

Terms of trade

1 Definitions and interpretation

1.1 Definitions

Additional Charge means:

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices; and
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

Business Day means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

Customer means the person identified on a Quote or Order as the customer and includes the Customer's agents and permitted assigns.

Goods means any goods supplied by the Supplier including those supplied in the course of providing Services.

Intellectual Property Rights means intellectual property rights at any time protected by statute or common law, including copyright, trade marks, patents and registered designs.

Loss includes, but is not limited to, costs (including party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

Order means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

PPS Law means:

- (a) the Personal Property Security Act 2009 (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a PPS Law.

Quote means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

Services means the services to be provided by the Supplier to the Customer in accordance with a Quote or an invoice and these terms of trade.

Supplier means Pacific Hoseflex Pty Ltd ACN 073 719 874 and includes the Supplier's agents and permitted assigns.

Warranty Period means the period of 12 months following the date of the invoice provided by the supplier to the Customer for the particular Goods or Services.

1.2 Interpretation

In these terms of trade, unless the context otherwise requires:

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any);
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these terms of trade;
- (d) a reference to a party to these terms of trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these terms of trade; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:
 - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
 - (ii) in all other cases, must be done on the next Business Day.

2 General

- (a) These terms of trade apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services. This includes all quotations, contracts and variations. These terms of trade take precedence over terms of trade contained in any document of the Customer or elsewhere.
- (b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.
- (c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

3 Quotes

- (a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 30 days from the date of issue.
- (b) Unless otherwise expressly agreed in writing, a Quote does not include delivery or installation of the Goods.
- (c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.

- (d) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted by the Customer. This occurs by the Customer completing an Order form and returning the form to the Supplier.
- (e) The Supplier reserves the right to amend any Quote before the Order has been completed to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended Quote will be the estimate or Quote for the purposes of these terms of trade.
- (f) An indication in a Quote of the time frame for the provision of the Goods or Services is an estimate only and is not a fixed time frame. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

4 Orders

- (a) Every Order by the Customer for the provision of Goods or Services must be submitted in writing on the Supplier's standard Order form (unless otherwise agreed).
- (b) An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods or Services ordered and the Supplier's Quote. Any costs incurred by the Supplier in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an Additional Charge.
- (c) Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.
- (d) Placement of an Order by the Customer signifies acceptance by the Customer of these terms of trade and the most recent Quote provided by the Supplier relating to that Order.
- (e) The Supplier may in its absolute discretion refuse to provide Goods or Services where:
 - (i) Goods are unavailable for any reason whatsoever;
 - (ii) credit limits cannot be agreed upon or have been exceeded; or
 - (iii) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.
- (f) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

5 Variations

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared by the Supplier or after the placement of an Order, the Supplier reserves the right to vary the Quote

to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the requested variation supersedes the original Quote. If the revised Quote only specifies additional work, the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods or Services or both.

- (c) The Supplier has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

6 Invoicing and payment

- (a) The Supplier will issue an invoice for the sale of the Goods or Services to the Customer prior to commencing the provision of the Goods or Services.
- (b) The amount payable by the Customer will be the amount set out in the invoice. This will be calculated as:
 - (i) the amount for the Goods or Services (or both) as set out in the Quote and any Additional Charges, or
 - (ii) where no Quote has been provided by the Supplier, the Supplier's usual charges for the goods or services (or both) as described in the Order.
- (c) The Customer must pay an invoice issued by the Supplier to the Supplier within 30 days of a valid tax invoice being issued to the Customer.
- (d) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
- (e) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
- (f) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these terms of trade, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (g) The Customer is to pay the Supplier on demand interest at the rate of 10% per year on all overdue amounts owed by the Customer to the Supplier, calculated daily.
- (h) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under these terms of trade.
- (i) The Customer and the Supplier agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

7 Additional Charges

- (a) The Supplier may require the Customer to pay Additional Charges in respect of Costs incurred by the Supplier as a result of reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by

the Supplier in order for it to provide the Goods or Services within the specified time frame (if any).

