
Spanos ElectriCool Pty Ltd– Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Spanos ElectriCool Pty Ltd” means Spanos ElectriCool Pty Ltd ATF Spanos Trust T/A Spanos ElectriCool Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Spanos ElectriCool Pty Ltd ATF Spanos Trust T/A Spanos ElectriCool Pty Ltd.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Spanos ElectriCool Pty Ltd to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Spanos ElectriCool Pty Ltd to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.7 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between Spanos ElectriCool Pty Ltd and the Client in accordance with clause 6 below.
- 1.8 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

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 any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Works on credit shall not take effect until the Client has completed a credit application with Spanos ElectriCool Pty Ltd and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Works request exceeds the Clients credit limit and/or the account exceeds the payment terms, Spanos ElectriCool Pty Ltd reserves the right to refuse delivery.
- 2.6 In the event that Spanos ElectriCool Pty Ltd is required to provide the Works urgently, that may require Spanos ElectriCool Pty Ltd’s staff to work outside normal business hours (including but not limited to working through lunch breaks, weekends and/or Public Holidays) then Spanos ElectriCool Pty Ltd reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Spanos ElectriCool Pty Ltd and the Client.
- 2.7 If Spanos ElectriCool Pty Ltd has been requested by the Client to diagnose a fault that requires investigation, disassembly and/or testing, all costs involved will be charged to the Client irrespective of whether or not the repair goes ahead.
- 2.8 The Client acknowledges and accepts that the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Spanos ElectriCool Pty Ltd reserves the right to substitute comparable Materials (or components of the Materials) and vary the Price as per clause 6.2. In all such cases Spanos ElectriCool Pty Ltd will notify the Client in advance of any such substitution, and also reserves the right to place the Client’s order on hold until such time as Spanos ElectriCool Pty Ltd and the Client agree to such changes.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Spanos ElectriCool Pty Ltd shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Spanos ElectriCool Pty Ltd in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Spanos ElectriCool Pty Ltd in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Spanos ElectriCool Pty Ltd; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

- 4.1 The Client acknowledges that Spanos ElectriCool Pty Ltd shall (for the duration of the Works) liaise directly with one (1) authorised representative, and that once introduced as such to Spanos ElectriCool Pty Ltd, that person shall have the full authority of the Client to order any Works and/or to request any variation thereto on the Client’s behalf. The Client accepts that they will be solely liable to Spanos ElectriCool Pty Ltd for all additional costs incurred by Spanos ElectriCool Pty Ltd (including Spanos ElectriCool Pty Ltd’s profit margin) in providing any Works or variation/s requested thereto by the Client’s duly authorised representative.

