TERMS AND CONDITIONS OF SALE

All Goods provided by the Supplier to the Customer are subject to the terms and conditions set out below. Where a Customer is a Consumer or a Small Business, clause 28 of these Terms of Sale applies and each clause or sub-clause in the Terms of Sale marked with '◄' is amended by that clause 28.

1. **Contract, Quotation, Order, Special Conditions**

1.1 A Contract between the Supplier and the Customer is formed when the Supplier accepts an Order from the Customer. The Supplier may accept or reject any Order in its absolute discretion (in whole or in part).

1.2 Each Order accepted by the Supplier (subject always to clause 26.3), together with these Terms of Sale, the Quotation (if any) and any Special Conditions, will constitute one Contract.

1.3 By placing an Order, the Customer accepts these Terms of Sale, subject to any Special Conditions agreed in writing.

1.4 Where an Order is placed by a Customer otherwise than in writing, any written acceptance of the Order by the Supplier will be deemed to correctly record the Order, unless the Customer notifies the Supplier of an error in the Supplier's record of the Order on the date of the Customer's receipt of the Order written acceptance. ◄

1.5 The Supplier may provide a Quotation. A Quotation:

(a) shall remain valid for a period of 30 days from the date of that Quotation, unless otherwise specified in writing;

(b) does not form an offer or obligation to supply Goods by the Supplier and may be withdrawn, varied or extended by the Supplier in writing at any time prior to the Supplier accepting an Order relating to that Quotation in accordance with clause 1.1; and

(c) is exclusive of GST.

1.6 For the Quotation, or otherwise in communications with the Customer prior to the Order, the Supplier may make an estimate of dimensions and quantities of Goods based on Customer Material. Any such estimate is provided to the Customer as indicative only and the Supplier is not responsible for any mistakes in the estimate nor for verifying the accuracy of the Customer Material. The Customer must check any estimate and, in any event, accepts full responsibility for calculating the dimensions and quantities of Goods in an Order without reliance on any estimate provided by the Supplier (whether in the Quotation or otherwise). ◄

1.7 If the Customer requires Goods for a particular purpose, that purpose and any related requirements, and the Supplier's agreement that the Goods will meet those requirements, must be agreed in writing in the Special Conditions. If the Customer does not specify the particular purpose and/or the Supplier does not expressly agree in writing that the Goods will be fit for the particular purpose, then the Customer agrees that it did not rely on the skill or judgment of the Supplier as to the suitability of the Goods in an Order for a particular purpose. ◄

1.8 If the quantities or weights of Goods supplied are subject to tolerances under an applicable Australian Standard, the Goods supplied are subject to those tolerances. Such Goods may be invoiced at the maximum tolerance permitted under the Australian Standard.

2. **Price**

2.1 The Price will be as agreed between the parties in writing in the Contract, or failing that as determined by the Supplier in its discretion, based on: ◄

(a) the price indicated on the Supplier's then current price list (as applicable at the date of the Contract); or

(b) the price in the Quotation which, subject to any variation or withdrawal of the Quotation in accordance with clause 1.5 or the correction of any error or omission, shall be binding on the Supplier provided the Customer responds to the Quotation within the period specified in clause 1.5.

2.2 The Price is exclusive of GST (unless agreed otherwise in writing). The Customer must pay GST on any taxable supply made by the Supplier to the Customer. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply. ◄

2.3 The Supplier may vary the Price in a Contract by 5 Business Days' notice to the Customer if: ◄

(a) there is any movement in the cost of supplying the Goods specified in the Order (including, without limitation, any actual increase in the costs to the Supplier in manufacturing, procuring, or transporting the Goods);

(b) the supply of the quoted Goods does not proceed in accordance with the delivery timetable provided on or prior to the time the Order is accepted;

(c) the supply of the quoted Goods and is suspended for more than 30 days; or

(d) the Supplier becomes liable to pay any tax, duty, excise, levy or additional amount in respect of the supply of the Goods as a result of a change in legislation or regulation or its interpretation.

2.4 The Customer acknowledges that the Supplier may charge a payment surcharge for credit card transactions equal to the Supplier's reasonable cost of acceptance.

2.5 A Supplier's price list is current as at the date noted in that price list and may be amended by the Supplier at any time. A change to a price list by the Supplier after the date of acceptance of an Order does not amend the Price in a Contract (unless the Price in a Contract is amended in accordance with clause 2.3).

3. **Payment terms**

3.1 Where the Customer has a commercial credit account with the Supplier, invoices are due and payable on the last working day of the month after the month in which the Goods were delivered (or such other date agreed by the parties in writing).

3.2 Where the Customer does not have an approved commercial credit account, payment of the Price must be made on the day that the Customer places an Order (or by such later time nominated in the Supplier's invoice or agreed in the Special Conditions).

3.3 If the Price is payable on the day that an Order is placed under clause 3.2, the Supplier is under no obligation to procure or supply Goods until the amount payable under clause 3.2 has been received by the Supplier in cleared funds.

3.4 The Customer must check all invoices and advise the Supplier of any errors or omissions within 5 Business Days of receipt. Failing advice from the Customer that the invoice contains an error or omission, the invoice may be deemed accepted by the Customer. ◄

4. **Default in payment**

4.1 If the Customer does not pay for the Goods supplied by the Supplier on or before the due date for payment in the Contract, the Supplier may:

(a) immediately suspend or cancel any Order or the delivery or collection of any Goods, and may then promptly give a written notice of the suspension or cancellation to the Customer;

(b) issue a written demand to the Customer demanding payment of the outstanding amount in full within 7 days; and ◄

(c) if the Customer has a commercial credit account, immediately suspend that account.

