

## 1. Interpretation

### 1.1 In these terms and conditions:

**Customer** means the person or entity whose order for the purchase of the Goods and/or installation is accepted by Alpha Lewis;

**Terms and conditions** means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special conditions agreed in writing by a duly authorised signatory of Alpha Lewis;

**Goods** means the Goods (including any instalment of the Goods or any parts for them) which Alpha Lewis is to supply in accordance with these terms and conditions;

**Installation** means the installation of the Goods by Alpha Lewis at the Premises;

**Premises** the premises at which the Goods are to be installed by Alpha Lewis (as notified by the Customer);

**Business Day** means any day which is not a Saturday, Sunday, or a public holiday in Melbourne, Victoria.

**Alpha Lewis** means Alpha Lewis Signs Pty Ltd (ACN 082 813 796).

1.2 Any reference in these terms and conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these terms and conditions are for convenience only and shall not affect interpretation.

## 2. Basis of the agreement

2.1 Alpha Lewis shall sell and the Customer shall purchase the Goods, and/or (if relevant) installation shall be carried out in accordance with: (i) any written quote of Alpha Lewis which is accepted by the Customer, and subsequently confirmed by Alpha Lewis or (ii) any written order of the Customer which is accepted by Alpha Lewis, subject in either case to these terms and conditions.

These terms and conditions apply to all Alpha Lewis sales, or installations. The Customer agrees to be bound by these terms and conditions on placing any order for Goods and/or installation and placing an order is deemed acceptance of these terms and conditions.

2.2 No variation to these terms and conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and Alpha Lewis.

2.3 - 2.5 [Not used].

2.6 Alpha Lewis catalogues, technical circulars, sales literature and other such documents are for the Customer's general guidance only and the particulars contained in such documents shall not constitute representations by Alpha Lewis and Alpha Lewis shall not be bound thereby, nor shall they form part of this agreement.

2.7 Where technically possible and within the tolerance of materials used, the Customer's colour balance requirements will be taken into account. In the absence of specific instructions in regard to pantone numbers or the Customer's supplied match samples, colour balance will be at the discretion of Alpha Lewis.

2.8. Where the Customer supplies artwork, proofs, photography, typographical design components or any other materials or ideas to Alpha Lewis (**Customer Materials**), the Customer takes full and sole responsibility for the Customer Materials accuracy and technical suitability for purposes of completing the agreement. The Customer warrants that any use by Alpha Lewis of the Customer Materials will not infringe any third party's rights (including intellectual property rights). Without limiting the Customer's obligations and liability under this clause, where Alpha Lewis reasonably determines that any Customer Materials are unsuitable for its contracted purpose, Alpha Lewis may recreate it at the expense of the Customer (and Alpha Lewis will notify the Customer prior to doing so). Alpha Lewis will give the Customer an opportunity to re-supply suitable Customer Materials.

2.9 Where the Customer requests alterations to any signage specification, alterations to suit the revised specifications will be undertaken by Alpha Lewis as a variation to the agreement. Agreement variations requested or mandated by the Customer will incur additional Alpha Lewis design costs.

2.10 Artist impressions and design renderings created by or on behalf of Alpha Lewis for the purpose of illustrating how proposed signage may appear in-situ may not reflect the final version and are not to be relied on as accurate.

2.11 Alpha Lewis designs and proofs are two dimensional and presented on a flat surface to be viewed by the Customer at a relatively small size. Traditional signage installation is made onto a larger flat two dimensional surface. In circumstances where the signage application or installation surface is not flat or two dimensional, there may be variations between the two dimensional design and proof and the three dimensional curved installation. On curved and uneven surfaces, Alpha Lewis, at its own discretion, may make minor adjustments to optimise readability or alignment.

