



FORGINGS FLANGES AND FITTINGS

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ACN 144 701 995

Terms and Conditions of Trade

1. DEFINITIONS & INTERPRETATION

- 1.1 “**ADI**” means authorised deposit-taking institution and has the same meaning as in the Banking Act 1959;
- 1.2 “**Agreement**” includes the agreement and any credit application, quotation, work authorisation or other form as provided by the Seller to the Customer for the supply of the Goods pursuant to these Terms and Conditions;
- 1.3 “**Confidential Information**” means all information acquired or created by either Party relating to each Party’s business or Intellectual Property that is not in the public domain (or, if in the public domain, is not in the public domain by reason of a breach of this Agreement), including but not limited to:
- (i) information about products, processes, systems, equipment, dealings, transactions, policies, finances, organisation or personnel, or about clients or customers or anyone associated with either Party;
 - (ii) any information regarding the Parties’ business methods, business policies, product designs, stock information, related suppliers, procedures, techniques, research or development, projects or results, sales information of any kind, financial information of any kind, intellectual knowledge, Intellectual Property, know-how, trade secrets, customer lists or other customer information, sales strategy, tactics or methods, marketing research strategy, information pertaining to products or services under development, marketing, advertising, artwork ideas, concepts, promotions or strategies, supplier information, hardware types, product lists and ranges, items purchased or under consideration of purchase, prices, passwords, purchasing agreements, and security; and
 - (iii) information relating to any and all of the Parties’ involvement with each other under the Agreement.
- 1.4 “**Customer**” means the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Seller to the Customer;
- 1.5 “**Force Majeure Event**” means events or circumstances beyond the reasonable control of the Seller including but not limited to acts of God, wars, riots, strikes, lock-outs, trade disputes or labour disturbances, breakdown of plant or machinery, accidents, storm, fire, floods, difficulties in obtaining materials, goods, transport or labour or any other circumstances affecting the supply of goods;
- 1.6 “**Goods**” mean goods or products supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services if any) and are as described on the Purchase Order(s) and Invoice(s);
- 1.7 “**Guarantor**” means that person (or persons) or entity who agrees to be liable for the debts of the Customer on a principal debtor basis pursuant to the Agreement;
- 1.8 “**Intellectual Property**” includes but is not limited to all trade marks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights owned or held by the Seller. These rights include but are not limited to:
- (i) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
 - (ii) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.
- 1.9 “**Intellectual Property Rights**” means all present and future rights conferred by statute, common law or equity anywhere in the world in or in relation to copyright, trade marks, designs, patents, methodology, concepts, models, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:
- (i) all rights in all applications to register these rights including all rights to claim Paris Convention priority;