4.2 If the Customer fails to pay the outstanding amount in full by the time set out in the written demand under clause 4.1:

(a) the Supplier may charge interest on the overdue amount, which will accrue and be recoverable from and including the due date for payment until and including the day that payment in full is received. The interest rate on any outstanding debt is 3% above

Westpac Banking Corporation's overdraft business rate from time to time (or, if that rate no longer exists, the rate for a business overdraft at another major Australian bank);

(b) if the Customer has a commercial credit account, the Supplier may immediately cancel the account and give written notice of the cancellation to the Customer and all liabilities of the Customer to the Supplier will become immediately due and payable; and

(c) the Customer will indemnify the Supplier against and reimburse on written demand the Supplier's: ◄

(i) costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis; and

(ii) losses, costs, expenses and disbursements incurred in connection with or arising from the suspension or cancellation of any Order or the delivery or collection of Goods in accordance with clause 4.1(a), including restocking fees, freight and handling costs, third party costs and bank charges.

4.3 The Supplier will not in any circumstances be liable for any loss or damage suffered by the Customer or any third party arising as a result of a suspension or cancellation of an Order or delivery or collection of any Goods or the provision of Services arising as a result of or in connection with clause 4.1(a).

5. **Variations**

5.1 Subject to clause 2.3, any variation to a Contract must be agreed between the parties in writing prior to the amended Goods being supplied, including any changes in Price to reflect the amended Goods.

6. **Cancellation or suspension of Orders**

6.1 The Supplier may suspend and/or cancel an Order under clauses 4.1 (Default in payment), 12 (Insolvency) and 22 (Force majeure) of these Terms of Sale.

6.2 Unless agreed in writing by the parties, the Customer may not cancel an Order (or any part of an Order) once accepted by the Supplier, and, subject to clause 8, delivered Goods cannot be returned. If the Supplier agrees to cancel an Order or to accept a return of delivered Goods (except a return in accordance with clause 8.4(b)), the Supplier may require the Customer to reimburse the Supplier for all losses, costs and expenses it has incurred or may incur as a result of the cancellation of an Order (in whole or part) or the return of delivered Goods, including restocking fees, the cost of returning Goods to the Supplier (including freight and handling costs), the cost of any damage to Goods returned (including, but not limited to, damage that occurs in return transit), third party costs, bank charges and any other incidental expenses incurred on any Order cancelled or Goods returned. ◄

6.3 In order for Goods to be returned to the Supplier (except under clause 8.4(b)), they must be undamaged and packed and wrapped appropriately. The Supplier may reject any proposed return of Goods that does not meet these criteria.

6.4 The Customer may not request the cancellation of an Order or (subject to clause 8) the return of Goods, where the Goods (or the Goods the subject of the Order) have been specifically produced, processed, manufactured or purchased by the Supplier at the Customer's request.

6.5 Unless agreed in writing by the parties, the Customer may not suspend an Order (or any part of an Order) or delay or defer delivery of Goods. If the Supplier agrees to suspend, delay or defer, the Supplier may require an adjustment to the Price (under clause 2.3) and may require the Customer to reimburse the Supplier for all losses, costs and expenses it has incurred or may incur as a result of the suspension, delay or deferral, including, without limitation, a storage fee, restocking fees, and any other incidental expenses or costs incurred on any part of the Order or delivery. The Customer agrees to indemnify the Supplier against any liability or loss incurred by the Supplier as a result of any claim by the Customer or by a third party against the Supplier or the Customer, caused by, arising from or in connection with any suspension of an Order or delay or deferral of a delivery of Goods agreed in accordance with this clause 6.5. ◄

7. **Delivery**

7.1 The Customer will pay for all costs associated with delivery of the Goods, unless otherwise agreed in writing.

7.2 Delivery costs will be as agreed in writing or if not agreed in writing, as set out in the Quotation or if there is no Quotation and no written agreement, as set out in the relevant price list for the Goods.

7.3 Any period or date for delivery provided by the Supplier is an estimate only and is not a contractual commitment. The Supplier will not in any circumstances be liable for any loss or damage suffered by the Customer or any third party for failure by the Supplier to meet any estimated period or date for delivery of the Goods.

7.4 The Customer must ensure it can take delivery of the Goods at the time the delivery is scheduled. Unless agreed in writing prior to delivery, unloading of all Goods shall be the Customer's responsibility and the Supplier will not be responsible for any damage from the unloading of the Goods by the Customer or by anyone on its behalf, including, amongst others, by the Supplier's employees, agents or contractors. ◄

7.5 Delivery is deemed to occur:

(a) where the Goods are delivered "ex works":

(i) when the Goods are collected from the Supplier by the Customer or any third party on behalf of the Customer; or

(ii) when the Customer's nominated carrier takes possession of the Goods, in which event the carrier shall be deemed to be the Customer's agent;

(b) where the Goods are delivered by the Supplier:

(iii) where the Customer (or its representative) will unload the Goods, when the Supplier delivers the Goods to the Customer's nominated site or to a location close to the Customer's nominated site or where reasonably directed by the Customer; or

(iv) if the parties agree that the Supplier will unload the Goods, when the Supplier has unloaded the Goods at or close to the Customer's site or where reasonably directed by the Customer.

7.6 Where the Customer has engaged the Supplier to deliver the Goods, the Customer agrees that:

(a) it must ensure that site access is available for delivery which is suitable and safe for heavy vehicles (with a portable crane);

(b) it must notify the Supplier prior to delivery of any special on-site requirements with respect to delivery (including unusual site access requirements, irregular terrain and on-site safety requirements and regulations);

(c) if the Supplier's delivery driver or contractor is not satisfied that access to the delivery site is safe, or if the Customer is not in attendance at the site at the time the Goods are delivered, the Supplier may unload the Goods at the kerbside close to the site and the Supplier's evidence of delivery to the kerbside shall be deemed acceptance of the delivery; and

(d) unless the Customer gives notice under clause 8.1, the Supplier's delivery docket setting out the quantity, description, date, time and place of delivery shall be conclusive evidence of the Supplier's delivery.

