

The Roofing Centre Albury Wodonga Pty Ltd Terms and Conditions of Trade as at 1 March 2024

Preamble:

These terms and conditions together with any credit application, quotation, order (including on-line or web-based orders) or proposal to which these terms are attached or in which these terms are referred, together make up a legally binding agreement (**the Agreement**) between **The Roofing Centre Albury Wodonga Pty Ltd**, ABN 94 003 916 569, (**the Supplier**) AND the person(s) or company named as the purchaser (**the Purchaser**) in the attached or previously signed or submitted credit application, quotation, order or proposal, AND if the Purchaser is a corporation, the directors of the Purchaser who have signed or otherwise agreed to this Agreement (**the Guarantor/s**).

This Agreement may be accepted by doing either one or more of the following:

- (a) Signing these terms and conditions of trade; or
- (b) Signing the credit application, proposal or quotation issued by the Supplier in which these terms and conditions were attached or referred to; or
- (c) Placing an order or accepting a quotation or proposal after receiving notice of these terms and conditions of trade.

THE PARTIES AGREE as follows:

1. Agreement to Buy and Sell

1.1 The parties acknowledge that the Supplier will sell and the Purchaser will purchase goods from time to time pursuant to these terms and conditions. If any future contract or document between the Supplier and the Purchaser is inconsistent with this Agreement, then this Agreement will apply unless the subsequent contract is signed by the Supplier, refers to and specifically alters this Agreement in writing.

1.2 Should there be any variation to any of the information supplied by the Purchaser in its credit account application or in the structure of the Purchaser's business (such as a conversion to or from a company or trust or the appointment of new directors or change in shareholders), the Supplier shall be notified in writing. Until a new credit application form is signed and approved in writing by the Supplier, the original Purchaser and those person(s) who signed as guarantor(s) shall remain liable to the Supplier as though all goods and services were supplied to the original Purchaser.

2. Placement of Orders and Variations

2.1 The Purchaser must, at the election of the Supplier, order the goods from the Supplier in writing, by phone, email, facsimile, Supplier-hosted on-line or web-based ordering (if the Supplier has this facility) or other electronic communication or telecommunication acceptable to the Supplier (which includes without limitation purchase orders, the acceptance by the Purchaser of a quotation, proposal or variation prepared by the Supplier) ("orders"). Upon placement of the order, the Purchaser will be bound to proceed with the purchase of the goods at a price confirmed by the Supplier.

2.2 The Supplier will not be bound by any terms or conditions expressed in orders or acceptances generated by the Purchaser except to the extent that such terms have been expressly agreed upon between the parties in writing and signed by the Supplier. For the avoidance of doubt, even where the Purchaser attaches or refers to other terms and conditions in purchase orders or other requests for quotations or supply of goods and/or services, received after this Agreement has been entered into (**additional terms**), such additional terms are expressly excluded from this Agreement and will be of no force or effect against the Supplier unless it expressly agrees otherwise (by notice in writing, signed by a director of the Supplier).

2.3 The Supplier may decline to accept any order without providing a reason in its absolute discretion.

2.4 If the Purchaser requests or the Supplier deems there to be a variation in the scope of the supply of goods, then the Supplier may (but is not obliged to) notify the Purchaser in writing of the variation, the price variation, associated delays and any other information the Supplier deems relevant.

2.5 The Supplier is not obliged to commence any supply associated with any variation identified in accordance with **clause 2.4** unless and until the Purchaser acknowledges and accepts in writing the variations contained in that notice.

3. Delivery and Collection of Orders

3.1 The Purchaser acknowledges that goods delivered to a courier are outside the Supplier's control and the Supplier will not be liable for any loss, damage, delay or non-delivery of goods contributed to by a third party (including the courier), to the extent permitted by law. In accordance with clause 7.6, the Purchaser bears the risk of the goods once the goods are delivered to the courier.

3.2 Deliveries shall be made during normal working hours and at the cost and risk of the Purchaser. In the event the Purchaser or the Purchaser's agent is not on site to accept the delivery, then the

driver's signature denoting the time, date & place of delivery, shall be deemed to be acceptance of the said delivery by the Purchaser.

3.3 If a delivery driver or courier, in their absolute discretion, deem the Purchaser's delivery site unsafe or inaccessible then the delivery driver or courier reserves the right to not make the delivery of the goods until such time as the issues in relation to the site have been rectified or an alternative address supplied. In the meantime, the goods will be taken back to the Supplier's premises at the Purchaser's expense and any subsequent re-delivery will be at the Purchaser's expense.

