

## 1. Definitions and Interpretation

In this Agreement, the words and expressions set out in this clause have the following meanings, unless the context admits otherwise:

**Abandoned** has the meaning under clause 35.

**Acceptable** means the Goods or Services are substantially in accordance with the requirements of the Agreement except for minor Defects which do not adversely affect the normal use of the Goods or the Services.

**Acceptance** means notification by the Client that the Goods or Services are Acceptable under by providing a purchase order or written Agreement signed by both parties

**Agreed Terms** means the "Agreed Terms" section of this Agreement.

**Agreement** means this agreement for the supply of Goods or Services (if any) and includes the Agreement Details, the Project Proposal, and the Agreed Terms.

**Agreement Details** means the "Agreement Details" section of this Agreement.

**Agreement Sum** means the amount stated on the accompanying Schiavello quote to be paid by the Client to Schiavello for the performance of this Agreement.

**Approval** means any approval, licence, consent or permit issued or required to be issued or amended by any Authority.

**Authority** means any government or governmental, semi-government, local government, statutory, public, ministerial, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**Background Intellectual Property** means any Intellectual Property Rights in any proprietary works (including methodologies) owned by Schiavello or a third party, pre-existing or otherwise, that have not been created specifically for the Client.

**Business Day** means any day on which licensed banks are open for business in Melbourne, Victoria but does not include a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December.

**Cancellation** means the order has been cancelled by the Client.

**Client** means the purchaser of the Goods or Services and is the entity stated in our quotation of the Agreement Details.

**Commencement Date** means the date on which The deposit is paid

**Confidential Information** has the meaning at defined at clause 12 and includes any information, drawings,

documents or other materials not publicly available on [www.schiavello.com](http://www.schiavello.com) or unpublished Schiavello brochures

**Consequential Loss** means any loss or damage suffered by the Client or for any claim against the Client howsoever arising for economic or indirect loss of any kind, including but not limited to, future profits, production opportunity, access to markets, business reputation or credit rating.

**Delay** means any situation where a milestone is not met by either party during the performance of the Agreement or via formal request by either party to delay or hold delivery of the Goods or Services

**Delivery Date** means the date for delivery of the Goods described in the Agreement Details.

**Defect** means any defect, fault or omission in the Goods or Services which is not in accordance with the requirements of the Agreement.

**Defects Liability Period** means the period for rectification of Defects set out in the Agreement Details commencing from the date on which the relevant Goods are Delivered (in the case of Goods) or where Services are provided (in the case of Services).

**Dispute** means a dispute arising out of or relating to this Agreement, including a dispute about the breach, termination, validity or subject matter of this Agreement, or a claim in equity or tort relating to the performance or non-performance of this Agreement.

**Duties/Tariffs/Taxes** means any levy applied by a government for the importation of goods.

**Force Majeure Event** means any of the following events, provided that such event was not caused by the affected party and is outside the reasonable control of the affected party:

- (a) a natural disaster, earthquake, landslide, meteor, fire, explosion, lightning, cyclone, act of God, aircraft or articles dropped from aircraft;
- (b) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority;
- (c) terrorism;
- (d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; or
- (e) confiscation, nationalisation, requisition, expropriation or embargo by or under the order of any government or public authority; or
- (f) a disease, epidemic, pandemic, quarantine, biological contamination, or entry or exit restriction:
  - a. causing a shortage in the availability of Schiavello's personnel, resources or supplies; or
  - b. which prevents Schiavello from performing any of its obligations under the Agreement.

**Goods** means the goods described in the Project Proposal to be Collected by the Client or Delivered by Schiavello pursuant to this Agreement.

**Inco Terms** means the International Commercial Terms 2020 being a set of standardized trade terms defined by the International Chamber of Commerce (ICC) that are commonly used in international transactions to allocate the costs, risks, and responsibilities between the buyer and the seller.

**Intellectual Property Rights** means any and all intellectual property rights, whether existing now or in the future, anywhere in the world, and the subject matter of such rights, including the following:

- (a) patents, copyrights, rights in circuit layouts (or similar rights), registered or unregistered designs, registered and unregistered trademarks, trade secrets, software, documentation, tools, techniques, concepts, methodologies, domain names, internet addresses, and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a),

whether or not such rights are registered or capable of being registered and whether existing under law, common law or in equity.