7.7 If a vehicle delivering Goods to the site specified by the Customer is disabled or damaged due to the condition of the site, the Customer is liable for, and indemnifies the Supplier against, the cost of salvage of, or repair to, the vehicle. The Customer indemnifies the Supplier (and keeps the Supplier indemnified) against any loss or damage suffered by the Supplier, or as a consequence of the Supplier becoming liable to any third party, directly or indirectly, as a result of:

(a) the Supplier's officers, agents or employees entering the Customer's site, or unloading the Goods, at the actual or implied request of the Customer; or ◄

(b) the Customer's officers, agents or employees unloading the Goods from any vehicle and/or loading the Goods onto any vehicle.

7.8 The Customer acknowledges and agrees that:

(a) additional costs may apply where the Supplier's delivery vehicle is held on site for more than one hour; ◄

(b) the Supplier is entitled to charge a storage fee and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Goods at the time agreed or scheduled; ◄

(c) the Supplier may deliver Goods by instalments and require payment for each separate instalment in accordance with these Terms of Sale; and

(d) it is not relieved from any obligation arising under a Contract or these Terms of Sale by reason of any delay in delivery.

7.9 The Customer must notify the Supplier in writing of any complaint regarding a failure to deliver on, or a delay in delivery from, an agreed or scheduled date within 3 business days of the failure or delay in delivery. The Customer waives, foregoes, abandons and forgives any claim the Customer may have against the Company for the failure to deliver or delay in delivery unless the Customer gives the Supplier notice in accordance with this clause 7.9. ◄

8. **Returns**

8.1 The Customer must inspect the Goods promptly after delivery and must notify the Supplier in writing by the earlier of (i) 24 hours after delivery to a construction site or 48 hours after delivery elsewhere, or (ii) the time that the Customer deals with the Goods, of any claim that the Goods (in whole or in part) are not in accordance with the Contract, including relevant details. ◄

8.2 If a notice is given under clause 8.1:

(a) the Customer must allow the Supplier to inspect the Goods the subject of the claim, including allowing reasonable access to the site to inspect the Goods; and

(b) the Customer must leave the Goods in the place, state and condition in which they were delivered until the Supplier has inspected the Goods. ◄

8.3 If the Customer fails to give notice under clause 8.1, refuses to allow the Supplier to inspect the Goods or fails to comply with clause 8.2(b) then, to the extent permitted by law, the Goods must be treated as having been accepted by the Customer and the Customer shall have no claim against the Supplier for damage to, short supply of or supply of incorrect Goods and the Customer must pay for the Goods in accordance with the terms of the Contract.

8.4 After the Supplier has inspected the Goods subject of a notice under clause 8.1:

(a) if the Supplier reasonably determines that: ◄

(i) those Goods are not damaged;

(ii) those Goods were damaged by the Customer or the Customer failed to take reasonable steps to prevent those Goods from being damaged on or following delivery or collection;

(iii) the Goods were installed or processed in a manner not compliant with the applicable Australian Standard and/or any guidelines relating to the installation or specifications of the Goods; or

(iv) those Goods are otherwise correct for the Contract,

the Customer is deemed to have accepted those Goods and the Supplier is entitled to the Price; or

(b) if the Supplier reasonably determines that:

(i) those Goods are damaged; and

(ii) the Customer did not damage those Goods or fail to take reasonable steps to prevent those Goods from being damaged on or following delivery or collection (including, but not limited to, on processing or installation); or

(iii) those Goods are otherwise incorrect for the Contract,

the Supplier may reclaim the Goods and the Customer is entitled to, at the option of the Supplier, one or more of the following:

(iv) the replacement of those Goods or the supply of equivalent Goods;

(v) the repair of those Goods;

(vi) the payment of the cost of replacing those Goods or acquiring equivalent goods; or

(vii) the payment of the cost of having those Goods repaired.

8.5 Except for a return of Goods reasonably determined by the Supplier to fall within clause 8.4(b), any other return of Goods is subject to the provisions of clause 6. For Goods that fall within clause 8.4(b), if the Supplier determines that the delivered Goods should be returned to the Supplier, any such return of Goods will be at the Supplier's cost and risk.

9. **Risk**

9.1 Risk of damage to, or loss of, the Goods passes to the Customer on delivery or collection.

9.2 If the Customer requests that Goods are delivered either to an unattended site, left outside, or are left outside the Supplier's premises for collection, or the Goods are stored by the Supplier in the event the Customer does not accept delivery, the Customer acknowledges that the Supplier will deliver the Goods as requested or store the Goods at the Customer's sole risk.

10. **Retention of title**

10.1 Until such time as the Customer has made payment in full for the Goods and until such time as the Customer has made payment in full of all other money owing by the Customer to the Supplier:

(a) title in the Goods does not pass to the Customer;

(b) the Customer agrees that property and title in the Goods will not pass to the Customer and the Supplier retains the legal and equitable title in those Goods supplied and not yet sold;

(c) the Customer will hold the Goods in a fiduciary capacity for the Supplier and agrees to store the Goods in such a manner that they can be identified as the property of the Supplier, and will not mix the Goods with other similar goods; and

(d) the Customer will be entitled to sell the Goods or any goods into which the Goods are incorporated or to which the Goods are affixed (**Sold Goods**) in the ordinary course of its business, but will sell as agent and bailee for the Supplier and the proceeds of sale of the Sold Goods and/or any obligation owed to the Customer from the sale of the Sold Goods will be held by the Customer on trust for the Supplier for an amount equal to all amounts owing by the Customer to the Supplier under any Contract(s) and/or these Terms of Sale.

10.2 The Customer's liability to the Supplier under these Terms of Sale will not be discharged by the operation of clause 10.1(d) (but its levels of indebtedness will be reduced by the extent of the funds paid to the Supplier).

10.3 The Customer agrees that whilst title in the Goods remains with the Supplier, the Supplier has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the Goods of the Supplier and, when payment is overdue, to immediately enter the premises (as the Customer's invitee) to repossess the Goods which may be in the Customer's possession, custody or control when payment is overdue.

