



YONG SHUN CO. PTY LTD

Wholesale Building and Landscaping Materials since 1992

ABN: 35050517112

25 Toohey Road, Wetherill Park NSW 2164, E: info@yongshun.com.au; P: +612 97580202

General Terms and Conditions

Goods are supplied on the following Terms and Conditions, unless varied and authorized in writing by the Supplier. These Terms and Conditions replace and supersede all previous agreements between the Customer and the Supplier entered prior to the date of issue.

1. Definitions

1.1 In these Terms and Conditions:

- (a) **'Commercial Credit Account'** means a trading account granted in writing by the Supplier to the Customer.
- (b) **'Consequential Loss'** includes any direct or indirect loss, any loss of profit or opportunity, expectation loss, delay loss, loss of use, loss of business or any form of consequential, special, punitive or exemplary loss or damages, regardless of whether a party foresaw or could foresee the other party suffering a loss of that kind and howsoever it arises or is claimed (including as a result of negligence or by the operation of Law);
- (c) **'Contract'** means the contract created in accordance with Clause 4.3.
- (d) **'Contract Sum'** means for Goods where the Contract provides:
 - (i) a lump sum, the lump sum; and
 - (ii) agreed rates, the sum of the products ascertained by multiplying the measured quantity of each section or item of Goods carried out in the Contract by the rate accepted by the Customer in the Quotation for that section or item.
 - (iii) a lump sum and rates, the aggregate of the sums referred to in paragraphs (i) and (ii), adjusted by any additions or deductions made pursuant to this Contract. If the Contract is silent, (ii) shall apply.
- (e) **'Customer'** means the person or entity describes as the 'Applicant' in this application, and/or the person ordering or purchasing the Goods as specified in any Quotation or invoice, receipt, document or order and if there is more than one person, the term 'Customer' is a reference to each person jointly and severally.
- (f) **'Delivery'** includes a delivery or supply of Goods in response to an Order of the Customer or which the Customer accepts whether or not the Supplier and the Customer have reached a concluded agreement about all of the terms and conditions of the delivery or supply including the Contract Sum for the Goods ordered.
- (g) **'Delivered'** means when the Goods are delivered to the Customer in accordance with clause 7.
- (h) **'Force Majeure'** means if the Supplier is prevented (directly or indirectly) from supplying the Goods or any party thereof by reason of acts of God, strikes, lockouts, trade disputes, fire, floods, breakdowns, delay in the manufacture of Goods for any reason whatsoever, interruption of transport, government action, no-delivery of raw material or products, refusal or failure of the Suppliers own suppliers to deliver to the Supplier or from any other reason that is beyond the control of the Supplier;
- (i) **'Goods'** means goods, products and materials supplied by the Supplier under the Contract.
- (j) **'Invoice'** means an invoice for payment of Goods supplied or to be supplied by the Supplier to the Customer.
- (k) **'Law'** includes the common law of Australia, rules of equity and the provisions of any relevant statute or statutory instrument including a bylaw, as may be amended from time to time.
- (l) **'Loss'** means any Liability incurred or alleged to have been incurred by the Supplier, the Customer or a third party in respect of, arising from or connected with any supply of Goods by the Supplier or by the Supplier's failure to supply any Goods or of a breach of these terms and conditions, whether arising at Law or otherwise.
- (m) **'Liability'** includes any demand or claim (including a demand or claim for direct or indirect Consequential Loss) in respect of any damage, cost, expense, harm, injury or death or any fine or penalty imposed by or under a Law or by any authority.
- (n) **'Order'** means a request for a delivery of Goods issued by the Customer to the Supplier.
- (o) **'PPS Act'** means the *Personal Property Securities Act 2009* (Cth)
- (p) **'Quotation'** means an offer in writing by the Supplier to supply the Goods set out in that document called a "Quote" (which may or may not be attached to these Terms and Conditions);
- (q) **'Quote Acceptance'** means communication by the Customer of acceptance of the terms of a Quotation (including these terms and conditions) by either:
 - (i) the Customer signing and returning to the Supplier these Terms and Conditions.
 - (ii) the Customer communicating that it accepts the terms of the Quotation, either in writing, orally or by conduct.
 - (iii) the Customer directing the Supplier to deliver the Goods after it receives the Quotation.



