



1. Definitions

- (a) “*Seller*” means Ultraspan Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Ultraspan Pty Ltd.
- (b) “*Client*” means the person/s buying the Goods and/or Services as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally. Any references to ‘Customer’ in any such quote or purchase orders means the same as all references to Client herein.
- (c) “*Essential Term*” means a term of this agreement which is specified to be an Essential Term and any other term of this agreement that a court finds to be essential.
- (d) “*Goods*” means all Goods or Services supplied by the Seller to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- (e) “*Natural Disaster*” means a tsunami, flood, cyclone, earthquake, bushfire or other act of nature.
- (f) “*Price*” means the Price payable (plus any GST where applicable) for the Goods as agreed between the Seller and the Client in accordance with clause 5 below.
- (g) “*Public Health Event*” means:
 - a. a pandemic, epidemic or disease; or
 - b. an imminent threat of an event in paragraph a. above.
- (h) “*GST*” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- (i) “*Relevant Event*” means any event or circumstance whatever that:
 - a. is outside the Seller’s ability to control; and
 - b. directly or indirectly causes, results in or contributes to:
 - i. the Seller being unable to commence, continue or complete the production and/or delivery of the Goods and Services;
 - ii. the manufacturer of the Goods being unable to commence, continue or complete the production of the Goods and Services,

including, by way of examples only and without limitation:

 - c. a Public Health Event;
 - d. a Natural Disaster;
 - e. war, act of war or terrorism;
 - f. an economic recession or depression;
 - g. an act of a government or government authority;
 - h. the manufacturer being unable to commence;
 - i. the manufacturer being unable to trade because it becomes insolvent, resolves to go into liquidation, enters into a scheme of arrangement for the benefit of its creditors, is ordered to be wound up or being placed in provisional liquidation, or is put into the control of a receiver and manager, official manager or administrator.
- (j) “*Services*” means the services described in the Quote provided to the Client for acceptance, subject to any agreed variations on the terms of this document.
- (k) “*Unforeseen circumstances*” includes:
 - a. Relevant Event;
 - b. Natural Disaster;

- c. Public Health Event;
- d. poor weather conditions;
- e. limitations to accessing the site;
- f. availability of machinery;
- g. safety considerations;
- h. prerequisite work by any third party not being completed;
- i. fluctuations in metal prices;
- j. availability of raw materials;
- k. changes to the scope of Services;
- l. any increase to the Seller in the cost of materials and labour by third parties.

2. Acceptance

- (a) The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- (b) These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.
- (c) Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed terms that purport to override these terms and conditions of trade.

3. Electronic Transactions (Queensland) Act 2001

Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the *Electronic Transactions (Queensland) Act 2001* or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

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

5. Price and Payment

- (a) At the Seller's sole discretion, the Price shall be either:
 - (i) as indicated on any invoice provided by the Seller to the Client; or
 - (ii) the Seller's quoted price (subject to clause 5(b)) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- (b) The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested by the Client. The Seller will issue a revised quotation to the Client for acceptance.
- (c) Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to Unforeseen Circumstances, will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- (d) At the Seller's sole discretion, a non-refundable deposit may be required.
- (e) Time is of the essence for payment of the Services.
- (f) Payment of the Services by the Client is to occur by one or more of the following:

- a. On delivery of the Goods;
 - b. Before delivery of the Goods;
 - c. By way of instalment/progress payments in accordance with the Seller's payment schedule as advised to the Client;
 - d. The date specified on any invoice or purchase order submitted to the Seller;
 - e. Any other form of payment as agreed to between by the Seller and the Client;
 - f. If all else fails or none of the above applies to the Client, thirty (30) days following the end of the month in which a statement is emailed to the Client's address for service of notices.
- (g) The method of payment may be way of cash, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Seller.
- (h) The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller, nor to withhold payment of any invoice because part of that invoice is in dispute.
- (i) Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- (j) The parties acknowledge and agree that this Clause is an essential term of this agreement.

6. Delivery of Goods

- (a) Delivery ("Delivery") of the Goods is taken to occur at the time that:
- a. The Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or
 - b. The Seller (or the Seller's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- (b) At the Seller's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price. This is disclosed to the Client with the quote or purchase order provided which the Client has accepted.
- (c) The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions of these terms and conditions.
- (d) Any time specified by the Seller for delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties.
- (e) In the event that the Seller is unable to supply the Goods as agreed solely due to an Unforeseen Event, or due to any action or inaction of the Client, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- (f) This parties acknowledge and agree that this Clause is an essential term of this agreement.