10.4 The Customer will be responsible for the Supplier's costs and expenses (including legal costs, on an indemnity basis) in exercising its rights under clause 10.3 where the Customer is otherwise in default of the Terms of Sale or the Contract. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the

Customer against the Supplier, its employees, servants, or agents. ◄

11. **Personal Property Securities Act**

11.1 The Customer acknowledges that by agreeing to these Terms of Sale, the Customer grants a security interest to the Supplier in all Goods (and their Proceeds) supplied by the Supplier to the Customer (or to its account) now or in the future. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

11.2 The Customer undertakes to do anything that is required by the Supplier:

(a) so that the Supplier can acquire and maintain one or more perfected security interests under the PPSA and has priority in respect of the Goods and their Proceeds;

(b) to register a financing statement or financing change statement; and

(c) to ensure that the Supplier's security position, and rights and obligations, are not adversely affected by the PPSA.

11.3 Unless the Customer has obtained the Supplier's prior written consent, the Customer undertakes not to:

(a) register a financing change statement in respect of a security interest contemplated or constituted by these Terms of Sale; and

(b) create or purport to create any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.

11.4 The Customer:

(a) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under these Terms of Sale;

(b) agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and

(c) agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.

11.5 The Customer agrees that it will, if requested by the Supplier, sign any documents, provide any information, or do anything else the Supplier reasonably requests, to ensure that any security interest created in the Supplier's favour by these Terms of Sale is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.

11.6 Notwithstanding section 275 of the PPSA, the parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.

11.7 The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA.

11.8 The Customer will be responsible for the Supplier's costs and expenses (including legal costs, on an indemnity basis) in exercising its rights under clause 11.7 where the Customer is otherwise in default of these Terms of Sale. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, servants, or agents. ◄

11.9 The Customer further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

11.10 Where the Customer has previously entered into an agreement with the Supplier by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property (including, but not limited to, in an application for commercial credit with the Supplier which pre-dates these Terms of Sale), those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in these Terms of Sale and will secure all indebtedness and obligations of the Customer under these Terms of Sale or a Contract. The Supplier may, at its election and upon the provision of reasonable written notice, vary the terms of such previous charges, mortgages, or other securities to reflect the terms in these Terms of Sale.

12. **Insolvency**

12.1 If:

(a) the Customer becomes Insolvent; or ◄

(b) in the reasonable opinion of the Supplier, there is an adverse change in the creditworthiness of the Customer; and/or ◄

(c) for a Customer that holds (or held) a commercial credit account with the Supplier:

(i) one or more Guarantors becomes Insolvent; or

(ii) in the reasonable opinion of the Supplier, there is an adverse change in the creditworthiness of one or more Guarantors; ◄ or

(iii) one or more Guarantors revokes their Deed of Guarantee without a suitable replacement Guarantor having provided a replacement guarantee acceptable to the Supplier prior to the revocation; or

(iv) there is a change in ownership or control of the Customer without prior written consent of the Supplier,

the Supplier may, without prejudice to its other rights under these Terms of Sale:

(d) immediately suspend or cancel any Order or the delivery or collection of any Goods and/or cease to accept any further Orders from the Customer and then promptly give a written notice to the Customer about it; and/or ◄

(e) if the Customer has a commercial credit account, immediately suspend the commercial credit account and then promptly give written notice to the Customer about it. If the Customer and/or Guarantor(s) are Insolvent or if the suspension of the commercial credit account continues for 7 days or more and the issue giving rise to the suspension has not been resolved to the satisfaction of the Supplier, the Supplier may cancel the Customer's commercial credit account and on such cancellation all liabilities of the Customer to the Supplier will become immediately due and payable. ◄

12.2 If the Customer becomes Insolvent, to the extent permitted by law, the Customer remains liable under these Terms of Sale and each relevant Contract for payment of all liabilities it has incurred. The Customer remains liable under these Terms of Sale and each relevant Contract even if the Supplier receives a dividend or payment as a result of the Customer being Insolvent.

13. **Indemnity**

13.1 The Customer agrees to indemnify the Supplier in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, bank dishonour fees, and legal costs on an indemnity basis) that the Supplier may suffer or incur at any time, directly or indirectly, as a result of any default by the Customer in the performance or observance of the Customer's obligations under a Contract and/or these Terms of Sale. ◄

13.2 The Customer agrees to indemnify the Supplier in respect of all liability, claims, damage, loss, costs, and expenses that the Supplier may suffer or incur at any time, directly or indirectly, as a result of or in connection with any third party claim made against the Supplier as a consequence of, relating to or arising from a Contract or the provision of Goods by the Supplier to the Customer or the supply of

goods or services by the Customer to the third party. ◄

13.3 The Customer's liability to indemnify the Supplier under these Terms of Sale is a continuing obligation separate and independent from the Customer's other obligations and survives termination of any Contract.

13.4 It is not necessary for the Supplier to incur any expense or make any payment before enforcing its rights of indemnity conferred by these Terms of Sale.

14. **Limitation of liability**

14.1 Subject to clauses 14.2 to 14.6, any liability of the Supplier for any loss or damage, however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with a Contract is limited to the sum paid to the Supplier by the Customer in respect of the component of the Order under that Contract subject to dispute.

14.2 The limitation contemplated in clause 14.1 is an aggregate limit for all claims made in connection with a Contract, whenever made.

14.3 The Supplier is not liable for any Excluded Loss, however caused (including by the negligence of the Supplier), suffered or incurred by the Customer in connection with a Contract or these Terms of Sale. ◄

14.4 For clarity, and without limiting clauses 14.1 to 14.3, the parties agree that clauses 14.1 to 14.3, are to apply in connection with a breach of a Contract, anticipated breach of a Contract and other conduct regardless of the seriousness or nature of that breach.