**Item** means an item in the Agreement Details.

**Party** or **Parties** means Schiavello and the Client who are the parties to this Agreement.

**Personnel** means any officer, director, employee, staff, agent, partner, subcontractor or contractor of a Party.

**Project Proposal** means the Schiavello Quote containing the project proposal submitted by Schiavello to the Client.

**Schiavello** means the supplier of the Goods or Services

**Security** means a an internationally acknowledged formal instrument, as approved by Schiavello, from an approved financial institution

**Services** means the services described in the Project Proposal which are to be provided by Schiavello pursuant to this Agreement (if any), including any Works expressly required to be carried out or performed.

**Site** means the land upon which the Goods or Services are to be Delivered or provided under this Agreement.

**Tax** means GST, VAT or sales tax levied by the relevant government authority of the country which the Goods or Services are being delivered.

**Works** means any installation or other works described in the Project Proposal to be carried out or performed by Schiavello at the Site pursuant to this Agreement (if any).

1.1. In this Agreement unless the context admits otherwise:

1.1.1 The singular includes the plural and vice versa.

1.1.2 A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.

1.1.3 A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement.

1.1.4 A reference to an Act or regulation includes any Acts or regulations amending, consolidating or replacing the Act or regulation, as applicable.

1.1.5 The Background clauses to this Agreement enumerated in the "Background" section are and will be deemed to form part of this Agreement.

1.1.6 Any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

1.1.7 Use of the word 'including' and similar expressions are not, nor are they to be interpreted as, words of limitation.

1.1.8 The language in all parts of this Agreement shall be in all cases construed in accordance with its fair and common meaning and not strictly for or against either of the parties.

1.1.9 Any reference to a currency, means the currency referred to in our offer.

1.1.10 A reference to a thing includes a part of that thing.

1.2. This Agreement constitutes the entire agreement and understanding between the parties as to the subject matter of this Agreement and any prior arrangements, agreements, representations or undertakings are superseded and hereby negated.

1.3. If any part of this Agreement is prohibited, void, voidable, illegal, or unenforceable, then that part is severed from this Agreement but without affecting the continued operation of the remainder of the Agreement.

1.4. If there is a conflict or ambiguity between documents included in this Agreement, then those documents will be given the following order of priority:

1.4.1 The Agreed Terms;

1.4.2 the Agreement Details;

1.4.3 the Project Proposal.

1.5. This Agreement is governed by the laws of the State of Victoria, Australia. Each Party submits to the jurisdiction of the courts and tribunals exercising jurisdiction of that State of Victoria, Australia.

1.6. If there is a Schedule entitled "Special Conditions" attached to this Agreement which identifies any additions, deletions or amendments to be made to this Agreement, then this Agreement shall be read and construed as though those additions, deletions or amendments are incorporation into these Agreed Terms.

**2. Goods and Services**

- 2.1. Schiavello shall supply and deliver the Goods in accordance with this Agreement.
- 2.2. Schiavello shall provide the Services (if any) to the Client in accordance with this Agreement.
- 2.3. The Client must accept the Goods or Services and pay Schiavello the Agreement Sum adjusted by any additions or deductions made pursuant to this Agreement.

**3. Exclusions**

- 3.1. Refer to Project Proposal

**4. Delivery or Collection of the Goods**

- 4.1. Delivery or Collection of the Goods shall be made at the time, place and in the manner specified in the Project Proposal.
- 4.2. Goods shall be packed with the minimum of packaging material so as to ensure its safe Delivery or Collection.
- 4.3. Every Delivery or Collection of the Goods will be accompanied by a delivery docket, stating the quantity dispatched, description of the Goods and any consignment details.
- 4.4. Whenever possible, unless otherwise agreed between the Parties, Schiavello will Deliver the full quantity of the Goods in a single delivery.
- 4.5. The Goods will be delivered under the Inco Terms defined on our offer
- 4.6. Unless otherwise agreed between the Parties, the Goods will be unloaded at the Site by the Client.

