

Background

- A. This is an Agreement between Schiavello and the Client.
- B. The Client has requested that Schiavello provide, and Schiavello has agreed to provide the Goods and complete the Works, to the Client on the Agreed Terms of this Agreement.
- C. The Client agrees to pay Schiavello the Agreement Sum for performing its obligations under the Agreement.

Agreed Terms

1. Definitions and Interpretation

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

Acceptable means the Goods are supplied and Works performed 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 Works.

Acceptance means notification by the Client that the Goods are Acceptable under Clause 24.

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

Agreement means this agreement for the sale and installation of Goods and provision of the Works and includes the Agreement Details, the Quotation Proposal, and the Agreed Terms.

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

Agreement Sum means the amount stated and set out in the Quotation to be paid by the Client to Schiavello for the performance of this Agreement.

Approval means any approval, licence, consent, trade certificate 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 and includes bodies exercising statutory functions such as certifiers and building surveyors.

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.

Client means the person or entity stated in Quotation and who is the purchaser of the Goods under this Agreement.

Commencement Date means the date on which this Agreement commences under Clause 37 of this Agreement and specified in the Quotation.

Collection means the collection of Goods from a location agreed to by Schiavello.

Consequential Loss means any loss of profit, revenue, rent, opportunity, goodwill or future reputation, any failure to realise anticipated savings and any damage to credit rating.

Completion Date means the date stated in the Quotation which is the date by which the Works under this Agreement are to be carried out and completed.

Delivery means the delivery of the Goods on the Delivery Date and includes the Collection of Goods where agreed by Schiavello.

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 Works 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 Works are completed (in the case of Works).

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.

ESK means External Sensor Kits.

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) loss or damage to the Works under the Contract caused by 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:
 - (i) causing a shortage in the availability of personnel, resources or supplies; or
 - (ii) which prevents Schiavello from performing any of its obligations under the Agreement.

Goods means the goods described in the Quotation to be delivered by Schiavello pursuant to this Agreement and includes the Services (if any).

GST has the same meaning as in the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of GST.

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 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.

ISP means Intelligent System Protection.

Legislative Requirement includes any Acts, Ordinances, regulations, by-laws, orders, awards, proclamations or directions of any State, Territory or province whether within Australia or in any other country.

NCC means the current National Construction Code produced and maintained by the Australian Building Codes Board (ABCB) which is published in three volumes - The Building Code of Australia (BCA) is Volume One and

Volume Two of the NCC and the Plumbing Code of Australia (PCA) is Volume Three of the NCC.

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.

Proposal means the project proposal submitted by Schiavello to the Client (if any).

Qualifying Cause of Delay means:

- (a) any act, default or omission of the Client or its consultant, agent or other contractor (not being employed by Schiavello);
- (b) any act or event beyond the reasonable control of Schiavello and could not have been prevented, avoided or overcome by Schiavello taking all reasonable steps and could not reasonably have been provided against before the Commencement Date;
- (c) natural disaster;
- (d) state, nation or worldwide industrial disputes;
- (e) a change in a Legislative Requirement;
- (f) a direction or declaration made in accordance with a Legislative Requirement or by an Authority, including a direction made under the *Public Health and Wellbeing Act 2008* (Vic) (or other equivalent Legislative Requirement); or
- (g) a variation to the Goods or the Works;
- (h) a Force Majeure Event.

Quotation means the quote provided by Schiavello for the supply of Goods to which this agreement is applied.

Schiavello means the person or entity stated in the Quotation who will be supplying the Goods and carrying out and performing Works under this Agreement.

Security means a bank guarantee given by an approved financial institution in the form and amount stated in the Quotation (if any).

Services means any installation or similar services described in the Quotation which are to be provided by Schiavello and necessary and incidental to supply of the Goods and provision of the Works under this Agreement.

Site means the location (unless otherwise agreed in writing) described in the Quotation upon which the Goods are to be delivered and Works performed under this Agreement.

Works means any minor works described in the Quotation to be carried out or completed by Schiavello at the Site pursuant to this Agreement.