7. Risk

- (a) Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery. The Seller will not be responsible or liable for the Goods upon the risk passing to the Client.
- (b) If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these

terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

- (c) If the Client requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- (d) The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- (e) Where the Client is to supply the Seller with any design specifications (including, but not limited to job specific drawings) the Client shall be responsible for providing accurate data. The Seller shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
- (f) The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. The Seller will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- (g) The Client acknowledges that Goods supplied may:
 - a. fade or change colour over time; and
 - b. expand, contract or distort as a result of exposure to heat, cold, weather; and
 - c. mark or stain if exposed to certain substances; and
 - d. be damaged or disfigured by impact or scratching.
- (h) The Client will not object to, refuse to perform under this agreement, refuse to pay upon demand for the Goods and Services when payment is due, nor make a claim against the Seller for any damages or compensation, for any Goods supplied that may result in any of the matters listed in Clause 7(g) above whether at the time of delivery or at any time thereafter.
- (i) The parties acknowledge and agree that this Clause is an essential term of this agreement.

8. Specifications

- (a) The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Seller's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Seller.
- (b) The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

9. Access

- (a) The Client shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the Services. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless such loss is due to the negligence of the Seller.
- (b) It is the responsibility of the Client to ensure that access is suitable to accept the weight of lifting cranes, laden trucks, front end loaders or other lifting or unloading equipment as may be deemed necessary by the Seller.

10. Underground Locations

- (a) Prior to the Seller commencing any work the Client must advise the Seller of the precise location of all underground services on the site and clearly mark the same. For this purpose the Client is to provide to the Seller a Dial Before You Dig comprehensive search at the Client's own cost and expense.

- (b) The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- (c) Whilst the Seller will take all care to avoid damage to any underground services, the Client agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 10(a).

11. Compliance with Laws

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

12. Title

- (a) The Seller and the Client agree that ownership of the Goods shall not pass until:
 - a. the Client has paid the Seller all amounts owing to the Seller; and
 - b. the Client has met all of its other obligations to the Seller.
- (b) Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognized.
- (c) It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12(a), the Client is only a bailee of the Goods and must return the Goods to the Seller on request.
- (d) The Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (e) The Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.
- (f) The Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs.
- (g) The Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods.
- (h) The Seller may recover possession of any Goods in transit whether or not delivery has occurred.
- (i) The Client shall not charge or grant an encumbrance over the Goods nor grant any security interest under the PPSA, nor otherwise give away any interest in the Goods while they remain the property of the Seller.
- (j) The Seller may commence proceedings against the Client as a liquidated debt to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- (k) The parties acknowledge and agree that this Clause is an essential term of this agreement.

13. Personal Property Securities Act 2009 ("PPSA")

- (a) In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- (b) Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) — being a monetary obligation of the Client to the Seller for Services — that have previously been supplied and that will be supplied in the future by the Seller to the Client.
- (c) The Client undertakes to:
 - a. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - b. register any other document required to be registered by the PPSA; or
 - c. correct a defect in a statement referred to in paragraphs a. and b. above;
 - d. indemnify and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - e. not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
 - f. not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Seller;
 - g. immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- (d) The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- (e) The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (f) The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- (g) Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- (h) The Client must unconditionally ratify any actions taken by the Seller under clauses 13(c) to 13(e).
- (i) Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- (j) The parties acknowledge and agree that this Clause is an essential term of this agreement.

14. Security and Charge

- (a) In consideration of the Seller agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- (b) The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

- (c) The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

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

- (a) The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller to inspect the Goods.
- (b) Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).
- (c) The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- (d) Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- (e) If the Client is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- (f) If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Client has paid for the Goods.
- (g) If the Client is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:
- a. limited to the value of any express warranty or warranty card provided to the Client by the Seller at the Seller's sole discretion;
 - b. limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
 - c. otherwise negated absolutely;
- (h) Subject to this clause 15, returns will only be accepted provided that:
- a. the Client has complied with the provisions of clause 15; and
 - b. the Seller has agreed that the Goods are defective; and
 - c. the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - d. the Goods are returned in as close a condition to that in which they were delivered as is possible.
- (i) Notwithstanding clauses 15(a) to 15(h), but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- a. the Client failing to properly maintain or store any Goods;
 - b. the Client using the Goods for any purpose other than that for which they were designed;

- c. the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - d. the Client failing to follow any instructions or guidelines provided by the Seller;
 - e. fair wear and tear;
 - f. any accident, Unforeseen Event, Natural Disaster or Public Health Event.
- (j) In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and defects, and that to the extent permitted by law, no warranty is given by the Seller as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. This clause 15(j) is an essential term of the agreement with the Client. The Client acknowledges and accepts this clause is an essential term and that the Seller has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 15(j).

16. Intellectual Property

- (a) Where the Seller has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- (b) The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- (c) The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.