5. Change in Control

- 5.1 The Client shall give Spanos ElectriCool Pty Ltd not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Spanos ElectriCool Pty Ltd as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At Spanos ElectriCool Pty Ltd's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Spanos ElectriCool Pty Ltd to the Client in respect of Works performed or Materials supplied; or
 - (b) the Price as at the date of delivery of the Works according to Spanos ElectriCool Pty Ltd's current price list; or
 - (c) Spanos ElectriCool Pty Ltd's quoted Price (subject to clause 6.2) which shall be binding upon Spanos ElectriCool Pty Ltd provided that the Client shall accept Spanos ElectriCool Pty Ltd's quotation in writing within thirty (30) days.
- 6.2 Spanos ElectriCool Pty Ltd reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather, limitations to accessing the site, obscured building defects, incorrect measurements provided by the Client, safety considerations (discovery of asbestos, etc.), prerequisite work by any third party not being completed, remedial work required due to existing workmanship being of poor quality or non-compliant to the building code, reinforced concrete in walls, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring in walls etc) which are only discovered on commencement of the Works;
 - (d) in the event of increases to Spanos ElectriCool Pty Ltd in the cost of labour or Materials which are beyond Spanos ElectriCool Pty Ltd's control.
- 6.3 Variations will be charged for on the basis of Spanos ElectriCool Pty Ltd's quotation, and will be detailed in writing, and shown as variations on Spanos ElectriCool Pty Ltd's invoice. The Client shall be required to respond to any variation submitted by Spanos ElectriCool Pty Ltd within ten (10) working days. Failure to do so will entitle Spanos ElectriCool Pty Ltd to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Spanos ElectriCool Pty Ltd's sole discretion a non-refundable deposit may be required.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Spanos ElectriCool Pty Ltd, which may be:
- (a) on completion of the Works; or
 - (b) by way of progress payments in accordance with Spanos ElectriCool Pty Ltd's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Spanos ElectriCool Pty Ltd.
- 6.6 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Spanos ElectriCool Pty Ltd.
- 6.7 Spanos ElectriCool Pty Ltd may in its discretion allocate any payment received from the Client towards any invoice that Spanos ElectriCool Pty Ltd determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Spanos ElectriCool Pty Ltd may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Spanos ElectriCool Pty Ltd, payment will be deemed to be allocated in such manner as preserves the maximum value of Spanos ElectriCool Pty Ltd's Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 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 Spanos ElectriCool Pty Ltd nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Spanos ElectriCool Pty Ltd an amount equal to any GST Spanos ElectriCool Pty Ltd must pay for any supply by Spanos ElectriCool Pty Ltd under this or any other contract for the sale of the Materials. 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.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is Spanos ElectriCool Pty Ltd's responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Spanos ElectriCool Pty Ltd claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Spanos ElectriCool Pty Ltd's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Spanos ElectriCool Pty Ltd that the site is ready.
- 7.3 At Spanos ElectriCool Pty Ltd's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 Spanos ElectriCool Pty Ltd may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by Spanos ElectriCool Pty Ltd for delivery of the Works is an estimate only and Spanos ElectriCool Pty Ltd will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every

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endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Spanos ElectriCool Pty Ltd is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Spanos ElectriCool Pty Ltd shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

8. Accuracy of Client's Plans and Measurements

- 8.1 Spanos ElectriCool Pty Ltd shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Spanos ElectriCool Pty Ltd accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 In the event the Client gives information relating to measurements and quantities of the Materials required to complete the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Spanos ElectriCool Pty Ltd places an order based on these measurements and quantities. Spanos ElectriCool Pty Ltd accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

9. Risk

- 9.1 If Spanos ElectriCool Pty Ltd retains ownership of the Materials under clause 14 then:
- (a) where Spanos ElectriCool Pty Ltd is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Materials at Spanos ElectriCool Pty Ltd's address; or
 - (ii) the Materials are delivered by Spanos ElectriCool Pty Ltd or Spanos ElectriCool Pty Ltd's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Spanos ElectriCool Pty Ltd is to both supply and install Materials then Spanos ElectriCool Pty Ltd shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 9.2 Notwithstanding the provisions of clause 9.1 if the Client specifically requests Spanos ElectriCool Pty Ltd to leave Materials outside Spanos ElectriCool Pty Ltd's premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 9.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation of the Materials and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Materials once installed. If, for any reason (including but not limited to, the structure not being watertight, the discovery of asbestos, defective or unsafe wiring, or dangerous access etc.) Spanos ElectriCool Pty Ltd reasonably forms the opinion that the Client's property is not safe for the installation of Materials to proceed then Spanos ElectriCool Pty Ltd shall be entitled to delay installation of the Materials (in accordance with clause 7.2) until Spanos ElectriCool Pty Ltd is satisfied that it is safe for the installation to proceed. Spanos ElectriCool Pty Ltd may in agreement with the Client bring the property up to a standard suitable for installation to proceed but all such Works undertaken and any additional Materials supplied shall be treated as a variation and be charged for in addition to the Price.
- 9.4 In the event asbestos or any other toxic substances are discovered at the property, it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Spanos ElectriCool Pty Ltd against any costs incurred by Spanos ElectriCool Pty Ltd as a consequence of such discovery. Under no circumstances will Spanos ElectriCool Pty Ltd handle removal of asbestos product.
- 9.5 Spanos ElectriCool Pty Ltd shall upon installation ensure that all Materials are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the Client specifically requires the Materials to be installed in any way which goes against Spanos ElectriCool Pty Ltd's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to Spanos ElectriCool Pty Ltd. Accordingly, Spanos ElectriCool Pty Ltd offers no warranty in regards to the aforementioned.
- 9.6 Spanos ElectriCool Pty Ltd accepts no responsibility for any damage or performance related problems with any Materials where they have not been used and/or maintained in accordance with Spanos ElectriCool Pty Ltd's and/or the manufacturers' recommendations.
- 9.7 The Client acknowledges that:
- (a) Spanos ElectriCool Pty Ltd is only responsible for components that are replaced by Spanos ElectriCool Pty Ltd and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure;
 - (b) where the Client has supplied goods for Spanos ElectriCool Pty Ltd to complete the Works, the Client acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those goods; and
 - (c) Spanos ElectriCool Pty Ltd shall not be liable for any loss or damage to the Works (or any part thereof) howsoever arising where sub-clauses (a) and (b) applies.
- 9.8 The Client acknowledges that all descriptive specifications, claimed efficiency/economy rates, illustrations, drawings, data dimensions, and weights stated in Spanos ElectriCool Pty Ltd's fact sheets, price lists or advertising material are indicative only and that they have not relied on such information.
- 9.9 Where Spanos ElectriCool Pty Ltd requires that Materials, tools etc. required for the Works be stored at the site, the Client shall supply Spanos ElectriCool Pty Ltd a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.
- 9.10 The Client warrants that no other tradesmen interfere with any Works and/or Materials supplied under this Contract. Spanos ElectriCool Pty Ltd shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.
- 9.11 Further to clause 9.10 above, the Client accepts that any damage to the Works/Materials caused by rodent, insect, reptile or any other animal will not be covered by any warranty.
- 9.12 Spanos ElectriCool Pty Ltd accepts no responsibility for:
- (a) any damage or defects in any Materials caused by movement and/or interference of the said Materials;