2.12 All Alpha Lewis quotes exclude the following unless expressly stated and agreed in writing:  
(i) transportation of equipment, Goods and Alpha Lewis

personnel to and from the installation Premises;  
(ii) packing the Goods for transportation to the customers installation Premises;  
(iii) crating;  
(iv) insurance of the Goods or any hire equipment whilst in transit storage or at the customers Premises;  
(v) delivery;  
(vi) power supply, fees and charges associated with the power supply or connection of power supply;  
(vii) any fees and charges associated with traffic control or third party property access to site; and  
(viii) any required special permits, including council permits or engineer calculations including Dial Before You Dig locator service.

2.13 Any estimate or quotation is given by Alpha Lewis on the basis that no agreement will come into existence until Alpha Lewis dispatches an acknowledgement of order (whether in writing or by phone by an authorised representative of Alpha Lewis) to the Customer.

### **3. Orders and specifications**

3.1 No order submitted by the Customer shall be deemed to be accepted by Alpha Lewis unless and until confirmed in Writing or by phone by Alpha Lewis authorised representative.

3.2 The Customer shall be responsible to Alpha Lewis for ensuring the accuracy of the terms of any order (including any applicable specification) which the Customer is responsible for ensuring is submitted by the Customer, and for giving Alpha Lewis any necessary information relating to the Goods or installation within a reasonable time to enable Alpha Lewis to perform the agreement in accordance with its terms. Where artwork proofs are submitted to the Customer for the Customer's approval, Alpha Lewis shall incur no liability for errors which should reasonably be identified by the Customer which are not so identified.

3.3 The quantity, quality and description of and any specification shall be those set out in Alpha Lewis' estimate (if accepted by the Customer) or the Customer's order (if accepted by Alpha Lewis). Unless confirmed in writing by Alpha Lewis, all specifications, drawings and particulars of weights, dimensions and performance issued by Alpha Lewis are approximate only and Alpha Lewis gives no warranty or representation that the Goods will conform to such specification (unless otherwise set out in this agreement).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods in accordance with a specification submitted by the Customer, the Customer warrants to Alpha Lewis that the intellectual property rights in such specification belong to the Customer or that the Customer is licensed or otherwise authorised to use such specification by the actual owner.

3.4.1 Copyright in all artistic and literary works authored by Alpha Lewis (or on its behalf) shall remain the property

of Alpha Lewis unless there is a written agreement with the Customer to the contrary.

3.4.2 The Customer shall indemnify Alpha Lewis on demand against all loss, damages, costs and expenses awarded against or incurred by Alpha Lewis in connection with or arising out of:-

(i) infringement of any intellectual property rights of any other person which results from Alpha Lewis' use of the Customer's specification or Customer Materials; and/or

(ii) any impracticality, inefficiency or lack of safety or other defect in the Goods where such defect is due (whether in whole or in part) to faults or omissions in information, drawings, designs, instructions, or specifications of the Customer or the Customer Materials.

3.5 Alpha Lewis reserves the right to make any changes in the specification of the Goods which are (in Alpha Lewis' reasonable opinion) required to conform to any applicable statutory or signage compliance requirements or, where the Goods and/or hire equipment are to be supplied to Alpha Lewis specification that does not materially affect their quality or performance.

3.6 No order which has been accepted by Alpha Lewis may be cancelled by the Customer except with the agreement in writing of Alpha Lewis and on terms that the Customer shall indemnify Alpha Lewis in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Alpha Lewis as a result of cancellation (unless otherwise set out in this agreement).

3.7 Alpha Lewis shall not be required to process any order which in its opinion is or may be of an illegal or defamatory nature and the Customer shall indemnify Alpha Lewis on demand against any loss, damages, costs and expenses awarded against or incurred by Alpha Lewis in connection with supplying Goods under this agreement that may be illegal or defamatory.

3.8 The Customer hereby gives such consent and permission to Alpha Lewis as may be required to enable Alpha Lewis to use copies of the Goods supplied to the Customer for the purposes of Alpha Lewis' own marketing requirements, including consenting to the reproduction of any Customer name, logo, trademark or other intellectual property right included in the Goods. This is without prejudice to Alpha Lewis other rights under these terms and conditions.