- 1.2 In this Agreement unless the context admits otherwise:
- 1.2.1 The singular includes the plural and vice versa.
 - 1.2.2 A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
 - 1.2.3 A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement.
 - 1.2.4 A reference to an Act or regulation includes any Acts or regulations amending, consolidating or replacing the Act or regulation, as applicable.
 - 1.2.5 The Background clauses to this Agreement enumerated in the "Background" section are and will be deemed to form part of this Agreement.
 - 1.2.6 Any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.
 - 1.2.7 Use of the word 'including' and similar expressions are not, nor are they to be interpreted as, words of limitation.
 - 1.2.8 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.
 - 1.2.9 A reference to "A\$", "\$A", "AUS\$", "dollar" or "\$" is a reference to Australian currency.
 - 1.2.10 A reference to a thing includes a part of that thing.
- 1.3 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.
- 1.4 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.
- 1.5 If there is a conflict or ambiguity between documents included in this Agreement, then those documents will be given the following order of priority:
- 1.5.1.1 the Agreed Terms;
 - 1.5.1.2 the Quotation;
 - 1.5.1.3 the Project Proposal (if any).
- 1.6 This Agreement is governed by the laws of the State or Territory upon which the Site is located. Each Party submits to the jurisdiction of the courts and tribunals exercising jurisdiction of that State or Territory where the Site is located.
- 1.7 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.
- 1.8 Unless otherwise provided in the Quotation, this offer shall remain open for acceptance for a period of 30 calendar days from the date of the Quotation submission.
- ## 2 Goods and Services
- 2.1 In accordance with this Agreement, Schiavello shall:
- 2.1.1.1 deliver the Goods and provide the Services (if any) by the Delivery Date; and
 - 2.1.1.2 carry out and complete the Works by the Completion Date.
- 2.2 After Acceptance of the Goods, the Client must pay Schiavello the Agreement Sum adjusted by any additions or deductions made pursuant to this Agreement.
- ## 3 Delivery of the Goods
- 3.1 Delivery of the Goods shall be made at the time, place and in the manner specified in the Quotation or Project Proposal (if any).
- 3.2 Goods shall be packed with the minimum of packaging material so as to ensure its safe Delivery.
- 3.3 Every Delivery of the Goods will be accompanied by a delivery docket, stating the quantity dispatched, description of the Goods and any consignment details.
- 3.4 Whenever possible, unless otherwise agreed between the Parties, Schiavello will deliver the full quantity of the Goods in a single delivery.
- 3.5 Unless otherwise agreed between the Parties, the Goods will be unloaded at the Site by Schiavello in accordance with the Agreement.
- 3.6 Unless otherwise agreed to by Schiavello in writing, any fees, charges, duties or taxes in connection with transportation, freight or shipping of the Goods are not included in the Agreement Sum and will be separately invoiced to and payable by the Client.
- ## 4 Risk in and ownership of the Goods
- 4.1 Risk in the Goods shall pass from Schiavello to the Client on Collection or Delivery of the Goods.
- 4.2 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.
- ## 5 Care of the Work
- 5.1 Schiavello shall be responsible for care of the whole of the Works under the Agreement from the Commencement Date to the Completion Date, at which time responsibility for the care of the Works shall pass to the Client.
- 5.2 If loss or damage, other than that caused by an excepted risk provided for in Clause 5.3, occurs to Works under the Agreement during the period of Schiavello's care, Schiavello shall at its cost, rectify such loss or damage.
- 5.3 The excepted risks causing loss or damage, for which the Client is liable, are:
- 5.3.1 any negligent act or omission of the Client or its consultants, agents, employees or other contractors (not being employed by Schiavello);

- 5.3.2 any risk specifically excepted elsewhere in the Agreement;
- 5.3.3 war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order or direction of any Authority;
- 5.3.4 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by Schiavello or its subcontractors or either's employees or agents;
- 5.3.5 use or occupation of any part of the Works under the Agreement by the Client or its consultants, agents or other contractors (not being employed by Schiavello); and
- 5.3.6 defects in such part of the design of the Works under the Agreement, other than design provided by Schiavello.

6 Payment and Invoicing

- 6.1 The Client must pay the Agreement Sum to Schiavello.
- 6.2 Schiavello will render to the Client a valid tax invoice, within the meaning of GST Act, for all Goods and Services in accordance with this Agreement.
- 6.3 The Agreement Sum for the Goods and Works:
 - 6.3.1 excludes GST (unless it is expressed to include GST in the Quotation).
 - 6.3.2 includes all taxes, duties and other imposts for which Schiavello is liable except under Clause 3.6.
 - 6.3.3 includes all amounts payable for the use or licence of intellectual property rights.
- 6.4 Unless an alternative payment arrangement has been agreed to by Schiavello in writing, Schiavello shall issue invoices as follows:
 - 6.4.1 An invoice requiring a deposit of 50% of the Agreement Sum upon the Parties acceptance of the Quotation with a further 25% advance payment prior to delivery of the Goods and provision of the Works; and ;
 - 6.4.2 An invoice requiring the balance of 25% of the Agreement Sum prior to Collection or Delivery of the Goods, completion of the Works or providing the Services.
- 6.5 The Client must pay to Schiavello the amount of each invoice within 10 Business Days after receiving an invoice.
- 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 by the Attorney-General under section 2 of the *Penalty Interest Rates Act 1983* (Vic).