- (b) The imposition of Additional Charges may also occur as a result of:
 - (i) cancellation by the Customer of an Order where cancellation results in Loss to the Supplier;
 - (ii) storage costs for Goods not collected from the Supplier within 4 weeks of the date on which the Goods are manufactured, fabricated, created or formed;
 - (iii) photocopying, courier, packing or handling charges not included in the Quote;
 - (iv) Government or council taxes or charges not included in the Quote; or
 - (v) additional work required by the Customer or any other occurrence which causes the Supplier to incur costs in respect of the Customer's Order additional to the quoted cost.

8 Acceptance of Goods

If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 7 days of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

9 Title and risk

- (a) Risk in Goods passes to the Customer immediately upon delivery.
- (b) Property and title in Goods supplied to the Customer under these terms of trade does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer have been fully paid.
- (c) Where Goods are supplied by the Supplier to the Customer without payment in full, the Customer:
 - (i) is a bailee of the Goods until property in them passes to the Customer;
 - (ii) irrevocably appoints the Supplier to be its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
 - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
 - (iv) will not attempt to convey title to the Goods to any third party unless otherwise agreed by the Supplier in writing;
 - (v) must not allow any person to have or acquire any security interest in the Goods;

- (vi) agrees that the Supplier may repossess the Goods if payment is not made within 30 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods, or there is an event of default as defined in clause 12 herein; and
 - (vii) the Customer grants an irrevocable licence to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier for any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.
 - (viii) The Customer will indemnify the Supplier for any claim made by any third party against the Supplier as a result of the Supplier taking possession of the Goods.
 - (ix) If the Customer sells the Goods before it has paid for them in full then the Customer:
 - A. holds the proceeds of the sale on trust as agent for the Supplier immediately when they are received; and
 - B. must pay the proceeds of sale of the Goods into a separate Bank account as trustee for the Supplier.
 - (x) Notwithstanding the provisions in this clause 9 and notwithstanding property in the goods not yet passing to the Customer, the Supplier is entitled to maintain an action against the Customer for the invoice and other costs
- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and:
- (i) the Customer makes a new object from the Goods, whether finished or not;
 - (ii) the Customer mixes the Goods with other goods; or
 - (iii) the Goods become part of other goods (**New Goods**),
- the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New Goods on trust for the Supplier until payment of all sums owing to the Supplier whether under these terms of trade or any other contract have been made. The Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph 9(d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
 - (f) Despite paragraph 9(c), the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:
 - (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale, less any GST, on trust for the Supplier in a separate account, until all amounts owed by the Customer to the Supplier have been paid; or

- (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- (h) The Customer consents to the Supplier perfecting any security interest that it considers this document provides for by registration under the PPSA. The Customer agrees to do anything the Supplier reasonably asks to ensure that the security interest:
 - (i) is enforceable, perfected and otherwise effective; and
 - (ii) has priority over all other security interests.
- (i) To the extent the law permits, the Supplier need not comply with, and the Customer may not exercise rights under, any provisions of Chapter 4 of the PPSA that may be contracted out of.
- (j) If the Supplier exercises a right, power or remedy in connection with this document or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.
- (k) To the extent the law permits, the Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent the Supplier from giving a notice under the PPSA.
- (l) The Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA. However, this does not limit the Customer's rights to request information other than under section 275.
- (m) If:
 - (i) a PPS Law applies or commences to apply to these terms of trade or any transaction contemplated by them, or the Supplier determines (based on legal advice) that this is the case; and
 - (ii) in the Supplier's opinion, the PPS Law:
 - (A) does or will adversely affect the Supplier's security position or obligations; or
 - (B) enables or would enable the Supplier's security position to be improved without adversely affecting the Customer,

the Supplier may give notice to the Customer requiring the Customer to do anything (including amending these terms of trade or execute any new Terms and Conditions) that in the Supplier's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in paragraph 9(m)(ii)(A) or improve the security position as contemplated in paragraph 9(m)(ii)(B). The Customer must comply with the requirements of that notice within the time specified in the notice. If having completed everything reasonably

practicable as required under this paragraph, in the Supplier's opinion the Supplier's security position or obligations under or in connection with these terms of trade have been or will be materially adversely affected, the Supplier may by further notice to the Customer cancel these terms of trade. If this occurs, the Customer must pay to the Supplier any money owed to the Supplier by the Customer immediately.