### **4. Price of the Goods**

4.1 Unless otherwise agreed between the parties in writing the price of the Goods ("the price") shall be Alpha Lewis' quoted price. All prices quoted are valid for 30 days only (or until earlier acceptance by the Customer or earlier withdrawal by Alpha Lewis before the Customer's acceptance).

Where installation is to occur, the price for such installation shall be included in the price quoted for the Goods.

4.2 Alpha Lewis reserves the right, by giving notice to the Customer at any time before delivery, to increase the price to reflect any increase in the cost to Alpha Lewis which is due to any change in delivery dates, quantities or specifications for the Goods as requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give Alpha Lewis adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation, and unless otherwise agreed in writing between the Customer and Alpha Lewis, all prices are given by Alpha Lewis on an ex works basis, and where Alpha Lewis agrees to deliver the Goods otherwise than at Alpha Lewis Premises, the Customer shall be liable to pay Alpha Lewis charges for transport, packaging and insurance.

4.4 Unless specifically stated all prices are exclusive of any applicable Goods and Services Tax (GST), which the Customer shall be additionally liable to pay to Alpha Lewis.

## **5. Terms of payment**

5.1 Alpha Lewis will invoice the Customer in accordance with the quote. Unless otherwise specified on the quote or invoice (or as otherwise agreed in writing between the parties), the customer must pay the price (less any deposit paid under clause 5.2) in cash, on delivery of the Goods.

No payment shall be deemed to have been received by Alpha Lewis until Alpha Lewis has received cleared funds or cash in hand.

5.2 Alpha Lewis may require the Customer to pay a deposit prior to commencing work under this agreement. Where the quote specifies a deposit is payable, the Customer must pay the deposit within a reasonable time, and prior to Alpha Lewis commencing work under this agreement. Where the Customer terminates this agreement and Alpha Lewis has commenced work on the Goods, the deposit will not be refunded to the Customer.

5.3 If the Customer fails to make any payment in full on delivery, or on the relevant due date then, without prejudice to any other right or remedy available to Alpha Lewis, Alpha Lewis shall be entitled to:

5.3.1 cancel the agreement or suspend any further deliveries or services (including installation if relevant) to the Customer;

5.3.2 charge the Customer interest on a daily basis on any overdue amount, at the rate for the time being fixed under section 2 of the Penalty Interest Rates Act 1983 (Vic); and

5.3.3 charge the Customer the cost of recovery of any unpaid amount including any legal costs, debt recovery fees, disbursements and bank charges incurred.

5.4 Alpha Lewis reserves the right (in its entire discretion) at any time by notice in writing to the Customer to set off any monies owed by Alpha Lewis to the Customer against any monies owed to Alpha Lewis by the Customer under the agreement.

## **6. Risk and property**

6.1 Risk of damage to or loss of the Goods shall pass to the Customer:

6.1.1 in the case of Goods to be collected from Alpha Lewis premises, at the time when Alpha Lewis notifies the Customer that the Goods are available for collection; or

6.1.2 in the case of Goods to be delivered to Premises (other than any Alpha Lewis premise) (i) at the time of delivery, or (ii) at the time of attempted delivery in circumstances where the Customer is not available to accept delivery of the Goods. Where title in the Goods has not passed to the Customer but risk has passed to the Customer, the Customer shall ensure that the Goods are adequately insured with a reputable insurer and that Alpha Lewis' interest in the Goods is noted on the said insurance policy.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these terms and conditions, the title in the Goods shall not pass to the Customer until Alpha Lewis has received in cash or cleared funds, payment in full of the price of the Goods.

6.3 Until such time as the title in the Goods passes to the Customer, the Customer shall hold the Goods as Alpha Lewis fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as Alpha Lewis property.

6.4 Until such time as title in the Goods passes to the Customer, Alpha Lewis shall be entitled at any time to require the Customer to deliver up the Goods to Alpha Lewis and, if the Customer fails to do so, Alpha Lewis reserves the right to enter any Premises of the Customer or any third party, where the Goods are stored and repossess the Goods.

6.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Alpha Lewis, but if the Customer does so, all moneys owing by the

Customer to Alpha Lewis shall (without prejudice to any other right or remedy of Alpha Lewis) immediately become due and payable.