17. Default and Consequences of Default

- (a) Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) at any time up to the date of judgement obtained by the Seller against the Client and until the Seller has been able to enforce the Judgement and recover all monies outstanding and owing to it.
- (b) If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).
- (c) Further to any other rights or remedies the Seller may have under this contract, if a Client has made payment to the Seller, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- (d) Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
 - a. any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
 - b. the Client has exceeded any applicable credit limit provided by the Seller;
 - c. the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

- d. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

(e) The parties acknowledge and agree that this Clause is an essential term of this agreement.

18. Cancellation / Termination

- (a) Without prejudice to any other remedies the Seller may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions, the Seller may suspend or terminate the supply of Goods and Services to the Client.
- (b) The Seller will not be liable to the Client for any loss or damage the Client may suffer or incur as a result of the Seller having exercised its rights under clause 18(a).
- (c) The Seller may cancel any contract to which these terms and conditions apply or cancel delivery of Goods and/or Services at any time before the Goods are delivered, by giving written notice to the Client in any one of the permissible methods of delivery of notices in these terms and conditions.
- (d) On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods.
- (e) The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- (f) In the event that the Client cancels delivery of the Goods other than cancellations pursuant to clause 18(g), the Client shall be liable for any and all loss and damage sustained or incurred (whether direct or indirect) by the Seller as a result of the cancellation (including, but not limited to, any loss of profits).
- (g) Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, can only be made:
 - a. prior to the commencement of production of the Goods; or
 - b. prior to an order being placed by the Seller.
- (h) The parties acknowledge and agree that this Clause is an essential term of this agreement.

19. Privacy Act 1988 (Cth)

- (a) The Client agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Seller.
- (b) The Client agrees that the Seller may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - a. to assess an application by the Client; and/or to notify other credit providers of a default by the Client; and/or
 - b. to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - c. to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- (c) The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- (d) The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):
 - a. the provision of Goods; and/or
 - b. analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - c. processing of any payment instructions, direct debit facilities and/or credit facilities requested

by the Client; and/or

- d. enabling the collection of amounts outstanding in relation to the Goods.
- (e) The Seller may give information about the Client to a CRB for the following purposes:
 - a. to obtain a consumer credit report;
 - b. to allow the CRB to create or maintain a credit information file about the Client including credit history.
- (f) The information given to the CRB may include:
 - a. personal information as outlined in 19(a) above;
 - b. name of the credit provider and that the Seller is a current credit provider to the Client; whether the credit provider is a licensee;
 - c. type of consumer credit;
 - d. details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - e. advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - f. information that, in the opinion of the Seller, the Client has committed a serious credit infringement;
 - g. advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- (g) The Client shall have the right to request (by e-mail) from the Seller:
 - a. a copy of the information about the Client retained by the Seller and the right to request that the Seller correct any incorrect information; and
 - b. that the Seller does not disclose any personal information about the Client for the purpose of direct marketing.
- (h) The Seller will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- (i) The Client can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint.
- (j) In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Dispute Resolution

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

- f. conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

21. Building Industry Fairness (Security of Payment) Act 2017 Qld ('the Act')

- (a) At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Act may apply.
- (b) Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Act, except to the extent permitted by the Act where applicable.

22. Service of Notices

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

23. General

- (a) An amendment or variation of these Terms and Conditions of Trade is not effective unless it is in writing and signed by or on behalf of the Parties by a person holding the requisite authority to bind the relevant Party.
- (b) If it is held by a Court that:
 - a. any part, clause or part of a clause of this agreement is void, voidable, illegal, unenforceable or a penalty; or
 - b. this agreement is void, voidable, illegal or unenforceable unless any part, clause or part of a clause of this agreement is severed from this agreement,

that part, clause or part of the clause will be severed from this agreement and the balance of this agreement given effect to, unless to do so would change the underlying principal commercial purposes of this agreement.

- (c) Queensland law applies to this agreement. The Parties submit to the non-exclusive jurisdiction of the Courts of Queensland.
- (d) If requested by the other Party, each Party must, at its own expense, do everything reasonably necessary to give effect to this agreement.
- (e) Each Party must pay its own costs on this agreement.
- (f) If the date or the last date for a notice to be given, an act to be performed or a payment to be made falls on a Saturday, Sunday or public holiday then the date or the last date (as the case may be) will be the Business Day next following such date.
- (g) In relation to measurement of time:

- a. where a period of time runs from a given day or the day of an act or event, it must be calculated

exclusive of that day;