10 Intellectual Property Rights

- (a) The Customer warrants that it owns all Intellectual Property Rights pertaining to its Order for Goods or Services or has a licence to authorise the Supplier to reproduce or use all copyright works or other materials the subject of Intellectual Property Rights supplied by the Customer to the Supplier for the purposes of the Order. Further, the Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer.
- (b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property Rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.

11 Agency and assignment

- (a) The Customer agrees that the Supplier may at any time appoint or engage an agent to perform an obligation of the Supplier arising out of or pursuant to these terms of trade.
- (b) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these terms of trade.
- (c) The Customer is not to assign, or purport to assign, any of its obligations or rights under these terms of trade without the prior written consent of the Supplier.

12 Default by Customer

- (a) Each of the following occurrences constitutes an event of default:
 - (i) the Customer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 14 days of being given notice by the Supplier to do so;
 - (ii) the Customer, being a natural person, commits an act of bankruptcy;
 - (iii) the Customer, being a corporation, is subject to:
 - (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Customer's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and

- (D) any assignment for the benefit of creditors;
 - (iv) the Customer purports to assign its rights under these terms of trade without the Supplier's prior written consent; or
 - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:
- (i) terminate these terms of trade;
 - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (iii) refuse to deliver Goods or provide further Services;
 - (iv) pursuant to clause 9(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
 - (v) retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.
- (c) In addition to any action permitted to be taken by the Supplier under paragraph 12(b), on the occurrence of an event of default all invoices will become immediately due and payable.

13 Termination

In addition to the express rights of termination provided in these terms of trade, a party may terminate these terms of trade by giving 30 days written notice to the other party.

14 Warranty

- (a) Subject to this clause 14 & clause 15, the Goods supplied by the Supplier are warranted for labour and parts for the Warranty Period against defects resulting from faulty design, material and/or workmanship.
- (b) This warranty only applies if the Goods have been installed and used under normal use and reasonable care (in the opinion of the Supplier).
- (c) The Supplier does not warrant that the goods will:-
 - (i) Meet the Customer's requirements, unless full details of all requirements have been provided to the Supplier in writing, as required under these terms and conditions;
 - (ii) Work in combination with other parts and components not supplied by the Supplier;
- (d) This warranty does not apply where damage to the Goods is caused by or resulting from any or all of the following:-
 - (i) Normal wear and tear;
 - (ii) Damage or deterioration to the external surfaces caused by normal weathering or abnormally corrosive conditions;

- (iii) Goods modified or repaired by anyone other than the Supplier;
 - (iv) Damage to the hose assembly caused by torque;
 - (v) Goods being used with, or connected to, a good and/or services not manufactured, supplied or authorised by the Supplier in writing or were used otherwise than for their intended purpose;
 - (vi) The Customer's failure to perform any necessary maintenance;
 - (vii) rough handling, including, but not limited to, defects to the Goods caused by sharp items;
 - (viii) Incorrect installation, abuse, accident or misuse (including use contrary to any instructions given by the Supplier);
 - (ix) foreign matter entering into the Goods (eg dirt, moisture and dust);
 - (x) storm, fire, flood, hail, earthquake;
 - (xi) vandalism, war;
 - (xii) Infestation of insects or vermin;
 - (xiii) negligence; or
 - (xiv) any other outside agency;
 - (xv) Any acts beyond the reasonable control of the Supplier.
- (e) This warranty excludes:
- (i) Any costs associated with the installation, de-installation or re-installation of the Goods;
 - (ii) transport costs of the Goods to and from the Supplier, including delivery, handling, insurance or travelling costs of the Goods for repairs under warranty;
 - (iii) any repairs or replacement of the Goods damaged during transit to and from the Supplier;
 - (iv) any loss or damage incurred by reason of, during, associated with, or related to the installation, de-installation or re-installation of the Goods, the Goods are being repaired or during transit.
- (f) The Customer will have until the expiration of the Warranty Period to inspect the Goods and notify the Supplier in writing of the following:-
- (i) A full description of any alleged defective Goods;
 - (ii) full details of when the Goods were last serviced;
 - (iii) all environmental and operational factors including, but not limited to, the application of the Goods and the area of installation;

