

These are the entire Terms and Conditions of Supply of all goods and services supplied by 360 Windows Pty Ltd ABN 51 676 479 708

Clause 1 is a glossary to help the parties understand certain words in the Terms

1. DEFINITIONS AND INTERPRETATION

Additional Expenses means any duties, fees, taxes (including GST), imposed by these Terms, including delivery and freight charges, site allowances, merchant and other payment related fees, traffic management charges, fees for relevant certifications and permits and licences, hire charges for lifting or access equipment, scaffolding or fence hire charges, material removal fees, installation fees, storage fees, environmental levies, consultant fees, and design and project management fees.

Credit Account means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms, or the number of trading days listed on Our invoice.

Customer means any person, firm or company placing an Order with Us for the purchase of Goods and Services pursuant to these Terms, including Your associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "You" and "Your").

Deposit means the upfront part-payment for the Goods and Services, the amount of which is determined by Us from time-to-time.

Due Date means the date listed on Our invoice for Your payment of Goods and Services.

Equipment means any plant, motor vehicles, appliances, machinery and other equipment supplied by Us to Your Site for provision of the Goods and Services.

Force Majeure means something outside a party's reasonable control, including war, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism.

Goods means any goods, products, equipment and merchandise supplied by Us to You pursuant to any Quote, Order and/or these Terms, including industrial and commercial windows, doors and glass products and all associated hardware such as screens, trims, locks, hinges and handles.

Insolvency Event means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

Loss means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

Order means a request to purchase Goods and Services placed by You.

PPSA means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and

- (b) any amendment made at any time to any other legislation as a consequence of the PPS Act.

Quote means Our written description of the Goods and Services to be supplied to You, which is valid for 30 days.

Services means professional window and door system services provided by Us to You pursuant to any Quote, Order and these Terms, which may include from time-to-time design, research and development, consulting, glass and glazing, toughening and laminating, and installation services.

Site means any place at which You request Goods and Services to be supplied.

Supplier means the entity or entities specified in these Terms as supplying Goods and/or Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

Terms means these Terms and Conditions of Supply, including any special terms and conditions that We list on Your Quote.

Website means www.360windows.com.au as redirected from time to time.

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and/or Services are being supplied;
- (b) a reference to writing includes email and any communication through Our website;
- (c) a reference to a clause or paragraph is a reference to these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (g) a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- (h) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

Clauses 2 and 3 outline the framework of the Terms, including our relationship, the governing law and how to make changes to the Terms

2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) These are the entire terms and conditions for sale of all Goods and Services supplied by Us to You. Except where special terms and conditions are listed by Us on any Quote, these Terms apply notwithstanding any provisions to the contrary which may appear on any other document.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You

warrant that any person signing these Terms or instructing Us as to the Goods and Services has Your authority and power to do so.

- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, making an Order, or by instructing Us to commence or continue Goods and Services.
- (d) You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) These Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Victoria applying the laws of that State.

3. CHANGES AND UPDATES TO THESE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms. Any updated or altered Terms will apply from the date of alteration. A copy of current Terms can be found on Our website or by requesting a copy from Us.
- (b) We will endeavour to notify You of any updated or altered Terms. However, there is no obligation whatsoever on Us to notify You of updated Terms and You agree that You must regularly inspect Our website for any updated Terms.
- (c) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (d) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (e) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.

Clauses 4 - 6 deal with purchasing from Us, including prices, orders, supply, risk and ownership

4. PRICES, QUOTATIONS AND ORDERS

- (a) You may purchase Goods and Services by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (b) Orders may be subject to minimum amounts as determined by Us in Our sole discretion from time-to-time.
- (c) We may accept or decline any Order by notifying You in writing, by delivering the Goods to You or supplying the Services. The parties agree that these Terms apply to all Orders for the supply of Goods and Services.
- (d) We may ask You to pay a Deposit upon receipt of a Quote from Us. If We ask You for a Deposit, We will not be deemed to have accepted Your Order until payment of the Deposit has been made. The balance price of the Order must be paid on delivery of Goods or completion of the Services, or as otherwise directed by Us.
- (e) We may issue a Quote to You, but a Quote is not an offer by Us to supply Goods and Services to You. We may vary or cancel any Quote before an Order is accepted.
- (f) All Quotes expire on the date stated on the Quote or otherwise 30 days after the date the Quote is issued by Us. We may vary or cancel any Quote before an Order is accepted.
- (g) You may cancel an Order within 24 hours of placing the Order without incurring any cancellation fees. You cannot cancel an Order after 24 hours of acceptance without Our written consent and at Our absolute discretion, and You may be required to make full payment of your

Order.