3.4 If a delivery driver or courier enters the Purchaser's delivery site at the direction of the Purchaser or its personnel and becomes bogged or stuck, or otherwise causes damage then the Purchaser will be liable for the costs of recovering the delivery vehicle and for any damaged caused to the vehicle and any other property or person.

3.5 Subject always to the preceding clauses, the Supplier's obligation to deliver goods will not extend beyond delivery immediately inside the boundary of the address details provided by the Purchaser.

3.6 If a date for delivery is nominated by the Purchaser, the Supplier will not be bound to deliver the goods by that date unless it expressly agrees to do so in writing, signed by the Supplier, in which case, it will be deemed to agree to use reasonable endeavours to deliver by the relevant date. The Supplier shall be excused from any failure to deliver which is contributed to by causes beyond its reasonable control and the time specified for completion of delivery shall be extended commensurately. Delay in delivery or completion shall not constitute a breach of this Agreement, nor shall it affect any other provisions of this Agreement to the Suppliers disadvantage. Subject to clause 13.2, if the Supplier has failed to supply goods with 14, days of an agreed date, the Purchaser may terminate this Agreement in accordance with clause 10.1 provided the Purchaser complies with the balance of its obligations under this Agreement. Termination under this clause is the sole remedy for the Purchaser.

3.7 The Supplier's delivery driver or courier will not accept returns of any goods unless prior arrangements are made with the Supplier.

3.8 Some orders will require complete payment or a percentage of the order price to be paid up front by the Purchaser to the Supplier, some or all of which may be non refundable. This will be notified to the Purchaser after the order is placed.

3.9 If goods are to be collected from the Supplier's premises and are not collected by the agreed collection date, then:

- (a) the Supplier will not be liable for any damaged caused to goods after that date;
- (b) the Purchaser will be liable to pay to the Supplier a storage fee calculated in accordance with clause 5.7, based on the price of the goods being stored; and
- (c) where the goods are not collected within fourteen (14) days of the agreed collection date, the Supplier may in its absolute discretion dispose of the goods in any manner it sees fit and recover from the Purchaser any loss incurred in doing so (which may include the price of the goods, storage fees and legal costs on an indemnity basis) as a liquidated debt.

4. Restocking Fee

4.1 All "Stock Items" (ie, goods which are kept in stock in large quantities by the Supplier and are not ordered in on a job by job basis) that are not defective in design or manufacture, as determined by the Supplier acting reasonably, and are returned by the Purchaser shall incur a restocking fee of 20% of the total tax invoice price for those Stock Items.

4.2 Return of all non-Stock Items that are not defective in design or manufacture will only be accepted for return if the Supplier's supplier of the goods will accept the return of the goods from the Supplier or otherwise in the absolute discretion of the Supplier. All non-Stock Items returned by the Purchaser under this clause shall incur a restocking fee of 50% of the total tax invoice price for those non-Stock Items plus any freight costs incurred by the Supplier, plus any re-stocking fee payable by the Supplier to its supplier.

4.3 The Purchaser acknowledges that the restocking fees are a genuine pre-estimate of the additional costs and damage suffered by the Supplier in accepting returns on the conditions specified in this clause.

4.4 All goods manufactured for a custom order or manufactured using the purchaser's specifications are not returnable unless the goods are determined by the Supplier to be defective in manufacture or materials.

4.5 The Supplier will under no circumstances accept a return or be liable to accept a return of goods which;

- (a) are manufactured for a custom order or manufactured using the purchaser's specifications (unless the goods are determined by the Supplier to be defective in manufacture or materials); or

(b) have been damaged or otherwise rendered un-saleable.

5. Payment, quotations and Price

5.1 All supplies of goods are made at the price current at the time of delivery or completion in \$AUD. The price of the goods is quoted EXW (Incoterms 2010) from the Supplier's premises. Costs and charges for freight and handling at the point of delivery to the Purchaser or the Purchaser's agent are payable by the Purchaser unless otherwise stated on the quote/order form. Costs and charges will vary depending on size, weight and length of individual orders. All quotes remain current for **21 days** only from the date of quote but are not fixed. **NOTE pricing may vary from time to time subject to exchange rate variations and/or material increases outside the control of the Supplier.**

5.2 The Supplier will provide estimates based on drawings/specifications provided by the Purchaser. These are not quotations.