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- (b) painting, re-decorating, re-sealing, carpentry or any other Works required for the restoration or making good of any surface/area where any Works have been carried out.
- 9.13 The Client acknowledges that they shall:
- (a) not be entitled to withhold any payment due under this Contract because of any delay in the connection of, or the supply of electricity to the Materials by an electrical distributor or any other third party; and
 - (b) be responsible for:
 - (i) any building work, excavation work, core drilling or any other non-standard surface penetrations that need to be carried out to enable Spanos ElectriCool Pty Ltd to carry out the Works; and
 - (ii) any animals and/or children on the worksite; and
 - (iii) the removal of rubbish from or clean-up of the worksite.
 - (c) ensure that all Materials, plant or equipment which Spanos ElectriCool Pty Ltd is to supply (or are to connect any of its Materials to) are of the correct type, size, rating, standard, quality, colour and finish, conform with all relevant Australian standards and local statutory requirements, and are as specified in the specifications, drawings and plans upon which Spanos ElectriCool Pty Ltd based the quotation on and therefore, the Client agrees to indemnify Spanos ElectriCool Pty Ltd against any costs incurred by Spanos ElectriCool Pty Ltd in rectifying such errors if required; and
 - (d) provide and have erected scaffolding to enable the Works to be undertaken (where in Spanos ElectriCool Pty Ltd's opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed; and
 - (e) remove any furniture or personal items from the vicinity of the Works, and agrees that Spanos ElectriCool Pty Ltd shall not be liable for any damage caused to those items through the Clients failure to comply with this clause; and
 - (f) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required.

10. Air Conditioning Risk

- 10.1 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 4.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 10.2 The final location of the wall, window or floor unit must be determined on site by the Client.
- 10.3 Spanos ElectriCool Pty Ltd shall upon installation ensure that all installed Materials meet current industry standards applicable to noise levels, however Spanos ElectriCool Pty Ltd cannot guarantee that noise levels will remain constant post installation as the Materials may be impacted by many factors such as the weather, lack of maintenance, tampering etc. Accordingly, Spanos ElectriCool Pty Ltd offers no warranty in regards to noise levels post installation unless it is evident that there is inherent fault in the Materials or that the installation process was defective.
- 10.4 In the event that any of the equipment needs to be relocated due to complaints from neighbors' or local authorities, then the Client shall be responsible for any and all costs involved.
- 10.5 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 10.6 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify Spanos ElectriCool Pty Ltd immediately upon any proposed changes. The Client agrees to indemnify Spanos ElectriCool Pty Ltd against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 4.2.