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- (r) **'Relevant Information'** includes all specifications relating to the Goods or Services, the application of the Goods or Services, and other matters that may affect the Supplier's ability to supply the Goods in a manner that conforms to the Customer's requirements as to performance or compliance with a standard communicated to the Supplier by the Customer or with which the Customer ought reasonably to be aware that the Supplier will be bound by contract, Law, custom or usage to conform.
 - (s) **'Supplier'** means Yong Shun Co. Pty Ltd, its associated companies, related bodies corporate (as that term is defined in the Corporations Act 2001), successors and assigns or any person acting on behalf of and with the authority of the Supplier, and any person or entity claiming under or through the Supplier.
 - (t) **'Variation'** means a change to the Goods arising from:
 - (i) an increase, decrease, addition or omission of the Goods or Works from the Contract.
 - (ii) a change in method or process for, or the sequence of, the carrying out of the Goods including Delivery of the Goods.
 - (iii) an alteration to the specification for the Goods.
 - (u) **'Working Documents'** means drawings, specifications, schedules or other documents together with any variation.
 - (v) **'Writing'** includes an electronic transmission.
- 1.2 A reference to an Act includes regulations and other instruments made under it, and consolidations, amendments, re-enactments or replacements of any of them from time to time.
2. **General**
- 2.1 These terms and conditions also govern and apply to your use of the website [www.yongshun.com.au] and all related sites and mobile sites as the Supplier from time to time designated ('Site') and by accessing and using the Site, you are agreeing to these terms and conditions in addition to the terms of use that can be found on the Site.
- 2.2 The Customer is taken to have exclusively accepted and is immediately bound by these terms and conditions if the Customer requests or accepts a Quotation from the Supplier, places an Order with the Supplier or accepts delivery of the Goods or the Goods are supplied to the Customer by the Supplier, regardless of whether or not the Customer's credit account application was accepted and/or approved by the Supplier.
- 2.3 To the extent permitted by Law, it is a condition of the Quotation, sale, supply and delivery of the Goods by the Supplier to the Customer that the Customer accept that these terms and conditions apply regardless of the provisions of any other document or instruction of the Customer.
- 2.4 The Supplier may, at any time, unilaterally vary the terms of trade in its absolute and unfettered discretion.
- 2.5 These terms and conditions may only be ended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Supplier and the Customer.
3. **Change in Control**
- 3.1 The Customer shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of control or ownership or office holding of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.
- 3.2 In the event of a change, pursuant to clause 3.1 above, the Supplier may require that the Customer enter into a new Credit Account Application.
- 3.3 Without affecting the generality of this clause, if the Customer shall fail to notify any proposed change of control or ownership or office holding of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice), the Supplier may, without prejudice to or affecting other rights of the Supplier under this clause, at its sole discretion, terminate the Commercial Credit Account of the Customer, in which event, all amounts in the Commercial Credit Account standing to the credit of the Supplier or otherwise payable by the Customer to the Supplier shall become due and payable to the Supplier forthwith within 3 days from the date of the Supplier's notice to the Customer, and in full, without and free from set-off, withholding, counterclaim, defense or any other right or claim, and clause 10.7 shall apply to any amount which remains unpaid by the Customer.



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4. Quotation and pricing

- 4.1 A Quotation remains open for acceptance by the Customer until the earlier of:
 - (a) 30 days from the date of the Quotation.
 - (b) the expiry date of the Quotation stated in the Quotation; or
 - (c) a notification by the Supplier to the Customer that the Quotation has been withdrawn.
- 4.2 The Customer may accept a Quotation by providing the Supplier with a Quotation Acceptance, either orally, in writing, or by conduct.
- 4.3 When the Quote Acceptance is provided, the Contract will be formed and comprised of (in descending order of precedence):
 - (a) any special terms agreed in writing.
 - (b) the terms of the Quotation.
 - (c) these Terms and Conditions.
 - (d) the Commercial Credit Account (if applicable); and
 - (e) the Working Documents.
- 4.4 The Contract constitutes an entire agreement between the Customer and the Supplier with respect to the Goods supplied under the Contract. All prior negotiations, proposals, representations and correspondence are superseded by this Contract which will in all circumstances prevail over any prior terms.
- 4.5 Notwithstanding clause 4.3 above, after the Contract is formed the Supplier is entitled, at its sole discretion, to terminate this Contract or amend the terms of the Quotation (including the Contract Sum), which the Customer may accept, failing which the Supplier may terminate this Contract if:
 - (a) supply of the Goods the subject of a Quotation does not commence within 30 days of a Quote Acceptance; or
 - (b) supply under the Contract is stopped or suspended for more than 30 days; or
 - (c) supply under the Contract has not been completed within twelve months of the date of the Quotation; or
 - (d) if, where the Contract Sum is not for a lump sum, the Customer requests Deliveries which are 20% more or less (in value or quantity) than the total estimated quantities of Goods provided by the Quotation.
- 4.6 In the event this Contract is terminated in accordance with clause 4.5 above:
 - (a) the Supplier shall issue the Customer with an Invoice for:
 - (i) the amount of all unpaid Invoices.
 - (ii) all amounts due in accordance with the terms of this Contract which would have been due but for the termination of this Contract, had an Invoice been issued on the day of the termination.
 - (iii) the cost of Goods manufactured, or in the course of being manufactured by the Supplier for the Contract; and
 - (iv) 5% of the unclaimed portion of the Contract Sum.
 - (b) the Customer shall pay the amount of the Invoice at subclause (a) without and free from any setoff, deduction, withholding, counterclaim, defense or any other right or claim against any person (except where such setoff, deduction, withholding, counterclaim, defense or right or claim cannot be excluded by law) within 7 days.
- 4.7 If a Force Majeure event arises:
 - (a) either party may at its absolute discretion terminate the Contract by written notice to the other party and if terminated, the Supplier will be entitled to the amounts provided at clause 4.6(a)(i) to (iii) above; and
 - (b) the Supplier may suspend the Supplier's obligations under this Contract, including but not limited to Deliver the Goods, without incurring any liability to the Customer.
- 4.8 Notwithstanding anything else contained herein, the Customer warrants that:
 - (a) the Customer will provide the Supplier with all Relevant Information to the Supplier when seeking a Quotation or placing an Order for Goods from the Supplier.
 - (b) any Relevant Information supplied by the Customer to the Supplier is accurate and complete.
 - (c) in giving any Quotation, accepting any Order or supplying or delivering Goods, the Supplier will be entitled for all purposes to rely upon the accuracy and completeness of any Relevant Information provided by the Customer.
 - (d) Subject to any Law to the contrary, unless the Supplier makes an express representation to the contrary in writing, the Customer will not allege or in any circumstances maintain that:
 - (i) the Supplier had, or should be taken to have, approved of or represented any specification (whether supplied by the Customer, by the Supplier or by a third party) as being suitable for any particular purpose; or
 - (ii) that the Supplier is liable for any Loss to the extent that the Loss results from or is attributable to any defects in, or unsuitability of, the specification.



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- (e) the Customer has formed its own opinion as to the correctness or otherwise of any information or advice provided by or any representation made by the Supplier in connection with any Goods quoted for, ordered from or supplied or delivered by the Supplier and does not rely on the Supplier in respect of such information, advice or representation or maintain or allege that it has so relied.