5.3 All quotations are prepared on a list of quantities provided by the Purchaser.

5.4 The Supplier will not be responsible for (and will be at liberty to charge for) differences in estimates or quoted quantities and the actual quantities of goods required to be supplied for a particular job.

5.5 The Purchaser must pay to the Supplier the price in relation to each purchase of goods as set out in the corresponding tax invoice.

5.6 Without prejudice to any other rights the Supplier may have under this Agreement or at law, the Supplier may withdraw credit facilities to the Purchaser at any time without notice. Without limiting the Supplier's rights to withdraw credit, the Supplier reserves the right to stop & place the account and any supply on hold until the account is returned to the agreed trading terms, and the Supplier agrees to recommence supply. Where credit has not been extended to the Purchaser or is otherwise suspended or withdrawn, then the Purchaser must pay for all goods purchased in full in cleared funds prior to the Supplier releasing those goods for shipping or collection.

5.7 The Purchaser agrees to pay to the Supplier an account service fee in relation to any amounts owed to the Supplier under or in connection with this Agreement which are not paid by their due date for payment. The account service fee will be calculated at a rate equal to 2% above the interest rate charged by the Supplier's financial institution on overdrafts of \$100,000, calculated daily and compounding monthly.

6. **Building and Construction Industry Security of Payment Act**
6.1 For the purposes of the *Building and Construction Industry Security of Payments Acts* (or equivalent acts) existing or enforceable from time to time in each State or territory in Australia:

(a) Every date on which goods are supplied shall be deemed a reference date, and the Supplier shall be entitled to issue payment claims accordingly.

(b) It shall be sufficient service of a payment claim if it is posted to your postal address as nominated on the credit application or to any other postal address that you nominate to us from time to time.

7. Passing of Title and Risk

7.1 Notwithstanding the delivery of the goods or part thereof the goods remain the sole and absolute property of the Supplier as full legal and equitable owner until such time as the Purchaser has paid the Supplier the full purchase price together with the full price of any other goods the subject of any other contract with the Supplier. Risk in all goods passes on delivery or collection (as the case may be).

7.2 The Purchaser acknowledges that it receives possession of and holds goods delivered by the Supplier solely as bailee for the Supplier until such time as the full price thereof is paid to the Supplier together with the full price of any other goods then the subject of any other contract with the Supplier. Until such time as the Purchaser becomes the owner of the goods, it must:

- Store them on the premises separately;
- Ensure that the goods are kept in good and serviceable condition;
- Secure the goods from risk, damage and theft; and
- Keep the goods fully insured against such risks that are usual or common to insure against in a business of a similar nature to that of the Purchaser.

7.3 Until the goods are paid for in full:

- The Supplier authorises the Purchaser to sell the goods but only in the ordinary course of its business;
- The proceeds of any sale of the goods (or sale of other goods into which the goods have been incorporated) must be paid into a separate account and held in trust for the Supplier. The Purchaser must account to the Supplier from this fund for the full price of the goods;
- The Purchaser is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale received the Purchaser shall account to the Supplier for the price of the goods;

(d) Should the Purchaser die stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy law or being a company calls a meeting for the purpose of or to go into liquidation or have a winding-up petition presented against it or has a receiver or administrator appointed, the Supplier may at its option notwithstanding its waiver of such default or failure and without prejudice to its other rights under this Agreement suspend or cancel this Agreement or require payment in cash before or on delivery or tender of Goods or documents notwithstanding terms of payment previously specified or may, subject to the law, repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.

7.4 If the Purchaser does not pay for any goods on the due date then the Supplier is hereby irrevocably authorised by the purchaser to enter the Purchaser's premises (or any premises under the control of the Purchaser or as agent of the Purchaser in which the goods are stored at such premises) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence or payment of any compensation to the Purchaser whatsoever.

7.5 On retaking possession of the goods the Supplier may elect to refund to the Purchaser any part payment that may have been made and to credit the Purchaser's account with the value of the goods less any charge for recover of the goods, or to resell the goods.

7.6 Risk passes to the Purchaser for goods, on delivery of those goods (or where a courier is used, on delivery of those goods to the courier) and for services, on completion of those services.