- (ii) all renewals and extensions of these rights; and
 - (iii) all rights in the nature of these rights, such as moral rights.
- 1.10 **"Invoice"** means a taxation invoice for Goods supplied by the Seller to the Customer;
- 1.11 **"Loss"** means
- (i) loss, including but not limited to direct loss, consequential loss, special loss, loss of anticipated profits and/or loss of business opportunity;
 - (ii) liability;
 - (iii) damage including but not limited to any damages or compensation and/or any damage to reputation; and/or
 - (iv) cost or expense including legal costs on a full indemnity basis;
- 1.12 **"Party(ies)"** means the parties to the Agreement including but not limited to the Seller and the Customer;
- 1.13 **"Personal Property Securities Act"** or **"PPSA"** means the Personal Property Securities Act (Cth) 2009, as amended from time to time;
- 1.14 **"Price"** means the price payable for the Goods specified in the Invoice in accordance with Clause 8 of this contract;
- 1.15 **"Purchase Order"** means an order request for Goods by the Customer to the Seller;
- 1.16 **"Quotation"** has the meaning set out in clause 4.1.
- 1.17 **"Security Agreement"**, **"Collateral"**, **"Commingled Goods"**, **"Financing Statement"**, **"Financing Change Statement"**, **"Personal Property"**, **"All Present and After Acquired Personal Property"**, **"Purchase Money Security Interest"**, **"Registration"** and **"Security Interest"** have the meanings given to them in the Personal Property Securities Act;
- 1.18 **"Seller"** means FFF Australia Pty Ltd (ACN 144 701 995) trading as "Forgings, Fittings and Flanges" and includes without limitation its officers, agents, sub-contractors, successors and assigns or any person acting on behalf of and with the authority of FFF Australia Pty Ltd;
- 1.19 **"Services"** means all services requested and supplied by the Seller to the Customer, including advice or recommendations and as specified in the Purchase Order(s), Invoice(s) or in any other communications;
- 1.20 **"Supply"** means supply of the Goods by the Seller under the Agreement;
- 1.21 **"Terms and Conditions"** means these terms and conditions of the Seller's supply of the Goods to the Customer pursuant to the Agreement and includes any amendments to them;
- 1.22 In interpreting these Terms and Conditions:
- (a) the clause headings are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer;
 - (b) any obligation on the part of two (2) or more persons or entities binds them jointly and severally;
 - (c) words in the singular number include the plural and vice versa;
 - (d) words importing a gender include any other gender;
 - (e) a reference to a person includes a partnership and a body, whether corporate or otherwise;
 - (f) a reference to the Customer includes the Customer's officers, employees, agents or sub-contractors;
 - (g) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
 - (h) a reference to a Schedule includes a reference to any part of that Schedule which is not physically annexed to these Terms and Conditions but which is incorporated by reference;
 - (i) monetary references are references to Australian dollar currency ("AUD"); and
 - (j) in the interpretation of these Terms and Condition, no rule of contract interpretation applies to the disadvantage of a Party on the basis that it put forward these Terms and Conditions or any part of them.

2. APPLICATION OF TERMS AND CONDITIONS

2.1 The Customer wishes to engage the Seller for the purposes of supplying the Customer with the Goods in accordance to these Terms and Conditions.

3. ORDERING PROCEDURE

3.1 The Customer must:

- (a) place the order for the Goods in writing to the Seller (“the **Invitation**”); or
- (b) put forward an invitation to Tender (also an “**Invitation**”).

3.2 The Customer must provide sufficient details of its requirements (e.g description of the Goods, quantity, time of delivery) and/or specifications for the Goods.

4. QUOTATION

4.1 Upon receipt of the Invitation, the Seller will provide a written quotation (“**Quotation**”) to the Customer within a reasonable time.

4.2 The Quotation may be withdrawn or varied by the Seller at any time prior to acceptance by the Customer.

4.3 The Quotation is valid for five (5) days from the date of the Quotation. If the Customer accepts the Quotation after the five (5) days, the Price in the Quotation may be revised at the Seller’s sole discretion.

4.4 Where drawings provided by the Customer are not complete and/or the Customer requires variations to the Quotation, the Prices as indicated in the Quotation are estimates only and may be subject to revision by the Seller.

4.5 The prices in the Quotation do not include GST unless otherwise specified.

5. PURCHASE ORDER

5.1 Purchase Orders

- (a) The Customer will provide the Seller with a Purchase Order for the supply of the required Goods.
- (b) The Purchase Order will be in writing and will specify:
 - (i) the description of the Goods required;
 - (ii) the specifications for the Goods;
 - (iii) the quantity of the Goods;
 - (iv) proposed time of delivery;
 - (v) any special requirements; and
 - (vi) a delivery address.
- (c) The Seller will endeavour to notify the Customer of the following within three (3) business days from the date of receipt of the Purchase Order:
 - (i) confirmation that the Seller has received the Purchase Order;
 - (ii) whether the Seller reasonably believes that the Goods can be supplied and whether the Seller can meet the Customer’s requirements; and
 - (iii) whether the Seller accepts the Purchase Order.

6. ACCEPTANCE OF THE TERMS AND CONDITIONS

6.1 Any instructions or indication received by the Seller from the Customer in relation to the following:

- (a) acceptance of the Quotation;
 - (b) provision of the Purchase Order to the Seller;
 - (c) supply of the Goods;
 - (d) the Customer and the Seller enter into an Agreement; or
 - (e) the Customer’s acceptance of the Goods supplied by the Seller,
- will constitute acceptance of these Terms and Conditions.