5. Escalation and price variation

- 5.1 The Contract Sum (including the agreed rates) shall remain fixed for the period (if any) stated in the Quotation. After that period, or if the Quotation provides for no fixed period, the Supplier may increase the Contract Sum for any remaining Deliveries by the greater of:
- (a) the Supplier's reasonable estimation of its additional costs incurred in supplying the Goods since the Contract was entered (including without limitation taxes, labour and the cost of carbon emissions); or
 - (b) the increase in the Consumer Price Index as published by the Australian Bureau of Statistics between the date the Contract was entered and the date the Goods are Delivered.
- 5.2 The Supplier reserves the right to change the Contract Sum at any time and without prior notice:
- (a) if a Variation to the Goods is requested by the Customer; or
 - (b) the event of increases to the Supplier's in the cost of labour or materials which are beyond the Supplier's control.
- 5.3 The Supplier shall advise the Customer of the increase or decrease to the Contract Sum arising from clause 5.1 within a reasonable time of the facts giving rise to the increase or decrease becoming apparent.
- 5.4 The Customer shall pay the Contract Sum as it is adjusted by this clause 5.

6. Supply

- 6.1 The Supplier will supply the Goods the subject of the Contract:
- (a) if all the Goods are to be delivered in one delivery, on the date stated in the Quotation: or
 - (b) if the Goods are to be delivered over a number of deliveries, with a reasonable time of the date requested (either in writing or orally) by a customer, provided:
 - (i) the Supplier receives the request (which shall include all necessary documentation such as drawings, specifications or schedules) no less than 10 business days prior to the requested date for delivery; and
 - (ii) The Supplier does not object in writing or verbally to delivering the Goods by the date requested by the Customer having regard to the Supplier's business requirements.
- 6.2 The Customer is not entitled to cancel or modify part or all of an Order once it is accepted by the Supplier, unless the Supplier consents in writing or verbally.

7. Delivery

- 7.1 (a) Unless otherwise stated in the Quotation, the Supplier will deliver the Goods to the address nominated in the Quotation.
- (b) the Customer shall ensure that its representative is available at the time of delivery and acknowledge delivery by signing a delivery receipt.
- (c) If the Quotation provides that the Goods are to be collected by the Customer at the premises of the Supplier, the Goods will be deemed Delivered when the Supplier issues the Customer with a notification that the Goods are ready for collection.
- 7.2 If the Customer fails to:
- (a) where the Supplier is responsible for delivery of the Goods in accordance with clause 7.1 above, accept delivery; or
 - (b) where the Customer is responsible for collection of the Goods, collect the Goods at the time nominated, the Supplier may then charge the Customer for, and the Customer must pay:
 - (i) The Supplier's storage fees at a reasonable rate nominated by the Supplier.
 - (ii) Rehandling, redelivery, fees at a reasonable rate nominated by the Supplier; and
- 7.3 The Supplier may, at its sole discretion, require the amounts due under this clause 7.2 to be paid prior to the Goods being Delivered.
- 7.4 Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if it is late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.



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- 7.5 The Supplier will make reasonable efforts to deliver the Goods to the Customer or make the Goods available for collection by the Customer (as the case may be) at the time nominated in the Customer. The Supplier will not be liable to the Customer for:
- (a) any failure or delay in delivery of part or all the Goods in accordance with the Contract; or
 - (b) any damage or loss to the Goods due to unloading or packaging; or
 - (c) damage to property caused by entering premises to deliver Goods.
- 7.6 Subject to clause 7.2 and 7.3, the Customer shall, before the Delivery of any Goods, check for any difference between the Goods as delivered and the Customer's Order placed with the Supplier.
- 7.7 If the Customer alleges that there is a difference between the Goods as delivered and the Goods Ordered, then the Customer must elect whether to accept or reject the Goods in whole or in part, and thereafter:
- (a) if the Customer accepts all or some of the Goods, the Customer will be taken to have Ordered what is delivered; and
 - (b) If the Customer rejects all or some of the Goods, the Customer shall record in writing details sufficient to accurately identify the nature of such disagreement or difference before the delivery vehicle departs from the nominated site.
- 7.8 If the Customer is not present at the nominated site at the time of Delivery, or being so present, fails or refuses to record in writing details of any disagreement or difference in accordance with clause 7.13(b), and the Goods are discharged then, to the extent permitted by Law:
- (a) the Customer shall be deemed to have unreservedly accepted both the Delivery and the accuracy of the delivery details.
 - (b) the Supplier shall have no Liability to the Customer for Loss in respect of any difference between the description and quantity of the Goods Delivered and the Customer's Order; and
 - (c) the customer irrevocable waives all of its rights to reject the Goods.
- 8. Variations**
- 8.1 The Supplier will provide the Goods in accordance with the Contract.
- 8.2 The Goods do not include the Excluded Items.
- 8.3 The Customer may request the Supplier to carry out a Variation, including to provide any of the Excluded Items.
- 8.4 The Supplier may, at its sole election, agree to perform the Variation.
- 8.5 If the Supplier elects to carry out a Variation it shall be entitled to:
- (a) an extension of time for Delivery of the Goods; and
 - (b) the Customer shall pay to the Supplier, the cost of the Variation which shall be priced using the following order of precedence:
 - (i) prior agreement.
 - (ii) applicable rates or prices in the Contract; and
 - (iii) reasonable rates and prices together with the Supplier's overhead and profit in the fixed amount of 5% on that additional amount.
- 9. Warranties and limitation of liability**
- 9.1 The Customer warrants that it does not intend to use the Goods predominantly for personal, domestic or household purposes.
- 9.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the *Competition and Consumer Act 2010* (Cth) ('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*').
- 9.3 Neither party excludes or limits the application of any statute (including the CCA), where to do so would contravene that statute or cause any provision of this Contract to be void.
- 9.4 Nothing in this Contract modifies or excludes the conditions, warranties, and undertakings and other legal rights under the CCA, and other laws to the extent they cannot be excluded or modified.
- 9.5 Except as expressly set out in this Contract, and the CCA, the Supplier makes no warranties or other representations in respect of the Goods or the Contract under these terms and conditions including the quality or suitability of the Goods, and the Supplier's liability in respect thereof, is limited to the fullest extent permitted by law.