- (h) If You are a Customer who does not have a Credit Account, We will not be deemed to have accepted Your Order until payment in full has been made.
- (i) Prices specified on any of Our price lists are subject to change without notice to You. You will be charged in accordance with the price that is current at the time You place Your order.
- (j) Unless the parties agree differently in writing, the price You must pay for Goods and Services is specified in Our invoice and may include Additional Expenses.
- (k) We have the right to change the prices of Goods and Services supplied under these Terms without notice:
 - i) Before accepting any Order or request for a Quote;
 - ii) You do not comply with Your obligations of Section 5 Supply and Delivery; or
 - iii) A variation to the original Order or Quote for Goods and Services occurs.
- (l) In any other circumstance, We will provide you with 7 days' notice of any price changes.

5. SUPPLY AND DELIVERY

- (a) Specifications for the Goods and Services being supplied under these Terms are contained in the Order/s You submit from time-to-time.

Supply and Delivery of Goods

- (b) To supply Goods to You, We may make the Goods available for Your collection or deliver the Goods to You. Delivery may be by a third-party carrier and delivery by instalments.
- (c) At any time, We may appoint an agent to perform Our obligations of delivery under these Terms.
- (d) Delivery may attract Additional Expenses that we determine from time-to-time and You agree to those Additional Expenses.
- (e) You authorise Us to deliver Goods to the Site nominated by You. You also authorise Us to leave any Goods at this Site whether or not any person is there to accept delivery.
- (f) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods delivered.
- (g) You must provide a suitable and safe Site for Us to deliver the Goods, including a Site that is compliant with occupational health and safety legislation and fully insured for Our (or Our agents, employees or contractors) safe use.
- (h) All delivery times indicated by Us are estimates only. Delivery times are subject to Goods being available and Our reasonable ability to supply Goods on that date. We will endeavour to deliver Goods at the time you need, but if We fail to deliver Goods within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods.
- (i) Delivery of the Goods is deemed to occur (and Our obligation is thereby discharged) when the Goods are:
 - i) Handed to You or Your representative; or
 - ii) Delivered to the site nominated by You or appearing on Your invoice for the Goods; or
 - iii) Collected from Us by You or Your representative, whichever occurs first.
- (j) If You do not collect the Goods by the nominated collection date, then We may deliver the Goods to any Site nominated by You or appearing on Your invoice for the Goods. We may also store the Goods or refuse to store the Goods if full payment has not been received from You.
- (k) You agree to examine the Goods immediately on delivery.
- (l) We are not liable for any Loss suffered by You whatsoever after delivery of the Goods to You.
- (m) You must pay all costs and fees We incur due to:

- i) Our storage or delivery of the Goods where You have failed to collect them by the nominated collection date;
 - ii) Any delay in delivery of the Goods which is caused by You, the conditions of the nominated Site or the nature of the Goods being delivered;
 - iii) Any unexpected labour, permit, licence or additional costs in connection with the delivery.
- (n) Entry onto Our premises is at Your own risk. It is also at the risk of Your agents, employees, contractors and other representatives. We are not liable for any Loss whatsoever that You (or any of Your agents, employees, contractors or other representatives) incur at Our premises.

Supply and Delivery of Services

- (o) The Services are provided to You with all due skill and care in accordance with Our professional standards.
- (p) You authorise Us to provide Services and deliver Equipment to the Site nominated by You. You also authorise Us to leave Our Equipment at the Site whether or not any person is there to accept delivery.
- (q) Estimates of time for completion of the Services are made in good faith and subject to:
- i) Receiving the required co-operation and commitment from You and other organisations, government bodies, advisers and consultants;
 - ii) Our reasonable ability to provide the Services by that date;
 - iii) Availability of Site dimensions, including confirmation of all finishes.
- (r) We will endeavour to deliver Services by the time You need, but if You do not provide or delay in providing that co-operation, We may charge Additional Expenses that are incurred as a result (in addition to any other rights We may have). If We fail to deliver Services within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Services.
- (s) We are not liable for any Loss suffered by You whatsoever after the Services have been delivered to You.