6.6 The Customer's right to possession of the Goods prior to payment of all sums due to Alpha Lewis in full shall terminate immediately if:

6.6.1 The Customer has a bankruptcy order made against the Customer or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to the court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

6.6.2 the Customer suffers or allows an execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the agreement or any other agreement between Alpha Lewis and the Customer, or is unable to pay its debts within the meaning of the Insolvency Law Reform Act 2016 or the Customer ceases to trade; or

6.6.3 the Customer encumbers pledges or in any way charges any of the Goods.

6.7 The Customer grants Alpha Lewis, its agents and employees an irrevocable licence at any time to enter any Premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession and/or power of sale has terminated, to recover them in either of which case the Customer shall place the Goods at the disposal of Alpha Lewis.

## 7. Warranties and liability

7.1 If a supply under this agreement is a supply of goods or services to a consumer within the meaning of the Australian Consumer Law (Sch 2 of the *Competition and Consumer Act 2010* (Cth)), nothing contained in this agreement excludes, restricts or modifies the application of any provision, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would contravene the statute or cause any term of this agreement to be void (Non-excludable Obligation).

7.1.1 In relation to Non-excludable Obligations (other than a guarantee as to title, encumbrances or quiet possession conferred by the Australian Consumer Law), except for goods or services of a kind ordinarily acquired for

personal, domestic or household use or consumption (in respect of which, Alpha Lewis' liability is not so limited under this clause), Alpha' Lewis liability to the Customer is limited to:

- (a) in the case of services, the cost of supplying the services again or payment of the cost of having the services supplied again; and
- (b) in the case of goods, the cost of replacing the goods, supplying equivalent goods or having goods repaired, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.

7.1.2 Except in the case of a major failure (as that term is defined under the Australian Consumer Law), Alpha Lewis may elect as between the remedies set out in paragraphs (a) and (b) above.

7.1.3 Except in relation to Non-excludable Obligations:

- (a) all conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied or imposed by custom, under the general law or by statute are expressly excluded under this agreement; and
- (b) Alpha Lewis' liability to the Customer arising directly or indirectly under or in any way connected with this agreement or the performance or non-performance of this agreement (and whether arising under statute, in tort (for negligence or otherwise), or on any other basis in Law), is limited as follows:
  - i. Alpha Lewis excludes all liability for loss or revenue, loss of goodwill, loss of customers, loss of capital, downtime costs, loss of profit, loss of or damage to reputation, loss under or in relation to any contract, loss of anticipated savings or benefits, or any indirect, consequential or special loss or damage, cost or expense or other claims for consequential compensation, incurred by or awarded against the Customer in relation to this agreement; and
  - ii. Alpha Lewis total aggregate liability in respect of the Goods or services, or under or in any way connected with this agreement, is otherwise limited to the total price paid under this agreement.

7.2 Each party must take all reasonable steps to minimise any loss it suffers or is likely to suffer and that is the subject of a claim under this agreement. If a party does not take reasonable steps to minimise that loss, then liability for the relevant claim will be reduced accordingly.

7.3 Neither party will be liable under this agreement to the extent that liability is caused by:

(a) the other party's breach of its obligations under this agreement or its negligent act or omission; or

(b) any delay in performance or breach of this agreement which arises as a result of any matter beyond its control (including, fire, flood, earthquake, element of nature or acts of God, strikes, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, quarantines, pandemics, epidemics, embargoes and other similar government actions).

7.4 Each indemnity in this agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this agreement for whatever reason.

## **8. Delivery**

8.1 Delivery of the Goods shall be made by the Customer collecting the Goods at Alpha Lewis Premises at any time after Alpha Lewis has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed in writing by Alpha Lewis, by Alpha Lewis delivering the Goods to that place.

Where Alpha Lewis agrees to deliver the Goods at a location other than at Alpha Lewis Premises, Alpha Lewis shall be under no obligation under Section 32(2) of the NSW Sale of Goods Act 1923 (or any such equivalent provision under the equivalent laws of Victoria).