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- 9.6 If the Customer is a "Consumer" as defined by the Competition and Consumer Act 2010 (Cth), the Goods come with guarantees that cannot be excluded under the CCA and if a 'consumer', the Customer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. A Consumer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- 9.7 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 9.8 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.
- 9.9 If the Customer is not a consumer within the meaning of the CCA, the Supplier'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 Customer by the Supplier at the Supplier's sole discretion.
 - (b) limited to any warranty to which the Supplier is entitled, where the Supplier did not manufacture the Goods.
 - (c) otherwise negated absolutely.
- 9.10 Subject to this clause 9 and the provisions of the CCA, returns will only be accepted provided that:
- (a) the Supplier agrees that the Goods are defective; and
 - (b) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (c) the Goods are returned in as close a condition to that which they were delivered as is possible.
- 9.11 Notwithstanding clauses 9.2 to 9.9 but subject to the CCA, the Supplier 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 Customer failing to properly maintain or store any Goods.
 - (b) the Customer using the Goods for any purpose other than that for which they were designed.
 - (c) the customer 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 Customer failing to follow any instructions or guidelines provided by the Supplier; or
 - (e) fair wear and tear, any accident, or act of God.
- 9.12 Goods which are not manufactured by the Supplier are subject solely to the warranties (if any) specified by their manufacturers or the third-party suppliers to the Supplier, and the Customer acknowledges that, to the extent permitted by law, the Supplier gives no warranties beyond such manufacturers or suppliers' warranties.
- 9.13 The Customer acknowledges that the Supplier makes no representations or warranties as to the fitness or suitability for any purpose of any of the Goods described in the Quotation or Contract. The Customer warrants that it has undertaken its own investigations (including obtaining specialist advice) in respect of the design, specification and selection of the Goods.
- 9.14 The Customer is solely responsible for the design of the Goods. The Supplier is not liable for the design, lifting or positioning of any prefabricated elements at the Customer's site, including but not limited to manually tied or welded components.
- 9.15 Subject to the Act and any other legislation, the Supplier is not liable to the Customer for any loss or damage, including for death or personal injury, which the Customer or any other person may suffer or incur which may arise directly or indirectly in connection with the Goods, except that the Supplier will be liable to the extent that it contributes to such loss including a breach of this Contract by the Supplier or by the fraud or negligence of the Supplier, its officers, agents, employees. The liability of the Supplier under this Agreement does not include liability for indirect or Consequential Loss.
- 10. Invoicing and payment**
- 10.1 The Customer shall pay the Supplier the Contract Sum together with all other amounts which become due and payable pursuant to this Contract.
- 10.2 Where the Supplier has granted the Customer a Commercial Credit Account, the Customer must comply with the terms and conditions of the Commercial Credit Account in clause 25.
- 10.3 If the Customer has a Commercial Credit Account with the Supplier, then, unless otherwise agreed in writing:
- (a) the Supplier may issue Invoices for Goods either:
 - (i) on dispatch of such Goods; or
 - (ii) when Goods (including parts of the Goods) are Delivered; or
 - (iii) when the Customer becomes obligated to pay an amount pursuant to clause 7.3.



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- (b) subject to clause 10.3(c), the Customer (other than builders or trades) must pay all Invoices in full, without and free from set-off, withholding, counterclaim, defense or any other right or claim (except where such set-off, withholding, counterclaim, defense or any other right or claim cannot be excluded by law), **by 30 days** from the last day of the month date in which the Invoice was issued or such other period as the Supplier may nominate or notify to the Customer in writing.
 - (c) **where the Customers placed order as builders or trades**, the Customer must pay all Invoices in full, without and free from set-off, withholding, counterclaim, defense or any other right or claim (except where such set-off, withholding, counterclaim, defense or any other right or claim cannot be excluded by law), **by 14 days** from date in which the Invoice was issued or such other period as the Supplier may nominate or notify to the Customer in writing.
- 10.4 If the Customer does not have a Commercial Credit Account with the Supplier, the Customer must pay the Supplier for the Goods in full at the time it issues an Order for Goods. The Supplier shall not be obliged to Deliver or manufacture the Goods until payment is received in full.
- 10.5 The Customer must pay all Invoices and all amounts under this Contract in full, without and free from setoff, deduction, withholding, counterclaim, defense or any other right or claim (except where such setoff, deduction, withholding, counterclaim, defense or right or claim cannot be excluded by law) and the Customer is not entitled to hold amounts otherwise due to the Supplier on account of retention. For the avoidance of any doubt, nothing in clause 19 prevents the Supplier from taking any action it considers appropriate to recover any amount owing under an Invoice and this Contract.
- 10.6 Interest in the amount of 15% per annum, compounding monthly, shall be payable on all amounts not paid by the due date for payment.
- 11. Default and termination**
- 11.1 If the Customer:
- (a) refuses or fails to pay any amounts when due under the Contract or refuses or fails to pay any accounts that it has with the Supplier on time and in accordance with the payment terms or if in the Supplier's opinion, the Customer will be unable to make a payment when it falls due.
 - (b) defaults in performing any of its obligations under the Contract.
 - (c) informs the Supplier or creditors generally that it is insolvent or is financially unable to proceed with the Contract.
 - (d) has execution levied against it by a creditor.
 - (e) is an individual and:
 - (i) commits an act of bankruptcy, is made bankrupt, makes a proposal for a scheme of arrangement or composition.
 - (ii) has a bankruptcy petition levied against him or her or presents his or her own petition.
 - (iii) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made; or
 - (f) is a corporation and:
 - (i) Notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement.
 - (ii) it enters a deed of company arrangement with creditors.
 - (iii) a controller, receiver or administrator is appointed.
 - (iv) an application is made to a court for its winding up and not stayed within 14 days.
 - (v) a winding up order is made in respect of it.
 - (vi) it resolves by special resolution to be wound up voluntarily.
 - (vii) a mortgage of any of its property takes possession of that property.
 - (viii) the Customer has a change of its directors, ownership or change of more than 50% of its shareholding and failed to inform the Supplier of the change or to enter into a new Credit Account Application in accordance with clause 3,
- the Customer is in breach of the Contract.
- 11.2 If the Customer breaches the Contract, then in addition to and without prejudice to any other rights it has by law, the Supplier may at its sole election:
- (a) treat the Contract as repudiated.
 - (b) may refuse to supply the Goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.