6.2 The Customer agrees that, notwithstanding any terms and conditions of any document (including the Purchase Order) provided by the Customer to the Seller purportedly regulating the legal relations between them, this Agreement and these Terms and Conditions will prevail, regardless of whether the Customer terms and conditions were later in time, and the Seller will only be bound by the terms and conditions of such documents to the extent, not inconsistent with this Agreement and these Terms and Conditions, that the Seller agrees with the Customer in writing to be so bound.

7. DEPOSIT

7.1 The Seller may require the Customer to pay a deposit (“**the Deposit**”) before the Seller processes the Order and in any case within 5 days of the Seller accepting an Order. In certain circumstances, the Seller may at its absolute discretion waive the payment of the Deposit. If the Customer’s credit application is not approved, the Customer must provide the Deposit.

7.2 If a deposit is required, the Seller is not obliged to commence manufacture or supply the Goods until the deposit has been received by the Seller.

7.3 If the Customer fails to pay the Deposit within the required time, the Seller may cancel the Order and shall not be liable in any way to the Seller for doing so.

7.4 To the extent permitted by law, any deposit paid is non-refundable.

8. PRICE AND PAYMENT

8.1 At the Seller’s sole discretion the Price is either:

- (a) as indicated on the Invoices provided by the Seller to the Customer; or
- (b) as indicated in the Quotation (subject to clause 8.2).

8.2 The Seller reserves the right to change the Price in the event of variations to the Goods supplied.

8.3 Time for payment for the Goods shall be on delivery or within thirty (30) days from the date of the Invoice, as the Seller dictates. If the Seller has approved the Customer’s credit application, the time for payment will be as agreed between the Parties.

8.4 In all cases the payment shall be in cleared funds in the currency specified in the invoice. International Customers must be aware of the period required for international transfer funds to clear to ensure payment is not delayed.

8.5 Payment can be made by cash, or by cheque, or by EFT transfer to the Seller’s account (Swift Code ANZBAU6PXXX Bank name ANZ, Branch Name OSBORNE PARK, Branch Address Level 1, 15 Hutton St, BSB: 016 412 account number: 904418629. If payment is made by EFT, the Customer must provide a reference (name, Quotation number or the delivery or site address).

8.6 GST and other taxes and duties that may be applicable will be shown separately and are not included in the Price.

9. DELIVERIES

9.1 The Supply of the Goods will be provided by the Supplier to the Customer’s nominated delivery address as indicated in the Purchase Order.

9.2 All Goods specified in the Purchase Order are estimated to be delivered within:

- (a) the estimated timeframe specified in the Quotation or as agreed between the Parties; or
- (b) if Clause 9.2(a) is unreasonable or impossible, as mutually agreed between the Parties or within a reasonable time.

9.3 The Seller will notify the Customer as soon as possible if the Seller becomes aware of any delay in the delivery of Goods pursuant to a Purchase Order.

9.4 The Customer must make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery and in the event that the Customer is unable to take delivery of the Goods as arranged then the Seller will be entitled to charge a reasonable fee for re-delivery and storage costs.

9.5 All Goods must be adequately packaged and labelled in accordance with:

- (a) good commercial practice to avoid damage in transit to their final destination; and
- (b) any legal or regulatory requirements.

9.6 Unless otherwise specified delivery costs are in addition to the Price.

- 9.7 The Seller may deliver the Goods by separate instalments and each separate instalment will incur delivery costs. The Customer agrees to pay the delivery costs.
- 9.8 Delivery of the Goods to a carrier, either named by the Customer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Customer, is deemed to be a delivery of Goods to the Customer.
- 9.9 The costs of carriage and any insurance which the Customer reasonably directs the Seller to incur must be reimbursed by the Customer without any set-off or other withholding (whatsoever) and is due on the date for payment of the Price. The carrier is deemed to be the Customer's agent.
- 9.10 The failure of the Seller to deliver will not entitle the Customer to treat the Agreement as repudiated.
- 9.11 The Seller will not be liable for any Loss or damage to the Customer resulting from late delivery of the Goods for any reason (including but not limited to changes to the Customer's requirements or variations to the Goods).
- 9.12 The Seller reserves the right to withhold delivery of the Goods until the Customer has fully paid all outstanding invoices.
- 9.13 The Customer must inspect the Goods prior to accepting delivery and must notify the Seller in writing of any alleged defect, damage in the Goods or failure to comply with the description or Quotation.
- 9.14 If the Customer fails to give the written notice within two (2) Business Days:
- (a) the Goods will be presumed to be free from any defect or damage;
 - (b) the Seller will be deemed to have unconditionally accepted the Goods as complying with the Quotation; and
 - (c) the Seller is not liable to replace or repair the Goods.
- 9.15 The Customer must not use any Goods until the inspection has been performed and the Goods accepted.