11. Access

- 11.1 The Client shall ensure that Spanos ElectriCool Pty Ltd has clear and free access to the work site at all times to enable them to undertake the Works (including carrying out site inspections, gain signatures for required documents, and for the delivery and installation of the Materials). Spanos ElectriCool Pty Ltd 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 Spanos ElectriCool Pty Ltd.
- 11.2 The Client agrees to be present at the worksite when and as reasonably requested by Spanos ElectriCool Pty Ltd and its employees, contractors and/or agents.

12. Hidden Services

- 12.1 Prior to Spanos ElectriCool Pty Ltd commencing any work the Client must advise Spanos ElectriCool Pty Ltd of the precise location of all hidden services on the site and clearly mark the same (including but not limited to any mains/services in wall cavities). The 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.
- 12.2 Whilst Spanos ElectriCool Pty Ltd will take all care to avoid damage to any hidden services the Client agrees to indemnify Spanos ElectriCool Pty Ltd 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 12.1.

13. Compliance with Laws

- 13.1 The Client and Spanos ElectriCool Pty Ltd 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, including any work health and safety (WHS) laws relating to worksites and any other relevant safety standards or legislation.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.3 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with the Australian and New Zealand Wiring standards.

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- 13.4 If during the course of installation when the Works are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by Spanos ElectriCool Pty Ltd, then Spanos ElectriCool Pty Ltd shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Works including any Materials and labour shall be the responsibility of the Client and will be shown as a variation on the invoice.
- 13.5 Any live services or services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". Spanos ElectriCool Pty Ltd's live services procedures are designed to eliminate risk of injury to Spanos ElectriCool Pty Ltd's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Works for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.2.
- 14. Title**
- 14.1 Spanos ElectriCool Pty Ltd and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Spanos ElectriCool Pty Ltd all amounts owing to Spanos ElectriCool Pty Ltd; and
 - (b) the Client has met all of its other obligations to Spanos ElectriCool Pty Ltd.
- 14.2 Receipt by Spanos ElectriCool Pty Ltd 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.
- 14.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Spanos ElectriCool Pty Ltd on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Spanos ElectriCool Pty Ltd and must pay to Spanos ElectriCool Pty Ltd the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by Spanos ElectriCool Pty Ltd shall be sufficient evidence of Spanos ElectriCool Pty Ltd's rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Spanos ElectriCool Pty Ltd to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Spanos ElectriCool Pty Ltd and must pay or deliver the proceeds to Spanos ElectriCool Pty Ltd on demand;
 - (e) the Client should not convert or process the Materials 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 Spanos ElectriCool Pty Ltd and must sell, dispose of or return the resulting product to Spanos ElectriCool Pty Ltd as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises Spanos ElectriCool Pty Ltd to enter any premises where Spanos ElectriCool Pty Ltd believes the Materials are kept and recover possession of the Materials;
 - (g) Spanos ElectriCool Pty Ltd may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Spanos ElectriCool Pty Ltd;
 - (i) Spanos ElectriCool Pty Ltd may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.
- 15. Personal Property Securities Act 2009 ("PPSA")**
- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 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 Materials and/or collateral (account) – being a monetary obligation of the Client to Spanos ElectriCool Pty Ltd for Works – that have previously been supplied and that will be supplied in the future by Spanos ElectriCool Pty Ltd to the Client.
- 15.3 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 Spanos ElectriCool Pty Ltd 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 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Spanos ElectriCool Pty Ltd 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 Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Spanos ElectriCool Pty Ltd;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Spanos ElectriCool Pty Ltd;
 - (e) immediately advise Spanos ElectriCool Pty Ltd of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.4 Spanos ElectriCool Pty Ltd 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.
- 15.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