14.5 The Supplier will not be liable to the Customer for any loss or damage the Customer may incur as a consequence of or in connection with any incorrect information contained in an Order or otherwise provided by or on behalf of the Customer to the Supplier from time to time. ◄

14.6 Except as agreed in writing in the Special Conditions, the Customer confirms and warrants to the Supplier that it has not and will not rely on:

(a) representations made and/or advice given by the Supplier or its employees in connection with the design, dimensions, installations or use of Goods sold and agrees that the Supplier shall not be liable for the consequences of any mistakes in such representation or advice even if made or given negligently; ◄ or

(b) any description or specification given by the Supplier or in printed literature of the Supplier, which the Customer acknowledges and agrees is for general indicative purposes only and any such description or specification has not been taken and will not be taken as implying or giving any undertaking by the Supplier as to fitness of any Goods for any particular purpose. ◄

14.7 If the *Competition and Consumer Act 2010* (Cth) or any other legislation provides that there is a guarantee in respect of any Goods supplied in connection with a Contract with a Customer and the Supplier's liability for failing to comply with that guarantee cannot be excluded but may be limited, clauses 14.1 to 14.3 do not apply to that liability and instead the Supplier's liability for such failure is limited to, in the case of a supply of Goods, the Supplier replacing the Goods or supplying equivalent Goods.

14.8 All terms, conditions, warranties, indemnities and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which are not expressly set out in a Contract are hereby expressly excluded and, to the extent they cannot be excluded, the Supplier disclaims all liability in relation to them. ◄

14.9 To the fullest extent permitted by law, the Supplier accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of the Supplier exercising its rights under clause 6.1.

15. **Costs**

15.1 Subject to clauses 15.2 and 15.3, payments by, or on behalf of, the Customer will be applied by the Supplier as follows.

(a) first, in payment of any and all collection costs and legal costs in accordance with clauses 4.2(c), 10.4, 11.8 and/or 13.1;

(b) second, in payment of any interest incurred in accordance with clause 4.2(a); and

(c) third, in payment of the outstanding invoices, or part thereof in an order determined by the Supplier in its absolute discretion. ◄

15.2 To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 15.1 above. ◄

15.3 Payments allocated (and/or reallocated) under clause 15.1 and/or 15.2 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment. ◄

16. **Materials**

16.1 The Customer warrants that any Customer Material provided to the Supplier is accurate and correct. The Supplier, to the extent permitted by law, accepts no liability for any loss, damage, costs or expense (including, without limitation, rectification costs) incurred by the Customer or by any third party as a result of the Customer Material being inaccurate or incorrect.

16.2 Where the Customer has provided Customer Material to the Supplier, the Customer grants the Supplier a non-exclusive license to use the Customer Material for the purposes of supplying the Goods and warrants that the use of the Customer Material does not infringe the Intellectual Property Rights of any third party. Further, the Customer is liable for and indemnifies the Supplier against any claim arising from the use of the Customer Material, where such Customer Material infringes (or is alleged to infringe) the Intellectual Property Rights of any third party.

17. **Intellectual Property**

The Customer acknowledges that:

(a) the Supplier IP in existence at the date a Contract comes into existence is and will at all times remain the property of the Supplier;

(b) unless otherwise agreed in writing, any Supplier IP created or developed following the date of a Contract vests in the Supplier as soon as the Intellectual Property Rights are created or developed and will at all times remain the property of the Supplier; and

(c) it has no rights under the Contract or otherwise to use Supplier IP except as set out in these Terms of Sale.

18. **Assignment**

18.1 Except as provided in clause 18.2, neither party shall assign or novate its benefits or obligations under any Contract without the written consent of the other (which consent shall not be unreasonably withheld). The Supplier may withhold its consent to assignment or novation by the Customer if the proposed assignee of the Customer is not at least as credit worthy as the Customer, in the Supplier's reasonable opinion.

18.2 The Supplier may assign its benefits under any Contract to a Related Entity of the Supplier and give written notice of the assignment to the Customer. Customer's written consent is not required for any such assignment.

18.3 The Supplier may subcontract any of its obligations under a Contract without the consent of the Customer.

19. **Waiver**

A waiver of any provision or breach of these Terms of Sale or any Contract of which they form part by a party shall only be effective if made by an authorised officer of the party in writing. If a party elects not to enforce its rights arising as a result of a breach of these Terms of Sale or of a Contract, that will not constitute a waiver of any rights relating to any subsequent or other breach.

20. **Set-off**

20.1 All payments required to be made by the Customer will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier and the Customer in writing or as required by law.

20.2 Any amount due to the Supplier from time to time may be deducted by the Supplier from any monies which may be or may become payable to the Customer by the Supplier.

21. **Liability of parties**

If two or more parties are included within the same defined term in these Terms of Sale:

(a) these Terms of Sale have separate operation in relation to each of them;

(b) a liability or obligation of those persons under these Terms of Sale is a joint liability or obligation of all of them and a several liability or obligation of each of them; and

(c) a right given to those parties under these Terms of Sale is a right given severally to each of them.

22. **Force majeure**

22.1 The Supplier is not liable to the Customer for any delay or failure to perform its obligations pursuant to a Contract if such delay or failure to perform is due to a Force Majeure Event.

22.2 If a Force Majeure Event occurs, the date by which the Supplier must perform an obligation, including the supply of any Goods, will be automatically extended by the period of the delay as advised by the Supplier to the Customer.

22.3 If the Supplier's delay or failure to perform an obligation due to a Force Majeure Event exceeds 14 days, the Supplier may terminate a Contract without any liability for breach of the Contract or for any antecedent breach and the Supplier will be entitled to full payment for all Goods which have been supplied to the date of such termination. ◄

22.4 If the Supplier's delay or failure to perform an obligation is due to an act or omission of the Customer or its personnel, the Customer will indemnify the Supplier for all losses suffered by the Supplier as a result of the delay or failure to perform, including any termination under clause 22.3.

23. **Severance**

23.1 If any provision of these Terms of Sale or any Contract of which they form part is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

23.2 If any part of these Terms of Sale or any Contract of which they form part is invalid or unenforceable, that part is deleted and the remainder remains effective.

24. **Variation**

24.1 The Customer agrees that these Terms of Sale may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Customer. Except as otherwise agreed in writing, the Customer agrees that the variation or amendment to these Terms of Sale will take effect 28 days after dispatch of the written notice of the variation or amendment by the Supplier (**Effective Date**) in respect of all Contracts entered into after the Effective Date.