Your Obligations and Acknowledgements

- (t) To facilitate Our supply of the Goods and Services, prior to Our supply of Goods and/or Services You must:
- i) Provide close and easy access for Us to carry Goods and Equipment to the installation area;
 - ii) Erect and maintain all scaffold, lifting and hoisting equipment (such as mechanical sucker or crane), barricades, guards, fencing, temporary roadways and footpaths, signs and lighting at the Site that We reasonably require;
 - iii) Provide and maintain a suitable and safe Site for Us to supply the Services, including compliance with occupational health and safety legislation and fully insured for Our (or Our agents, employees or contractors) safe use;
 - iv) Provide accurate and complete instructions, Site measurements and information that We reasonably require;
 - v) Facilitate access to designs, plans, files, records, information technology systems, premises, facilities, third parties where applicable and people (whether engineers, builders, management or staff) with the relevant skills and experiences that We reasonably require;
 - vi) Provide all resources that are reasonably necessary to ensure timely approval, development and sign-off of all project plans, licenses and permits, specifications, accounts and deliverables, including inspecting and reviewing any reports and other work product prepared by Us or a third party;
 - vii) Identify and advise Us of any existing internal or external structural faults, including aged or loose mortar and loose sill tiles;
 - viii) Adequately and safely batten all electrical and power lines at

the Site;

- ix) Remove or refit any existing alarm systems, including reeds or switches associated with doors and windows;
 - x) Remove or refit existing plumbing or electrical wiring;
 - xi) Arrange for any cutting, modification or making good of ceiling tiles, plaster, grids or bulkhead linings; and
 - xii) Unless otherwise agreed between the parties, provide adequate storage and protection for all Goods and Equipment at the Site.
- u) You acknowledge and agree that:
- i) Our Services are limited to the particular consultation, project, solution, tasks, activities or other scope of work that We have agreed to carry out and the specific circumstances that apply in the course of Our Services;
 - ii) We are entitled to rely on the accuracy of and completeness of the information (written or oral) provided to, or obtained by, Us, whether the information is provided by, or obtained from, You, Your officers or staff, or Your advisors or consultants;
 - iii) Any Services provided are based on information that is made available or is available to Us at the time. You acknowledge and agree that actual results may be different from any objectives, budgets, projections or forecasts since unanticipated or unexpected events frequently occur and the variation may be material;
 - iv) We may not be able to remove old windows and doors as a whole;
 - v) Existing window furnishings may not fit the window opening after the Goods are installed. Unless otherwise agreed in writing between the parties, You are responsible for the cost of alterations of any window or door furnishings;
 - vi) We reserve the right to determine the final installation method of Goods as may be structurally necessary; and
 - vii) You must promptly notify Us of any change in information that may have a material impact on the Services, including any information regarding a design wind load, window or door thickness, and any required glazing certificates.

6. RISK AND OWNERSHIP

- (a) Unless the parties agree differently in writing, all risk in Goods and Services passes to You when the Goods and Services are delivered to You (or Your agent, representative or nominated carrier) or when the Goods are collected by You (or Your agent or nominated carrier).
- (b) Legal ownership of Goods sold to You does not pass to You until We have received all amounts owing by You on any account whatsoever with Us, including any Additional Expenses.
- (c) Until legal ownership of Goods passes to You, Goods sold are held by You for Us as bailee. You must store the Goods separately from Your own or anyone else's goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (d) You may resell any Goods before legal ownership passes to You, provided that You:
- i) Resell the Goods to a third party in the ordinary course of business;
 - ii) Act in any transaction as Our fiduciary agent;
 - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
 - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
 - v) Allow us to inspect any records of any payments received for Goods.
- (e) If You do not pay for any Goods and Services by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods. We

reserve these repossession rights without being liable to You or any other third party in any way.

- (f) You must insure the Goods at Your own cost and expense. Insurance must be to the full extent of the price paid or payable for those Goods and remain valid at all times. This includes, but is not limited to, between the time that risk in the Goods passes to You and the date that title in the Goods passes to You.
- (g) Legal ownership of Equipment does not pass to You whatsoever. Even if You go into external administration, We retain title to the Equipment at all times. Your rights to use any Equipment is only with Our prior written consent.
- (h) If We consent to Your use of Our Equipment, then Your rights to use Our Equipment are as bailee only and You are not entitled to offer, sell, assign, sub-let, mortgage, pledge or otherwise deal with hired Goods in any way which is inconsistent with Our (or any third party sub-hirer) ownership of the Equipment.
- (i) If You do not pay for any Goods and Services by the Due Date or You suffer an Insolvency Event, then We may repossess Our Equipment wherever it is located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing any of the Equipment. We reserve these repossession rights without being liable to You or any other third party in any way.