**5. Risk in and ownership of the Goods**

- 5.1. Risk in the Goods shall pass from Schiavello to the Client on Collection or Delivery of the Goods.
- 5.2. Ownership of, and unencumbered title in, the Goods shall pass to the Client upon full payment of the Agreement Sum and upon Collection or Delivery of the Goods to the Site.

**6. Payment and Invoicing**

- 6.1. The Client must pay the Agreement Sum for the Goods and Services to Schiavello.
- 6.2. Schiavello will render to the Client a valid commercial invoice, for all Goods and Services in accordance with this Agreement.
- 6.3. The Agreement Sum for the Goods or Services:
  - 6.3.1 excludes Sales taxes, GST or VAT (unless it is expressed to include GST or VAT in the Project Proposal).
  - 6.3.2 includes all duties and other imposts for which Schiavello is liable or relevant to the Inco Term on our offer

- 6.3.3 includes all amounts payable for the use or licence of intellectual property rights.

- 6.4. Unless stated otherwise, invoicing and payment , Schiavello shall issue:

- 6.4.1 An invoice requiring a deposit of 50% of the Agreement Sum upon the Parties acceptance of the Project Proposal; and

- 6.4.2 A further invoice requiring the balance of the Agreement Sum, issued and paid prior to Collection or Delivery of the Goods or providing the Services.

- 6.5. The Client must pay to Schiavello the amount of each invoice within the time frame defined on our offer

- 6.6. For the avoidance of any doubt, payment of the full Agreement Sum must be made prior to any Collection or Delivery of any Goods unless otherwise agreed in writing by Schiavello.

- 6.7. Interest shall be due and payable after the date of default in payment at the interest rate fixed at 10% per annum, compounded daily.

**7. Client's Obligations**

- 7.1. The Client must provide reasonable access to the Site as necessary to allow Schiavello to Deliver the Goods or provide the Services.

- 7.2. The Client will upon reasonable request provide to Schiavello information and assistance as may be reasonably required for to Deliver the Goods or provide the Services.

**8. Notices**

- 8.1. A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be sent to at the address set out in this Agreement:

- 8.1.1 by delivering it personally to that Party;
- 8.1.2 by sending it by prepaid post addressed to that Party; or
- 8.1.3 by sending it by electronic transmission.

- 8.2. A notice or other communication is deemed to be given and received:

- 8.2.1 if delivered, on actual receipt;
- 8.2.2 if posted, on the expiration of 3 Business Days after the date of posting; or
- 8.2.3 if sent by electronic transmission, on confirmation of correct electronic transmission.

**9. Discrepancies**

- 9.1. If either Party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of

performing the Agreement, that Party shall give the other Party written notice of the discrepancy.

- 9.2. Schiavello will then reasonably direct the Client as to the interpretation and construction to be followed.
- 9.3. If compliance with an inconsistency, ambiguity or discrepancy causes Schiavello to incur more or less cost than otherwise would have been incurred had the inconsistency, ambiguity or discrepancy not been found, the difference shall be reasonably assessed by Schiavello and added to or deducted from the Agreement Sum.

**10. Approval of Authorities**

- 10.1. The Client is and remains responsible for obtaining all Approvals from any relevant Authority and for payment of all fees in relation thereto.

**11. Security**

- 11.1. Security shall be provided by the Client to Schiavello in accordance with our offer
- 11.2. Security shall, without notice, be subject to recourse by a Schiavello who remains unpaid after the time for payment would be due.
- 11.3. Schiavello's entitlement to security shall cease upon full payment of the Agreement Sum.