8. Security and PPSA

8.1 For the purposes of this clause, "PPSA" means the Personal Property Securities Act 2009 (Cth) as amended from time to time. Where a particular section or term from the PPSA is used in this Agreement, it is deemed to be that section or term as defined or used in the PPSA as amended, renumbered or replaced from time to time.

8.2 To the extent permitted by law, and for better securing payment of the Contract Price plus any costs or charges, the Purchaser hereby charges all of its real and personal present and after-acquired property in favour of the Supplier.

8.3 The Purchaser acknowledges and agrees that this Agreement constitutes a security agreement in relation to the Supplier's security interest in all present and after-acquired goods for the purposes of the PPSA. The Purchaser agrees to grant a "Purchase Money Security Interest" to the Supplier.

8.4 For the avoidance of doubt, the Purchaser acknowledges and agrees that it grants to the Supplier a security interest in all goods supplied by the Supplier to the Purchaser (whether now or in the future) and in any proceeds from the sale of those goods.

8.5 To the extent permitted by law, the following provisions of the PPSA do not apply, and for the purposes of section 115 of the PPSA are contracted out of this Agreement:

- sections 95 (notice of removal of accession), to the extent that it requires the Supplier to give a notice to the Purchaser, 96 (retain of accession) and 125 (obligation to dispose of or retain collateral);
- section 130 (notice of disposal), to the extent that it requires the Supplier to give a notice to the Purchaser;
- section 132(3)(d) (contents of statement of account after disposal);
- section 132(4) (statement of account if no disposal);
- section 135 (notice of retention);
- section 142 (redemption of collateral);
- section 143 (reinstatement of security agreement).

8.6 For the purposes of section 14(6) of the PPSA, the Purchaser (and the Supplier) agree that any payments received from the Purchaser by the Supplier pursuant to or in any way connected with this Agreement, will be applied in such order as the Supplier deems fit in its absolute discretion.

8.7 The Purchaser consents to:

- and agrees to execute any other document or instrument required to give effect to the security interests created by this Agreement; and
- the registration with the relevant authority or public register of any security interest created by this Agreement or any other document required to give effect to a security interest created by this Agreement, including without limitation the registration of a financing statement or financing change statement on the Personal Property Securities Register.

8.8 The Purchaser must pay all costs of and incidental to the preparation, execution and registration of any instrument which is executed for the purposes of giving effect to this clause and must also pay all costs incidental to the withdrawal, discharge or release of such instrument.

8.9 To the extent permissible at law, the Purchaser waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing

Change Statement relation to a Security Interest granted by the Purchaser, as Grantor to the Supplier.