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- (c) is entitled, but not obliged, to claim return of any Goods in the possession of the Customer where title has not passed to the Customer; and
 - (d) demand immediate payment of all amounts owing by the Customer to the Supplier and the Customer must make immediate payment of those amounts.
- 11.3 The Customer is not entitled to terminate, suspend or cancel part or all of the Contract for any reason (including for convenience) except if the Supplier has failed to remedy its breach of the Contract within a reasonable period (being not less than 7 business days) after the Customer gives it written notice of such breach. If the Customer purports to wrongly terminate or rescind part or all of the Contract or refuses to take delivery of any Goods delivered in accordance with the Contract, the Supplier may recover from the Customer the total amount of the order placed on the Supplier, less any amounts already paid by the Customer.
- 11.4 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fees, and bank dishonor fees).
- 11.5 Upon termination of the Contract with the Supplier, the Customer agrees that the Supplier, its employees, or agents are entitled, but not obliged, to enter the Customer's premises at any time upon 24 hours written notice and may do all things necessary in order to take possession of any Goods, save and except any Goods made to Customer's specification, where title has not passed. The Customer agrees to do all things necessary to obtain the consent of all relevant persons having an interest in the premises where the Goods are situated to facilitate the Supplier recovering the possession of the Goods, and the Customer indemnifies the Supplier against any expense, liability, claim or loss that may be incurred as a result of entry to the Customer's premises by the Supplier its employees or agents.
- 11.6 Upon termination of the Contract, the Customer shall pay to the Supplier:
- (a) all moneys due to the Supplier which remain unpaid at the date of termination; and
 - (b) all reasonable costs and expenses incurred by the Supplier in relation to the enforcement of its rights and powers contained in this agreement (including legal costs as between solicitor and client).
- 11.7 On breach or default of these terms and conditions or of any of the Customer's obligations, the Customer irrevocably permits the Supplier, or a person authorized by the Supplier, at the sole discretion of the Supplier, to enter any premises at any reasonable time to recover and retrieve the Goods held in the Customer's possession. For the avoidance of doubt, nothing herein shall oblige the Supplier to make entry or to recover / retrieve any Goods delivered to the Customer to mitigate its loss.
- 11.8 The Customer also indemnifies and holds the Supplier harmless for all losses, costs, damages, and expenses incurred or suffered directly or indirectly by the Supplier as a result of:
- (a) the Supplier recovering the Goods held in the Customer's possession.
 - (b) the Supplier exercising or attempting to exercise its rights under this clause or exercising or attempting to exercise any other right under these terms and conditions as a result of the Customer's failure or neglect to observe and comply with its obligations under these terms and conditions.
 - (c) any breach or default on these terms and conditions or any other agreement the Customer has with the Supplier.
- 12. Tax**
- 12.1 Unless otherwise expressly stated in writing, all amounts stated in a Quotation or payable under the Contract are exclusive of GST. If GST is payable, the amount of GST will be specified separately in the relevant documentation.
- 12.2 If GST is or becomes payable by a supplier in relation to a supply under the Contract, the recipient of that supply must pay to the Supplier an amount equal to the GST. An amount payable under this Clause must be paid:
- (a) at the same time as the payment of the amount in respect of that supply is due; and
 - (b) in addition to the amount payable under the Contract.
- 12.3 The Customer is not obliged to pay any GST unless a valid tax invoice has been issued.
- 12.4 If the Customer fails to pay such GST when due, the Supplier may recover it from the Customer as a debt under the Contract.
- 12.5 Any party that becomes aware of the occurrence of any adjustment event in connection with the Contract must notify the other party as soon as possible. The parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST, or refund of GST, on that supply is paid no later than 20 business days after the parties first become aware of the adjustment event.



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12.6 For the purposes of this Clause, terms used in this Clause which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the meaning given to them in that Act.

13. Risk

- 13.1 Responsibility, risk of damage or loss of the Goods passes to the Customer on Delivery of the Goods and the Customer must at its own cost, insure and keep insured the Goods against such risks as a prudent owner of the Goods would insure at their full cost price, with a reputable insurance company, on or before Delivery.
- 13.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, then the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 13.3 If a vehicle engaged in the delivery of Goods to the Customer's property is disabled or damaged due to the condition of the Customer's property, the Customer is liable for the cost of any salvage or repair required to the vehicle. The Customer indemnifies the Supplier and keeps the Supplier indemnified against any loss or damage suffered by the Supplier or as a consequence of the Supplier becoming liable to any third party directly or indirectly as a result of the Supplier's officers, agents or employees entering any property at the request of the Customer or unloading the Goods.
- 13.4 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

