

Terms & Conditions

1. Definitions

In these Terms and Conditions, the words below have the following meanings:

Additional Charge means:

- (a) fees or charges for additional work or variations performed at the Customer's request, or reasonably required as a result of the Customer not performing its obligations under these Terms, calculated in accordance with the Company's then current prices; and
- (b) expenses incurred by the Company at the Customer's request or reasonably required as a result of the Customer not performing its obligations under these Terms.

Agreement means each Offer which is accepted by the Company under clause 3.2.

Application for Credit means the form approved by the Company which has been completed by the Customer for an account with the Company for the provision of Goods and/or Services.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and any equivalent State or Territory legislation.

Business Day means any day except a Saturday, Sunday or public holiday in the State.

Change in Control means, in relation to a party:

- (a) the person who Controls the party at the date that party first became bound by these Terms subsequently ceases to have Control of the party;
- (b) a person who does not Control the party at the date that the party first became bound by these Terms subsequently obtains Control of the party; or
- (c) if the party is Controlled by a group or consortium of persons, or if the group or consortium could Control the party were they to act collectively, any material change in the composition of that group or consortium.

COD Customer means a customer who pays cash on delivery. Goods are handed over upon full payment only.

Company means Aglo Systems Group Pty Ltd ACN 149 754 076 and Mondolux Pty Ltd ACN 618 052 195

Confidential Information means all information disclosed by the Company to the Customer and includes these Terms and the prices of the Goods or Services but excludes information that:

- (a) is public knowledge or becomes available to the Customer from a source other than the Company (otherwise than as a result of a breach of confidentiality by the Customer or any person to whom it has disclosed the information); or
- (b) is rightfully known to, or in the possession or control of the Customer and not subject to an obligation of confidentiality in accordance with the terms of an Agreement.

Consequential Loss means loss beyond the normal measure of damages and includes indirect loss, loss of reputation, loss of profits, loss of actual or anticipated savings, loss of bargain and loss of opportunities.

Consumer has the meaning provided to it in section 3 of the Australian Consumer Law.

Consumer Guarantee means a guarantee provided under Division 1 of Part 3-2 of the Australian Consumer Law.

Control has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

Customer means the entity or person requesting that Goods and/or Services be supplied to it by the Company.

Customer Background Materials means all material in whatever form (including documents, specifications, designs, plans, processes, information and data) owned or licensed by the Customer and provided by, or on behalf of, the Customer to the Company for the purposes of an Agreement.

Default Rate means two percent per calendar month.

Delivery Fee means:

- (a) the delivery or freight fee set out in a Quote or agreed in writing between the parties; or
- (b) if no delivery or freight fee is set out in a Quote or agreed in writing between the parties, the actual costs of the Company incurred in delivering the Goods to the Customer.

Force Majeure Event means any event arising from, or attributable to, acts, events, omissions or accidents which are beyond the reasonable control of a party including any fire, failure or shortage of power supplies, materials or components, weather conditions, flood, lightning, storm, explosion, earthquake, subsidence structural damage, epidemic or other natural physical disaster, riot, disease, civil commotion, insurrection, political instability, armed conflict, war, terrorist action, strike or other labour difficulty or shortage, unavailability of transport providers, failure or inability to obtain any license, failure or malfunction of computers or any other information technology system or the threat of any of the foregoing.

Freight and Handling Fee means \$20.00

Goods means the goods to be supplied by the Company to the Customer under an Agreement.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.

H&S Laws means all applicable laws, regulations, codes of practice and guidelines concerning the health, safety and welfare of people at work.

Insolvency Event means, in relation to a body corporate, a liquidation or winding up or the appointment of a voluntary administrator, receiver, manager or similar insolvency administrator to that body corporate or any substantial part of its assets; or in relation to an individual or partnership, the act of bankruptcy, or entering into a scheme or arrangement with creditors; or the occurrence of any event that has substantially the same effect to any of the above events.

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extensions.

Invoice has the meaning provided to it in clause 5.4.

Loss means any loss, liability, cost, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and includes direct loss and Consequential Loss.

Offer has the meaning provided to it in clause 3.1.

Order means any order or other request by or for the Customer to the Company for it to supply to the Customer any Goods and/or Services,

whether such order or request is written, verbal or implied in the circumstances and which may have been given in response to a Quote.

Personnel means any employee, agent, or contractor of the Company who assists the Company in the delivery of Goods and/or provision of Services under an Agreement.

PDH Goods or Services means goods or services which, for the purposes of the Australian Consumer Law, are of a kind ordinarily acquired for personal, domestic or household use or consumption.

Premises means the premises of the Customer where, from time to time, Goods are delivered, and/or Services are provided, by the Personnel.

Price List means any price list or catalogue of the Company's goods published and distributed by the Company in hard copy or electronically to its actual and prospective customers, as updated and replaced by the Company from time to time in its discretion.

Purchase Price has the meaning provided to it in clause 5.1.

Quotation or Quote means a quote, if any, provided by the Company to the Customer in respect of the Goods and/or Services.

Restocking Fee means the fee calculated pursuant to clause 9.4

Services means the services to be supplied by the Company to the Customer under an Agreement.

State means Victoria, Australia.

Tax or Taxes means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, GST, consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any government agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.

Terms means these Terms and Conditions.

2. Application

These Terms apply to and govern the supply by the Company of Goods and/or Services to the Customer which are to be provided under an Offer accepted by the Company.

3. Formation of Agreement

3.1 The Customer acknowledges and agrees that by submitting an Order the Customer makes an offer to the Company for the Company to supply it with the Goods and/or Services on the terms of:

- (a) these Terms;
- (b) the Order; and
- (c) the Quote (if any), (the **Offer**).

3.2 A contract will be formed between the Company and the Customer in respect of each Offer upon the earlier of the Company:

- (a) notifying the Customer, either verbally or in writing, that it accepts the Customer's Offer;
- (b) accepting, in full or part, payment from the Customer for any Goods or Services the subject of the Offer;
- (c) making delivery of the Goods the subject of the Offer to the Customer; or
- (d) performing the Services the subject of the Offer.