- (iv) whether vacuum or any additional testing has been conducted on the Goods, and if so, details of when the testing was conducted, the type of testing and the outcome;
 - (v) the velocity of the Goods;
 - (vi) if static charge is present;
 - (vii) if thrust force is applied;
 - (viii) any special information concerning choice of materials
 - (ix) any movement and/or vibration;
 - (x) any additional requirements for cleaning and post-test treatment;
 - (xi) whether a water hammer has occurred,
 - (xii) any other information as requested by the Supplier.
 - (xiii) provide the Supplier with a tax invoice or proof of purchase of the Goods; and
 - (xiv) ship the Goods back to the Supplier in its original or equivalent packaging, prepaid postage charges and insure the postage or accept the risk of loss or damage during postage.
- (g) The Supplier will be given the opportunity to inspect the allegedly defective Goods.
- (h) After the Supplier has inspected the Goods it will either:
- (i) accept the Customer's warranty claim and agree to repair or, should the Supplier in its absolute discretion decide it is necessary, replace the Goods in accordance with clause 14(j); or
 - (ii) deny the Customer's warranty and inform the Customer of that decision, and if requested by the Customer in writing repair or replace the Goods and the Customer agrees to pay the usual charges for such repairs or replacement.
- (i) The Customer agrees that it is responsible for all transport costs of the Goods to and from the Supplier, including handling, insurance and travelling costs for repairs or replacements under this warranty.
- (j) To the extent permitted by applicable law, the Supplier's liability for breach of a warranty implied by law or expressed in these terms of trade is limited to:
- (i) the replacement of the Goods or supply of equivalent Goods; or
 - (ii) the repair of the Goods; or
 - (iii) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
 - (iv) the payment of having the Goods repaired
- (k) The Supplier's liability is confined to this clause 14 and will not extend to any other claims for loss or damage occurring in respect to the supply, repair and/or replacement of the Goods.

- (l) If the Customer should fail to strictly comply with clause 14(f) above then the Customer agrees that the Goods are conclusively deemed to be supplied in accordance with these terms of trade and free of any defects.
- (m) Except as provided for in these terms of trade, and to the extent permissible by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded and the Supplier shall not be liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods or arising out of the Suppliers negligence in any way whatsoever.

15 Exclusions and limitation of liability

- (a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these terms of trade by any law is excluded.
- (b) The Supplier makes no warranty as to the suitability of the Goods for the purpose for which they are required by the Customer unless, prior to the Supplier issuing its invoice for the particular Goods, the Customer has provided the Supplier with full details in writing of the following:
 - (i) the conditions in which the Goods will be operating;
 - (ii) the intended application and installation of the Goods;
 - (iii) the nominal size and hose assembly length required;
 - (iv) flexibility type required;
 - (v) maximum operating pressure;
 - (vi) the construction method - the standards or procedures to be manufactured to;
 - (vii) the materials of construction;
 - (viii) the temperature range; and
 - (ix) the type of fitting for hose assembly.
 - (x) whether vacuum or additional testing is required;
 - (xi) service cycle life;
 - (xii) goods to be conveyed;
 - (xiii) goods velocity;
 - (xiv) if static charge is present - if continuity is required;

- (xv) all environmental factors including, but not limited to, the application of the Goods and the area of installation;
 - (xvi) if thrust force is applied;
 - (xvii) if spring rate is required;
 - (xviii) any special information concerning choice of materials;
 - (xix) whether additional protection is required;
 - (xx) movement and/or vibration;
 - (xxi) any additional requirements for cleaning and post-test treatment;
 - (xxii) whether a water hammer can occur;
 - (xxiii) requirements for test certificates and documentation;
 - (xxiv) if a coloured cover or identification is required; and
 - (xxv) any special requirements for packaging.
- (c) If the Customer should fail to strictly comply with the requirements in clauses 15(b)(i) to 15(b)(xxv) then the Customer has satisfied itself as to the suitability of the Goods for the purpose for which they are required by the Customer and the Supplier shall not be liable for any loss or damage direct or indirect should the Goods not be suitable for that purpose.
- (d) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.
- (e) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods or Services or both, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.
- (f) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on terms of trade, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.
- (g) The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.

