date.

19. Safety Reports

19.1. Purpose

- 19.1.1. The safety report identifies physical hazards that give rise to risks on the subject property, assesses those risks and recommends control measures.
- 19.1.2. A safety report is not a comprehensive audit in compliance with the relevant safety legislation. An audit can 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.

- 19.2. **We require:** building plans for the subject property showing the common areas and private areas, as well as a completed order form, or a work order containing the information listed on our order form.

19.3. Limitations on safety reports

- 19.3.1. A safety report will not include:

- 19.3.1.1. An assessment of the structural adequacy of any element of the subject property;
- 19.3.1.2. Issues relating to asbestos;
- 19.3.1.3. Issues relating to fire;
- 19.3.1.4. Glass assessment;
- 19.3.1.5. The structural rigidity of balustrades or handrails;
 - 19.3.1.5.1. A report may contain incidental comments regarding balustrades, but the balustrades will not be comprehensively inspected as part of this service. A separate balustrade test can be requested by the customer.
- 19.3.1.6. Slip testing;
- 19.3.1.7. Lighting; or
- 19.3.1.8. Risks which the inspector deems to be insignificant.

- 19.3.2. It is the customer's responsibility to:

- 19.3.2.1. Ensure that any recommendations made in our services are adopted; and
- 19.3.2.2. Ensure ongoing compliance with relevant safety standards.
- 19.3.2.3. 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.

20. Asbestos Reports

20.1. Purpose

- 20.1.1. The asbestos report determines if asbestos is present on the subject property.
- 20.1.2. If asbestos or asbestos containing material is identified on the subject property, we will prepare an asbestos register and management plan in accordance with the provisions of applicable legislation.
- 20.2. We identify asbestos in accordance with the *Code of Practice: How to Manage and Control Asbestos in the Workplace* as adopted by State and Territory government agencies.
- 20.3. We will take a sample to determine conclusively if a material contains asbestos only if it is safe and practicable.

- 20.3.1. Where a sample has been taken, we will seal the leading edge of the sampled material but we will not otherwise repair any damage caused by sampling techniques. Reasonable steps will be taken to take samples in unobtrusive locations.
- 20.4. We will not take samples where asbestos may be present in areas that cannot be assessed without using destructive sampling techniques.
- 20.5. All samples taken are carried out by a NATA accredited laboratory.
- 20.6. Any findings of the laboratory will be forwarded to the customer, but we do not adopt or make any guarantees as to the accuracy of the findings of the independent testing agency.

21. Structural Engineering Reports

- 21.1. 'Desktop reviews' are a form of structural engineering report, offered subject to the following limitations:
 - 21.1.1. Opinions and recommendations are made with the information and documentation provided by the customer. The customer accepts that they are responsible for providing all information necessary to draw an opinion.
 - 21.1.2. We reserve the right to make an opinion that no determination can be reached on the available evidence presented over desktop.
- 21.2. Structural engineering reports are visual inspections.

22. Window Safety Device Installation

- 22.1. **Purpose**
 - 22.1.1. To install window safety devices (WSDS) and test them against legislative requirements.
- 22.2. **We require:** building plans for the subject property showing the common areas and private areas, information about any windows which have an opinion of more than two (2) metres above the surface beneath, as well as a completed order form, or a work order containing the information listed on our order form.
- 22.3. **Limitations on window safety device installation**
 - 22.3.1. No additional issues will be addressed, such as a glass assessment.
 - 22.3.2. The service only warrants compliance with legislative provisions at the time of the inspection.
 - 22.3.3. 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.
 - 22.3.4. It is the responsibility of the customer to:
 - 22.3.4.1. ensure that the recommendations contained in the services are adopted;
 - 22.3.4.2. to ensure ongoing compliance with relevant safety standards; and
 - 22.3.4.3. have the window safety devices reinspected annually.
 - 22.3.5. We will not be responsible for any loss or damage caused by the installation.
 - 22.3.6. We exclude, to the fullest extent permitted by law, liability for any loss, injury or damage at the subject property following the installation service.
 - 22.3.7. We will not be responsible for any loss or damage as a consequence of any manufacturing defect in the window lock device.
 - 22.3.8. 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.

22.3.9. We reserve the right to charge the customer for any additional devices or testing required if the number of windows requested in the work order form is incorrect.