3.3 An Agreement formed under clause 3.2 will comprise these Terms, any Application for Credit, the Order, any Quote and the Invoice.

3.4 The Company is not bound to accept any Offer and may not accept any Offer for any reason and in the sole discretion of the Company.

4. Variation

4.1 The Customer may request that its Order be varied by providing a request in writing to the Company. Such a request must be agreed to in writing by the Company to have effect.

4.2 Any agreement to vary the Order is subject to an Additional Charge incurred for work carried out by the Company due to the variation. Any quote issued by the Company in relation to the Additional Charge will be in addition to the Quote for the Goods and/or Services and does not amend the Quote.

4.3 The Company has an automatic extension of time for the provision of the Goods or Services equal to the delay caused by the variation.

5. Price and payment

5.1 Unless otherwise agreed by the parties and subject to clause 5.2, the price the Customer must pay for the Goods and/or Services under each Agreement will be:

- (a) the price for the Goods and/or Services specified in the Quote or, if there is no Quote, the Invoice or, if there is no Invoice, the Price List; and
- (b) the Delivery Fee, (together the **Purchase Price**).

5.2 The Company reserves the right to increase the Purchase Price if the cost of any of the materials, components or labour used by the Company in the manufacture of the Goods or performance of the Services increases (including as a result in a fluctuation of the exchange rate) between the date of the Quote and the date the Goods are delivered or services Performed.

5.3 Samples of Goods, where available, will be charged at the same price as that specified in the Quote, Invoice (defined at clause 5.5) or, if there is no Invoice, the Price List for the Goods, unless the Company gives the Customer written notice that a different price applies to the sample.

5.4 Unless otherwise expressly specified by the Company or in these Terms, all prices stated are exclusive of all Taxes and the Customer is solely responsible for the payment of all Taxes levied or payable in respect of the Goods and/or Services and must immediately upon request by the Company provide the Company with evidence of payment of any Taxes.

5.5 The Company may invoice the Customer for the Purchase Price at any time following formation of the relevant Agreement (**Invoice**).

5.6 Subject to clause 5.8, unless otherwise agreed in writing by the parties, the due date for payment by the Customer to the Company of the Purchase Price for the Goods and/or Services supplied pursuant to an Agreement (**Due Date**) is 30 days from the end of the month in which the Invoice is dated.

5.7 Time is of the essence in respect of the Customer's obligation to make payment for Goods or Services sold by the Company to it.

5.8 If the Customer has previously failed to make any payment to the Company by the due date for that payment (whether under these Terms or otherwise), or if the Customer's credit limits with the Company have been exceeded, or the Company determines in its sole discretion that the Customer's creditworthiness is unsatisfactory, the Company may, in its absolute discretion:

- (a) refuse to supply the Customer with further Goods or perform the Services;

- (b) withhold the provision of any further Goods or Services until overdue amounts are paid in full; or
 - (c) require the Customer to pay for all Goods or Services in full prior to supplying the Goods or Services to the Customer.
- 5.9 If the Customer fails to make any payment by the Due Date, is in breach of clauses 10.5(e), 10.6 or 11, disposes of or gives any security interest over its business or a material part of its business, or is the subject of an Insolvency Event, then, without prejudice to any other right or remedy available to the Company, the Company will be entitled to:
- (a) charge interest (before and after any judgment) on all amounts the Customer owes the Company at the Default Rate calculated daily and payable by the Customer for each day immediately following the due date for payment until payment is made and the Company receives payment of all such amounts (including interest) in full by way of cleared funds;
 - (b) be reimbursed for, and recover from the Customer, all costs and expenses incurred by Company in seeking to collect amounts owed by the Customer, including, without limitation, the costs of any collection agents the Company engages, and the legal costs (on a solicitor and client basis) the Company pays;
 - (c) immediate payment for all Goods purchased by the Customer from the Company, the payment of which would otherwise not have been then due and payable;
 - (d) terminate or suspend delivery of any order which is the subject of any other sale between the Customer and the Company; and
 - (e) terminate any Agreement in respect of the Goods or Services and cease providing the Customer with Goods or Services under these terms and conditions. The Company will not be obliged to notify the Customer before exercising its rights as outlined above and these rights will be in addition to any other rights that the Company may have at law or in equity.
 - (f) enter the property of the Customer in order to repossess the Goods;
 - (g) cancel any account facilities previously granted to the Customer by the Company; and
 - (h) cancel any trade discounts or rebates provided, or otherwise offered, to the Customer under any Agreement or other arrangement.
- 5.10 Any payments the Customer makes to the Company will be applied as follows:
- (a) first, as reimbursement in accordance with clause 5.9(b) or any collection costs and expenses the Company incurs;
 - (b) second, in payment of any interest charged to the Customer in accordance with clause 5.9(a); and
 - (c) third, in satisfaction or part satisfaction of the oldest portion of the Customer's account.
- 5.11 If an amount is payable by the Customer to the Company, the Company is entitled to set-off that amount against any amount payable by the Company to the Customer.
- 5.12 The Customer is not entitled to retain any money it owes to the Company for any alleged default by the Company of these Terms, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or any delay in the supply of Goods or provision of Services.