10. CANCELLATION

- 10.1 The Seller may cancel the Agreement to which these Terms and Conditions apply or cancel delivery of the Goods at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice the Seller must repay to the Customer any sums paid in respect of the Price. The Seller will not be liable for any Loss or damage whatever arising from such cancellation.
- 10.2 In the event that the Customer wishes to cancel the Order at any time after the Seller has accepted the Order:
- (a) The Customer must get the prior written consent of the Seller; and
 - (b) the Customer will be liable for any costs, expenses or losses incurred by the Seller (including but not limited to any loss of profits or manufacturing costs) up to the time of cancellation.
- 10.3 The Customer must reimburse the Seller for any expenses (including but not limited to administrative, storage or delivery costs) incurred by the Seller as a result of any cancelled order for whatever reason.

11. PASSING OF RISK

- 11.1 Goods supplied by the Seller to the Customer will be at the Customer's risk upon
- (a) delivery to the Customer; or
 - (b) delivery to the Customer's custody, possession or control,
- whichever is the sooner.

12. THE PERSONAL PROPERTY SECURITIES ACT

- 12.1 Ownership of the Goods remains with the Seller until all the amounts owing by the Customer to the Seller (including without limitation to the purchase price of the Goods and other debts owing to the Seller) have been paid in full.
- 12.2 The Customer acknowledges that this Agreement and these Terms and Conditions constitute a Security Agreement which creates a Security Interest in favour of the Seller in the following Collateral for the purpose of securing the Customer's required payments to the Seller under the Agreement:
- (a) All Goods (including any Commingled Goods) supplied by the Seller to the Customer from time to time; and
 - (b) The Customer's All Present and After Acquired Personal Property.
- 12.3 Further to clause 12.2, the Customer grants to the Seller a Purchase Money Security Interest.

- 12.4 The Customer accepts, acknowledges and agrees that:
- (a) the Seller can, affect and maintain a Registration (in any manner that the Seller considers appropriate) of its Security Interest on the PPSR in relation to any Security Interest created, contemplated or constituted by this Agreement;
 - (b) the Customer waives its rights under s.157 of the PPSA to receive notification of a Registration by the Seller;
 - (c) Pursuant to section 275(6) of the PPSA, the Customer agrees the Seller is not required to disclose to an interested person information pertaining to the Seller's Security Interest unless required to do so pursuant to the PPSA or at law generally.
- 12.5 The Customer will:
- (a) sign any documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) and/or assistance which the Seller may reasonably require to enable perfection of its Security Interest or Registration of a Financing Statement or Financing Change Statement on the PPSR;
 - (b) give the Seller not less than 14 days' written notice of any proposed change in their name and/or any other changes in their details (including but not limited to, changes in their address, facsimile number, email address, trading name or business activities);
 - (c) indemnify the Seller against any costs the Seller incurs in perfecting and maintaining its perfected Security Interest in the Goods or such other Personal Property under the PPSA and any costs the Seller may incur in the course of enforcing any of its rights under this Agreement, the PPSA or at law generally;
 - (d) procure from any persons considered by the Seller to be relevant to its security position, such agreement and waivers as the Seller may at any time reasonably require.
- 12.6 The Customer undertakes not to:
- (a) register a Financing Change Statement in respect of a Security Interest contemplated or constituted by the Agreement without the Seller's prior written consent;
 - (b) register, or permit to be registered, a Financing Statement or a Financing Change statement in respect of a Security Interest contemplated or constituted by this Agreement in favour of a third party without the Seller's prior written consent.
- 12.7 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising in connection with this Agreement to which these Terms and Conditions apply, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of the Agreement:
- (a) Section 95 (notice of removal of accession), to the extent that it requires the Seller to give a notice to the Customer;
 - (b) Section 96 (when a person with an interest in the whole may retain an accession);
 - (c) Subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - (d) Section 125 (obligation to dispose of or retain collateral);
 - (e) Section 129 (disposal by purchase);
 - (f) Section 130 (notice of disposal of collateral), to the extent that it requires the Seller to give a notice to the Customer;
 - (g) Section 132(3)(d) (contents of statement of account after disposal);
 - (h) Section 132(4) (statement of account if no disposal);
 - (i) Section 135 (notice of retention of collateral);
 - (j) Section 142 (redemption of collateral); and
 - (k) Section 143 (reinstatement of security agreement).
- 12.8 Notices or documents required or permitted to be given to the Seller for the purposes of the PPSA must be given in accordance with the PPSA.