8.2 Any dates quoted for delivery of the Goods are approximate only and Alpha Lewis shall not be liable for any delay in delivery of the Goods howsoever caused.

Time for delivery shall not be of the essence of the agreement unless previously agreed by Alpha Lewis in writing by an authorised signatory of Alpha Lewis. The Goods may be delivered by Alpha Lewis in advance of the quoted delivery date upon giving reasonable notice to the Customer.

8.3-8.4 *[Not used]*

8.5 If the Customer fails to take delivery of the Goods or fails to give Alpha Lewis adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Alpha Lewis fault) then, without prejudice to any other right or remedy available to Alpha Lewis, Alpha Lewis may:

8.5.1 Elect that the Goods are deemed delivered; or

8.5.2 Store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage.

8.6 Except where the Customer signs a delivery note accepting delivery of the Goods in satisfactory condition,

in which case the Customer will be deemed to have accepted the Goods as being free of all defects or faults, all defects in the Goods must be notified in writing (giving full details of the alleged defects and affording Alpha Lewis a reasonable opportunity to inspect the alleged defects, failing which the notice shall be deemed to be invalid) by the Customer to Alpha Lewis within 7 days of delivery of the Goods otherwise the Goods will have been deemed to have been accepted and to have been delivered to the Customer free of all defects or faults and the Customer shall have no further right to reject the Goods or recover any compensation.

## **9. Not used**

## **10. Installation**

10.1 Installation at a fixed site

10.2 The customer warrants that the site for installation is fit for purpose, is free from any underlying defects and that the Goods can be installed at the relevant site at the Premises safely.

10.3 Alpha Lewis is not responsible for any delay in installation directly or indirectly arising out of the actions or omissions of the Customer (including any employee, officer or contractor of the Customer) or any third party.

10.4 The Customer shall: –

10.4.1 Make any necessary agreement with relevant regulatory, governmental or other authorities or other relevant third parties and obtain any consent or authorisation required in respect of the installation;

10.4.2 Provide any information Alpha Lewis may reasonably require in connection with the installation;

10.4.3 Pay for any relevant approval or permission;

10.4.4 Meet the requirements of any of these authorities at all times to maintain their approval;

10.4.5 Tell Alpha Lewis if any information the Customer has given to Alpha Lewis changes; and

10.4.6 If any approval, consent or authorisation is amended or ends, the Customer must advise Alpha Lewis in writing as soon as the Customer becomes aware of any amended or terminated approval, consent or authorisation.

10.5 The Customer must during installation: –

10.5.1 give Alpha Lewis access to the Premises so that Alpha Lewis may perform the installation and provide all such assistance as may be reasonably requested by

Alpha Lewis promptly and without cost to Alpha Lewis. The Customer shall move any materials, and other objects obstructing or preventing installation in advance of the agreed installation date;

10.5.2 use best efforts to make sure that the Premises and any equipment provided are safe and without risk for Alpha Lewis employees, agents and any third party. The Customer must notify Alpha Lewis of the location of any concealed pipes and wires which may affect the installation and about any known risks and any hazardous materials at the Premises. Alpha Lewis may decline to carry out the installation if it considers that the installation in accordance with the Customer's instructions presents a risk to Alpha Lewis employees and agents (without prejudice to any remedy that Alpha Lewis may have in this regard).

10.5.3 warrant that they have unencumbered title to any materials (such as old signs) to be removed from any location at which Goods are delivered or to be installed, and that the Customer is properly authorised to dispose of them without the consent of any third party. The Customer also warrants that said materials are safe to remove, that are not contaminated or contain dangerous components.

10.5.4 provide information about the Customer, the Premises and any other relevant information so that Alpha Lewis can perform the installation. The Customer must write to Alpha Lewis to tell them of any changes to this information; and

10.5.5 ensure that Alpha Lewis staff and contractors have adequate welfare facilities (toilet and washing facilities).