6. Additional Charges and Cancellation Fees

- 6.1 The Company may require the Customer to pay Additional Charges in respect of costs incurred by the Company as a result of reliance on inadequate or incorrect information different site conditions or material provided by the Customer or if the company has given notice in writing as to the date required, which the Customer provides later than required by the Company in order for it to provide the Goods or Services within the specified timeframe.
- 6.2 Additional Charges or a Restocking Fee may be imposed where the Customer varies or cancels the Order, on the following terms:
- (a) after placing an Order, the Customer has 3 business days to cancel the Order without incurring a Restocking Fee.
 - (b) if an Order is cancelled after 3 days, the Company may impose a Restocking Fee in accordance with clause 9.4.
 - (c) clauses 6.2(a) and 6.2(b) do not apply to Orders for Goods specially designed, manufactured or modified to a Customer's specification or Goods designed, manufactured or modified by Aglo Systems Custom Design & Manufacturing; and
 - (d) cancelled Orders for Goods specially designed, manufactured or modified to a Customer's specification or Goods designed, manufactured or modified by Aglo Systems Custom Design & Manufacturing are subject to a cancellation fee as advised on the Company's quotation or design tender documentation in relation to those Goods.
- 6.3 Additional Charges may also be imposed:
- (a) if the Customer requires the Company to store the Goods for longer than 14 days after the scheduled delivery date of the Goods, to be calculated at the Company's reasonable discretion;
 - (b) for packing and handling charges not included in the Quote; and
 - (c) any other occurrence that cause the Company to incur a Loss cost or expense in respect of the Order, where that Loss, cost or expense has not been provided for in the Quote.

7. Delivery of Goods and provision of Services

- 7.1 The Company will deliver the Goods and provide the Services to the Customer in the manner determined by the Company or as otherwise agreed between the Company and the Customer. If the Customer elects to have the Goods delivered, the Customer must pay all delivery charges incurred by the Company for delivery of the Goods to the Customer's nominated address.
- 7.2 Whilst the Company takes reasonable care in packaging the Goods, unless otherwise agreed between the Parties or otherwise required by law, the Company has no responsibility for goods that are lost or damaged in transit.
- 7.3 The Company will endeavour but is not obliged, to deliver Goods and provide the Services between the hours of 9.00am and 5.00pm on a Business Day at the place of delivery.
- 7.4 In the event of the Customer returning or failing to accept any delivery of the Goods, the Company shall be entitled to payment for those Goods and to treat the obligation to supply the remainder of the Goods (if any) as cancelled by the Customer.
- 7.5 Without limiting any other rights the Company may have, the Company will be entitled to store at the risk and cost of the Customer any Goods which the Customer refuses or fails to take delivery of.

7.6 The Company will use its reasonable endeavours to deliver the Goods and provide the Services on any date specified or estimated by the Company or set out in an Order however such dates are estimates only and the Company will not, in any circumstances or for any reason (including the occurrence of a Force Majeure Event), be liable for late or part delivery of the Goods or provision of the services and later delivery of Goods does not entitle the Customer to cancel any order for the Goods.

7.7 Without limiting clause 7.6, the Company may deliver a portion of the Goods or Services and may invoice or otherwise charge the Customer for that portion. The Customer may not refuse to accept delivery of the Goods or to pay for the Goods or Services because only a portion of the quantity ordered was delivered and the Customer agrees that the Company will not be liable for any Loss that the Customer suffers as a result of any delay or cancellation.

7.8 There must be a representative of the Customer present at the delivery location at the time delivery is made of the Goods and, if no such representative is present, a redelivery fee may be charged by the Company.

7.9 The Customer acknowledges and agrees that:

- (a) the Company may, but will not be required to, provide proof of delivery or other similar documentation (whether at the time of delivery or after);
- (b) any proof of delivery or other similar documentation provided by the Company will be conclusive evidence of the delivery of the relevant Goods;
- (c) it will not request proof of delivery or other similar documentation from the Company; and
- (d) it will not dispute any Invoice based on (in whole or in part) proof of delivery or other similar documentation not having been provided by the Company.

7.10 If the Customer either:

- (a) notifies the Company that it requires the Company to store the Goods for a period of time; or
- (b) does not collect the Goods or accept delivery of the Goods within 7 days of any scheduled date for collection or delivery of the Goods,

then the Company may charge the Customer an amount which the Company considers to be reasonable in consideration for the Company storing the relevant Goods until such time as the Goods are collected by, or delivered to, the Customer (**Storage Fee**) and the Storage Fee must be paid by the Customer to the Company within 30 days from the date on which the Company notifies the Customer of the Storage Fees.

8. Acceptance of Goods

Unless the Customer gives notice to the company in writing of any fault in the Goods or failure of the Goods to accord with the Order within 7 days of delivery of the Goods, the Customer agrees that it has accepted that the Goods are not faulty and that they accord with the Order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the applicable Australian Consumer Law.

9. Return of Goods

9.1 The terms of this clause 9 are subject to clause 8 and clause 12.

9.2 Subject always to any applicable provisions of the Australian Consumer Law, the Customer may only return the Goods to the Company if:

- (a) it believes the Goods are not supplied in accordance with the description, quality or quantity set out in the Agreement;
- (b) it has provided the Company with a written notice of its claim; and
- (c) the Goods have not been specifically ordered, manufactured, modified, or customised in whole or in part for the Customer.

9.3 Any written notice under clause 9.2 must:

- (a) state the original invoice number and date for the Goods;
- (b) be made within 7 days of the date of delivery or collection of the Goods; and
- (c) be accompanied by payment for the Restocking Fee.

9.4 Subject to clause 9.2, the Restocking Fee will be calculated on the following basis:

- (a) For Goods in the Company's standard product range, a 20% Restocking Fee will be applied, calculated on the Goods' price on the Quote, Invoice or, if there is no Invoice, the Price List; and
- (b) For Goods not in the Company's standard product range, a 50% Restocking Fee will be applied, to be calculated on the Goods' price on the Quote, Invoice or, if there is no Invoice, the Price List.

9.5 If the Company, at its sole discretion, determines that the Goods specified in a written notice under clause 9.2 do not meet the description, quality or quantity set out in the Agreement and accepts the return of the Goods, the Company's liability in respect of the returned Goods is limited to, at its sole discretion, supplying replacement Goods to the Customer or providing the Customer with credit for the returned Goods, to be applied against future Orders. No cash refund is payable to the Customer in respect of returned Goods.