24.2 Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by the Supplier without notification and clause 24.1 will not apply.

24.3 Any proposed variation to these Terms of Sale by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

24.4 Variations requested by the Customer will only be binding if they are in writing and signed by an authorised officer of the Supplier and may be in the form of Special Conditions applicable to all Contracts or specific only to a particular Contract, as agreed between the parties in writing.

25. **Jurisdiction**

25.1 The Customer acknowledges and agrees that these Terms of Sale and each Contract will be governed by the laws of the State or Territory in which the Goods are supplied by the Supplier, and the laws of the Commonwealth of Australia which are in force in the relevant State or Territory.

25.2 The parties to each Contract submit to the non-exclusive jurisdiction of the courts of the State or Territory from which the Goods are supplied by the Supplier, and the relevant federal courts and courts competent to hear appeals from those courts.

26. **Entire agreement**

26.1 The Contract constitutes the entire agreement and understanding between the parties relating in any way to its subject matter, unless agreed otherwise by the Supplier and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of a Contract are merged into the Contract and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of these Terms of Sale or constitutes any collateral agreement, warranty or understanding. ◄

26.2 Notwithstanding clause 26.1, in circumstances where there is a pre-existing written commercial credit account application and terms and conditions (**Original Agreement**) between the Customer and the Supplier, these Terms of Sale will constitute a variation of the Original Agreement whereby the terms and conditions of the Original Agreement are deleted and replaced with these Terms of Sale, unless:

(a) the terms and conditions of the Original Agreement are otherwise expressly or implicitly preserved by these Terms of Sale; or

(b) the terms and conditions of the Original Agreement cannot otherwise be amended without breaching the Original Agreement,

in which case they will co-exist with these Terms of Sale, and, to the extent of any inconsistency, these Terms of Sale will prevail.

26.3 These Terms of Sale shall apply to every Contract between the Supplier and the Customer. Any terms and conditions of the Customer's Order or of any other document of the Customer's deviating from or inconsistent with these Terms of Sale are expressly rejected by the Supplier. For the avoidance of doubt, the Customer understands and agrees that these Terms of Sale will prevail over, and the Supplier will not be bound by, any terms or conditions (express or implied) added or provided by the Customer, whether in an Order or otherwise, unless otherwise agreed in writing by the Supplier (including in the Special Conditions).

27. **Notices**

The Customer agrees to accept service of any document required to be served, including any notice or demand under a Contract, the Terms of Sale or the PPSA or any originating process, by (i) delivery in person, or (ii) prepaid post at any address (A) nominated in its application to the Supplier for a commercial credit account or (B) notified in writing to the Supplier by the Customer or its authorised representative or (iii) email to the email address of the Customer (A) nominated in its application to the Supplier for a commercial credit account or (B) notified in writing to the Supplier by the Customer or its authorised representative. Any document served in accordance with this clause 27 will be taken as having been received (i) if delivered in person, when delivered to the Customer's nominated address (ii) if by post, 3 business days from and including the date of postage and (iii) if by email in accordance with the *Electronic Transactions Act 2011* (Cth).

28. **Consumers and Small Business Customers**

28.1 The provisions of this clause 28 will only apply to a Contract made between the Supplier and a Customer who is either a Consumer or a Small Business (each a **CSB Customer**) or, in relation to any provision concerning a Customer with a commercial credit account (which are not available to Consumers) a Customer that is a Small Business (an **SB Customer**). To the extent of any inconsistency between other provisions of these Terms of Sale and the provisions of this clause 28, the provisions of this clause 28 shall prevail in relation to a Contract with a CSB Customer or an SB Customer.

28.2 If the CSB Customer places an Order with the Supplier otherwise than in writing and on receiving the Supplier's written confirmation of that Order discovers a difference between the Order as confirmed by the Supplier and the CSB Customer's expectation of the Order, the CSB Customer must promptly, and in any event no later than 2 Business days following receipt of the written Order confirmation (or not less than 24 hours before delivery, if earlier), give notice of the difference to the Supplier and the parties shall amend the Order accordingly. If the CSB Customer does not give a notice in accordance with this clause 28.2, the Supplier's written acceptance of the Order will be deemed to correctly record the Order in accordance with **clause 1.4**.

28.3 Where the CSB Customer requires Goods for a particular purpose and expressly makes that particular purpose known to the Supplier prior to the Supplier's acceptance of an Order, subject to the CSB Customer's purpose being within the usual intended purpose of the Goods, and/or within any limitations or conditions set out in the specifications of the Goods, on accepting that Order the Supplier will be deemed to have agreed that the Goods are suitable for the particular purpose expressly communicated by the CSB Customer and the provisions of **clause 1.7** are amended accordingly. If the CSB Customer's particular purpose made known to the Supplier is outside of the usual intended purpose of the Goods, or outside any limitations or conditions set out in the specifications of the Goods, the Supplier does not agree to, or make any representation regarding, the Goods being fit for such purpose.

28.4 In the event that the Price has not been agreed in writing between the parties, the Price will be determined as follows:

(a) the price quoted by the Supplier in the Quotation (if still valid in accordance with **clause 1.5(a)**); or

(b) if there is no Quotation (or the Quotation is not still valid), at or, if the Supplier so decides, below, the price indicated on the Supplier's then current price list (as applicable as at the date of the Contract),

and the Supplier's discretion in **clause 2.1** shall not apply.

28.5 If the CSB Customer is a Consumer, the Supplier shall ensure that any Quotation or other provision of the Price to that CSB Customer includes the total price of the Goods to be sold to that CSB Customer (including GST) and **clause 2.2** read accordingly.