10.6 References in these terms and conditions to the Goods shall (unless the agreement otherwise requires and include where relevant and applicable) reference to the installation and the relevant provisions of the Agreement shall accordingly apply once the necessary changes having been made to the installation.

## 10.7 Vehicle Wrap Installation

10.7.1 It is the Customer's responsibility to ensure vehicle suitability and that the existing surface to be vinyl wrapped are clean, dry and free from grease, dirt, wax, oil, and free from any existing graphics and decals upon delivery to Alpha Lewis Premises. An exterior vehicle detailing charge will be applied in addition to the installation fee when, in the opinion of Alpha Lewis, any vehicle is not in a satisfactory condition suitable for a quality wrap installation.

10.7.2 Alpha Lewis vehicle preparation does not include paint chip repairs or the removal of dents, scrapes and paintwork scuffs.

10.7.3 Should badges need to be removed, Alpha Lewis will at all times use care. Any resulting damage to the badge or marks on the paintwork surface may require remedial work when the Signage is removed at a later date. Alpha Lewis holds no liability for any future remedial work following removal of the badge.

10.7.4 In the event that a Customer requests that Alpha Lewis remove a pre-installed vinyl wrap, applied by a company other than Alpha Lewis, Alpha Lewis will make every effort to remove the existing vinyl, but will not be held responsible for any damage they may occur to the vehicle surface during the wrap removal.

10.7.6 Vehicle delivery to and retrieval from an appointed installation Premises is the customers responsibility and must be undertaken within a reasonable time.

10.7.7 All applied vinyl wrap remains the property of Alpha Lewis until paid for in full. Pending payment for Goods supplied, the Customer holds the Goods as the property of Alpha Lewis and the Goods must be kept identified as belonging Alpha Lewis. In the event that the Customer fails to make payment, the Customer irrevocably authorises Alpha Lewis to remove the vinyl wrap.

## 11. Agreement termination

11.1 This clause applies if:

11.1.1 the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

11.2.1.3 the Customer ceases, or threatens to cease, to carry on business; or

11.1.4 Alpha Lewis reasonably understand or perceives that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly;

11.1.5 the Customer is in breach of the provisions of the agreement and fails to remedy the same (if capable of remedy) within 10 Business days of Alpha Lewis notifying the Customer of such breach.

11.2 If this clause applies then, without prejudice to any other right or remedy available to Alpha Lewis, Alpha Lewis shall be entitled to cancel the agreement or suspend any further deliveries under the agreement without any liability to the Customer, and if the price has

not been paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12.10 The agreement shall be governed by and construed in accordance with the laws of Victoria and the parties agrees to submit to the exclusive jurisdiction of the Australian courts.

## **12. General**

12.1 Any notice required or permitted to be given by either party to the other under these terms and conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address notified by a party to the other pursuant to this provision.

12.2 No waiver by Alpha Lewis of any breach of the agreement by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.3 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected.

12.4 Each right or remedy of Alpha Lewis under the agreement is without prejudice to any other right or remedy of Alpha Lewis whether under the agreement or not.

12.5 Failure or delay by Alpha Lewis in enforcing or partially enforcing any provision of the agreement will not be construed as a waiver of any of its rights under the agreement and any waiver by Alpha Lewis of any breach of, or any default under any provision of the agreement by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the agreement.

12.6 The agreement and any documents incorporated into it constitutes the entire agreement between the parties and supersedes all prior agreements and understandings between the Customer and Alpha Lewis.

12.7 The Customer must keep confidential and must not (without Alpha Lewis's written consent) use any ideas, systems or processes communicated or made available by Alpha Lewis to the Customer.

12.8 All electronic media (other than the media supplied by the Customer) used by Alpha Lewis to store data for the purposes of completing the agreement remain the sole property of Alpha Lewis. The Customer cannot require Alpha Lewis to supply to the Customer any such data. Alpha Lewis may charge the Customer for supplying such data where it chooses to supply such data to the Customer.

12.9 Alpha Lewis may assign and/or subcontract any and all of its rights and obligations under this agreement to any person. The Customer must not assign this agreement without Alpha Lewis' prior written consent.