9.6 All Goods returned for credit must be packed in their original containers (if applicable) and if the Goods are soiled or damaged the Goods may be rejected by the Company or credited at a reduced amount in the Company's sole discretion.

9.7 The Customer will be responsible for the cost of having the Goods returned to the Company.

9.8 All information, specifications and samples provided by the Company in relation to the Goods 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 will not entitle the Customer to reject the goods upon delivery or make any claim in respect of them under clause 9.2.

9.9 Samples of Goods are not returnable unless the return is pre-approved, and a Goods Return Authorisation have been provided to the Customer in writing.

10. Title and risk of Goods

10.1 Title to, and property in, any Goods supplied under an Agreement remain with the Company and will only pass to the Customer once all moneys owing by the Customer to the Company in respect of the Agreement or any other agreement or arrangement between the parties have been paid in full. If payment is made by way of cheque or other negotiable instrument, title in the Goods will not pass to the Customer until the cheque or other negotiable instrument has been honoured or cleared by the Company's bankers.

10.2 Where the Goods are supplied without payment in full, the Customer:

- (a) is a Bailee of the Goods and fiduciary agent of the Company until title to and property in the Goods passes to the Customer pursuant to this Agreement; and
 - (b) irrevocably appoints the Company to be its attorney to do all acts and things necessary to ensure the retention of title to the Goods including the registration of any security interest over the Goods in favour of the Company under applicable law.
- 10.3 Risk in the Goods passes to the Customer upon the Goods being removed from the Company's premises (or that of the Company's Company) for delivery to the Customer or collection by the Customer, and:
- (a) the Customer is responsible for arranging, and taking out in its own name and its own cost, any insurance in respect of the Goods from the time risk passes to the Customer under this clause; and
 - (b) the Customer indemnifies the Company against any Loss or damage to the Goods, however caused, occurring after the Goods have been removed from and left the Company's premises (or the premises of the Company's Company).
- 10.4 In the event that the Customer is required to return any Goods to the Company, risk in the Goods passes to the Company on confirmation of receipt of the Goods by the Company.
- 10.5 Until such time as full title, property and ownership of the Goods passes to the Customer in accordance with clause 10.1, and while the Goods remain in the Customer's full control and possession:
- (a) subject to clause 10.6, the Customer must not sell, lease, dispose of or otherwise deal with the Goods in any way without the Company's prior written consent;
 - (b) the Customer must insure the Goods for their full replacement value and must store the relevant Goods separately from any other goods and in a way that enables the Goods to be clearly identified as the Company's and referable to a particular Invoice;
 - (c) the Company may enter the premises of the Customer or any third party where the Goods are stored during the hours of 9.00am to 5.00pm to inspect the Goods and:
 - (i) the Customer expressly authorises and grants the Company an express, irrevocable licence to enter the premises of the Customer or relevant third party to inspect the Goods; and
 - (ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored;
 - (d) the Company may at any time after payment is overdue require the Customer to deliver up the Goods to the Company and, if the Customer fails to deliver up the Goods immediately, the Company may enter the premises of the Customer or any third party where the Goods are stored and repossess them and:
 - (i) the Customer expressly authorises and grants the Company an express, irrevocable licence to enter the premises of the Customer or relevant third party to remove or arrange for the removal of the Goods; and
 - (ii) the Customer indemnifies the Company against any Loss that may be incurred or sustained by the Company, its employees or agents, as a result of the entry of those premises where the Goods are stored; and
 - (e) the Customer must not pledge or grant a security interest in or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Company. If the Customer does pledge or in any way charge by way of security, for any indebtedness, any of the Goods for which property and ownership has not passed to the Customer, the Customer must remove the pledge, charge or security interest immediately and all moneys owing by the Customer to the Company will (without prejudice to any other right or remedy of the Company) immediately become due and payable to the Company.
- 10.6 Notwithstanding that title to the Goods has not passed to the Customer under clause 10.1, the Customer may resell the Goods or any part thereof in the name of the Customer but only as agent for the Company and may deliver any such Goods to the buyer of those Goods (**Buyer**) but only in the ordinary course of its business and:
- (a) on terms which will not prejudice the Company's ability to obtain the sale proceeds thereof, noting the Company expressly precludes any transfer of Goods from the Customer to a Buyer that would extinguish the Company's security interest in the proceeds;
 - (b) prior to any disposal of Goods further to this clause 10.6, the Customer informs the Buyer in writing of the Company's security interest in the Goods, that the Company expressly precludes any transfer of Goods from the Customer to a Buyer that would extinguish the Company's security interest in the proceeds from the disposal of those Goods and confirms as much in writing to the Company;
 - (c) any amount paid by the buyer of such Goods to the Customer (**Sale Proceeds**) must be held by the Customer on trust for the Company and banked in a separate bank account relating only to the sale proceeds of any Goods and shall be forwarded as soon as possible to the Company in satisfaction of any amount owed by the Customer in respect of the Goods;
 - (d) where the Customer is not paid by the Buyer, the Customer agrees to assign all of its rights against the Buyer to the Company upon the Company giving the Customer notice in writing to that effect and for the purpose of giving effect to the assignment, the Customer irrevocably appoints the Company as its Attorney; and
 - (e) unless the Company enforces a security interest further to s32(2) of the PPSA, if and when the full amount due to the Company in respect of the Goods has been received by the Company, any further Sale Proceeds may be retained by the Customer.
- 10.7 Where the Company supplies the Goods to the Customer without payment in full for the goods, in the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods manufactured or produced by the Customer or a third party (**New Goods**), the Customer agrees that the ownership of the New Goods immediately passes to the Company and that the Customer will hold the New Goods on trust for the Company until the Customer has paid all sums owing to the Company whether under this Agreement or any other agreement between the Company and the Customer, and the Company may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Company.
- 10.8 The Customer must hold a proportion of any payment (**Relevant Proportion**) received by the Customer from a Buyer of the New Goods on trust for the Company and the Customer acknowledges that the Relevant Proportion must be not less than the dollar value of the

- portion of the Goods incorporated or transformed into the New Goods.
- 10.9 If an Insolvency Event occurs in respect of the Customer then, without the need for notice or demand by the Company, the Customer acknowledges any sale or purported sale of the Goods will not be in the ordinary course of the Customer's business and the proceeds of any Goods sold in such circumstances will, to the extent of any money owing by the Customer to the Company, be held on trust for the Company by the administrator, controller or similar officer as the case may be, or if there is no such officer, by the Customer.
- 10.10 The parties acknowledge that:
- (a) the Company's rights in the Goods established under this clause 10 are a 'purchase money security interest' (PMSI); and
 - (b) the Company will have a PMSI in proceeds of the Goods.