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- 15.7 Unless otherwise agreed to in writing by Spanos ElectriCool Pty Ltd, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client shall unconditionally ratify any actions taken by Spanos ElectriCool Pty Ltd under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of Spanos ElectriCool Pty Ltd agreeing to supply the Materials, 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).
- 16.2 The Client indemnifies Spanos ElectriCool Pty Ltd from and against all Spanos ElectriCool Pty Ltd's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Spanos ElectriCool Pty Ltd's rights under this clause.
- 16.3 The Client irrevocably appoints Spanos ElectriCool Pty Ltd and each director of Spanos ElectriCool Pty Ltd as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

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

- 17.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Spanos ElectriCool Pty Ltd 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 Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Spanos ElectriCool Pty Ltd to inspect the Materials or to review the Works provided.
- 17.2 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**).
- 17.3 Spanos ElectriCool Pty Ltd acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Spanos ElectriCool Pty Ltd makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Spanos ElectriCool Pty Ltd's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, Spanos ElectriCool Pty Ltd's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If Spanos ElectriCool Pty Ltd is required to replace any Materials under this clause or the CCA, but is unable to do so, Spanos ElectriCool Pty Ltd may refund any money the Client has paid for the Materials.
- 17.7 If Spanos ElectriCool Pty Ltd is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Spanos ElectriCool Pty Ltd may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 17.8 If the Client is not a consumer within the meaning of the CCA, Spanos ElectriCool Pty Ltd's liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Spanos ElectriCool Pty Ltd at Spanos ElectriCool Pty Ltd's sole discretion;
 - (b) limited to any warranty to which Spanos ElectriCool Pty Ltd is entitled, if Spanos ElectriCool Pty Ltd did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 17.9 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) Spanos ElectriCool Pty Ltd has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.
- 17.10 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, Spanos ElectriCool Pty Ltd 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 Materials;
 - (b) the Client using the Materials for any purpose other than that for which they were designed;
 - (c) the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) interference with the Works by the Client or any third party without Spanos ElectriCool Pty Ltd's prior approval;
 - (e) the Client failing to follow any instructions or guidelines provided by Spanos ElectriCool Pty Ltd;
 - (f) fair wear and tear, any accident, or act of God.
- 17.11 Spanos ElectriCool Pty Ltd may in its absolute discretion accept non-defective Materials for return in which case Spanos ElectriCool Pty Ltd may require the Client to pay handling fees of up to twenty five percent (25%) of the value of the returned Materials plus any freight costs.

18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Spanos ElectriCool Pty Ltd's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes Spanos ElectriCool Pty Ltd any money the Client shall indemnify Spanos ElectriCool Pty Ltd from and against all costs and disbursements incurred by Spanos ElectriCool Pty Ltd in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Spanos ElectriCool Pty Ltd's contract default fee, and bank dishonour fees).