9. Warranties and Liability

- 9.1 This Agreement does not attempt to exclude, restrict or modify the application of any applicable laws of the Commonwealth State or Territory which cannot be excluded, restricted or modified.
- 9.2 The Purchaser acknowledges and agrees that to the extent permitted by law, the Supplier will not be liable for, and the Purchaser releases the Supplier in respect of, any claim, loss, cost, damage or expense (Claim) arising out of any act or omission of the Supplier or its employees, officers or agents unless that Claim is a direct result of the negligence or breach of this Agreement or a warranty by the Supplier.
- 9.3 The parties agree that to the extent permitted by law any liability for a Claim against the Supplier that cannot be excluded will be limited to the lesser of:
- (a) the re-supply or repair of defective goods or services (if applicable);
 - (b) the cost of the re-supply or repair by a third party of defective goods or services in question (if applicable); or
 - (c) the contract price of the original supply of the goods or services.
- 9.4 Notwithstanding any of the above, the parties agree that the Supplier will under no circumstances be liable to the Purchaser for any indirect or consequential loss, loss of income, profit or opportunity or for any contingent, consequential direct/indirect special, or punitive damages arising out of or in connection with this Agreement, at law or in equity.
- 9.5 The Supplier's liability/obligations to honour any claim under or in connection with this Agreement do not extend to rectification of defects, loss or damage which is caused or contributed to by use, storage or operation of any part of the goods other than in accordance with the more stringent of either: guidelines or specifications supplied by the Supplier or the manufacturer; industry best practice; relevant building codes; Australian Standards; or use under normal working conditions. The Supplier will also not be liable for defects, loss, costs or damage arising out of or in connection with:
- (a) the misuse, neglect, or wilful destruction of any part of the goods;
 - (b) any damage caused by or to the goods as a result of continued use of any part of the goods after a defect has been detected or ought to have been detected;
 - (c) damage or loss due to any direction from the Purchaser (or its employees, officers, agents, contractors) to the Supplier for goods or services to be provided in a particular way or contrary to industry standards or manufacturer guidelines;
 - (d) conduct of the Purchaser or its employees, officers, agents, contractors or any third party;
 - (e) any weather-related event and/or natural disaster; or
 - (f) installation or fixing of goods to other goods or property after a defect has been detected or ought to have been detected.
- 9.6 The Supplier will use reasonable endeavours to transfer warranties given by third party manufacturers of the goods supplied to the extent those warranties are transferrable. However, the Supplier will not be liable for negotiating with manufacturers on behalf of the Purchaser and will not be liable to provide warranties to the Purchaser in addition to those provided by the manufacturer and transferred under this clause.
- 9.7 The content of any third party manufacturer's warranties may be provided upon request to the Supplier. Note that these warranties will be subject to their own terms and conditions with which the Purchaser should be familiar. Some claims for defective goods will not be accepted by the third party manufacturer of goods.
- 9.8 Without limiting other reasons for non-acceptance of claims by a third party manufacturer, failure to store coloured, zincalume, galvanised and strip coated goods off the ground and protected from all weather (including direct sunlight and moisture) and/or a failure to remove strip coating immediately after installation may void the warranty over the goods.
- 9.9 To the extent permitted by law and unless otherwise expressly agreed, the Supplier does not provide and expressly excludes all warranties whether implied by statute or otherwise in respect of any goods. For clarity, nothing in this Agreement is intended to exclude, limit or impair any rights afforded to the Purchaser in its capacity as a consumer (as defined under the Competition and Consumer Act 2010, if applicable) which are contained within Schedule 2 of that Act, except to the extent that the Supplier is permitted to reduce its liability under that Act.
- 9.10 If any provision of this Agreement is held to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.
- ## 10. Term and Amendment
- 10.1 This Agreement will commence and will have effect on and from the date of acceptance as set out in the preamble of these terms and conditions and will expire upon reasonable notice being given by one party to the other or in accordance with clause 10.2.

- 10.2 Without limiting any other rights of the parties, a party (**Non-Defaulting Party**) may terminate the Agreement without notice if:
- (a) the other party (**Defaulting Party**) is in breach of this Agreement and:
 - i. where the breach is capable of rectification, the Non-Defaulting Party has provided the Defaulting Party with notice of such a default and provided the Defaulting Party with seven (7) days to rectify that default but the Defaulting Party has failed to do so;
 - ii. the breach is incapable of rectification, acting reasonably;
 - (b) the Defaulting Party commits an act of insolvency or an external administrator or controller, liquidator or trustee in bankruptcy is appointed.

For the avoidance of doubt, a breach of this Agreement by the Guarantor will be considered a breach of this Agreement by the Purchaser.