Clauses 7 - 9 outline how we get paid for Services, including making payment, credit accounts and our security for payment

7. PAYMENT AND CREDIT

- (a) Unless the parties agree differently in writing, You must pay for Goods and Services on or before the Due Date.
- (b) All amounts payable by You for Goods and Services are inclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (c) At Our discretion, We may require payment (including part payment) for the Goods and Services before any Order or Quote is processed and fulfilled.
- (d) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.
- (e) Payment must be made in a manner approved by Us. We may charge You a reasonable bank processing fees, including surcharges for processing payments made by credit card, dishonour handling fees, and other bank processing fees at amounts advised by Us from time to time.
- (f) If You do not pay for Goods and Services by the Due Date, We may:
 - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. Or We may charge You a late payment fee calculated as 10% of the amount of the Invoice. The parties agree that this interest or late payment charge is not a penalty, but a true measure of damages incurred by Us;
 - ii) Require You to pay cash on delivery of any further Goods and Services, or suspend or cease supplying Goods and Services to You;
 - iii) Demand Your immediate payment of all outstanding monies;
 - iv) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
 - v) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and

- vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- (g) You may apply for a Credit Account with Us to purchase Goods and Services. We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (h) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent. Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (i) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.
- (j) You also authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts owed by You to Us (including Additional Expenses and interest payable under the Contract).
- (k) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (l) Time is of the essence in relation to this section. This section survives expiry or termination of these Terms.

8. SECURITY OVER REAL ESTATE

- (a) To secure payment of all monies You owe Us for the supply of Goods and Services, You:
 - i) Charge all of Your interest in real and personal property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("**Charge**"). This Charge constitutes a General Security Agreement for the purposes of the PPSA;
 - ii) Authorise and consent to Us taking all actions necessary to give effect to the Charge, including the lodgement of a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, or any other security document; and
 - iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form. You agree that any amount payable to Us payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Registry Services New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
 - iv) Irrevocably appoint Us and any person nominated by Us severally as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security document to effect the Charge granted under this part.

9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

Security for Goods Supplied

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods supplied by Us from time to time and any proceeds of the sale of the Goods to secure payment for the Goods supplied ("**Security Interest**").
- (b) Each sale or supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and the proceeds of the sale of the Goods, including as a purchase money security interest (as that term is defined in the

PPSA ("PMSI"), pursuant to these Terms.

General Security Agreement for Services Supplied

- (d) For the purpose of any general security agreement ("General Security Agreement"), "Collateral" means all Your present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which You have at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in Your own right or as trustee of a trust.
- (e) You acknowledge and agree that:
- i) In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in Your Collateral to secure payment for the Services supplied ("Security Interest");
 - ii) Each supply of Services by Us under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
 - iii) We may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

Assurances

- (f) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods and/or Services, including for the purposes of:
- i) Ensuring that any Security Interest created under, or provided for, by these Terms:
 - a. Attaches to the Goods and/or Collateral that is intended to be covered by that Security Interest; and
 - b. Is enforceable, perfected and otherwise effective; and
 - c. Has the priority required by Us.
 - ii) Enabling Us to prepare and register a financing statement or financing change statement;
 - iii) Enabling Us to register a PMSI pursuant to the PPSA;
 - iv) Enabling Us to register an ALLPAAP pursuant to the PPSA; and
 - v) Enabling Us to exercise and maintain any of Our rights or powers in connection with any such Security Interest.
- (g) If You dispose of the Goods or the Collateral, You must:
- i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
 - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (h) If a higher-priority security interest does arise in the Goods and/or Collateral despite Your obligations under this section, You must:
- i) Ensure that You receive cash proceeds for the Goods and/or Collateral of at least equal to the market value of the Goods and/or Collateral; and
 - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (i) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

Exclusion of Notices and Other Obligations

- (j) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:

- i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - ii) Sections 142 and 143 are excluded;
 - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (k) To the extent permitted by law, You agree to waive:
- i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - ii) Any time period that must otherwise lapse under any law before a secured part or a receiver exercises a right, power or remedy.
- (l) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

- (m) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (n) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
- i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
 - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (o) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (p) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

Other

- (q) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (r) Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