13. SECURITY AND CHARGE

- 13.1 Subject to clause 12 and the Personal Property Securities Act:

- (a) where the Customer and/or the Guarantor (if any) is the owner of any real property, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said real property to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the Agreement. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) is entitled to lodge an absolute caveat, where appropriate and the caveat will be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Seller elect to proceed in any manner in accordance with this clause 13 and/or its sub-clauses, the Customer and/or the Guarantor will indemnify the Seller from and against all the Seller's incurred costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate, constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.

14. DEALING WITH THE GOODS

14.1 Until all the amounts owing by the Customer have been paid in full the Customer:

- (a) may not modify, sell, dispose or grant to a third party any interest in the Goods;
- (b) must hold Goods as trustee and agent for the Seller;
- (c) where the Goods have been used in the manufacture or on-sold then the Customer must hold the new product or the proceeds of sale as trustee and agent for the Seller; and
- (d) must store the Goods in such a manner which maintains the condition of the goods, makes them readily distinguishable from other goods and allows the Seller unrestricted access to them for the purpose of inspection or removal.

14.2 The Purchaser hereby grants the Seller the irrevocable license to enter the premises where the Goods are held and ability to remove them from the property.

15. RETURNS

15.1 Goods will not be accepted for return other than in accordance with clause 9.13.

15.2 If the Seller accepts a return of the Goods, the Seller may in its absolute discretion issue a credit note to the Customer instead of replacing the Goods.

16. WARRANTY

16.1 The warranty shall be the current warranty provided by the manufacturer or supplier of the Goods to the Seller. The Seller shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer or the supplier.

16.2 The warranty in clause 16.1 is subject to the conditions in clause 16.3.

16.3 The conditions applicable to the warranty given by clause 16.3 are:

- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - (i) failure on the part of the Customer (or its employees, agents or contractors) to properly install or maintain the Goods; or
 - (ii) failure on the part of the Customer (or its employees, agents or contractors) to follow any instructions or guidelines provided by the Seller; or
 - (iii) any use of the Goods otherwise than for any application specified on the Order or the Quotation; or
 - (iv) the continued use of the Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - (v) fair wear and tear, any accident or act of God.

16.4 If the Customer (or its employees, agents or contractors) modifies, alters or otherwise interferes with the Goods without the Seller's consent, the warranty may be void by the manufacturer or the supplier. In such circumstances, the Seller is not liable for the costs of replacing the Goods.