11. PPSA

- 11.1 Words and expressions used in this clause 11 which are not defined in these Terms but are defined in the Personal Property Securities Act 2009 (Cth) (PPSA) have the meaning given to them in the PPSA.
- 11.2 Unless a Customer has paid in full for Goods before they are delivered to it, they acknowledge and agree that:
- (a) these Terms constitute a security agreement under the PPSA; and
 - (b) the Company has a security interest in the Goods (including any Goods to be supplied in the future) and any proceeds;
 - (c) where the Company has other enforcement rights in addition to the enforcement rights provided for in the PPSA, those other enforcement rights will continue to apply; and
 - (d) If the Customer fails to comply with this clause they are in default and clause 5.8 applies. In the event of default, the Customer authorises the Company and any person authorised by the Company to enter premises where the Goods may be located to take possession of the Goods, which may be retained, sold or otherwise disposed of, at the Company's sole discretion.
- 11.3 The Customer agrees to do anything required by the Company to enable the Company to register the security interest and to maintain the registration and must indemnify, and on demand reimburse the Company by paying all costs, expenses and other charges incurred by the Company in preparing, lodging or registering any financing statement or financing change statement in relation to any such security interest, maintaining those registrations, and enforcing any security interests.
- 11.4 In the event that the Company commences to take action against the Customer pursuant to these Terms, such action whether by way of issue of a letter of demand, a court claim or other process, the Customer hereby expressly consents and agrees to, where applicable, entering into a security agreement with the Company in accordance with the PPSA and on such terms as required by the Company, so that the Company may register a caveatable or other form of security interest against any/all property in which the Customer has an interest. And the Customer further consents to such caveatable and other security interests remaining on the property until such time as the full amount owing to the Company has been paid by the Customer. All costs associated with registering or removing any caveatable or other security interest are the responsibility of and shall be recoverable against the Customer.
- 11.5 The Customer must promptly take all reasonable steps which are:

- (a) prudent for its business under or in relation to the PPSA; and/or
- (b) which are required to maintain the Company's interest in the Goods and/or proceeds where the Customer on sells the Goods to a third party.

- 11.6 The Customer must not change its name, address or contact details without providing prior written notice to the Company and must not register a financing change statement or a change demand without the Company's prior written consent.
- 11.7 To the extent that the PPSA permits, the Customer waives its rights to receive a copy of any verification statement or financing change statement; to receive any notice required under the PPSA, including notice of a verification statement; to reinstate the security agreement by payment of any amounts owing or by remedy of any default; and under sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 127, 128, 129, 130, 132, 134(2), 135, 136(3), (4) and (5), 137, 142 and 143 of the PPSA.
- 11.8 The Customer may only disclose information or documents, including information of a kind referred to in section 275(1) of the PPSA, if the Company has given prior written consent.

12. Exclusion and limitation of liability

- 12.1 The Customer expressly agrees that the use of the Goods is at the Customer's risk. To the full extent allowed by the law, the Company's liability for breach of any term implied into these Terms by law is excluded.
- 12.2 If the Customer is a Consumer and the Company supplies PDH Goods or Services to the Customer, the Company acknowledges that the Customer may have certain rights under the Australian Consumer Law in respect of the Consumer Guarantees as they apply to the PDH Goods or Services supplied by the Company and nothing in this Agreement should be interpreted as attempting to exclude, restrict or modify the application of any such rights.
- 12.3 If the Customer is a Consumer and any goods or services supplied by the Company to the Customer are non PDH Goods or Services, the Company's liability to the Customer in connection with any breach of the Consumer Guarantees in respect of those non PDH Goods or Services is limited (at the Company's discretion) to the cost of the Company resupplying those non PDH Goods or Services or payment of the cost of having the non PDH Goods or Services supplied again.
- 12.4 If the Customer is liable to pay damages to a Consumer under the Australian Consumer Law in relation to the supply of Goods which are non PDH Goods or Services, the Company's liability to the Customer is limited to an amount equal to the lower of:
- (a) the cost of replacing the Goods;
 - (b) the cost of obtaining equivalent Goods; or
 - (c) the cost of having the Goods repaired.
- 12.5 If:
- (a) the Customer is not a Consumer; or
 - (b) the Australian Consumer Law does not apply,
- then to the extent permitted by law, the Company expressly excludes all liability in respect of the Goods or Services supplied by the Company to the Customer.
- 12.6 Any advice, recommendation, information, assistance or service given by the Company in relation to the Goods 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 as to accuracy appropriateness of reliability. The Company 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.

12.7 If the Customer makes a claim against the Company which includes a cause of action other than for a breach of a Consumer Guarantee then, to the extent the claim, or part of the claim, does not relate to a Consumer Guarantee, the Company expressly excludes all liability in respect of the Goods or Services supplied by the Company to the Customer.

12.8 Without limiting any other provision in these Terms, the Company is not liable for any Loss the Customer suffers as a result of:

- (a) improper use or consumption of the Goods; or
- (b) misuse or neglect of the Goods or any other use or consumption of the Goods which is outside of the ordinary commercial application of the Goods or is otherwise inconsistent with the Company's instructions in relation to the use or consumption of the Goods.

12.9 Subject to the rest of this clause 12, the aggregate liability of the Company to the Customer arising out of or in connection with an Agreement will in no event exceed an amount equal to the amount of the Purchase Price under that Agreement.

13. Warranties

13.1 In addition to any applicable manufacturer's warranty, the Company warrants that all Goods or Services supplied by the Company will be free from defects in workmanship and in good working order for a period of 1 year from the date an Invoice is issued to the Customer in respect of the Goods, unless an extended warranty has been granted by the Company in writing (**Warranty Period**).

13.2 Notwithstanding the above, the Company's Goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure.

13.3 The Company's warranty in respect of the Goods includes the cost of transporting replacement fittings to the relevant project site and the cost of installing the replacement fittings, but only if there is a failure rate of more than 3% of the total quantity of Goods of precisely the same fitting type supplied for that particular project. Fitting failures across multiple fittings types on a particular project cannot be aggregated to achieve a 3% minimum failure rate.

13.4 Notwithstanding any extension of warranty period under clause 13.1, the warranty provided under clause 13.3 in relation to transport and installation of replacement fittings is only applicable for 1 year from date of the Invoice. Any installation or transport costs incurred by the Customer after this period are to be borne by the Customer.

13.5 The Company does not warrant the operation of Goods. The Customer must read and follow any instruction manuals and instructions provided by the Company. If the Customer fails to do so it may invalidate this warranty.

13.6 The warranty does not apply to any third-party goods or services not provided by the Company.

13.7 During the Warranty Period the Company will replace or repair any defective Goods or Services provided by the Company without charge, so long as the damage does not arise from:

- (a) improper installation, adjustment or operation of the Goods by the Customer or any other third party not engaged by the Company;
- (b) the use of accessories or equipment including hardware not authorised by the Company in writing;
- (c) any contamination by foreign materials;
- (d) any modification of the Goods or Services which is not authorised by the Company including tampering with or any attempt to disassemble the Goods;
- (e) any misuse of the Goods outside the specifications for those Goods including electrical power, temperature, humidity or dust;
- (f) failure for any reason to follow the directions for use in any instructions or manual;
- (g) inadequate or improper maintenance of the Goods; and
- (h) normal wear and tear including from cleaning, accidents, acts of God, force majeure event, theft, vandalism or misuse beyond the reasonable control of the Company.

13.8 To obtain the benefit from this warranty:

- (a) the Goods and Services must have been supplied or provided by the Company;
- (b) any claim must be made within the Warranty Period
- (c) The Customer must send a notice in writing to the Company enclosing proof of purchase and the Customer's contact details.
- (d) If the Company wishes to inspect the Goods, the Customer must arrange with the Company a time for a representative of the Company to visit the premises where the Goods are located.
- (e) to the extent the Company is liable in relation to any defective Goods or Services during the Warranty Period, the Customer's remedies are limited to, in the Company's absolute discretion:
 - (i) in relation to Goods:
 - A. replacement of Goods;
 - B. repair of Goods; and
 - C. the Customer will be liable to pay the reasonable costs of returning the Goods to the Company's premises for replacement or repair;
 - D. the cost of replacing the Goods or acquiring equivalent Goods; or
 - E. costs of having the Goods repaired,
 - (ii) in relation to Services:
 - A. repeating the Services or component of the Services found to be defective; or
 - B. costs of having the Services re-performed.
- (f) Any service outside the scope of the warranty will be charged at the Company's rate as current at the time, the applicable rate to be confirmed by the Company in writing;
- (g) All transportation and incidental charges incurred in the repair or replacement of the Goods or, or any of its component parts

and the cost of returning the Goods to the Customer must be paid by the Customer; and

- (h) To the extent permitted by law, this warranty does not extend to cover any consequential loss either directly or indirectly due to the defective Goods.

14. Intellectual Property

- 14.1 The Customer grants to the Company a non-exclusive, royalty free licence during the term of each Agreement to use, reproduce, modify, adapt and further develop all Intellectual Property Rights in those portions of the Customer Background Materials which are required to enable the Company to supply the Goods.
- 14.2 The Customer represents and warrants to the Company that:
- (a) the Customer is the legal and beneficial owner of, or is entitled to use (or will on creation own or be entitled to use); and
- (b) is entitled to licence to the Company in accordance with clause 14.1,
- the Intellectual Property Rights in the Customer Background Materials.
- 14.3 The Customer indemnifies the Company and agrees to keep the Company indemnified against all Losses incurred by the Company in relation to or in any way directly or indirectly connected with any breach of the Intellectual Property Rights in relation to Customer Background Materials.
- 14.4 Unless specifically agreed in writing between the Company and the Customer, all Intellectual Property Rights in any works created by the Company on for the Customer vest in and remain the property of the Company.
- 14.5 The parties acknowledge and agree that nothing in these Terms shall be construed as an implied or express transfer from the Company to the Customer of the ownership of, or title to, any of the Intellectual Property Rights in the Goods, material created as part of the Services or any other Intellectual Property Rights owned by or licensed to the Company and the Customer agrees that it must not infringe the Intellectual Property Rights of the Company or use the Intellectual Property Rights of the Company which exist in the Goods or materials created as part of the Services for anything other than for the sole purpose of using the Goods.

15. Indemnity

- 15.1 The Customer indemnifies and keeps indemnified the Company, 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 Company or, for which the Company is liable, in connection with all Losses arising from or incidental to the provision of Goods, any Order or the subject matter of these Terms.
- 15.2 Further, the Customer indemnifies the Company and holds the Company harmless from and against all legal costs, and any other associated fees and costs which the Company incurs as a direct or indirect result of:
- (a) recovering any amounts the Customer owes to the Company (including any fees paid to a debt collector or similar);
- (b) any breach of an Agreement by the Customer (including any breach of the warranties provided by the Customer); and
- (c) any negligent or wilful act or omission by the Customer, the Customer's employees, agents, servants, contractors or others for whom the Customer is legally responsible.

- 15.3 Clause 15 remains in force after the termination of these Terms.

16. Notification of claims

- 16.1 The Customer shall notify the Company immediately if it becomes aware of:
- (a) any claim; or
- (b) any death, serious injury or serious illness,
- in respect of, or caused by, the Goods or other goods of which the Goods are a component or mixed with and the Customer will take all reasonable steps to mitigate any Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 16.2 If Goods are sold by the Customer to a third party for commercial use by that third party, the Customer must impose on the third party an obligation to notify the Customer immediately if the third party becomes aware of:
- (a) any claim; or
- (b) any death, serious injury or serious illness,
- in respect of the Goods or other goods of which the Goods are a component or mixed with and to take all reasonable steps to mitigate Loss arising as a consequence of the claim, death, serious injury or serious illness.
- 16.3 The Customer must, and must impose on any third party to whom it sells the Goods an obligation to:
- (a) not, without the Company's express written consent, make any representation to any Consumer regarding the purpose, performance or durability of the Products, which is in breach of the Australian Consumer Law;
- (b) take all steps and do all things necessary to promptly pass on to the Company any claim made by a Consumer arising out of or in connection with the Australian Consumer Law and must, at the Customer's expense, assist the Company to comply with its obligations under the Australian Consumer Law; and
- (c) not agree to settle any claim made by a Consumer without the prior written consent of the Company.

17. No representations

The Customer acknowledges and agrees that it has not relied on any representations, inducements or statements made to it by the Company regarding the supply of the Goods or Services and it has satisfied itself that the Goods and Services are fit for the purpose it requires them for.

18. Confidentiality

- 18.1 The Customer:
- (a) may use Confidential Information solely for the purposes of the relevant Agreement;
- (b) must keep confidential all Confidential Information; and
- (c) may disclose Confidential Information only:
- (i) to employees and contractors who:
- (A) are aware and agree that the Confidential Information of the other party must be kept confidential; and
- (B) either have a need to know the Confidential Information (and only to the extent that each has a need to know), or have been specifically approved by the Company; or

(ii) as required by law or securities exchange regulation.

18.2 The Customer must notify the Company immediately once it becomes aware of any breach of confidentiality in respect of the Confidential Information and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

19. Privacy

The Customer acknowledges and agrees that personal information (as that term is defined in the Privacy Act 1988 (Cth)) regarding the Customer if the Customer is an individual, or the employees, contractors, officers and agents of the Customer if the Customer is an organisation, may be collected, held, used and disclosed by the Company for the purposes set out in the Company's privacy policy (available on the Company's website or on request from the Company). The Customer consents, and where applicable will make all reasonable endeavours to have its employees, contractors, officers and agent consent, to the Company collecting, holding, using and disclosing any such personal information for all purposes specified in the Company's privacy policy.

20. GST

All amounts payable by the Customer in connection with an Agreement do not include an amount for GST. If GST is payable on any supply made by the Company under these Terms, the Customer must pay to the Company, in addition to and at the same time as the payment for the supply, an amount equal to the amount of GST on the supply. Where the Customer is required by these Terms to reimburse or indemnify the Company for any Loss or other amount incurred, the amount to be reimbursed or paid will be reduced by the amount of any input tax credit that the Company will be entitled to claim for the Loss or amount incurred and increased by the amount of any GST payable by the Company in respect of the reimbursement or payment. This clause does not merge on completion or termination of the relevant Agreement or contract. In this clause, words and expressions which are defined in the GST Act have the same meaning given to them by the GST Act.

21. Force Majeure

21.1 The Company will not be liable for any failure to perform or delay in performing its obligations under an Agreement if that failure or delay is due to a Force Majeure Event.

21.2 If a Force Majeure Event under clause 21.1 exceeds 20 Business Days, the Company may immediately terminate the Agreement by written notice to the Customer.

22. Termination

22.1 Without limiting the Company's other rights under these Terms, the Company may terminate any and all Agreements between it and the Customer and any account facility under an Application for Credit and may refuse to deliver Goods with immediate effect by written notice to the Customer if:

- (a) the Customer is the subject of an Insolvency Event;
- (b) the Customer has breached any term of the relevant Agreement (including these Terms) and fails to remedy the breach within 14 days of the Company giving it written notice to do so;
- (c) the Customer purports to assign its rights under these Terms without the Company's prior consent;
- (d) the Customer ceases or threatens to cease conduct of its business in the normal manner; or
- (e) pursuant to clause 21.2.

22.2 On termination of an Agreement, the Customer must, at its cost and within 10 Business Days of the date of termination, return to the Company all Goods the subject of the Agreement (other than any Goods which have been paid for) and any displays and other promotional materials in relation to the Goods.

22.3 Upon termination under clause 22.1, all outstanding invoices to the Customer will become immediately due and payable.

22.4 At termination each party retains any rights, entitlements or remedies it has accrued before termination, including the right to pursue all remedies available to either party at law or in equity.

23. Acknowledgements and representations

23.1 If an Offer has been accepted by the Company, the Customer acknowledges that the Offer was accepted by the Company on the basis of, and in reliance upon, any information, specifications, data, representations, statements and documents provided by the Customer.

23.2 By making an Offer, the Customer warrants and represents to the Company that it has read and understood these Terms prior to making the Offer and agrees to be bound by them in full.

23.3 The Price List, goods lists and other similar documents or catalogues do not constitute an offer by the Company to supply Goods appearing in those lists or catalogues or an offer by the Company to supply Goods at the prices set out in those lists or catalogues. The Company's price lists and catalogues may be changed by the Company at any time without notice. All Quotes and any prices are provided by the Company on an errors and omissions excepted basis and the Company reserves the right to correct any clerical errors or omissions whether in computation or otherwise in any Quote, Invoice or Price List.