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- 18.3 Further to any other rights or remedies Spanos ElectriCool Pty Ltd may have under this Contract, if a Client has made payment to Spanos ElectriCool Pty Ltd, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Spanos ElectriCool Pty Ltd under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 18.4 Without prejudice to Spanos ElectriCool Pty Ltd's other remedies at law Spanos ElectriCool Pty Ltd shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Spanos ElectriCool Pty Ltd shall, whether or not due for payment, become immediately payable if:
- any money payable to Spanos ElectriCool Pty Ltd becomes overdue, or in Spanos ElectriCool Pty Ltd's opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by Spanos ElectriCool Pty Ltd;
 - the Client becomes insolvent or bankrupt, 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Cancellation**
- 19.1 Without prejudice to any other remedies Spanos ElectriCool Pty Ltd may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Spanos ElectriCool Pty Ltd may suspend or terminate the supply of Works to the Client. Spanos ElectriCool Pty Ltd will not be liable to the Client for any loss or damage the Client suffers because Spanos ElectriCool Pty Ltd has exercised its rights under this clause.
- 19.2 Spanos ElectriCool Pty Ltd may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Spanos ElectriCool Pty Ltd shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Spanos ElectriCool Pty Ltd for Works already performed. Spanos ElectriCool Pty Ltd shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Spanos ElectriCool Pty Ltd as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 20. Privacy Policy**
- 20.1 All emails, documents, images or other recorded information held or used by Spanos ElectriCool Pty Ltd is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. Spanos ElectriCool Pty Ltd acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Spanos ElectriCool Pty Ltd acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by Spanos ElectriCool Pty Ltd that may result in serious harm to the Client, Spanos ElectriCool Pty Ltd will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to Spanos ElectriCool Pty Ltd in respect of Cookies where transactions for purchases/orders transpire directly from Spanos ElectriCool Pty Ltd's website. Spanos ElectriCool Pty Ltd agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- IP address, browser, email client type and other similar details;
 - tracking website usage and traffic; and
 - reports are available to Spanos ElectriCool Pty Ltd when Spanos ElectriCool Pty Ltd sends an email to the Client, so Spanos ElectriCool Pty Ltd may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Spanos ElectriCool Pty Ltd's website.
- 20.3 The Client agrees for Spanos ElectriCool Pty Ltd to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Spanos ElectriCool Pty Ltd.
- 20.4 The Client agrees that Spanos ElectriCool Pty Ltd may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Client; and/or
 - to notify other credit providers of a default by the Client; and/or
 - 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
 - to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.5 The Client consents to Spanos ElectriCool Pty Ltd being given a consumer credit report to collect overdue payment on commercial credit.
- 20.6 The Client agrees that personal credit information provided may be used and retained by Spanos ElectriCool Pty Ltd for the following purposes (and for other agreed purposes or required by):
- the provision of Works; and/or
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

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- (d) enabling the collection of amounts outstanding in relation to the Works.
- 20.7 Spanos ElectriCool Pty Ltd may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that Spanos ElectriCool Pty Ltd is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Spanos ElectriCool Pty Ltd has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of Spanos ElectriCool Pty Ltd, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.9 The Client shall have the right to request (by e-mail) from Spanos ElectriCool Pty Ltd:
- (a) a copy of the Personal Information about the Client retained by Spanos ElectriCool Pty Ltd and the right to request that Spanos ElectriCool Pty Ltd correct any incorrect Personal Information; and
 - (b) that Spanos ElectriCool Pty Ltd does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.10 Spanos ElectriCool Pty Ltd will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Client can make a privacy complaint by contacting Spanos ElectriCool Pty Ltd via e-mail. Spanos ElectriCool Pty Ltd will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

21. Unpaid Seller's Rights

- 21.1 Where the Client has left any item with Spanos ElectriCool Pty Ltd for repair, modification, exchange or for Spanos ElectriCool Pty Ltd to perform any other service in relation to the item and Spanos ElectriCool Pty Ltd has not received or been tendered the whole of any monies owing to it by the Client, Spanos ElectriCool Pty Ltd shall have, until all monies owing to Spanos ElectriCool Pty Ltd 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.
- 21.2 The lien of Spanos ElectriCool Pty Ltd shall continue despite the commencement of proceedings, or judgment for any monies owing to Spanos ElectriCool Pty Ltd having been obtained against the Client.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

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

24. Building Industry Fairness (Security of Payment) Act 2017

- 24.1 At Spanos ElectriCool Pty Ltd's sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.

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24.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.

25. General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which Spanos ElectriCool Pty Ltd has its principal place of business, and are subject to the jurisdiction of the Brisbane courts in that state.
- 25.3 Subject to clause 17, Spanos ElectriCool Pty Ltd 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 Spanos ElectriCool Pty Ltd of these terms and conditions (alternatively Spanos ElectriCool Pty Ltd's liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 25.4 Spanos ElectriCool Pty Ltd may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of Spanos ElectriCool Pty Ltd.
- 25.6 Spanos ElectriCool Pty Ltd may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Spanos ElectriCool Pty Ltd's sub-contractors without the authority of Spanos ElectriCool Pty Ltd.
- 25.7 The Client agrees that Spanos ElectriCool Pty Ltd may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Spanos ElectriCool Pty Ltd to provide Works to the Client.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.