17. IMPLIED GUARANTEES UNDER THE COMPETITION AND CONSUMER ACT 2010 (CTH) ("CCA") AND THE FAIR TRADING ACT ("FTA")

- 17.1 Any condition, warranty or guarantee which would otherwise be implied in the Agreement is hereby excluded to the full extent permitted by law.
- 17.2 Where legislation implies in the Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty will be deemed to be included in the Agreement. However, the liability of the Seller for any breach of such condition or warranty will be limited, at the option of the Seller, to one or more of the following:
- (a) the replacement of the Goods or the supply of equivalent Goods;
 - (b) the repair of such Goods;
 - (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
 - (d) the payment of the cost of having the Goods repaired; and
- 17.3 Nothing in the Agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

18. EXCLUSION OF LIABILITY

- 18.1 The Customer agrees that the Seller or its affiliates, agents and sub-contractors and each of their partners, principals, members, employees and other personnel will not be liable to the Customer for any actions, claims, or Loss in any way arising out of or relating to the Goods for an amount greater than ten percent (10%) of the Price paid by the Customer to the Seller under this Agreement.
- 18.2 In no event will the Seller or its affiliates, agents or sub-contractors or any of their partners, principals, members, employees or other personnel be liable for special, incidental, indirect, consequential or punitive damages, costs expenses or losses of any kind, lost profits, lost revenue, loss of management time, opportunity costs, failure to realise anticipated savings, or lost data.
- 18.3 This clause 18 will apply regardless of the form of action, damage, claim, liability, cost, expense or loss whether in contract, statute or tort (including without limitation to negligence) or otherwise. To the extent that this clause 18 refers to persons other than the Seller, the Seller holds the benefit of this clause 18 on trust for them.
- 18.4 The total liability of the Seller, if any, is limited at all times to the Price.

19. CUSTOMER'S INDEMNITY

- 19.1 The Customer continually indemnifies the Seller, the Seller's affiliates, agents or subcontractors, against any claim or proceeding that is made, threatened or commenced, and against any liability, Loss, damage or expense (including legal costs on a full indemnity basis) any of them incurs or suffers, as a direct or indirect result of any of the following:
- (a) A breach of this agreement including any warranty;
 - (b) A wilful, unlawful or negligent act or omission by the Customer or an officer, employee, agent or subcontractor of the Customer;
 - (c) Damage to or loss of any of the Seller's property.

20. CUSTOMER'S WAIVER

- 20.1 Subject to clause 20.3, the Customer warrants that it has not relied on any representation made by the Seller in any form (including but not limited to the Seller's leaflets, catalogues, brochures, website) which has not been stated expressly in these Terms and Conditions or upon any descriptions, illustrations or specifications or any documentation provided by the Seller.
- 20.2 The Customer acknowledges and agrees that, to the extent the Seller has made any representation which is not otherwise expressly stated in these Terms and Conditions, the Agreement or in any other document, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.
- 20.3 The Customer waives any right to rescind, terminate or cancel the Agreement with the Seller or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Seller and the Customer acknowledges that it is relying on its own skills and judgement when acquiring the Goods.

21. CONFIDENTIAL INFORMATION

- 21.1 A Party ("the Receiving Party") will not, without the prior written approval of the other Party, disclose the other Party's ("the Disclosing Party") Confidential Information.
- 21.2 The Receiving Party will not be in breach of clause 21.1 in circumstances where it is legally compelled to disclose the Disclosing Party's Confidential Information.

- 21.3 The Receiving Party will ensure that its employees, agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the Disclosing Party's Confidential Information.
- 21.4 The Disclosing Party may at any time require the Receiving Party to arrange for its employees, agents, or sub-contractors engaged in the performance of this Agreement to execute a suitable confidentiality deed at the Disclosing Party's expense.
- 21.5 The Receiving Party will on demand return to the Disclosing Party any Confidential Information supplied by the Disclosing Party to the Receiving Party in connection with this Agreement.
- 21.6 Notwithstanding any other provision of this clause 21, the Parties may disclose the terms of this Agreement to its employees, related companies, solicitors, auditors, insurers or accountants, and will ensure that every person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to the Parties.

22. INTELLECTUAL PROPERTY

- 22.1 The Customer expressly agrees and acknowledges that:
- (a) any Intellectual Property in the Seller's Goods (whether unregistered, registered or registrable) is the property of the Seller; and
 - (b) nothing in the Agreement is intended to provide the Customer with any interest in the Intellectual Property in the Seller's Goods.
- 22.2 The Customer warrants that it has all rights to any Intellectual Property that it provides to the Seller. The Customer indemnifies and will keep indemnified the Seller against all loss, damages, costs (including legal costs on a solicitor client basis), or claims made by any third party in relation to any Intellectual Property supplied by the Customer to the Seller.

