

## QA-L9 Terms & Conditions of Trade

### 1. Definitions

- 1.1 "Novafast" means Novafast International Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Novafast International Pty Ltd.
- 1.2 "Client" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Novafast to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by Novafast to the Client (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Novafast to the Client.
- 1.5 "Price" means the Price payable for the Goods and/or Equipment hire as agreed between Novafast and the Client in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods/Equipment.
- 2.2 These terms and conditions may only be amended with Novafast's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and Novafast.
- 2.3 The Client acknowledges and agrees that it is their responsibility to obtain any necessary approvals or permits from local council or government for the Services. Novafast shall not be held liable for the Client's failure to comply with this clause.

### 3. Change in Control

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

### 4. Price and Payment

- 4.1 At Novafast's sole discretion the Price shall be either:
  - (a) as indicated on any invoice provided by Novafast to the Client; or
  - (b) the Price as at the date of delivery of the Goods/Equipment according to Novafast's current price list; or
  - (c) Novafast's quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 4.2 Novafast reserves the right to change the Price if a variation to Novafast's quotation is requested. Any variation from the plan of scheduled Services or specifications of the Goods (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to Novafast in the cost of taxes, levies, materials and labour or where additional Services are required due to the discovery of hidden or unidentifiable difficulties including, but not limited to, poor weather conditions, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, obscured building defects, safety considerations, availability of machinery, change in design and/or specifications, prerequisite work by any third party not being completed or hidden pipes and wiring in walls etc. which are only discovered on commencement of the Services) will be charged for on the basis of Novafast's quotation and will be shown as variations on the invoice.
- 4.3 At Novafast's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Client on the date/s determined by Novafast, which may be:
  - (a) on delivery of the Goods/Equipment;
  - (b) before delivery of the Goods/Equipment;
  - (c) by way of instalments/progress payments in accordance with Novafast's payment schedule;
  - (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 fourteen (14) days following the date of any invoice given to the Client by Novafast.
- 4.5 Payment may be made by cash, bank cheque, electronic/on-line banking or by any other method as agreed to between the Client and Novafast.
- 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Novafast an amount equal to any GST Novafast must pay for any supply by Novafast under this or any other agreement for the sale of the Goods/hire of the Equipment. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 5. Delivery of Goods/Equipment

- 5.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
  - (a) the Client or the Client's nominated carrier takes possession of the Goods/Equipment at Novafast's address; or
  - (b) Novafast (or Novafast's nominated carrier) delivers the Goods/Equipment to the Client's nominated address even if the Client is not present at the address.
- 5.2 At Novafast's sole discretion the cost of delivery is either included in the Price or is in addition to the Price.
- 5.3 The Client must take delivery by receipt or collection of the Goods/Equipment whenever either is tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Equipment as arranged then Novafast shall be entitled to charge a reasonable fee for redelivery of the Goods/Equipment and/or the storage of the Goods.
- 5.4 Novafast may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by Novafast to the Client is an estimate only. The Client must still accept delivery of the Goods/Equipment even if late and Novafast will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

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### 6. Risk

- 6.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, Novafast is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Novafast is sufficient evidence of Novafast's rights to receive the insurance proceeds without the need for any person dealing with Novafast to make further enquiries.
- 6.3 If the Client requests Novafast to leave Goods outside Novafast's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 6.4 Where Novafast is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Novafast shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 6.5 Novafast reserves the right to refuse to enter the site to undertake the Services in the event that Novafast believes the site to be unsafe. In this event, the Client agrees that it is their responsibility to ensure the site is made safe before Novafast will enter the site, Novafast shall not be liable for any delays caused, loss, damages, or costs however resulting from an unsafe site.
- 6.6 Novafast shall not be held responsible for any damage to the Goods or delays to delivery caused by outside agents. Where the Client requests Novafast to repair such damage then Novafast reserves the right to charge the Client for any costs incurred in rectifying such damage.