**12. Confidential Information**

- 12.1. The Client must:
  - 12.1.1 keep all confidential information confidential and must not use that confidential information except as necessary for the purposes of this Agreement;
  - 12.1.2 keep effective control of all confidential information received under or in connection with this Agreement;
  - 12.1.3 take all reasonable precautions and maintain such reasonable security measures that are necessary to maintain the confidentiality of the confidential information;
  - 12.1.4 promptly inform Schiavello of any suspected or actual unauthorised use or disclosure of the confidential information; and
  - 12.1.5 promptly do anything reasonably required by Schiavello to prevent or restrain a breach or suspected breach of this Agreement or any infringement or suspected infringement by any person of the other Party's rights under this Agreement.
- 12.2. The Client must promptly return all confidential information (whether hard copy, electronic or other form) to Schiavello promptly upon request by Schiavello or termination or expiry of this Agreement.
- 12.3. The Client must inform Schiavello if the geographical location of any server(s) or other data storage devices on which the Client intends to store confidential information is

other than Australia or the United States of America and must obtain Schiavello's prior written consent for the confidential information to be stored in an overseas geographical location.

**13. Intellectual Property Rights**

- 13.1. The Client warrants that, unless otherwise provided in the Agreement, design, materials, documents and methods of working, each specified in the Agreement or provided or directed by Schiavello, shall not infringe any Intellectual Property Right.
- 13.2. Schiavello warrants that, unless otherwise provided in the Agreement, any other design, materials, documents and methods of working, each provided by Schiavello, shall not infringe any Intellectual Property Right.
- 13.3. The Client indemnifies and will keep indemnified Schiavello from and against any and all claims, liabilities, losses, expenses (including standard legal fees), fines, penalties, taxes or damages asserted against Schiavello by a third party that the Intellectual Property Rights and under this Agreement infringes a third party's intellectual property rights.
- 13.4. Except as otherwise provided in the Agreement, ownership of the Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Goods, any documentation provided by Schiavello, and in any material created by or on behalf Schiavello in the course of providing any Services, is vested and shall vest in Schiavello.
- 13.5. All Schiavello designs remain exclusively the property of Schiavello, and no granting of rights, implied or otherwise will be given to the Client, and any breach or infringement of design rights will give rise for Schiavello to exercise its legal rights to recover all costs and expenses (including legal costs) on a full indemnity basis.

**14. Assignment and Novation**

- 14.1. The Client shall not, without Schiavello's prior written approval (including terms) assign or novate this Agreement or any payment of any other right, benefit or interest under the Agreement.
- 14.2. Schiavello may at any time assign or novate any of its rights and obligations under this Agreement without the consent of the Client.

**15. Indemnities**

- 15.1. The Client shall indemnify Schiavello against:
  - 15.1.1 loss of or damage to Schiavello's property including Goods; and
  - 15.1.2 any claims in respect of personal injury or death or loss of, or damage to, any property, directly arising out of Client's (including its agents, employees, contractors) acts or omissions under the Agreement.

- 15.2. The indemnity shall be reduced proportionately to the extent that the negligent act or omission of the Schiavello may have contributed to the loss or damage.
- 15.3. This clause does not apply to the extent that Schiavello's liability is limited by any other provision of this Agreement. Insofar as this subclause applies to property, it applies to property other than the Goods.
- 15.4. Notwithstanding any other provision in this Agreement, Schiavello shall not be liable to the Client, nor shall it be required to indemnify the Client, for any loss or damage suffered by the Client or for any claim against the Client howsoever arising for including Consequential Loss of any kind. This subclause survives the expiration or termination of this Agreement.

**16. Insurance of the Goods**

- 16.1. The Parties shall insure the Goods for their replacement value against loss or damage, including loss or damage in transit to the Project Site and for unloading.
- 16.2. The required policies under this clause shall:
  - 16.2.1 be effected before commencing supply or delivery of the Goods;
  - 16.2.2 be maintained until risk in the Goods passes to the Client;
  - 16.2.3 cover the Parties' respective rights, interests and liabilities.

**17. Public and Product Liability Insurance**

- 17.1. Schiavello shall effect and maintain public liability insurance for the duration of the Agreement.

**18. Insurance Currency**

- 18.1. The Parties will provide certificates of currency of any insurances effected and maintained whenever requested in writing by the other Party.
- 18.2. Insurance shall not limit liabilities or obligations under other provisions of the Agreement.

**19. Extension of Time**

- 19.1. If Schiavello becomes aware of any event beyond its reasonable control, including any act, default or omission of the Client or its consultants, agents or other contractors (not being employed by Schiavello), which will probably cause delay to the Delivery of Goods or supply of Services, it shall promptly give the Client a written notice of that cause and estimated delay.
- 19.2. Schiavello will be entitled to a reasonable extension of time for Delivery Goods or supply of Services and will be treated as a deemed extension of time.

**20. Quality**

- 20.1. Schiavello will deliver the Goods shall be free from Defects (except minor defects) in materials and workmanship and be of merchantable quality.

- 20.2. Within 5 Business Days of Collection or Delivery, the Client shall give a written notice to Schiavello that the Goods are Acceptable or that they are rejected. If the Client fails to notify Schiavello within the notice period, Acceptance shall be deemed to have been notified.

- 20.3. If the Client gives notice of rejection of the Goods, the notice shall state the reasons for rejection.

- 20.4. If Goods are rejected by the Client, Schiavello may inspect or test the Goods and determine to:
  - 20.4.1 replace or repair, without cost to the Client, the rejected Goods;
  - 20.4.2 remove the rejected Goods and refund payment of the rejected Goods; or
  - 20.4.3 confirm that the Goods are in accordance with the Agreement and not take any further action.

- 20.5. Reasonable costs and expenses may be invoiced by Schiavello to the Client where after inspection or testing Schiavello confirm that the Goods are in accordance with the Agreement.

- 20.5. Reasonable costs and expenses may be invoiced by Schiavello to the Client where after inspection or testing Schiavello confirm that the Goods are in accordance with the Agreement.

**21. Defects**

- 21.1. If the Client gives reasonable notice of any Defect discovered in the Goods within 60 days of delivery, Schiavello will use its best and reasonable endeavours to correct or rectify the Defect.
- 21.2. Reasonable costs and expenses may be invoiced by Schiavello where after inspection or testing no Defect is discovered or determined by Schiavello.

**22. Variations**

- 22.1. Schiavello will not vary the Agreement, Goods or design except as otherwise agreed in writing between the Parties.

**23. Subcontracting**

- 23.1. Schiavello may, without requiring the Client's consent, subcontract the whole or any part of the work required to Deliver the Goods or provide the Services, which may include the manufacture or provision of materials or supplies.

**24. No Waiver**

- 24.1. Any time or other indulgence granted by Schiavello to the Client or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Schiavello against the Client will not in any way amount to a waiver of any of the rights or remedies of Schiavello in relation to the terms of this Agreement.

**25. Severability**

- 25.1. If a court, arbitrator, tribunal or other competent Authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

**26. Limitation of liability**

- 26.1. To the extent permitted by law, the total liability of Schiavello arising in connection with the subject matter of this Agreement, including a claim in tort, under statute, or for rectification (or like claim available under the law governing this Agreement), is limited to the Agreement Sum. This limitation continues to apply notwithstanding any breach, rescission, repudiation or termination of this Agreement.
- 26.2. The limitation of liability under subclause 28.1 shall not apply to:
  - 26.2.1 liability to pay the Agreement Sum as adjusted pursuant to this Agreement;
  - 26.2.2 liability to account for security;
  - 26.2.3 liability for infringement of Intellectual Property Rights;
  - 26.2.4 the extent that liability is otherwise limited by another provision of this Agreement; and
  - 26.2.5 liability out of which by law the Party liable cannot contract.
- 26.3. Amounts payable in respect of subclauses (1)-(5) inclusive shall not be included in the limitation of liability under subclause 28.1.

**27. No relationship**

- 27.1. This Agreement does not create a relationship of employment, agency or partnership between the Client and Schiavello.

**28. Disputes**

- 28.1. Either Party may raise a dispute under this Agreement by notice in writing to the other party.
- 28.2. If the dispute cannot be resolved within 10 Business Days of raising it, then either Party may by giving notice in writing to the other Party within 20 Business Days of raising the dispute refer the dispute to mediation as follows:
  - 28.2.1 the mediation shall be conducted in accordance with the Australian Disputes Centre Commercial Mediation Guidelines, as amended from time to time;
  - 28.2.2 the Parties shall share equally in the costs of the mediator but each shall bear its own costs otherwise incurred; and
  - 28.2.3 any determination of the mediator shall be kept confidential and is not binding on the Parties, unless both Parties agree in writing.
- 28.3. Schiavello may in its absolute discretion, continue to provide the Goods or Services during any dispute resolution process pending the resolution of the dispute. The Client must not withhold payment for such Goods or Services because of the dispute.

- 28.4. Unless a Party has complied with the provisions of this clause, that Party may not commence court proceedings relating to any dispute under this Agreement, except where that Party seeks urgent interlocutory relief.

- 28.5. Mediation does not affect any other rights or remedies of the Parties under this Agreement including any right to terminate the Agreement.

**29. Set-off**

- 29.1. All claims for money due or to become due to Schiavello may be subject to deduction by Schiavello for any set-off or counterclaim against the Client arising out of the Agreement.

**30. Amendment**

- 30.1. No amendment or variation of this Agreement is valid or binding on a Party unless made in writing and executed by both Parties.

**31. Termination**

- 31.1. Schiavello may immediately terminate or suspend this Agreement or part of this Agreement by notice in writing to the Client if: and
  - 31.1.1 suspends or ceases its business activities;
  - 31.1.2 is in liquidation or insolvency;
  - 31.1.3 appoints a receiver or trustee in respect of any of its property; or
  - 31.1.4 performs any other act which shows or tends to show that it is insolvent.
- 31.2. the Client breaches any term of this Agreement and fails to remedy that breach within 10 Business Days of the date Schiavello notifies the Client of the breach and requires it to remedy that breach or the Client;
  - 31.1.5 If the Client is in breach of any provision of this Agreement which breach in the opinion of Schiavello is not remediable; or
  - 31.1.6 any of the Personnel is found guilty of any criminal or civil offence; or
  - 31.1.7 being an individual, commits an act of bankruptcy, becomes a bankrupt, executes a deed of assignment or deed of arrangement under Part 10 of the Bankruptcy Act 1966 (Cth) as amended or a creditor accepts a composition under that Act or any analogous overseas law; or being a corporation (other than for the purpose of a reconstruction or amalgamation): and
    - A. is the subject of a compromise or arrangement with its creditors;
    - B. in respect of property of which a receiver or a receiver and manager is appointed; or
    - C. in respect of which a provisional liquidator or liquidator is appointed,

Schiavello may, without prejudice to any other rights and remedies it has under the Agreement or otherwise:

- i. terminate the Agreement in whole or part by notice in writing to the Client; and
- ii. immediately retrieve and take possession of any Goods where title has not passed to the Client.

**32. Commencement of Agreement**

32.1. Unless otherwise provided in this Agreement or agreed in writing by the Parties, this Agreement commences on the Commencement Date.

**33. Force Majeure**

33.1. If a Party is unable to perform an obligation under this Agreement because of a Force Majeure Event, then:

- 33.1.1 as soon as reasonably practicable (and in any event no later than 10 Business Days) after the Force Majeure Event arises, that Party must notify the other Party in writing of the extent to which the notifying Party is unable to perform its obligation;
- 33.1.2 where a Party complies with Clause 32.1.1, that Party's obligation to perform those obligations will be suspended for the duration of the delay arising directly out of the Force Majeure Event.

33.2. In all cases, the Parties must use their best endeavours to minimise the impact of any Force Majeure Event.

33.3. If notice has been given under Clause 32.1 and a delay arising directly out of a Force Majeure Event continues for more than 20 Business Days, either Party may, at its discretion, terminate the Agreement by giving 10 Business Days written notice to the other party.

33.4. Neither Party is excused from any obligation to pay money because of a Force Majeure Event, despite any other provision of this Agreement.

**34. Project On Hold**

34.1. Where the Client requests the project to be placed on hold, notice must be provided to Schiavello with the following information:

- 34.1.1 Reason for Hold
- 34.1.2 Expected duration of the hold
- 34.1.3 Expected action by Schiavello

34.2. Upon receipt of this notice, Schiavello will take the following action:

34.2.1 shall provide within 10 business days the following:

- D. Any additional costs attributable to the delay including the forecast for when these costs will be incurred, where these costs may include but are not limited to:
  - iii. Storage of completed goods and unprocessed materials

- iv. Future changes to exchange rates, freight rates, labour costs and other relevant indices may be retrospectively added once the project is taken off hold, abandoned or cancelled

- v. Future changes to the cost of any materials not purchased will be added once the project is taken off hold; and

- E. Any additional requirements for extension of time to restart the project;

- F. Schiavello will immediately raise a claim for the completed costs to date which will be calculated based upon clause 34.2.2 with the addition of monthly storage fees with the costs completed to date will be calculated as per clause 36.3; and

- G. A report detailing the current level of completion for the project

34.2.2 To determine the level of completion, Schiavello will:

- A. Continue production of any product already in manufacturing until fully completed and will be considered completed for the purpose of calculating completion costs;

- B. Complete shipping any product already in the process of being freighted to a delivery location nominated by Schiavello and will be considered as delivered for the purposes of calculating completion costs;

- i. Final delivery to the nominated location will not occur until the goods have been paid for

- ii. Storage costs will apply as per the formula at clause 34.3; and

- iii. Hold any completed product yet to be shipped, to be stored at a location nominated will be held by Schiavello and will be considered completed for the purpose of calculating completion costs and calculate storage costs will apply as per the formula at clause 34.3

34.3. Storage costs for any completed product and/or raw materials purchased for the project will be charged monthly and will be 1% of the net contract value per month or actual storage costs – whichever is greater. Storage fees are calculated with a one month minimum and will not be pro-rated.

**35. Project Abandoned**

35.1. The project is deemed to be abandoned if the project has been on hold for a period of 6 months

35.2. An Abandoned project is deemed as Cancelled and treated as per clause 36 below

35.3. All costs incurred to date, and any further costs associated with the Abandoned project will be calculated and claimed by Schiavello and must be paid prior to the release of any final goods or remaining raw materials.

**36. Project Cancelled.**

36.1. Either party may cancel this contract upon written notice to the other party. In the event of cancellation, the cancelling party shall be responsible for any costs incurred by the other party up to the time of cancellation +++++

36.2. All costs incurred to date, and any further costs associated with the cancellation of the project will be calculated and claimed by Schiavello and must be paid prior to the release of any final goods or remaining raw materials.

36.3. The following formula will be used to calculate the project abandonment/cancellation fees:

$$CC = CV - M - P - F + S + AC - CP$$

36.3.1 Cancellation Cost **(CC)** equals Contract Value **(CV)** less the value of any materials **(M)** not purchased to date less the value of any manufacturing/processing **(P)** costs not used to date less any freight **(F)** costs not used to date plus any storage **(S)** of the completed product and unprocessed raw materials plus any applicable additional costs **(AC)** related to the project being placed on hold, abandoned or cancelled less the total value of any claims paid to date **(CP)**:

36.3.2 Where contract value **(CV)** means: The total agreed contract value at the time the project was considered abandoned or cancelled;

36.3.3 Where material costs **(M)** means: The value of any materials yet to be purchased by Schiavello for any future phases of the project;

36.3.4 Where manufacturing/processing **(P)** costs means: The value of any labour and machine/processing time not expended to date on the completed works;

36.3.5 Where freight **(F)** costs means: The value of any freight or delivery allowance not expended to date on the completed works;

36.3.6 Where storage **(S)** means: Any storage costs calculated at clause 34.3 as part of the project being placed on hold, being abandoned or cancelled

36.3.7 Where applicable additional costs **(AC)** means: The value of any costs associated with any hold, abandonment or cancellation of the project that may include but is not limited to: exchange rate fluctuations, fluctuations in the cost of freight and other services where this has adjusted during the hold, abandonment or cancellation period that is beyond the original completion date of this agreement.

36.3.8 Where claims paid to date **(CP)** means: The total value of any claims or invoices paid to date by the client.

**37. Warranty**

Schiavello's Warranty Terms and Conditions apply to all Goods supplied under this Agreement.