16 Indemnity

- (a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these terms of trade.
- (b) This includes, but is not limited to, any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand.
- (c) This provision remains in force after the termination of these terms of trade.

17 Force majeure

- (a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

18 Dispute resolution

- (a) If a dispute arises between the Customer and the Supplier, the following procedure applies:
 - (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within [insert number] Business Days (or other period as agreed).
- (c) Unless otherwise agreed by the parties, any dispute that cannot be settled by negotiation between the parties or their representatives, the parties expressly agree to endeavour to settle the dispute by mediation administered by the Australian Commercial Disputes Centre (**ACDC**) before having recourse to arbitration or litigation. The mediation must be conducted

in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these terms of trade. This paragraph survives termination of these terms of trade.

- (d) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these terms of trade.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

19 Miscellaneous

- (a) These terms of trade are governed by the laws of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the courts of that state.
- (b) These terms of trade and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These terms of trade supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these terms of trade, the Customer has not relied on any warranty, representation or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these terms of trade.
- (e) If any provision of these terms of trade at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to this paragraph) and delivered personally, sent by pre-paid mail to the address of the addressee specified in the relevant Quote; sent by fax to the fax number of the addressee specified in the relevant Quote, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

- (j) Time is of the essence of these terms of trade.

20 Guarantee

- (a) The Guarantor/s request the Supplier to supply Goods to the Customer under these terms of trade, and agree that they receive valuable consideration by the Supplier agreeing to do so.
- (b) In consideration of the Supplier agreeing to make supply to the Customer under these terms of trade the Guarantors jointly and severally guarantee to the Supplier the due and punctual performance by the Customer of the Customer's obligations under these terms of trade.
- (c) Should the Customer fail to fulfill its obligations under these terms of trade, including but not limited to, make any payments required by these terms of trade as and when required by these terms of trade, then the Guarantor/s guarantees the Supplier to make those payments on the Customer's behalf.
- (d) The Guarantors indemnify the Supplier in relation to the performance of these terms of trade, and agree that their liability to the Supplier is the same as if each guarantor alone was the Customer, and all transactions between the Supplier and the Customer were transactions between the Supplier and that guarantor;
- (e) This guarantee and indemnity is continuing, and is not affected by any delay or failure by the Supplier to strictly enforce its rights against the Customer or the Guarantors, nor any waiver by the Supplier of any of its rights against the Applicant or the Guarantors except to the extent specifically waived.

21 Security

- (a) The Customer and Guarantor/s hereby agree to:
 - (i) charge all their beneficial interest (freehold and leasehold) in real property held now or in the future to secure the obligations owed to the Supplier under these terms of trade;
 - (ii) that upon demand being made by the Supplier, the Customer and Guarantor/s will immediately execute a mortgage in registerable form to secure any sum then outstanding to the Supplier pursuant to these terms of trade and/or consents to a Caveat being lodged over all real properties held by the Customer and the Guarantor/s now or in the future to secure the interest of the Supplier pursuant to this equitable mortgage;
- (b) In the event the Customer and/or Guarantor/s fail to execute a document in accordance with clause 21(a)(ii), then the Customer and Guarantors hereby irrevocably and by way of security appoint the Supplier to be their true and lawful attorney to execute and register any such instrument as described in clause 21(a). For the purposes of this appointment, the Customer and Guarantors authorise the Attorney appointed by this clause to enter into conflict transactions within the meaning of the Power of Attorney Act 1998.

Signed by *[name of Customer]* in the presence of *[name of witness]*

[Signature of Customer]

[Signature of witness]

Signed by *[name of Supplier]* in the presence of *[name of witness]*

[Signature of Supplier]

[Signature of witness]

Signed by *[name of Guarantor]* in the presence of *[name of witness]*

[Signature of Supplier]

[Signature of witness]