### 7. Client's Responsibilities

- 7.1 It is the Client's responsibility to;
  - (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
  - (b) remove all fragile items, Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by Novafast in this regard; and
  - (c) or. Novafast will not accept any responsibility for cleaning or repair costs
  - (d) supply power to within eight (8) metres of the project; and
  - (e) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between Novafast and the Client, any additional costs will be invoiced to the Client as an extra.
- 7.2 The Client acknowledges that in the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Novafast against any costs incurred by Novafast as a consequence of such discovery. Under no circumstances will Novafast handle removal of asbestos product.
- 7.3 The Client acknowledges that it is their responsibility to ensure that all Goods, plant or equipment which Novafast is required to install (or to connect any of its Goods 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 Novafast based the quotation on and therefore, the Client agrees to indemnify Novafast against any costs incurred by Novafast in rectifying such errors if required.
- 7.4 Novafast is not responsible for the removal of rubbish from or clean-up of the building/constructions site/s. This is the responsibility of the Client or the Client's agent.

### 8. Specifications

- 8.1 The Client acknowledges that:
  - (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Novafast's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Novafast;
  - (b) while Novafast may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Novafast has given these in good faith and based on prescribed estimates which may be inaccurate due to factors out of Novafast's control (including, but not limited to, the location (geographical or otherwise) of the Goods);
  - (c) some buildings may not have the optimum orientation for the installation of the Goods or components, and therefore understands and accepts that the Goods performance may be compromised in such situations. Notwithstanding the former, Novafast will use its best endeavours to install and position the Goods to maximise performance.
- 8.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 8.3 Novafast reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases Novafast will notify the Client in advance of any such substitution.

### 9. Underground Locations

- 9.1 Prior to Novafast commencing any work the Client must advise Novafast of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 9.2 Whilst Novafast will take all care to avoid damage to any underground services the Client agrees to indemnify Novafast 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 9.1.

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### 10. Title To Goods

10.1 Novafast and the Client agree that ownership of the Goods shall not pass until:

- (a) the Client has paid Novafast all amounts owing to Novafast; and
- (b) the Client has met all of its other obligations to Novafast.

10.2 Receipt by Novafast 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.

10.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to Novafast on request.
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for Novafast and must pay to Novafast the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Novafast and must pay or deliver the proceeds to Novafast on demand.
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Novafast and must sell, dispose of or return the resulting product to Novafast as it so directs.
- (e) the Client irrevocably authorises Novafast to enter any premises where Novafast believes the Goods are kept and recover possession of the Goods.
- (f) Novafast may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Novafast.
- (h) Novafast may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

### 11. Personal Property Securities Act 2009 ("PPSA")

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

11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods/Equipment that has previously been supplied and that will be supplied in the future by Novafast to the Client.

11.3 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 Novafast 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 11.3(a)(i) or 11.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Novafast for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods/Equipment charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Novafast;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Novafast;
- (e) immediately advise Novafast of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

11.4 Novafast 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.

11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

11.7 Unless otherwise agreed to in writing by Novafast, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

11.8 The Client must unconditionally ratify any actions taken by Novafast under clauses 11.3 to 11.5.

11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 12. Security and Charge

12.1 In consideration of Novafast agreeing to supply the Goods/Equipment, 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).

12.2 The Client indemnifies Novafast from and against all Novafast's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Novafast's rights under this clause.

12.3 The Client irrevocably appoints Novafast and each director of Novafast as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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

- 13.1 The Client must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify Novafast in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Novafast to inspect the Goods/Equipment.
- 13.2 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).
- 13.3 Novafast acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Novafast makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Novafast's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, Novafast's liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If Novafast is required to replace the Goods under this clause or the CCA, but is unable to do so, Novafast may refund any money the Client has paid for the Goods.
- 13.7 If the Client is not a consumer within the meaning of the CCA, Novafast's liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Client by Novafast at Novafast's sole discretion;
  - limited to any warranty to which Novafast is entitled, if Novafast did not manufacture the Goods;
  - otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- the Client has complied with the provisions of clause 13.1; and
  - Novafast has agreed that the Goods are defective; and
  - the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
  - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, Novafast shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store any Goods/Equipment;
  - the Client using the Goods/Equipment for any purpose other than that for which they were designed;
  - the Client continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - the Client failing to follow any instructions or guidelines provided by Novafast;
  - fair wear and tear, any accident, or act of God.
- 13.10 Novafast may in its absolute discretion accept non-defective Goods for return in which case Novafast may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 13.11 Notwithstanding anything contained in this clause if Novafast is required by a law to accept a return then Novafast will only accept a return on the conditions imposed by that law.