7 Client's Obligations

- 7.1 The Client must provide reasonable access to the Site as necessary to allow Schiavello to Deliver the Goods and complete any Works.
- 7.2 The Client will upon reasonable request provide to Schiavello information and assistance as may be reasonably required for the Delivery of the Goods.

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

10 Site and Site Conditions

- 10.1 Unless otherwise agreed between the parties in writing, the Client shall on or before the Delivery Date, give Schiavello access to the Site to allow Delivery of the Goods and to carry out and complete the Works.
- 10.2 Latent conditions are physical conditions on the Site and its near surrounds, including artificial things, which differ materially from the physical conditions which should reasonably have been anticipated by a competent supplier.
- 10.3 Schiavello, upon becoming aware of a latent condition while carrying out Works under the Agreement, shall promptly, and where possible before the latent condition is disturbed, give the Client written notice of the general nature thereof.
- 10.4 The effect of the latent condition shall be a deemed variation, priced reasonably by Schiavello.

- 10.5 Schiavello gives no warranty to the Client in respect of any Site conditions likely to be encountered during the execution of Works under the Contract or otherwise. The Client agrees that it is fully responsible for, and assumes the full risk of all additional work, increased costs and any damage, expense, loss, liability or delay (including any delay in achieving the Delivery Date) it suffers or incurs arising out of, or in any way in connection with the Site conditions actually encountered during the Delivery of the Goods or execution of Works, including the suitability or otherwise of the site (including site conditions) for the Works under the Contract.
- 10.6 The Client shall have no claim against Schiavello for costs in respect of, or in connection with, a Site condition.

11 Approvals

- 11.1 The Client is and remains responsible for obtaining all Approvals from any relevant Authority and for payment of all fees in relation thereto.
- 11.2 The Client is responsible for ensuring the relevant certifiers and building surveyors are fully consulted prior to specification and purchase to ensure compliance with the NCC. The cost and fees of fit-out related trade certificates are excluded from the Agreement Sum and are wholly borne by the Client.

12 Security

- 12.1 Where the Agreement Sum exceeds \$100,000 and if specified in the Quotation, Security may be provided by Schiavello to the Client. All Security will in the form of bank guarantees in values and expiry dates as determined by Schiavello.
- 12.2 Security shall be subject to recourse by the Client who claims for non-performance only after at least 5 Business Days have elapsed from the time the Client gave notice to Schiavello of its intention to have recourse to the Security.
- 12.3 A Client's entitlement to security shall cease after the expiration or termination of this Agreement.

13 Confidential Information

- 13.1 The Parties shall ensure that there are kept confidential such documents, samples, models, patterns and other information as are supplied and clearly identified as confidential.
- 13.2 If required in writing by a Party, the other Party shall enter into a separate agreement not to disclose to anyone else any such confidential information event after the expiration or termination of this Agreement.

14 Intellectual Property Rights

- 14.1 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.

- 14.2 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.
- 14.3 The Client indemnifies and will keep indemnified Schiavello from and against any and all claims, liabilities, losses, expenses (including legal fees on a standard basis), 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.
- 14.4 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.
- 14.5 Schiavello grants to the Client a royalty-free, non-exclusive and non-transferrable license to use any Background Intellectual Property incorporated or used in any material containing Intellectual Property Rights.

15 Assignment and Novation

- 15.1 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.
- 15.2 Schiavello may at any time assign or novate any of its rights and obligations under this Agreement without the consent of the Client.

16 Indemnities

- 16.1 Schiavello shall indemnify the Client against:
- 16.1.1 loss of or damage to the Client's property; and
 - 16.1.2 claims by any person against the Client in respect of personal injury or death or loss of, or damage to, any property, directly arising out of Schiavello's performance of the Agreement.
- 16.2 The indemnity shall be reduced proportionately to the extent that the act or omission of the Client or its consultants, agents or other contractors (not being employed by Schiavello) may have contributed to the injury, death, loss or damage.
- 16.3 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.
- 16.4 Notwithstanding any other provision in this Agreement, Schiavello will not be liable to the Client, nor will 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 Consequential Loss. This subclause survives the expiration, completion or termination of this Agreement.