14. Legal Title

- 14.1 The Supplier and the Customer agree that ownership of the Goods shall not pass to the Customer until:
 - (a) the Customer has paid the Supplier all amounts owing to the Supplier under the Contract and otherwise pursuant to these terms and conditions; and
 - (b) the Customer has met all its other obligations to the Supplier.
- 14.2 All payments received from the Supplier may be applied by the Supplier in the manner the Supplier, in its absolute discretion, determines.
- 14.3 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honored, cleared or recognized.
- 14.4 The Supplier and the Customer agreed that until ownership of the Goods passes to the Customer in accordance with 14.1:
 - (a) legal title and property in all Goods supplied under this Contract remains vested in the Supplier and does not pass to the Customer.
 - (b) The Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
 - (c) The Customer must store the Goods separately and in such a manner and maintain any labelling and packaging of the Supplier, so that the Goods are clearly and readily identifiable as the property of the Supplier.
 - (d) The Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - (e) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
 - (f) The Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (g) the Customer irrevocably authorizes the Supplier to enter any premises at any reasonable time where the Supplier believes the Goods are kept in order to recover possession of the Goods and/or inspect, repose or remove the Goods.
 - (h) The Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
 - (i) The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
 - (j) The Supplier may commence proceedings to recover the Contract Sum notwithstanding that ownership of the Goods has not passed to the Customer.



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15. Personal Property Securities Act 2009 ('PPSA')

15.1 Upon agreeing to these terms and conditions, the Customer 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 that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.

15.2 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

15.3 The Customer undertakes to:

- (a) at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to:
 - (i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register (PPSR);
 - (ii) sign any documents and/or provide any further information required by the Supplier to be able to register the security interest granted by the Customer under the PPSA.
 - (iii) register any other document required to be registered by the PPSA; or
 - (iv) correct a defect in a financing statement or a financing change statement.
- (b) accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Customer or the Customer's authorized representative.
- (c) indemnify, and upon demand, reimburse the Supplier for all expenses incurred in registered a financing statement or financing change statement on the PPSR or releasing any Goods charged thereby.
- (d) not register or permit to be registered a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier.
- (e) immediately advise the Supplier 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. The Customer further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply and hereby consents to the execution, registration and perfection of each, and every security interest and the Customer agrees that any security interest created will have priority in respect of the secured property.

15.4 To the extent the law permits for the purposes of sections 115(1) and 115(7) of the PPSA:

- (a) The Supplier need not comply with sections 95, 96, 118, 121(4), 125, 129, 130, 132(3) (d), 132(4) and 135 of the PPSA; and
- (b) Sections 142 and 143 of the PPSA are excluded.
- (c) for the purposes of section 115(7) of the PPSA, the supplier need not comply with sections 132 and 137(3).

15.5 To the extent the law, the Customer and each of the Guarantors waives its rights to receive any notice that is required by:

- (a) any provision of the PPSA (including a notice of a verification statement; or
- (b) any other law before the Supplier or a receiver exercises a right, power or remedy; or
- (c) any time period that must otherwise lapse under any law before the Supplier or a receiver exercises the right power or remedy.

15.6 If a law which required a period to notice or a lapse of time cannot be exclude, 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 that the law allows to be agreed (whichever is the longer). However, nothing in this clause prohibits the Supplier or any receiver from serving a notice under the PPSA or pursuant to any other law.

15.7 The Client agrees to unconditionally ratify any actions taken by the Supplier under clauses 15.3 to 15.6.

15.8 Subject to any express provisions, to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

15.9 The Customer acknowledges that the Supplier has the right to register the Goods on the PPSR.

15.10 The Customer agrees to provide all relevant information to enable the Supplier to register the Goods on the PPSR and generally to maintain, obtain, register and enforce the security interests created pursuant to these terms and conditions.

15.11 The Customer hereby consents to the execution, registration and perfection of each, and every security interest and the Customer agrees that any security interest created will have priority in respect of the secured property.

15.12 Unless otherwise agreed and to the extent permitted by the PPSA, the parties agree not to disclose any information of the kind referred to in section 275(1) of the PPSA to an interested person or any other person. The Customer waives any right it has to authorize disclosure of the above information.



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- 15.13 In addition to any rights the Supplier may have under Chapter 4 of the PPSA, the Supplier may, at any time, demand the return of the Goods and shall be entitled without notice to the Customer and without liability to the Customer, to enter any premises where it suspects the Goods may be located in order to search for and remove the Goods without committing a trespass, even though they may be attached or annexed to other goods or land not the property of the Customer, and for this purpose the Customer irrevocably licenses the Supplier to enter such premises, undertakes that it will procure any necessary authority to enter from any relevant person and also indemnifies the Supplier from and against all loss suffered or incurred by the Customer as a result of exercising its rights under this clause. If there is any inconsistency between the Supplier's rights under this clause and its rights under Chapter 4 of the PPSA, this clause prevails.
- 15.14 All costs and expenses arising as a result of actions taken by either party pursuant to this clause 15 will be for the account of the Customer. Within 7 days of a written request, the Customer must pay to the Supplier any costs or expenses incurred or to be incurred in connection with this clause 15.
- 15.15 Pursuant to section 125(3) of the PPS Act, the Supplier may delay disposing of, or taking action to retain, the whole or part of the collateral that it seizes under section 123 of the PPS Act, for as long as it fit in its absolute discretion.
- 15.16 The Supplier does not need to give the Customer any notice required under the PPS Act (including, without limitation, a notice of a verification statement under section 157 of the PPS Act) unless the requirement for the notice cannot be excluded.

16. Security and Charge

- 16.1 In consideration of the Customer agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 16.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

17. Resale

- 17.1 The Customer agrees that it will not re-supply the Goods supplied to it by the Supplier without the Supplier's prior written consent, which the Supplier may withhold at its absolute discretion.