28.6 If the Supplier varies the Price of a CSB Customer's Order under **clause 2.3**, the Supplier may only vary the Price by the amount necessary to cover any additional costs incurred or payable by the Supplier, or the amount of any tax, duty, excise, levy or other additional amount in connection with the relevant Order. If the Supplier increases the Price of a CSB Customer's Order in this manner then, within 5 Business Days of receiving notice of the increase in the Price, the CSB Customer may terminate the Contract by notice in writing to the Supplier and the CSB Customer shall reimburse the Supplier for all reasonable losses, costs and expenses it has reasonably incurred or may reasonably incur as a result of the cancellation of the Order, including, without limitation, restocking fees and any other incidental expenses or costs incurred in cancellation of the Order.

28.7 A CSB Customer must check all invoices promptly and in any event advise the Supplier of any errors or omissions within 10 Business Days of receipt and **clause 3.4** is amended accordingly.

28.8 Where a written demand for payment is issued to a CSB Customer under **clause 4.1(b)**, payment in full may only be required within 14 days.

28.9 Where a CSB Customer indemnifies the Supplier under **clause 4.2(c)**, **10.4** or **11.8** it does so only in relation to costs and expenses reasonably incurred by the Supplier in the circumstances set out in the relevant clause.

28.10 Where a CSB Customer seeks to cancel an Order (in whole or in part) or return Goods under **clause 6.2** or to suspend or delay an Order (or any part of an Order) under **clause 6.5**, the Supplier will not unreasonably withhold its agreement to the cancellation or return or the suspension or delay, provided that:

(a) the Goods the subject of the Order being cancelled/returned or suspended/delayed are not Goods covered by **clause 6.4**; and

(b) the Customer agrees to reimburse the Supplier for an amount covering the Supplier's reasonable losses, expenses and costs under **clause 6.2** or **6.5**, as the case may be; and

(c) any adjustment to the Price under **clause 6.5** is in accordance with **clause 2.3** as amended by **clause 28.6** above,

and **clauses 6.2** and **6.5** are amended accordingly with respect to a CSB Customer.

28.11 The Supplier's limitation of liability with regard to a CSB Customer in each of **clause 1.6** (but only for any mistakes in an estimate prepared by the Supplier), **clause 7.4** (but only as it relates to damage to the Goods on unloading by the Supplier's employees, agents or contractors), **clause 9.2** (but only as it relates to the Supplier's storage of Goods on behalf of the CSB Customer), **clause 14.5** (but only where any incorrect information in an Order was created by the Supplier), **clause 14.6(a)** (but only as it relates to mistakes in representations or advice given by the Supplier or its employees) and **clause 14.6(b)** (but only as it relates to any description or specification given by the Supplier or in printed literature of the Supplier) will not apply to the extent only that the Supplier's liability to the CSB Customer under these clauses is caused by the wilful default or negligence of the Supplier or its employees, agents and contractors.

28.12 A CSB Customer's liability to indemnify the Supplier under **clause 7.7(a)** or **clause 13.2** will be reduced proportionally to the extent only that:

(a) any negligent act or omission by the Supplier or a breach of the Supplier's obligations under these Terms of Sale has caused the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity; or

(b) these Terms of Sale make the Supplier specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of, or damage to the Goods.

28.13 Under **clause 7.8(a)** a CSB Customer may only be charged where the delivery vehicle is held on site as a result of matters within the control of the CSB Customer (or any customer or head-contractor of the CSB Customer) and under **clause 7.8(b)** a CSB Customer may only be charged reasonable storage fees and redelivery charges by the Supplier.

28.14 The time within which a CSB Customer must give a notice under **clause 7.9** is (a) 3 business days, for delivery to a construction site, or (b) 10 business days, for a delivery elsewhere, of the date of failure or delay in delivery and **clause 7.9** is amended accordingly.

28.15 A CSB Customer giving a notice under **clause 8.1** must give that written notice by the earlier of (a) close of business (i) for a delivery to a construction site, 3 business days, or (ii) for a delivery elsewhere, 10 business days, after the relevant delivery or (b) the time that the Customer deals with the Goods.

28.16 A CSB Customer must comply with **clause 8.2(b)**, except where such compliance would not be safe or would prevent the CSB Customer from keeping the Goods secure (for example, if located on a kerbside).

28.17 Where a CSB Customer has given a notice under **clause 8.1** and the Supplier has inspected and reasonably determined that **clause 8.4(a)** applies to the Goods the subject of that notice from the CSB Customer, before the Supplier may deem the CSB Customer to have accepted the Goods in accordance with **clause 8.4(a)**, (a) the Supplier must give the CSB Customer written notice setting out the reasons for its determination and (b) the CSB Customer may dispute the Supplier's determination within 5 business days of receiving the notice in clause 28.17(a) from the Supplier. If the CSB Customer disputes the Supplier's determination in accordance with clause 28.17(b), suitable representatives of the parties may meet to seek a resolution of the disputed matters or either party may commence proceedings in relation to the dispute. If the CSB Customer does not dispute the Supplier's determination within the period set out in clause 28.17(b), the CSB Customer will be deemed to have accepted the Goods in accordance with **clause 8.4(a)**.

28.18 If the Supplier repossesses the Goods under **clause 10.4** or otherwise under these Terms of Sale and the amount recovered by the Supplier from a sale of the repossessed Goods exceeds the aggregate of the Supplier's costs and expenses under **clauses 4.2(c)**,

10.4 and **11.8** together with any other amounts owing by the SB Customer to the Supplier, whether under a Contract, these Terms of Sale or otherwise, the Supplier will hold any such excess amount on account for the SB Customer.

28.19 For an SB Customer, **clause 12.1(b)** and **12.1(c)(ii)** are amended to refer to a 'material adverse change in the creditworthiness' of the SB Customer or Guarantor, as required, and the time for suspension in **clause 12.1(e)** is 14 days rather than 7 days.

28.20 If **clause 12.1(a)** or **(b)** applies to a cash CSB Customer and all amounts due and payable by the CSB Customer to the Supplier have been paid in full, then the Supplier may, in its reasonable discretion, either (a) deliver the Goods or make them available for collection or (b) cancel the Order and refund the CSB Customer the Price (less any costs reasonably incurred by the Supplier in cancelling the Order).