- b. a day is the period of time commencing at midnight and ending 24 hours later.
- (h) Time is of the essence of this agreement, except regarding a time of day for deliver of the Goods and/or Services.
- (i) Subject to the terms of this agreement, the Parties acknowledge that it is their intent that the Seller is obliged to sell, and the Buyer is obliged to buy the Goods and Services on the terms set out in this agreement. If a provision of this agreement or any legislation is (in the context of whether or not this agreement is valid and binding) open to interpretation, then such provision or legislation must be read or interpreted so that the agreement is found to be valid and binding on the Parties.
- (j) Reference to statutes includes, if the context requires, any regulations, codes, policy statements and similar things concerning them. Reference to statutes and regulations includes all statutes and regulations amending, consolidating, or replacing them.
- (k) If a Party consists of more than one person, this agreement (including each agreement, representation, warranty and promise) binds them and is for their benefit jointly and each of them individually. A party that is a trustee is bound both personally and as a trustee.
- (l) Headings are for convenience only and do not form part of this agreement or affect its interpretation.
- (m) In any combination or list of options, the use of the word or is not used as a word of limitation.
- (n) The use of the word including (and any similar expression) is not used as a word of limitation.
- (o) Without limiting any other right or remedy of the Seller including those under this agreement or any right under statute or at common law, if the Client breaches or fails to comply with an Essential Term or makes a fundamental breach of an intermediate term of this agreement, the Seller may affirm or terminate this agreement. No affirmation or termination of this agreement is effective unless it is in the form of a notice. A failure to make an election to affirm or terminate this agreement by any particular date is not to be taken as a waiver of any rights of the Seller under this agreement.
- (p) A failure to make an election to affirm or terminate this agreement by any particular date by either Party is not to be taken as a waiver of any rights of that party under this agreement.
- (q) A waiver of any right under this Contract is effective only if given in the form of a Notice, signed by or on behalf of the Party bound, by a person holding the requisite authority to bind the relevant Party, in respect of the specific instance to which it relates, and for the specific purpose for which it is given. In the absence of an effective waiver, no failure or forbearance by a Party to insist on any right to performance of a condition or obligation of the other Party can amount to, under any circumstances, a waiver, an election between existing rights, a representation sufficient to ground an estoppel or a variation whereby that other Party is relieved or excused from performance of such condition or obligation.
- (r) Words in the singular include the plural, and words in the plural include the singular.
- (s) Words indicating a gender includes each other gender.
- (t) A person includes an individual and a corporation.
- (u) A Party includes the Party's executors, administrators, successors, and permitted assigns.
- (v) Dimensions include the area of the thing for which the dimensions have been given.
- (w) Neither party may not assign or transfer or attempt to assign or transfer their interest under this agreement without the prior written consent of the other. This is an Essential Term.

24. Representations and Warranties and Disclosure

- (a) The Client acknowledges that no sales or marketing agent has authority from the Seller to make representations or to give warranties or assurances on behalf of the Seller, other than those contained in this agreement.
- (b) The Client confirms and represents to the Seller that the Client has not been induced to enter into this Contract by, and has not relied on, any representations, warranties or assurances other than those which are included above or contained in this agreement and/or which are included in the relevant quote and/or purchase order attached.
- (c) The Client understands that:
 - a. it is representing and warranting to the Seller that it has not been induced by and has not relied on anything said or done by or on behalf of the Seller to enter into this agreement, other than what is contained in this agreement and the relevant quote and/or purchase order attached;
 - b. except for this representation and acknowledgement, the Seller would not have entered into this agreement to supply the Goods and Services to the Client at the price agreed to; and
 - c. by the acknowledgment, confirmation and representation given in this clause 24, it is likely that the Client will not be able to sue the Seller in respect of any promise, representation, warranty or assurance other than those set out above or which are set out elsewhere in this agreement and the relevant quote and/or purchase order attached.
- (d) Where, in the terms of this agreement or the quote / purchase order attached, a representation, warranty or acknowledgement has been made by a Party, the other Party to whom the representation, warranty or acknowledgement is made is entitled to rely on that representation, warranty or acknowledgement.
- (e) The Client acknowledges that the Seller has agreed to enter into this agreement in reliance upon the various representations, warranties and acknowledgements made by the Client in this agreement.
- (f) In undertaking the manufacture, order, production and/or supply of the Goods and Services, the Seller is assuming a range of risks which it cannot foresee or control. These risks include that:
 - a. the production of the Goods and Services may be delayed or take an extended period of time;
 - b. a Disaster Event may cause significant damage to improvements;
 - c. a pandemic or other unforeseen event may cause significant delays in building improvements;
 - d. a change in economic conditions affecting financial viability;
 - e. Client preferences change such that Clients desire a different product;
 - f. risk that innovation in design and product necessitates a change to the composition or production of the Goods and delivery of the Services (or any part of it).
- (g) Accordingly, to protect the legitimate interests of the Seller given:
 - a. the nature of the Goods and Services being sold,
 - b. the technical, planning, regulatory, economic and commercial uncertainties set out above;
 - c. the relative risks to which the Seller is exposed,

it is necessary that the agreement include terms that:

- a. permit the Seller to make changes and variations;
- b. grant the Seller rights to terminate the Contract; and
- c. limit the ability of the Client to object.