Clause 10 outlines how to deal with issues that may arise, including returns

10. RETURNS

- (a) Unless We agree otherwise in writing, We are not required to accept returned Goods from You or issue You with a credit for Goods and Services. Our consent to return Goods will not be unreasonably withheld.
- (a) If You think any Goods or Services are defective, damaged, missing or misdelivered, You must notify Us of any complaint in writing and **within 7 days** of delivery/collection of the Goods or Services. You must take all steps necessary to mitigate any Loss arising from any defect in the Goods or Services supplied. You will be deemed to accept the Goods and Services (including any defects) if You do not make a complaint in accordance with these Terms.
- (b) Any complaint under this section must be accompanied by:-
- i) Proof of purchase;
 - ii) Written details of the alleged defect including photographs;
 - iii) Appropriate documentation (such as installation and maintenance records).
- (c) You must allow Us or Our authorised representatives access to the

- Goods or Site for inspection.
- (d) Goods which are not manufactured by Us are subject solely to the warranties (if any) specified by the third-party manufacturers or suppliers to Us. To the extent permitted by law, We give no warranties beyond the third-party manufacturer or supplier warranties.
 - (e) If We agree to accept Goods by return or provide You with a credit, You must provide Your proof of purchase for the Goods being returned.
 - (f) We may charge You reasonable restocking, disposal or repacking charges which We incur from the Goods being returned.
 - (g) Goods which are already installed, custom built, or not in original or resaleable condition cannot be returned, including Goods which are not in their original shipping cartons.
 - (h) You are responsible for any Additional Expenses associated with any return of Goods.
 - (i) Credits may only be redeemed against future orders and subject to Our minimum order policy. No cash refunds will be issued for credits.

Clauses 11 – 13 outline the exclusions, limitations of liability and indemnities applicable to each party under these Terms

11. WARRANTIES AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) as amended from time to time (“the Act”)), where to do so would contravene that statute or cause any provision of these Terms and Conditions to be void. Nothing in these Terms and Conditions modifies or excludes the conditions, warranties, and undertakings and other legal rights under the Act and other laws.
- (b) If You are a consumer as that term is defined under the Australian Consumer Law, Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods and Services repaired or replaced if the Goods and Services fail to be of acceptable quality and the failure does not amount to a major failure. The benefits provided to You under this part are in addition to other rights and remedies available to You under the law.
- (c) However, We only deal with commercial customers purchasing Goods and Services for business purposes and We do not deal with Consumers (as that term is defined in the Australian Consumer Law). The Australian Consumer Law will not apply to Goods and Services sold by Us. When purchasing Goods and Services You acknowledge that You are not a Consumer (as that term is defined in the Australian Consumer Law).
- (d) Except as expressly set out in the Act, these Terms and Conditions or a separate warranty document, We make no warranties or other representations under or in connection with these Terms and Conditions, and Our liability in respect thereof, is limited to the fullest extent permitted by law.
- (e) You acknowledge that We make no representations or warranties as to the fitness or suitability for any purpose of any of the Goods (whether express or implied and even if that purpose is made known to Us) and You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the goods. You are responsible for ensuring that the Goods are suitable for Your intended use.
- (f) No sale under these Terms constitutes a sale by sample. You acknowledge that any sample may vary from the goods that are produced.
- (g) No sale under these Terms constitutes a sale by description. Any description of goods is by way of identification only.
- (h) To the extent permitted by law, all other implied conditions and warranties are excluded.

12. LIMITATION OF LIABILITY

- (a) If We are lawfully allowed to limit our liability to You in respect of the Goods and Services, then Our liability to You is limited to Our choice of:
 - i) re-supply of the Goods and/or Services; or
 - ii) the cost to replace the Goods and/or Services with equivalent Goods and/or Services; or
 - iii) repair of the Goods, or cost to repair the Goods; or
 - iv) reimbursement of some or all of the price paid by You for the Goods and/or Services.
- (b) In any other situation, including but not limited to Our breach of these terms, tort law or negligence, then Our liability to You will not exceed the price of the Goods and/or Services supplied by Us (to the extent that is permitted by law).
- (c) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (d) We will not be liable to You if:-
 - i) Goods and Services have not been paid for;
 - ii) Goods have been abused, misused or neglected by You;
 - iii) We cannot establish any defect in the Goods after inspection;
 - iv) You have used the Goods other than for the purposes for which they were designed, including for an illegal purpose;
 - v) Goods have been repaired, altered or modified by someone other than Us;
 - vi) Goods have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress; and
 - vii) A defect has arisen due to Your failure to assemble, use, handle and maintain the Goods in accordance with Our care and maintenance recommendations or industry-accepted standards;
- (e) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods and Services and any Additional Expenses.

13. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and Services and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us.
- (b) Specifically, You must indemnify Us and hold Us harmless (or Our agents, employees or contractors) from:
 - i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Services and any action taken to secure any charge;
 - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with the Credit Account and supply of Goods and Services;
 - iii) Any loss and damage incurred by Us as a result of You cancelling your Order after 24 hours, including but not limited to any Additional Expenses;
 - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
 - v) Any and all Loss arising out of damage to Our Equipment on Site (including any loss of or damage to property) except to the extent that such Loss is caused by Our negligence or breach;
 - vi) Any and all Loss arising out of Your (or Your agent, employee, contractor or other representative’s) attendance at Our premises or the Site;
 - vii) Any and all Loss arising out of Your failure to provide a safe,

suitable and compliant Site for Services (including any personal injury or death) except to the extent that We have committed an act of negligence, breach of the law or breach of the Terms;

viii) Any liability that We incur in connection with Our reliance on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant information.

(c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms. For clarity, this indemnity does not apply to Loss which is caused by Our breach of these Terms.

Clauses 14 and 15 deal with the end of these Terms, including resolving disputes or termination if applicable

14. DISPUTE RESOLUTION

(a) If a dispute arises between the parties, the following procedure applies:

i) Either party may give the other a notice of the dispute. This means that the dispute must be dealt with in accordance with this section;

ii) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this paragraph;

iii) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this paragraph;

iv) If a dispute is notified, each party must immediately refer the dispute to its senior management. Those representatives must endeavour to resolve the dispute as soon as possible, but at least within 30 days (or other period as agreed between the parties);

v) At Our sole discretion, We may elect to resolve any dispute by mediation via the Australian Commercial Disputes Centre (ACDC) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The ACDC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;

vi) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists (including the referral of the dispute to mediation);

vii) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

15. TERMINATION

(a) Our termination rights are:

What We can do

We can by written notice:

- Suspend or cancel supply of Goods and Services or any current Order(s) for Goods and Services; and/or
- Suspend or terminate Your Credit Account; and/or
- Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired; and/or
- Register a default with any credit reporting agency, where applicable;

What We can do

and/or

- Enforce Our rights under any Security Interest; and/or
- Suspend or terminate the contract created by these Terms (“Our Termination Rights”)

(b) We can exercise Our Termination Rights immediately when:

When We can exercise Our Termination Rights

- You have not paid for Goods and Services by the Due Date; and/or
- You exceed the limit of Your Credit Account; and/or
- You breach a material term of these Terms; and/or
- Either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms; and/or
- You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
- You engage in illegal activity related to the Services;
- You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation; and/or
- An Insolvency Event occurs.

(c) Otherwise, either party may terminate these Terms:

i) Immediately by written notice if the other party is in breach of a material term of these Terms and the breach is not rectified within 14 days of the termination notice; or

ii) In all other circumstances, by giving the other party 30 days’ written notice.

(d) If a termination notice is given to a party for breach of these Terms, the terminating party may also:

i) recover any of its equipment, property, goods, materials and all related data, documentation and records in the possession, custody or control of the party at fault;

ii) recover any sums paid to the party at fault on any account or for services which have not been fulfilled or performed;

iii) subject to any limitation on liability applicable to the party at fault, recover from the party at fault the amount of any loss or damage sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have conferred on the terminating party;

iv) be regarded as discharged from any further obligations under these Terms; and

v) pursue any additional or alternative remedies provided by law.

Clauses 16 – 17 provide general information applicable to the Terms, including how we handle Your personal information

16. GENERAL

(a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.

(b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

(c) If any provision (whole or part) of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If modification is not possible, the relevant provision (whole or part) will be deleted. Any modified or deleted provision will not affect the validity and enforceability of the rest of these Terms.

(d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.

(e) In addition to any other method of service provided by law, a notice

may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.

- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.

17. ELECTRONIC COMMUNICATIONS

- (a) In addition to any other delivery method, You agree to receive Invoices via email.
- (b) You agree to accept service of notices under the Building and Construction Industry Security of Payment Act 2002 (Vic) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the goods were delivered to You, via e-mail (in addition to any and all other forms of service authorised under the legislation, or regulations made by the Act).
- (c) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the Electronic Transactions (Victoria) Act 2000 ("the Act").
- (d) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the Act.
- (e) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

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