### 14. Intellectual Property

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

### 15. Default and Consequences of Default

- 15.1 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 Novafast's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes Novafast any money the Client shall indemnify Novafast from and against all costs and disbursements incurred by Novafast in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Novafast's contract default fee, and bank dishonour fees).
- 15.3 Without prejudice to any other remedies Novafast may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Novafast may suspend or terminate the supply of Goods/Equipment to the Client. Novafast will not be liable to the Client for any loss or damage the Client suffers because Novafast has exercised its rights under this clause.
- 15.4 Without prejudice to Novafast's other remedies at law Novafast shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Novafast shall, whether or not due for payment, become immediately payable if:
- any money payable to Novafast becomes overdue, or in Novafast's opinion the Client will be unable to make a payment when it falls due;
  - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

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### 16. Cancellation

- 16.1 Novafast may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Client. On giving such notice Novafast shall repay to the Client any money paid by the Client for the Goods/Equipment. Novafast shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 In the event that the Client cancels delivery of the Goods/Equipment the Client shall be liable for any and all loss incurred (whether direct or indirect) by Novafast as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.3 Cancellation of orders for Goods/Equipment 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.

### 17. Dispute Resolution

- 17.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### 18. Compliance with Laws

- 18.1 The Client and Novafast shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 18.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 18.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

### 19. Privacy Act 1988

- 19.1 The Client agrees for Novafast to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by Novafast.
- 19.2 The Client agrees that Novafast 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 years.
- 19.3 The Client consents to Novafast being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Client agrees that personal credit information provided may be used and retained by Novafast for the following purposes (and for other agreed purposes or required by):
- the provision of Goods/Equipment; and/or
  - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods/Equipment; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - enabling the collection of amounts outstanding in relation to the Goods/Equipment.
- 19.5 Novafast may give information about the Client to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Client including credit history.
- 19.6 The information given to the CRB may include:
- personal information as outlined in 19.1 above;
  - name of the credit provider and that Novafast is a current credit provider to the Client;
  - whether the credit provider is a licensee;
  - type of consumer credit;
  - 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);
  - 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 Novafast has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - information that, in the opinion of Novafast, the Client has committed a serious credit infringement;
  - advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Client shall have the right to request (by e-mail) from Novafast:
- a copy of the information about the Client retained by Novafast and the right to request that Novafast correct any incorrect information; and
  - that Novafast does not disclose any personal information about the Client for the purpose of direct marketing.
- 19.8 Novafast 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Client can make a privacy complaint by contacting Novafast via e-mail. Novafast 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](http://www.oaic.gov.au).

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### 20. Unpaid Seller's Rights

- 20.1 Where the Client has left any item with Novafast for repair, modification, exchange or for Novafast to perform any other service in relation to the item and Novafast has not received or been tendered the whole of any moneys owing to it by the Client, Novafast shall have, until all moneys owing to Novafast are paid:
- a lien on the item; and
  - 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.
- 20.2 The lien of Novafast shall continue despite the commencement of proceedings, or judgment for any moneys owing to Novafast having been obtained against the Client.

### 21. Equipment Hire

- 21.1 Equipment shall at all times remain the property of Novafast and is returnable on demand by Novafast. In the event that Equipment is not returned to Novafast in the condition in which it was delivered Novafast retains the right to charge the Client the full cost of repairing the Equipment. In the event that Equipment is not returned at all Novafast shall have right to charge the Client the full cost of replacing the Equipment.
- 21.2 The Client shall;
- keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.
  - not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.
  - keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Novafast to the Client.
- 21.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Novafast's interest in the Equipment and agrees to indemnify Novafast against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

### 22. Building and Construction Industry Security of Payment

- 22.1 At Novafast's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 22 each as applicable, except to the extent permitted by the Act where applicable.

### 23. General

- 23.1 The failure by Novafast to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Novafast'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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of South Australia in which Novafast has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 23.3 Subject to clause 13 Novafast 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 Novafast of these terms and conditions (alternatively Novafast's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 23.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Novafast nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.5 Novafast may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 23.6 The Client agrees that Novafast may amend these terms and conditions at any time. If Novafast makes a change to these terms and conditions, then that change will take effect from the date on which Novafast notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for Novafast to provide Goods/Equipment to the Client.
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.8 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.