23. DEFAULT AND CONSEQUENCES

- 23.1 Neither Party shall take any action (including legal action) against the other Party for a default of the Agreement without first giving the defaulting Party written notice specifying the default and providing the defaulting Party with seven (7) days to rectify such.
- 23.2 Interest on overdue Invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two point five percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement. The Customer acknowledges that this rate is not a penalty and is a genuine pre-estimate of the Seller's loss and damage.
- 23.3 If the Customer defaults in payment (including by way of dishonoured cheque) of any invoice when due, the Customer will indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs (on a solicitor and own client basis) and the Seller's debt recovery costs.
- 23.4 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms and Conditions. The Seller will not be liable to the Customer for any Loss or damage the Customer suffers because the Seller has exercised its rights under this clause 23.4.
- 23.5 Without prejudice to the Seller's other remedies at law the Seller is entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors; or
 - (c) a trustee in bankruptcy, receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 23.6 **FORCE MAJEURE**
- 23.7 This Agreement may be terminated without adverse effect to any rights that the Seller may have in accordance with this Agreement in the event that the Customer's ability to fulfil terms of this order is affected by a Force Majeure Event for a period of 14 days or more.
- 23.8 If in the event of Force Majeure, either party becomes unable to fulfil the requirements of this order in whole or in part, or is delayed:

- (a) The party affected must give immediate notice to other affected parties. Notice must identify details of the event of Force Majeure; establish which requirements have been affected and the estimated delay in meeting requirements of this order;
- (b) The requirements affected will be suspended, but only for as long as those requirements are affected by the event of force majeure; and
- (c) The party affected by the event of force majeure must move to overcome or remove the impact of the event from affecting the requirements of this order and minimise any subsequent delay to the best of the party's ability.

24. PRIVACY ACT 1988 (CTH)

- 24.1 The Customer and/or its Guarantor/s agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Seller.
- 24.2 The Customer and/or its Guarantor/s agrees that the Seller may exchange information about the Customer and the Guarantor/s 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 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 credit worthiness of Customer and/or Guarantor/s.
- 24.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 24.4 The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by the Seller, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 24.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

25. GENERAL

- 25.1 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.
- 25.2 These Terms and Conditions and any agreement to which they apply shall be governed by the laws of Western Australia and the Parties unconditionally submit to the jurisdiction of the courts of Western Australia.
- 25.3 The documents comprising the Agreement will be read in the following order of precedence:

- (a) the Agreement;
- (b) the Terms and Conditions;

Where any conflict occurs between the provisions contained in the Terms and Conditions, the Terms and Conditions will be read down to resolve such conflict. If the conflict remains incapable of resolution by reading down, the conflicting provisions will be severed from the Terms and Conditions without otherwise diminishing the enforceability of the remaining provisions of the Terms and Conditions.

- 25.4 In the event of any breach of the Agreement or any of these Terms and Conditions by the Seller the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 25.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
- 25.6 The Seller may license or sub-contract all or any part of its rights and obligations (including supplying of the Goods) without the Customer's consent.
- 25.7 The Seller reserves the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change.
- 25.8 The failure by the Seller to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.
- 25.9 Upon acceptance of these Terms and Conditions by the Customer, the Terms and Conditions are binding and can only be amended with the written consent both the Parties.
- 25.10 Where more than one Customer has entered into this Agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 25.11 The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this Agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.
- 25.12 The Customer shall give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause 26.11.
- 25.13 Any notice required or permitted to be given under the Agreement may be given by:
 - (a) written notice delivered to the other Party's address;
 - (b) facsimile transmitted to a facsimile number;
 - (c) email to an email address;
 notified by the receiving Party to the other Party or the Public for the purposes of the Agreement.

SIGNED by the Parties' representatives as acknowledgement of receipt of these Terms and Conditions

AUTHORISED CUSTOMER REPRESENTATIVE	AUTHORISED SELLER REPRESENTATIVE	WITNESS
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NAME	NAME	NAME
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DATE: