



Terms and Conditions of Business

Bairnsteel Pty Ltd ACN 104 217 352 ABN 47 104 217 352
and its associated, related, subsidiary and parent
companies, successors and assigns ("Bairnsteel")
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The Glossary

1. DEFINITIONS AND INTERPRETATION

Additional Expenses means any fees, expenses, duties, taxes (including GST) and disbursements that We incur to supply the Goods and Services, including delivery and freight charges, permit and licence fees, toll or other road charges, scaffolding or fence hire charges, traffic management costs, installation fees, storage fees, return and restocking fees, third-party services, administration and account keeping fees, merchant fees and payment surcharges at amounts and rates advised by Us from time-to-time.

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

Customer means any person, firm or company placing an Order with Us for the purchase of Goods and Services pursuant to these Terms (also referred to as "You" and "Your").

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

Equipment means the plant, machinery, appliances, tools, vehicles, accessories and other equipment that We use to perform the Services.

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

Goods means any products, parts, materials, hardware, accessories and other goods that We supply to You pursuant to any Quote, Order and/or these Terms.

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

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

Order means Your request to purchase Goods and Services.

PPSA means:

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

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

Services means the works, processing, labour and other services that We supply to You pursuant to any Quote, Order and/or these Terms.

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

Supplier means the entity or entities specified in these Terms as supplying Goods and Services to You (also referred to as "Us", "We" and "Our").

Website means www.bairnsteel.com.au as redirected from time to time.

In these Terms:

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

About these Terms

2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) The entire agreement between the parties for all Goods and Services supplied is comprised of these Terms, any Credit Account application, and any special conditions listed on any Quote or Order. Unless the parties otherwise agree in writing, these Terms apply to the extent of any inconsistency between documents.
- (b) You warrant that You are authorised to enter into and perform the agreement created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Goods and Services has Your authority and power to do so.
- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, by verbal acceptance, submitting an Order, or by instructing Us to supply Goods and Services.
- (d) We are engaged to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) These Terms are interpreted according to the laws of the State or Territory as We may reasonably determine. Legal proceedings by either party may be conducted in the State or Territory that We determine in Our sole discretion. If We do not make a determination, You consent to any proceedings being conducted in a Victorian Court applying the laws of Victoria.

3. CHANGES AND UPDATES TO THESE TERMS

- (a) We may update or alter our standard terms and conditions of business from time-to-time.

Duly signed and accepted in full on behalf of _____

Signature _____ Name _____ Position _____ Date _____

- (b) We will provide You with 7 days' written notice of any updates or alternations to these Terms. Updated or altered Terms will apply to all Orders that You place after the date of the notice, unless You object in writing within the notice period. If You object to Our updated Terms, You may exercise Your termination rights outlined in these Terms and We may choose not to accept any new Orders from You until You accept Our updated Terms.
- (c) Any other changes that You request to these Terms or to the Goods or Services to be supplied are subject to Our consent (which will not be unreasonably withheld). Any such changes will only apply if agreed to in writing and signed by the parties.
- (d) You must notify Us in writing of any material change to Your organisation, including a change of director, legal entity, bank account details or change of address.
- (e) The parties may only assign or transfer all or any of their title, estate, interest, benefit, rights, duties and obligations in these Terms to any person with the other parties' written consent and provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (f) You must not charge, encumber or otherwise deal with any of Your rights and obligations under these Terms without Our prior written consent.

How to Purchase Our Goods and Services

4. PRICES, QUOTATIONS AND ORDERS

- (a) We may vary or cancel any Quote before accepting an Order from You.
- (b) You may purchase Goods and Services by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (c) You acknowledge and agree that We are not responsible for any errors in specifications for Orders placed verbally. We encourage You to place all Orders in writing.
- (d) We may accept or decline any Order by notifying You verbally or in writing, or by supplying the Goods and Services to You.
- (e) We may ask You to pay a deposit for an Order in any amount that We advise from time-to-time. We are not required to accept Your Order until payment of the deposit has been made. The balance of the Order must be paid as We direct.
- (f) You may only cancel an Order if We have not taken steps to supply the Services or deliver the Goods.
- (g) You cannot cancel Orders for non-stocklist Goods, Goods made to Your custom specifications, or Services where production or work has commenced, unless You pay Us for the Loss that we incur as a result of Your cancellation.
- (h) In all other situations, You cannot cancel an Order without Our written consent (which We will not unreasonably withhold).
- (i) Unless the parties otherwise agree in writing, the price You must pay for Goods and Services is specified in Our price list that is current at the time You place Your Order and/or Our invoice for the Goods and Services.
- (j) We may charge You Additional Expenses that We incur in supplying the Goods and Services.
- (k) We have the right to change our prices for Goods and Services to be supplied under these Terms from time-to-time.
- (l) We have the right to revise and change Our quoted price for Goods and Services if Our scope of work changes, including where conditions of a Site differ from what We have quoted You, where You change Your Order or where We receive notification of a market condition change that impacts Our prices. We will notify You in writing of any proposed price change.
- (m) Unless You provide Us with a written objection within the notice period, the updated prices for Our Goods and Services will apply to all Orders submitted after expiry of the notice period.

Getting the Goods and Services to You

5. DELIVERING GOODS

- (a) You authorise Us to:
 - i) deliver Goods to the Site nominated by You; and
 - ii) leave Goods and Our Equipment at the Site whether or not any person is there to accept delivery.
- (b) The method of delivering Goods is at Our sole discretion. At any time, We may appoint a third party agent to perform Our delivery obligations of these Terms.
- (c) You must pay all Additional Expenses to deliver Goods.
- (d) You must provide a suitable and safe Site with clear, close and easy access for Us (or Our agents, employees or contractors) to deliver Goods, including a Site that is compliant with occupational health and safety legislation
- (e) We are not obliged to obtain a signed receipt, delivery docket or other acknowledgement of Goods being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods delivered.
- (f) You acknowledge and agree that any supply and delivery times indicated by Us are given in good faith and are estimates only. Estimates of time may change subject to Goods and Equipment being available, Our reasonable ability to supply Goods and Services on the estimated date, Force Majeure Events and receiving cooperation from You and relevant third parties.
- (g) We will endeavour to deliver Goods and Services at the time you need, but if We fail to deliver within a specified time due to factors beyond Our control or Your acts or omissions, You are not permitted to cancel Your Order, refuse to accept supply or refuse to pay for the Goods and Services.
- (h) You acknowledge and agree that We may incur Additional Expenses (such as storage, handling, re-delivery and insurance costs) if You cause a delay in delivery.
- (i) Delivery is deemed to occur when Goods are handed to You or Your representative or delivered to the Site.
- (j) You agree to inspect and examine Goods immediately on delivery.
- (k) If You need to return Goods for any reason, You must notify Us within 24 hours of receiving the Goods and follow the returns policy outlined in these Terms.

6. SUPPLYING SERVICES

- (a) The Services are provided to You with all due skill and care in accordance with Our professional standards.
- (b) To facilitate supply of Our Services, You must provide all resources that We reasonably require to supply the Services, including but not limited to accurate and complete instructions, Site specifications and measurements, files and records, plans, licenses and permits, third parties where applicable and people (whether engineers, builders, management or staff) with the relevant authority that We reasonably require.
- (a) You acknowledge and agree that:
 - i) Our Services are limited to the particular job, project, solution, tasks, activities or other scope of work that We have agreed to carry out;
 - ii) The Services provided are based on information that You provide to Us or available to Us at the time. We are entitled to rely on the accuracy and completeness of the information for the Services, whether that information is obtained by Us or provided by You, Your officers or staff, or Your advisors or consultants.
 - iii) You must promptly notify Us if any of the information that You have provided to Us changes or if You become aware of something which renders such information obsolete or inaccurate;
 - iv) We will seek Your prior written consent to approve any major modifications to Goods and Services that We consider are reasonably necessary.

7. CREDIT ACCOUNTS

- (a) You may apply for a Credit Account with Us to purchase Goods and Services.
- (b) We have no obligation to provide credit facilities to You.
- (c) You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (d) A Credit Account must only be used by You. Your Credit Account cannot be assigned, transferred or made available for use by any other entity or person (including any purchaser of Your business) without Our prior written consent.
- (e) You authorise Us to debit Your Credit Account with the price of Goods and Services supplied to You and all other amounts that You owe Us (including Additional Expenses and interest payable under the Contract).
- (f) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt that You owe Us.
- (g) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (h) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment to return Your Credit Account to its credit limit before accepting further Orders from You.

8. PAYMENT

- (a) Unless the parties otherwise agree in writing, You must pay for Goods and Services by the Due Date.
- (b) All amounts payable by You for Goods and Services are exclusive of GST (unless expressly stated otherwise).
- (c) You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (d) Payment must be made by an approved payment method. There may be Additional Expenses associated with Your method of payment, such as a surcharge.
- (e) We may charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
- (f) We may request payment of Goods and Services by instalments or progress claims.
- (g) If You believe that You have a set-off claim against Us (including any query, dispute or claim), You cannot withhold any payment of Goods and Services on that basis without Our prior written consent.
- (h) If You do not pay for Goods and Services by the Due Date, We may:
 - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
 - ii) Require You to pay cash on delivery of any further Goods and Services;
 - iii) Suspend or cease supplying Goods and Services to You;
 - iv) Demand Your immediate payment of all outstanding monies on Your account whether or not the Due Date has passed;
 - v) Allocate any payments received from You against interest charges, costs and Additional Expenses first before allocating payments to the Goods and Services; and
 - vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- (i) Time is of the essence in relation to this section 7. This section 7 survives expiry or termination of these Terms.

9. RISK AND OWNERSHIP

- (a) Unless the parties otherwise agree in writing, all risk in the Goods and Services passes to You when the Goods are delivered to Site or handed to You (or Your agent, representative or nominated carrier) on collection.
- (b) Legal ownership of any Equipment remains with Us at all times and never passes to You.
- (c) Legal ownership of Goods does not pass to You until We have received all amounts owing by You on any account whatsoever with Us, including any Additional Expenses.
- (d) Until legal ownership of the Goods passes to You, all Goods are held by You for Us as bailee.
- (e) You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (f) You may resell any Goods before legal ownership passes to You, provided that You:
 - i) Resell the Goods to a third party in the ordinary course of business;
 - ii) Act in any transaction as Our fiduciary agent;
 - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
 - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
 - v) Allow us to inspect any records of any payments received for Goods.
- (g) If You do not pay for Goods and Services by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods. We reserve these repossession rights without being liable to You or any other third party in any way.

10. RETURNS

- (a) Unless these Terms permit or We otherwise agree in writing, We are not required to accept returned Goods or issue You with a credit for Goods.
- (b) You may request a return of Goods in the following situations:
 - i) You have received the incorrect product type or Order quantity due to an error by Us;
 - ii) The Goods are damaged or faulty at the time of delivery.
- (c) All other requests for return or credit may only be accepted on a case-by-case basis and strictly in Our sole discretion.
- (d) **You must request any return within 24 hours of the date that the Goods were delivered.**
- (e) You will be deemed to accept the Goods (including any reported defects) if You don't follow this returns procedure.
- (f) You must take all steps necessary to mitigate:
 - i) Loss arising from a defect or damage in the Goods supplied; or
 - ii) Damage being caused to the Goods that You want to return.
- (g) You must allow Us or Our authorised representatives access to the Goods for inspection, if required.
- (h) If We accept a return from You, You are responsible for any Additional Expenses associated with the return (unless the return is due to Our error). We may charge You reasonable restocking, storage, disposal or repacking charges which We incur by the Goods being returned.
- (i) Returns cannot be accepted in the following situations:
 - i) Goods which are not in original or resaleable condition;
 - ii) Goods which have been subject to incorrect handling, storage or environments by You;
 - iii) Goods have been damaged after delivery and the damage was caused by You or within Your control;

- iv) Goods that have already been installed;
- v) Any error in the Order caused by You;
- vi) Any error in an Order that You submitted verbally;
- vii) Goods manufactured to Your custom specifications; and
- viii) Non-stock list Goods specifically ordered for You.

- iii) We may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

Making Sure We Get Paid

11. SECURITY OVER REAL ESTATE

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

12. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

Security for Goods Supplied

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

General Security Agreement for Services Supplied

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

Assurances

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

Exclusion of Notices and Other Obligations

- (j) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
 - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - ii) Sections 142 and 143 are excluded;
 - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (k) To the extent permitted by law, You agree to waive:
 - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (l) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

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

Other

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

How We Reduce Risk

13. WARRANTIES AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the *Competition and Consumer Act 2010* (Cth) as amended from time to time ("the CCA")), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies or excludes the conditions, warranties, and undertakings and other legal rights under the Act and other laws.
- (b) Except as expressly set out in the CCA, these Terms, or a separate warranty document, We give no implied warranties or representations under these Terms or in connection with the Goods and Services that We supply.
- (c) You acknowledge and agree that:
 - i) You are responsible for ensuring that the Goods and Services are suitable for Your intended Site and use. In that regard, You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the Goods and Services;
 - ii) No sale under these Terms constitutes a sale by sample. You acknowledge that any sample may vary from the Goods that are supplied;
 - iii) No sale under these Terms constitutes a sale by description. Any description of Goods is by way of identification only; and
 - iv) To the extent permitted by law, all other implied warranties, terms and conditions are excluded.

14. LIMITATION OF LIABILITY

- (a) This section applies to Loss that You may suffer or incur as a result of or in connection with these Terms, the Goods or Services.
- (b) To the extent permitted by law, and where it is appropriate to do so, We may limit Our liability to You pursuant to these Terms by Our choice of:
 - i) Resupplying the Goods and Services; or
 - ii) Replacing the Goods and Services with an equivalent (or paying the cost to supply an equivalent); or
 - iii) Refunding the price You paid for the Goods and Services.
- (c) To the extent permitted by law, Our liability for Loss that You suffer or incur in relation to these Terms will not exceed the total price of all

Goods and Services supplied, except for the following types of Loss:

- i) Personal injury (including sickness and death);
 - ii) Breach of privacy legislation;
 - iii) Breach of intellectual property rights;
 - iv) Breach of confidentiality;
 - v) Statutory liability that cannot be contracted out of;
 - vi) Property damage that is covered by insurance.
- (d) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages, indirect or consequential loss of any kind.
 - (e) We will not be liable to You for Loss in relation to the Goods and Services if:
 - i) You have not paid for the Goods and Services;
 - ii) The Loss is caused by You use or misuse of the Goods, including negligence in using the Goods, failure to supervise staff using the Goods, or failure to use and maintain the Goods in accordance with Our instructions or industry standards.
 - iii) You have used Goods and Services other than for the purposes for which they were designed or intended, including for an illegal purpose;
 - iv) Goods have been repaired or modified by a third party;
 - v) Goods have been subject to abnormal conditions, including temperature, water, fire, humidity, pressure, neglect or other environmental conditions.
 - (f) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods, Services and any Additional Expenses.
 - (g) Nothing in these Terms affects the duty of a party to mitigate damages after a breach of these Terms by the other party.

15. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any direct Loss that We suffer or incur as a direct result of Your act or omission (or any entity or person that You are responsible for) pursuant to these Terms or in relation to the Goods and Services, including but not limited to Your breach of these Terms, breach of a warranty provided by these Terms, negligence, fraud or illegal conduct.
- (b) Specific situations that You must indemnify Us against and pay Us for (or Our agents, employees or contractors) include:
 - i) All legal costs which We incur as a result of any breach, act or omission by You under these Terms. This includes legal or mercantile agent fees on an indemnity basis for the recovery of unpaid Goods and Services, any action taken to secure a charge and repossession of unpaid Goods;
 - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with any Credit Account and supply of Goods and Services;
 - iii) Any Loss that We incur as a result of You cancelling your Order in a way that is not permitted by these Terms;
 - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
 - v) Any Loss of or damage to Our Equipment that is caused by You;
 - vi) Any Loss arising out of Your failure to provide a safe, suitable and compliant Site with clear, close and easy access for Us to deliver the Goods (including personal injury or death);
 - vii) Any Loss that We incur by relying on information that You provide which is inaccurate, incomplete or obsolete.
- (c) This indemnity will be proportionally reduced to the extent that We or any of Our representatives caused or contributed to the Loss.
- (d) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms.

16. DISPUTE RESOLUTION

- (a) If the parties have a dispute in relation to the Goods and Services or these Terms, then the parties must follow this dispute resolution procedure:
- i) The disputing party must give the other party written notification of the dispute;
 - ii) On receipt of a dispute notice issued in accordance with this section, the parties must:
 1. Refer the dispute to its respective senior management;
 2. Each party's senior management representatives must endeavour to resolve the dispute within 30 days of the date of the dispute notice (or such other period as agreed between the parties in writing);
- (b) If the dispute has not been resolved by senior management representatives of each party within 30 days of the dispute notice (or such other period as agreed in writing), then either party **may** (but is not required to) elect to resolve the dispute by mediation via the Australian Disputes Centre (**ADC**) before commencing arbitration or litigation. Any ADC mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
- (c) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless and until the dispute has been referred for resolution under these Terms and to the extent that this dispute resolution procedure has been completed;
- (d) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this section;
- (e) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists;
- (f) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

17. TERMINATION

- (a) By giving You written notice, We can:
- i) Suspend or cancel supply of Goods and Services (including a current Order);
 - ii) Suspend or terminate Your Credit Account, if You have one;
 - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
 - iv) Register a default with any credit reporting agency, where applicable;
 - v) Suspend or terminate the contract created by these Terms (collectively "**Our Termination Rights**").
- (b) We can exercise Our Termination Rights immediately when:
- i) You have not paid Our invoice (including any Additional Expenses) by the Due Date;
 - iii) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
 - iv) You engage in illegal activity related to the Goods and Services;
 - v) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
 - vi) An Insolvency Event occurs.
- (c) In all other situations, either party may terminate these Terms:
- i) Immediately by written notice if the other party is in breach of a

material clause of these Terms and the breach is not rectified within 7 days of the termination notice;

- ii) Without cause by giving the other party at least 30 days' written notice.
- (d) When these Terms are terminated:
- i) We may exercise Our repossession rights for all unpaid Goods stipulated by these Terms;
 - ii) We may recover from You, and You must pay, all outstanding amounts for Goods, Services and Additional Expenses imposed by these Terms; and
 - iii) Either party may pursue any additional or alternative remedies provided by law.

Other Information

18. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Policy pursuant to the *Privacy (Credit Reporting) Code 2014*, the *Privacy Act 1988* (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012* (Cth), and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Policy by contacting Us in writing.

19. GENERAL

- (a) Any clauses which are expressed to be, or are by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.
- (g) You agree to receive invoices via email.
- (h) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the *Electronic Transactions (Victoria) Act 2000* ("ETA").
- (i) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the ETA.
- (j) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the ETA. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

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