24. Inconsistency

24.1 Unless otherwise specified in these Terms, in the event of an inconsistency between any of the documents listed in clause 3.3, the following order of precedence shall apply to the extent of the inconsistency:

- (a) the prices and quantity of Goods and/or Services set out in a Quote (if any);
- (b) these Terms;
- (c) the Application for Credit;
- (d) any other terms of the Quote (if applicable);
- (e) the Invoice; and
- (f) without limiting clause 24.2, any terms in the Order.

24.2 These Terms shall prevail over any Customer terms and conditions, except to the extent specifically agreed by the Company in writing and any terms or conditions included in an Order or other document provided or issued by the Customer will only be binding on the Company if expressly agreed by the Company in writing.

25. Cancellation

25.1 Without limiting clause 5.8(b), the Company may cancel or suspend any Agreement effective immediately upon providing the Customer with written notice of cancellation or suspension where the Company believes (for any reason) that it will be unable to supply the relevant Goods or provide the Services to the Customer, provided that if the Company cancels an Agreement under this clause 25.1 it will refund to the Customer any amounts already paid by the Customer for the Goods or Services subject of the cancellation and which are not

provided to the Customer. The refund of any such amounts will be the Customer's sole remedy against the Company in respect of any cancellation pursuant to this clause 25.1.

25.2 Neither an Agreement nor any Offer that has been submitted can be cancelled by the Customer except with the prior written consent of the Company and without prejudice to any other rights the Company may have, the Customer indemnifies the Company for any Loss incurred by the Company in connection with such cancellation.

26. Dispute resolution

26.1 If a dispute arises between the Customer and the Company under this Agreement, the following procedure applies:

- (a) A party may give the other party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause 26; and
- (b) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has first been referred for resolution in accordance with this clause 26.

26.2 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 7 Business Days (or other period as agreed).

26.3 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 (the "**Mediation**") before having recourse to arbitration or litigation.

26.4 Either Party may start the Mediation by serving a notice to that effect on the other Party (the "Mediation Notice"). The Mediation Notice must state that a dispute has arisen and identify what is in dispute.

26.5 The Parties must jointly appoint a mediator within fourteen (14) days of the service of the Mediation Notice, failing which a mediator is to be appointed by the then CEO of the Law Institute of Victoria or his or her delegate on the application of either Party (in either case, the person so appointed is now called the "**Mediator**").

26.6 The Mediation must occur within 28 days after service of the Mediation Notice. If the dispute is not resolved within twenty eight days (28) days after service of the Mediation Notice or any other time which the Parties agree to in writing, the mediation ceases.

26.7 The Parties must bear and pay an equal share of the Mediator's costs.

26.8 If the dispute is resolved via the Mediation, the Parties must sign a note or memorandum recording the terms in of that resolution, which will become final and binding on them.

26.9 The Mediation will be confidential and conducted on a "without prejudice" basis, to the extent that:

- (a) written statements prepared for the Mediator or for a party; and
- (b) any discussion between the parties and between each of them and the Mediator during the Mediation, cannot be used in any subsequent proceedings in connection with the dispute.

26.10 If the Parties are unable to resolve the dispute via the Mediation, either of them may refer the dispute to a Court having the appropriate jurisdiction.

27. Miscellaneous

27.1 In these Terms:

- (a) the singular includes the plural and vice versa;
- (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
- (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to persons taking by novation) and permitted assigns;
- (e) headings are inserted for convenience and do not affect the interpretation of these Terms;
- (f) no provision will be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Terms or the inclusion of the provision in the Terms; and
- (g) all monetary amounts are in Australian dollars and a reference to payment means payment in Australian dollars.

27.2 The Customer must maintain and keep current and complete records of the Goods which the Company has supplied to the Customer, including the Goods which are sold by the Customer to a third party and must, immediately upon written request from the Company, provide the Company with access to, or copies of, those records.

27.3 The Customer must not assign or otherwise deal with any of its rights or obligations under these Terms without the Company's prior written consent. The Company may assign, subcontract or deal with any of its rights or obligations under these Terms (including any right to be paid or chose in action) at any time and without any requirement to notify the Customer.

27.4 For the purposes of clause 27.3, a Change in Control of the Customer shall be considered an assignment of the Customer's rights or obligations under these Terms.

27.5 The Company may, to the extent permitted by law, vary these Terms from time to time with the variation becoming effective as soon as the Company provides the Customer notice of the variation.

27.6 A failure to exercise or delay in exercising any right under these Terms does not constitute a waiver and any right may be exercised in the future. Waiver of any of these Terms must be in writing and is only effective to the extent set out in that written waiver.

27.7 If any provision of these Terms is void, unenforceable or illegal and would not be so if words were omitted, then those words are to be severed and if this cannot be done, the entire provision is to be severed from these Terms without affecting the validity or enforceability of the remaining provisions.

27.8 These Terms and the accepted Agreement constitute the entire agreement between the Customer and the Company in respect of the supply of the Goods or Services and supersede all previous communications, representations, understandings or agreements between the Company and the Customer.

27.9 These Terms are governed by the laws in force in the State of Victoria, and the Customer and the Company submit to the non-exclusive jurisdiction of the courts of the State.

27.10 The provisions of clauses 1, 10, 11, 12, 15, 16, 18, 19, 22, 24, 26 and 27 of these Terms survive the expiry or termination of the Agreement.

- 27.11 Each party must:
- (a) do all acts necessary or desirable to give full effect to an Agreement; and
 - (b) refrain from doing anything which might prevent full effect being given to an Agreement.
- 27.12 The relationship between the parties is and will remain that of independent contractors, and nothing in the Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.
- 27.13 Notices by a party must be delivered by hand, prepaid post, facsimile or email and sent to the address of the receiving party specified in the Agreement. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending, by facsimile upon receipt of a successful transmission report and by email one hour after the email (unless the sender knows that email has failed to send).
- 27.14 If the Customer is acting as the trustee of any trust (whether disclosed or not), then the Customer declares that it is entering into any agreement with the Company, including but not limited to these Terms, both in its own capacity and as trustee of the trust with the ability to bind, and the intention of binding, both.