17 Insurance of the Goods

- 17.1 Schiavello shall insure the Goods for their replacement value against loss or damage, including loss or damage in transit to the Site and for unloading.
- 17.2 The policy under this Clause shall:
 - 17.2.1 be effected before commencing supply or delivery of the Goods;
 - 17.2.2 be maintained until risk in the Goods passes to the Client;
 - 17.2.3 cover the Parties' respective rights, interests and liabilities; and
 - 17.2.4 be in the name of Schiavello, and may note the interest of the Client.

18 Public Liability Insurance

- 18.1 Schiavello shall effect and maintain public liability insurance for the duration of the Agreement.
- 18.2 Schiavello shall effect and maintain product liability insurance for the duration of the Agreement and thereafter for six years.
- 18.3 The public liability insurance and product liability insurance policies under this Clause shall:
 - 18.3.1 be effected before commencing the performance of the Agreement;
 - 18.3.2 cover the respective rights and interests; and liabilities to third parties, of the Parties and subcontractors from time to time, whenever performing obligations under the Agreement; and
 - 18.3.3 be in the name of Schiavello, and may note the interest of the Client.
 - 18.3.4 cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by Clause 20) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy).

19 Insurance of Employees

- 19.1 Before commencing performance of the Agreement, Schiavello shall insure against statutory and common law liability for death of or injury to persons employed by Schiavello. The insurance cover shall be maintained until expiry of the Completion Date or earlier termination of the Agreement.
- 19.2 Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the Client's statutory liability to Schiavello's employees.

20 Insurance of the Works

- 20.1 Before Schiavello commences any Works under the Agreement, Schiavello shall insure all any of the Works which it is responsible for and under its care under this Agreement against loss or damage resulting from any cause until Schiavello ceases to be responsible for their care.

- 20.2 Without limiting the generality of the obligation to insure, such insurance shall cover things in storage off site and in transit to the Site but may exclude:
 - 20.3 the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
 - 20.4 the cost of making good faulty design, workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
 - 20.5 Consequential Loss of any kind, but shall not exclude loss of or damage to the Works;
 - 20.6 damages for delay in completing or for the failure to complete the Works;
 - 20.7 loss or damage resulting from ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause.
- 20.8 Unless otherwise agreed to in writing between the Parties, the insurance cover shall be for an amount not less than the Agreement Sum plus 20%.
- 20.9 Insurance shall be in the name of Schiavello, and may note the interest of the Client, and shall cover the parties and all subcontractors whenever engaged in Works under the Agreement for their respective rights, interests and liabilities.

21 Insurance Currency

- 21.1 Schiavello will provide certificates of currency of any insurances effected and maintained whenever requested in writing by the Client.
- 21.2 Insurance shall not limit liabilities or obligations under other provisions of the Agreement.

22 Extension of Time

- 22.1 A Party becoming aware of anything which will probably cause delay to the Delivery of Goods or completion of Works shall promptly give the other Party written notice of that cause and estimated delay.
- 22.2 Schiavello will be entitled to an extension of time for Delivery of the Goods or completion of the Works as the Client reasonably assesses if:
 - 22.2.1 Schiavello is or expects to be delayed by a Qualifying Cause of Delay; and
 - 22.2.2 Schiavello gives the Client a written claim for an extension of time within a reasonable time of becoming aware, but no later than the Completion Date, of the Qualifying Cause of Delay.
- 22.3 Within 5 Business Days of receiving Schiavello's claim for an extension of time, the Client shall give Schiavello a written direction evidencing their assessment of the extension of time. If the Client does not do so, there shall be a deemed assessment and direction for an extension of time as claimed.
- 22.4 The Client may at any time and from time to time before the Delivery Date reasonably direct an extension of time for the benefit of Schiavello.

23 Liquidated Damages

- 23.1 If the Works are not completed by the Completion Date, liquidated damages if specified in the Quotation, shall be due and payable to the Client for every Business Day after the Completion Date to and including the earliest of:
- 23.1.1 termination of the Agreement;
 - 23.1.2 upon Acceptance of the Goods; or
 - 23.1.3 acquisition of substituted like Goods.
- 23.2 Unless otherwise noted in the Quotation, any Liquidated Damages specified will be capped at 1% of the Agreed Sum.

24 Quality

- 24.1 The Goods shall be free from Defects in materials and workmanship and at least of merchantable quality.
- 24.2 Within 5 Business Days of 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.
- 24.3 If the Client gives notice of rejection of the Goods, the notice shall state the reasons for rejection.
- 24.4 If Goods are rejected by the Client, Schiavello may inspect or test the Goods and determine to:
- 24.4.1 replace or repair, without cost to the Client, the rejected Goods;
 - 24.4.2 remove the rejected Goods and refund payment of the rejected Goods; or
 - 24.4.3 confirm that the Goods are in accordance with the Agreement and not take any further action.
- 24.5 Reasonable costs and expenses may be invoiced by Schiavello to the Client where after inspection or testing Schiavello confirms that the Goods are in accordance with the Agreement.

25 Defects

- 25.1 If the Client gives reasonable notice of any Defect discovered in the Goods or the Works completed during the Defects Liability Period, Schiavello will use its best and reasonable endeavours to correct or rectify the Defect.
- 25.2 Where no Defects Liability Period is specified in the Quotation, the Defects Liability Period shall be 60 Business Days from Acceptance.
- 25.3 Schiavello shall meet all direct costs of the discharge of any rectification obligations, including any packing, freight, disassembly and re-assembly costs.
- 25.4 Reasonable costs and expenses may be invoiced by Schiavello where after inspection or testing no Defect is discovered or determined by Schiavello.

26 Variations

- 26.1 Schiavello will not vary the Goods or the Works except as otherwise agreed in writing between the Parties.

27 Subcontracting

- 27.1 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 or complete any Works, which may include the manufacture or provision of materials or supplies.

28 No Waiver

- 28.1 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.

29 Severability

- 29.1 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.

30 Limitation of liability

- 30.1 To the extent permitted by law, the total liability of each Party 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.
- 30.2 The limitation of liability under Clause 30.1 shall not apply to:
- 30.2.1 liability to pay the Agreement Sum as adjusted pursuant to this Agreement;
 - 30.2.2 liability to account for security;
 - 30.2.3 liability for infringement of Intellectual Property Rights;
 - 30.2.4 the extent that liability is otherwise limited by another provision of this Agreement; and
 - 30.2.5 liability out of which by law the Party liable cannot contract.
- 30.3 Amounts payable in respect of Clauses 30.2.1-30.2.5 inclusive shall not be included in the limitation of liability under Clause 30.1.

31 No relationship

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

32 Disputes

- 32.1 Either Party may raise a dispute under this Agreement by notice in writing to the other party.
- 32.2 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:
- 32.2.1 the mediation shall be conducted in accordance with the Australian Disputes Centre Commercial Mediation Guidelines, as amended from time to time;
 - 32.2.2 the Parties shall share equally in the costs of the mediator but each shall bear its own costs otherwise incurred; and
 - 32.2.3 any determination of the mediator shall be kept confidential and is not binding on the Parties, unless both Parties agree in writing.
- 32.3 Schiavello shall continue to provide the Goods or complete the Works during any dispute resolution process unless otherwise agreed between the Parties. The Client must not withhold payment for such Goods or Works because of the dispute unless the payment is the subject matter of the dispute.
- 32.4 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.
- 32.5 Mediation does not affect any other rights or remedies of the Parties under this Agreement including any right to terminate the Agreement.

33 Set-off

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

34 Amendment

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

35 Termination

- 35.1 Either Party may immediately terminate or suspend this Agreement or part of this Agreement by notice in writing to the other Party if:
- 35.2 the other Party breaches any term of this Agreement and fails to remedy that breach within 10 Business Days of the date the first Party notifies the other of the breach and requires it to remedy that breach; or
- 35.2.1 the other Party:
- 35.2.1.1 suspends or ceases its business activities;
 - 35.2.1.2 is in liquidation or insolvency;
 - 35.2.1.3 appoints a receiver or trustee in respect of any of its property; or
 - 35.2.1.4 performs any other act which shows or tends to show that it is insolvent.
- 35.3 If the Client:
- 35.3.1 is in breach of any provision of this Agreement which breach in the opinion of Schiavello is not remediable;

- 35.3.2 any of the Personnel is found guilty of any criminal or civil offence;
- 35.3.3 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 as amended or a creditor accepts a composition under that Act or any analogous overseas law; or
- 35.3.4 being a corporation (other than for the purpose of a reconstruction or amalgamation):
 - 35.3.4.1 is the subject of a compromise or arrangement with its creditors;
 - 35.3.4.2 in respect of property of which a receiver or a receiver and manager is appointed; or
 - 35.3.4.3 in respect of which a provisional liquidator or liquidator is appointed,
- 35.3.5 Schiavello may, without prejudice to any other rights and remedies it has under the Agreement or otherwise:
 - 35.3.5.1 terminate the Agreement in whole or part by notice in writing to the Client; and
 - 35.3.5.2 immediately retrieve and take possession of any Goods where title has not passed to the Client.