18. Shortages, defects and inaccuracies, failure of, or delay in supply

- 18.1 The Customer must check and closely examine all Goods within 24 hours of Delivering and in any event before the Customer (or its employees or agents) use the Goods.
- 18.2 The Customer must notify the Supplier of any defect, damage or non-conformance of the Goods within the earlier of:
- 48 hours the time they are Delivered; or
 - the Customer dealing with the Goods.
- 18.3 Upon providing the notification required in clause 18.2, the Customer must allow the Supplier to inspect the Goods.
- 18.4 The Supplier will endeavour to rectify inaccuracies or short supply within 48 hours of notification but will not be responsible for any loss or damage (including Consequential Loss) however caused arising out of or resulting from such inaccuracies, short supply or non-conformances not within the Supplier's reasonable control.
- 18.5 If, due to any cause whatsoever, the Supplier is unable to supply any part of the Contract by the nominated delivery date or at all, it is entitled, at its opinion:
- to supply the Customer similar Goods which in the reasonable opinion of the Supplier are an appropriate substitute without prior reference to the Customer (in which the case the Customer may decline acceptance of the similar Goods without incurring any penalty or cost); or
 - not to supply part or all of the Goods; or
 - delay supply of part or all the Goods.



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19. Dispute resolution

- 19.1 If a dispute or difference between the parties arises in connection with the subject matter of this Contract, then either party shall by post or by hand provide written notice of the nature and details of the dispute.
- 19.2 Within 14 days of receipt of a notice in accordance with clause 19.1 above, senior management representatives of each of the parties, with full authority to agree such resolution or resolution methods, shall confer to resolve the dispute or agree methods for resolving the dispute. All aspects of the conference, except for the fact of its occurrence, shall be privileged.
- 19.3 Nothing in this Clause 19 prevents a party seeking urgent interlocutory relief from a Court or requires that party to participate in informal resolution processes for longer than 30 days after a dispute has arisen.

20. Confidentiality

- 20.1 The Supplier and the Customer agree that a Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
 - (a) prior approval in writing has been obtained from the other party.
 - (b) disclosure is required by law; or
 - (c) the information is in the public domain prior to the disclosure by the party.
- 20.2 The expression "any third party" does not include the financial or legal advisors of a party or a related body corporate of a party.

21. Working Documents

- 21.1 The Supplier accepts no responsibility for the accuracy or correctness of Working Documents prepared by the Customer or a third party. The supplier is not liable for any comment or silence in respect of a review of Working Documents.
- 21.2 The Supplier is under no obligation to review or consider the Working Documents and is entitled to rely on the Working Documents, regardless of if any errors in the Working Documents are subsequently identified by the Supplier. The supplier is not liable for any comment or silence in respect of a review of Working Documents.
- 21.3 Unless otherwise agreed, the Customer must deliver all Working Documents without charge to the Supplier prior to commencement of the Works.
- 21.4 The Customer indemnifies the Supplier against all claims and costs, liabilities and expenses incurred by the Supplier as a result of or related to:
 - (a) any inaccuracy, omission or error in the Working Documents prepared by the Customer or third party; or
 - (b) working Documents, or any other documents provided by the Customer to the Supplier for the purposes of or in the course of supply of Goods, breaching a third party's intellectual property right. This Clause survives termination or expiry of the Contract.

22. Cancellation

- 22.1 The Supplier may cancel any Contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.2 In the event that the Customer cancels delivery of the Goods, the Customer shall be liable for all loss incurred whether direct or indirect by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.3 Cancellation of Orders made to the Customer's specifications will not be accepted once an order has been placed.

23. Notices

- 23.1 Documents under this Contract (including Quotations and Invoices) may be transmitted by facsimile, hand, post and email to the numbers and addresses identified in the Quotation.



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24. Miscellaneous

- 24.1 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which the Supplier has its principal place of business and are subject to the jurisdiction of the Parramatta courts in New South Wales.
- 24.2 The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.3 Subject to clause [10], the Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Contract Sum).
- 24.4 The Customer shall not be entitled to set off against, or deduct from the Contract Sum, any sums owed or claimed to be owed to the Customer by Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 24.5 The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 24.6 The Customer must not assign its benefits or obligations under the Contract without prior consent in writing of the Supplier and the Supplier must not unreasonably withhold its consent to an assignment. The Supplier may assign the benefits and obligations under the Contract.
- 24.7 A party waives a right under the Contract only by written notice that it waives the right.
- 24.8 No amendment of the Contract is effective unless it is agreed by both parties in writing. This clause does not apply to any change in Quotation, or the Contract Sum permitted by this Contract.
- 24.9 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorizations to allow it to do so, it is not insolvent, and that this agreement creates binding and valid legal obligations on it.
- 24.10 For the avoidance of all doubt, the sale or disposal of the Customer's business does not terminate this Agreement. This Agreement will remain in full force in relation to any Goods supplied to the business prior to the date that the Customer notifies the Supplier in writing of the sale of the Customer's business. The Customer shall remain liable for all Orders delivered to the business (even if the sale of the business has been completed) up until the business day after the Supplier receives written notice of the sale of the business from the Customer or from the Customer's duly authorized representative.
- 24.11 The Customer agrees to the terms of the Privacy Act 1988 statement contained in this document.
- 24.12 If a provision of these terms and conditions is unenforceable or invalid then:
 - (a) the provision must be read down to the extent necessary to avoid that result; and
 - (b) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

25. Commercial Credit Account Conditions

- 25.1. Customer warrants that all the information provided by it in this application is accurate, correct and complete as at the date signed by Customer. If at any future time there is any change to the information regarding the Customer provided by it in this form, the Customer agrees to notify the Supplier of the change immediately.
- 25.2. Supplier may accept or reject the application for credit made in this form in its absolute discretion. Customer agrees that it is not entitled to any credit unless and until it receives notice in writing from the Supplier that credit has been approved and the maximum amount of credit approved (Credit Limit). Until Customer receives such notice, any goods or services that are to be supplied to Customer by a Supplier and any equipment to be hired to Customer by a Supplier will only be provided on a cash in advance basis.
- 25.3. Customer agrees that the Credit Limit is a maximum limit, and Customer is required to ensure at all times that the aggregate amount of all outstanding invoices issued by Suppliers to Customer is less than the Credit Limit. If the aggregate amount of all outstanding invoices reaches (or, with the further supply of goods or services or the further hire of equipment, would reach) the Credit Limit, then any goods or services that are to be supplied to Customer by a Supplier and any equipment to be hired to Customer by a Supplier will only be provided on a cash in advance basis.
- 25.4. Customer may apply to increase or reduce the Credit Limit at any time in writing. Supplier may agree or refuse to increase the Credit Limit in its absolute discretion and, if it agrees, on such conditions as Supplier requires (for example, the provision of a bank guarantee or, if not previously provided, the provision of a guarantee and indemnity by officer(s) or



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- shareholder(s) of Customer or by beneficiaries of the trust of which Customer is trustee). Supplier may reject an application to reduce the Credit Limit if the requested Credit Limit is less than the aggregate amount payable by Customer under outstanding invoices issued by Suppliers to Customer.
- 25.5. The credit granted to the Customer may be reduced, suspended until further notice, or terminated at any time by Supplier by written notice to Customer. If credit is terminated, all money payable by the Customer to any Supplier becomes immediately due and payable.
- 25.6. Where the Customers placed order as builders or trades, the Customer shall provide Supplier with security for payment of any amount due and payable to Supplier under the Commercial Credit Account by providing credit card or debit card details with proper signed authority to authorize the Supplier processing with payment of the invoice of Goods ordered 14 days from the date of such invoice with the card provided by the Customer.
- 25.6 (a) Supplier may at any time impose as a condition precedent to the granting of any further credit or the maintenance of the existing credit limit, the requirement that Customer gives or procures such security or additional security as is required by Supplier in its absolute discretion. A Supplier is entitled to withhold the supply of goods and/or services until such security or additional security is provided.
- (b) If any invoice issued by a Supplier to Customer is overdue, any Supplier may refuse to supply any Goods on credit until no such invoices are overdue.
- (c) The Supplier may, in its absolute discretion, suspend the provision of Goods to Customer at any time if the Supplier believes that Customer is unable or unwilling to pay an amount to any Supplier when due.
- (d) Supplier may amend or replace these Credit Conditions in its absolute discretion by providing prior written notice to Customer, which notice may be endorsed on or accompany an invoice, statement, correspondence or other document provided to Customer. The amended or replacement Credit Conditions apply with effect from the date stipulated in the notice (which must be no earlier than the date the notice is given to the Customer) and do not affect accrued rights and obligations.
- 25.7. Customer represents and warrants to Supplier that:
- (a) Customer is not aware of any information, notice or court proceedings that may result in the appointment of a trustee in bankruptcy, administrator, controller or managing controller, receiver or receiver manager or liquidator to it or any of its property.
- (b) Customer does not intend to enter into any scheme of arrangement with creditors either formally through a court or otherwise.
- (c) None of its officers (if it is a company or other body corporate), partners (if it is a partnership) or it (if it is a sole trader) has been a director of a company which has been placed in liquidation or has been declared bankrupt or has entered into an arrangement under the Bankruptcy Act 1966 (Cth) (as amended).
- 25.8. Customer agrees to notify Supplier in writing as soon as practicable and in any event within 3 days of the occurrence of:
- (a) a change in the legal status, ownership or control of Customer.
- (b) a change in the directors (if it is a company or other body corporate) or partners (if it is a partnership) of Customer.
- (c) the appointment of a liquidator, administrator or receiver, or the liquidation, administration, arrangement, receivership or bankruptcy of Customer; or
- (d) any step being taken to sell an asset or assets of Customer with a value of 20% or more of the gross assets of Customer, or sell, transfer, encumber or otherwise dispose of 20% or more of the shares (if it is a company or other body corporate) of Customer.
- On the occurrence of such an event, the Supplier may reduce, suspend until further notice, or terminate the provision of credit to Customer and/or may require Customer to make a new application for credit.
- 25.9. If the Supplier terminates the Commercial Credit Account of the Customer or the provision of credit to Customer, all amounts in the Commercial Credit Account standing to the credit of the Supplier or otherwise payable by the Customer to the Supplier shall become due and payable to the Supplier in full forthwith within 3 days from the date of the Supplier's notice to the Customer, and free from set-off, withholding, counterclaim, defense or any other right or claim, and clause 10.7 shall apply to any amount which remains unpaid by the Customer.
- 25.10. The Supplier may at any time set off amounts payable by the Supplier to Customer from the amounts payable by Customer to the Supplier.
- 25.11. These Credit Conditions are governed by the laws of New South Wales. Customer submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.



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PRIVACY STATEMENT

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the Privacy Act 1988 (as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012) (Act).
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorization or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
3. For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
4. The Supplier may collect personal information about the Customer for the Supplier's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, internal management purposes, marketing, sales and business development purposes and direct marketing.
5. To enable the Supplier to assess the credit application or to review any existing credit, the Customer authorise and provide consent to the Supplier to obtain:
 - (a) from a credit reporting agency, a credit report containing personal information about the Customer in relation to credit provided by the Supplier.
 - (b) a report from a credit reporting agency containing personal information about the Customer.
 - (c) a report containing information about the Customer's commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of a person or an entity in relation to credit provided by the Supplier.
6. The Customer agrees that the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
7. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (as amended from time to time).
8. The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 21M (1) of the Privacy Act 1988).
9. The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Customer and the Supplier or required by law from time to time):
 - (a) the provision of Goods; and/or
 - (b) the marketing of Goods by the Supplier, its agents or distributor; and/or
 - (c) analyzing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer.
 - (e) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.