- 10.3 The Supplier may assign or otherwise transfer any of its rights under this Agreement.
- 10.4 The Purchaser may not without the prior written consent of the Supplier assign or otherwise transfer any of its rights or obligations under this Agreement.
- 10.5 The Supplier reserves the right to amend this Agreement, provided such amendments are conveyed to the Purchaser in writing. The Purchaser further acknowledges that such writing will be by email and/or ordinary mail to the address set out in the original credit application, proposal or quotation, unless the Purchaser advises in writing to the Supplier a new address, and this new address is acknowledged by return in writing by the Supplier. Any amendments will be deemed to be accepted upon placement of a further order with the Supplier after notice of the amendment, or 28 days, from notice, whichever occurs first. Should the Purchaser not agree with any amendment, the Purchaser should notify the Supplier and should not place any further orders with the Supplier unless the Supplier agrees in writing to revoke or vary the proposed amendments for the benefit of the Purchaser.
- 10.6 Subject to clause 11.1, the parties agree that on the termination of this Agreement the Purchaser must pay the Supplier for all goods provided and services rendered prior to termination of this Agreement. If the Supplier has incurred costs purchasing goods, materials or products which cannot reasonably be re-sold or which can be re-sold but will result in a loss to the Supplier, the Purchaser agrees to pay the Supplier for that loss and cost incurred. For the avoidance of doubt, the Supplier will provide the Purchaser with those goods, materials and products once payment is made in full.
- 10.7 If, following the termination of this Agreement, the Purchaser directs or allows the Supplier to supply goods or services to the Purchaser or another party at the Purchaser's direction, the parties agree that this Agreement will re-commence from the date that is the earlier of the direction being given or the goods or services being supplied.
- 10.8 The parties agree that clauses which, by their nature, are intended to survive termination or expiry of this Agreement continue in force after termination or expiry.
- ## 11. Defaults and Rights
- 11.1 In the event of a default under this Agreement by the Purchaser, the whole of any outstanding balance will become immediately due and payable by the Purchaser to the Supplier together with all legal costs and expenses associated with recovery of the outstanding balance on an indemnity basis.
- 11.2 The certificate of a director or the credit manager of the Supplier will, in the absence of evidence to the contrary, be conclusive as to the amount of the outstanding balance.
- 11.3 No failure or delay of the Supplier to exercise any right or obligation of the Purchaser of any obligation hereunder and no custom or practice of the parties which is at variance with the terms of this Agreement and no waiver by the Supplier of any particular default by the Purchaser shall affect or prejudice the Supplier's rights in respect of any subsequent default and no indulgence or forbearance by the Supplier of its rights under this Agreement shall adversely affect or prejudice its rights in relation to such default or any subsequent default.
- ## 12. Intellectual Property
- 12.1 For the purposes of this Agreement, "Intellectual Property Rights" means copyright, trademark, design, patent, trade secret, secret process, know-how, concept, idea, information, formula, invention, semiconductor or circuit layout rights and any other rights (including software and services) and any other rights whether or not they are registered or registrable, relevant to, among other things, the textual, graphical, audio and other information, content, data or material used by the Supplier in respect to this Agreement.
- 12.2 Any pre-existing Intellectual Property Rights owned by the Supplier before the commencement of this Agreement, will remain vested in the Supplier.

- 12.3 Any pre-existing Intellectual Property Rights owned by the Purchaser before the commencement of this Agreement, will remain vested in the Purchaser.
- 12.4 The Purchaser agrees to grant to the Supplier a non-exclusive, transferable, royalty free licence to use the Purchaser's pre-existing Intellectual Property Rights to the extent that use relates to any material created by the Supplier pursuant to this Agreement.
- 12.5 Subject to any Intellectual Property Rights existing in any third party materials, all Intellectual Property Rights, created by the Supplier on or after the commencement of this Agreement will remain vested in the Supplier notwithstanding those rights were created pursuant to or for use in or with the goods.
- 12.6 Where goods are manufactured to the Purchaser's specification, the Purchaser hereby indemnifies the Supplier from against liability to or action by a third party arising out of or in any way related to infringement of the intellectual property rights of a third party.
- 12.7 The Purchaser or its personnel, employees or representatives, must not reverse engineer, disassemble, decompile, alter, modify, or develop the goods and/or services provided by the Supplier.
- 13. Force Majeure**
- 13.1 A Force Majeure event means anything outside reasonable control of a party, including but not limited to:
- Power, date or communication outages;
 - Acts of God or the public enemy, national emergencies, radioactive contamination, insurrection, riot, hostile or warlike action or sabotage;
 - A transaction embargo;
 - Industrial action (including a picket); and
 - Any legislation or regulation and any action or inaction of any government or government agency.
- 13.2 If the Supplier is wholly or partially unable to perform its obligations because of a Force Majeure event, then:
- As soon as reasonably practicable after the Force Majeure event arises, the Supplier will notify the Purchaser of the extent to which the Supplier is unable to perform its obligations; and
 - The Supplier's obligation to perform will be suspended for the duration of the delay arising out of the Force Majeure event.
- 14. Applicable Law**
- 14.1 The parties expressly agree that this Agreement will be governed by and interpreted in accordance with the laws of the State of Australia where the head office of the Supplier is located. This Agreement is deemed to have been entered into at the address of the head office of the Supplier.
- 15. Guarantor and Purchaser's Warranties**
- 15.1 The Guarantor and Purchaser (and each director and office bearer if the Purchaser is a company) separately warrants that:
- In the case of a natural person, he/she has never been a bankrupt or entered into a deed of arrangement or compromise or any other arrangement under Part X of the *Bankruptcy Act* or otherwise assigned his/her assets for the benefit of creditors.
 - It has never been under external administration or subject to the appointment of an external receiver or controller or entered into a deed of company arrangement and that it is solvent and able to pay its debts as and when they fall due.
 - They are not executing this Agreement as a result of or by reason of or in reliance upon any promise, representation, statement or information of any kind whatever given or offered to them by or on behalf of the Supplier whether in answer to an enquiry or otherwise.
 - Prior to the placement of any order, it has made its own independent enquiries and satisfied itself as to the size, design, capacity, quality and fitness for purpose of the goods and/or services and, to the extent permitted by law, the Purchaser is not relying on any warranty, promise or representation in relation to the goods and/or services, either expressly or impliedly given by the Supplier and any warranties, terms and conditions in relation to the state, quality or fitness of the goods for any purpose, whether implied by use, statute or otherwise is, to the extent permitted by law, hereby excluded;
 - Any information, data or other documents supplied or provided by or on behalf of the Purchaser, Guarantor or its representatives detailing requirements of the goods and/or services (**Your Specifications**) are accurate, complete and not misleading.

- And acknowledges that, the Supplier has relied on the Your Specifications in manufacturing and/or supplying the respective order and the Purchaser and Guarantor releases and holds the Supplier harmless from any claim, loss, cost, damage or expense suffered or incurred as a result of any of Your Specifications being incorrect, inaccurate or incomplete including without limitation any claim resulting from the goods and/or services (as modified to Your Specifications) not being fit for purpose.

16. The Supplier Relies on Guarantor and Purchaser's Warranties

- 16.1 The Purchaser acknowledges that in entering into this Agreement, the Supplier relies upon the warranties provided above and upon any information supplied by the Purchaser in an accompanying credit account application.
- 16.2 The Supplier relies upon the representation that the person signing this Agreement has authority to execute it on behalf of the Purchaser described in the Credit Application.

17. Personal Information

- 17.1 The Purchaser and Guarantors consent to the Supplier from time to time, seeking, advising, exchanging and verifying any personal or commercial information of the Purchaser or the Guarantors with any third party and to carrying out any further pertinent investigation about the Purchaser's or Guarantor's contact/address details, credit arrangements, trading terms, credit worthiness, credit standing, credit history or credit capacity, financial status etc.

18. Goods and Services Tax (GST)

- 18.1 All amounts payable by the Purchaser under this Agreement are exclusive of GST. If GST is payable on any supply made by a party under or in connection with this Agreement, the consideration provided (or to be provided) for that supply will be increased by an amount equal to the GST liability properly incurred by the party making the supply (the "GST Amount") and paid at the same time and in the same manner as the consideration.

19. Credit Limit

- 19.1 Notwithstanding any other provision in these terms, the Supplier may grant credit to the Purchaser under these terms either unconditionally or with any condition it sees fit, including, without limitation, a cap on the amount of credit the Supplier is comfortable extending to the Purchaser. The Supplier may increase or decrease any such cap as it sees fit from time to time throughout the duration of these terms by notice to the Purchaser in writing.
- 19.2 If a credit limit is set and then exceeded by the Supplier, such excess will not be a breach of this Agreement by the Supplier.
- 19.3 In the event that the Supplier serves notice in accordance with clause 19.1 then, apart from any extension, increase or reduction set out in the notice, this Agreement and any supporting guarantee will continue to operate in its amended form.
- 19.4 However, should the Supplier decide to extend beyond the credit cap in place from time to time, then the cap will in no way act to limit the ability or right of the Supplier to recover any monies owing to it nor will such cap act to limit the liability of the Purchaser or any Guarantor to pay those monies to the Supplier.

20. General

- 20.1 If any provision of this Agreement is or becomes illegal, unenforceable, void or invalid, it is to be treated as being severed from this Agreement, but the rest of this Agreement will not be affected.
- 20.2 This Agreement contains the entire agreement between the parties as at the date of the Agreement with respect to its subject matter and supersedes all prior agreements and understandings between all parties in connection with it.
- 20.3 Nothing in this Agreement will be deemed to constitute a partnership, joint venture, agency or other form of fiduciary relationship between the Supplier and the Purchaser and neither the Supplier nor the Purchaser has the power to bind the other except as expressly authorised by this Agreement.
- 20.4 This Agreement, where signed, may be signed in counterparts.
- 20.5 The governing jurisdiction for this Agreement is NSW and the parties agree that this Agreement must be interpreted in accordance with the laws of NSW. Each party submits to the non-exclusive jurisdiction of the Courts of NSW.