36 Force Majeure

- 36.3 If a Party is unable to perform an obligation under this Agreement because of a Force Majeure Event, then:
- 36.3.5 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;
 - 36.3.6 where a Party complies with Clause 36.1.1, 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.
- 36.4 In all cases, the Parties must use their best endeavours to minimise the impact of any Force Majeure Event.
- 36.5 If notice has been given under Clause 36.1 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.

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

37 Commencement of Agreement

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

38 Disclaimer – Limitations of the ISP and ESK

38.3 Despite the use of motor control units featuring ISP and ESK there is still a risk of pinching or entrapment of body parts or other equipment beneath the edge of a workstation that is being actively lowered or raised as the effective operation of the ISP and ESK systems and the cutting of the motor is conditional not only on the electronic control unit itself but also the interaction between the mechanical and electrical systems comprising the control unit.

To this end, it is also noted that the mechanical components, motor and ambient conditions all affect the cut out the sensitivity of the control unit.

For this reason, neither Schiavello nor the manufacturer LOGICDATA can eliminate the risk of crushing or pinching and do not accept any liability arising from such an injury or damage occurring as a result of the incorrect or inappropriate operation of a workstation or desk fitted with an electronic control unit featuring ISP and/or ESK.

AUSTRALIAN STANDARDS CONCERNING MINIMUM SAFETY DISTANCES AND SAFETY GAPS TO PREVENT CRUSHING PARTS OF THE HUMAN BODY

Australian Standard AS 4024.1803 establishes minimum gaps to enable machinery designers to avoid hazards arising from crushing (but not impact, shearing or drawing in).

According to clause 4.1 of the Standard, a crushing hazard is created or generated if either two movable parts are moving towards one another or one movable part is moving towards a fixed part.

In Schiavello's assessment the potential for this hazard to arise is clearly created when either two height-adjustable desks are situated adjacent or in close proximity to one another (whether side by side or in some other configuration involving the necessary degree of physical proximity) or a single height adjustable desk is situated adjacent or in close proximity to another piece of furniture or hard surface (whether side by side or in some other configuration involving the necessary degree of physical proximity).

Table 1 of the Standard specifies minimum values for gaps to avoid crushing injuries to parts of the human body and these including most relevantly for electronically height-adjustable workstations:

INSTALLATION OF HEIGHT ADJUSTABLE WORKSTATIONS IN CONTRAVENTION OF AUSTRALIAN STANDARDS CONCERNING MINIMUM SAFETY DISTANCES AND SAFETY GAPS TO PREVENT CRUSHING PARTS OF THE HUMAN BODY

Schiavello has detected an increasing trend on the part of end-users and designers requiring multiple height adjustable workstations to be placed adjacent or in close proximity to one another (whether side by side or in some other configuration involving the necessary degree of physical proximity) or a single height adjustable desk to situated adjacent or in close proximity to another piece of furniture or hard surface (whether side by side or in some other configuration involving the necessary degree of physical proximity) at distances which do not meet the minimum values for gaps to avoid crushing injuries to parts of the human body specified by AS 4024.1803.

DISCLAIMER OF LIABILITY

If, despite the information contained in this disclaimer and its advice and recommendation that this not occur (which is given by Schiavello via this Notice and Disclaimer among other means), Schiavello is required by an end-user or client to supply height-adjustable workstations which must be or are intended to be used at distances which do not meet the minimum values for gaps to avoid crushing injuries to parts of the human body specified by AS 4024.1803 then Schiavello disclaims any and all liability arising from such an injury or damage occurring as a result of the operation of a workstation or desk fitted with an electronic control unit featuring ISP and / or ESK and may require the end-user and /or client (as determined by Schiavello in its absolute discretion) to enter into a Deed of Release releasing Schiavello, and the suppliers and manufacturers of the control units from all liability arising in this regard.

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