23. Sinking Fund Report

- 23.1. This is a forecast of non-recurrent capital expenditure on strata scheme assets, prepared in accordance with the provisions of applicable legislative instruments.
- 23.2. Where requested by 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.
 - 23.2.1. The customer accepts that we are not responsible for any and all liability resulting from the inclusion of these items.
 - 23.2.2. The customer indemnifies us against any and all liability resulting from including these items as requested by the customer.

24. Access to Private Units / Lots

- 24.1. If access to private units or lots is required by us, the customer is responsible for arranging access.
- 24.2. The customer acknowledges that if a key or other means of unlocking is not provided by the customer to access an individual lot, 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.
 - 24.2.1. Where keys have been obtained by 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.
- 24.3. A separate tax invoice may (where appropriate) be issued for the inspection of the common property and individual private units or lots. Payment of the Tax Invoice is the responsibility of the Customer.
- 24.4. A single report will be supplied including details of the common property and individual units/lots on the subject property. It is the customer's responsibility to relay this information to the owners of relevant private units or to any other further intended recipients.

25. Insurance Valuations

25.1. Purpose

- 25.1.1. An insurance valuation provides an indication of a property's value.
- 25.1.2. A heritage valuation provides an indication of how a property's age, historical significance, location, materials, architectural significance, and any other matter of relevance that impact its value.

25.2. Disclosure

- 25.2.1. The customer must notify and disclose any matters which the customer knows to be a matter which may materially affect the valuation, including a matter which diminish or increase the value of the property. We are not liable for an inaccurate valuation due to a failure of the customer to disclose information to us.
- 25.2.2. The customer must disclose to us any heritage listings related to a property. We are not liable for an inaccurate valuation due to a failure of the customer to disclose information about any heritage listing to us.

25.3. Limitations on insurance valuations

25.3.1. 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.

25.3.2. 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.

25.3.3. Our service does not account for future fluctuations in the property market.

25.4. **Use of insurance valuation by third parties**

25.4.1. Our service is provided for our bona fide paying customers.

25.4.2. Our service may be communicated or otherwise provided to bona fide third party insurers only.

25.4.2.1. This includes insurance companies (including brokers) with a privacy policy which adequately protects that information from access by other third parties.

25.4.2.2. The customer indemnifies us against any loss or damage suffered by third parties caused by a failure to comply with clause 22.4.2.

26. Fire Reports

26.1. **Purpose**

26.1.1. The purpose of a fire report is to identify non-compliance and propose strategies for fire safety compliance.

26.1.1.1. SIE fire reports include: fire safety reports, evacuation practices, evacuation plans, emergency management plans and evacuation signs.

26.1.2. Fire reports only assess the fire safety compliance of common property areas.

26.2. **We require:** building plans for the subject property showing the common areas and private areas, as well as a completed order form, or a work order containing the information listed on our order form.

26.3. The action required by the customer to respond to the non-compliance identified at the property will be stated in the report.

26.3.1. Where reasonable action is not taken to comply with the relevant state legislation, the onus remains on the customer to ensure the safety of tenants and owners.

26.4. Compliance measures coincide with the relevant state legislation, Australian/New Zealand Standards and the National Construction Code.

27. Provision of Plans

27.1. The customer must provide us with relevant building or other plans when requested.

27.2. If clause 23.1 is not complied with, 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.

27.2.1. The customer must pay costs associated with us ordering plans, including an administration charge of \$33. These costs will be added to the cost of the services.

28. Compliance Subscription Package

28.1. **Purpose**

28.1.1. The compliance subscription package provides, for a minimum term and with the fee increasing annually, those safety reports, asbestos reports, fire safety services, pool safety services, structural engineering reports, sinking fund forecasts, insurance valuations and window safety devices that are required or requested by the customer at the subject property.

28.2. The minimum term is specified in Schedule 1 of the Quotation.

28.3. The fee shall escalate as specified in Schedule 1 of the Quotation.

28.4. Termination

28.4.1. Where the customer requests to terminate the agreement before the minimum term, and the customer has no cause for termination under any existing law or statute, the customer must:

28.4.1.1. For all services which have been prepared prior to the termination date, 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

28.4.1.2. The customer is not obliged to any refund for prepared services, whether or not they have been delivered to the customer.

28.4.2. Where the customer requests to terminate the agreement and the end of the minimum term, termination is effective:

28.4.2.1. If notification of termination is made prior to the end of the minimum term or at the end of the minimum term; or

28.4.2.2. If notification is received after the end of the minimum term, upon our receipt of notification of termination.

28.4.3. The customer is not obliged to any refund.