28.21 **Clause 13.1** will not apply to a CSB Customer.

28.22 **Clause 14.3** is deleted and replaced with the following:

"Neither party is liable for any Excluded Loss, however caused (including by the negligence of the liable party), suffered or incurred by the other party in connection with a Contract or these Terms of Sale."

28.23 For an SB Customer, **clause 15.1(c)** is amended so that payments are allocated against invoices as agreed between the Supplier and the SB Customer or, failing such agreement, to invoices in the order of issuance and **clauses 15.2** and **15.3** shall not to apply to the extent that the exercise of the rights in **clauses 15.2** and **15.3** is adverse to the position of the SB Customer.

28.24 If a Force Majeure Event continues for longer than 14 days, the CSB Customer may give notice in writing to the Supplier to terminate any Contract under which the supply of Goods has been delayed due to that Force Majeure Event, except that the CSB Customer may not terminate a Contract under this clause 28.25 in respect of Goods contemplated in clause 6.4 without the prior written agreement of the Supplier. **Clause 22** is amended accordingly.

28.25 For a CSB Customer, Special Conditions means any matters relating to a Contract (which may be a single Contract or all Contracts between the Customer and the Supplier) agreed in writing between the Customer and the Supplier, which may include electronic correspondence in relation to a Contract between the parties where agreement on a relevant matter is reached. **Clauses 14.8** and **26.1** shall be interpreted accordingly.

29. **Definitions**

In these Terms of Sale:

Confidential Information means information that (a) is, by its nature, confidential, (b) is designated by the Supplier to be confidential or (c) the Customer knows or ought to know is confidential, relating to the Goods or the Supplier's business which is not in the public domain, including trade secrets, know-how, scientific, technical, product, market, or pricing information.

Consumer has the meaning given to that term in section 3 of the *Australian Consumer Law* in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Contract means a contract between the Supplier and the Customer for the supply of Goods, as constituted by the Supplier's quotation (if any), an Order, these Terms of Sale and the Special Conditions (if any).

Corporations Act means the *Corporations Act 2001* (Cth).

Customer means the person, firm, organisation, partnership, corporation, trustee of a trust, or other entity (including its successors and permitted assigns) to whom Goods are provided by the Supplier.

Customer Material means any and all information, specifications, data and documents provided by or on behalf of the Customer to the Supplier (whether in hard copy or in an electronic format) in the course of the Supplier supplying the Goods.

Deed of Guarantee means a deed of guarantee and indemnity in a form acceptable to the Supplier provided by the Guarantor(s) of a Customer with a commercial credit account with the Supplier (or its Related Entities).

Excluded Loss means any one or more of consequential loss, loss of revenue, loss of reputation, loss of profits, loss of bargain, indirect loss, special loss, lost opportunities, including opportunities to enter into arrangements with third parties, loss or damage in connection with claims against a party by third parties or loss or corruption of data.

Force Majeure Event means a circumstance beyond the Supplier's reasonable control, including any strikes, lockouts, fires, floods, storm, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, failure of a third party supplier or service provider, failure of the Customer to perform its obligations under a Contract, disease, epidemic or pandemic, quarantine measures in relation to the same, government intervention, acts, orders or regulation, acts of God or any other activity beyond the Supplier's control.

Goods means all goods supplied by the Supplier to the Customer and as are described on the invoices, Quotation or any other forms as provided by the Supplier to the Customer.

GST has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantor means the person or persons who have provided a Deed of Guarantee to the Supplier (and/or its Related Entities) in connection with the Supplier (and/or its Related Entities) providing a commercial credit account to the Customer.

Insolvency or **Insolvent** means, in relation to a party or a Guarantor, any one or more of the following:

(a) the party is (or states that it is) unable to pay its debts when they fall due;
(b) the party takes any step to obtain protection or is granted protection from its creditors under any applicable law;
(c) the party is (or states that it is) an insolvent under administration or insolvent, each as defined in the Corporations Act;
(d) the party resolves to wind itself up or dissolve itself or gives notice of its intention to do so;
(e) the party enters into or resolves to enter into, any arrangement, assignment, moratorium or composition for the benefit of all or a class of creditors;
(f) the party makes an application (not being an application that is being contested in good faith and that is not stayed, withdrawn or dismissed within 14 days of its commencement) to a court for an order or it seeks an order that it be wound up or have a liquidator appointed;
(g) the party has a receiver, trustee, administrator or similar official appointed over any or all of its property or undertaking;
(h) the party is taken (under section 459F of the Corporations Act) to have failed to comply with a statutory demand;
(i) the party is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
(j) the party is a natural person and commits an act of bankruptcy within the meaning of the *Bankruptcy Act 1966* (Cth); or
(k) anything having a substantially similar effect to any of the circumstances described in paragraphs (a) to (j) above happens to a party under any law;

Intellectual Property Rights means all industrial and intellectual property rights throughout the world, whether present or future,

and whether protectable by statue, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

Order means a written or oral order from the Customer requesting the supply of Goods.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means the Price payable for the Goods as determined in accordance with clause 2 and, where relevant, clause 28.
Proceeds has the meaning given to that term in section 31 of the PPSA.
Quotation means a quotation in relation to the sale of Goods provided by the Supplier to the Customer.
Related Entity means any company with common directors and/or common shareholders and/or under the control of common persons or entities as the Supplier.
Small Business means a Customer that (a) employs fewer than 100 persons at the time of making the Contract and/or (b) has turnover in the financial year prior to making the Contract of A$10,000,000 or less.
Special Conditions means any terms and conditions (other than these Terms of Sale) relating to a Contract which are expressly agreed in writing between the Customer and the Supplier.
Supplier means the company which has accepted an Order to supply Goods from the Customer.
Supplier IP means all Intellectual Property Rights in and in connection with Confidential Information, all documents, reports, software, patents, and patentable inventions relating to the Goods or Services and Working Documents.
Terms of Sale mean these Terms and Conditions of Sale, as amended from time to time in accordance with their terms.
Working Documents means all literary, artistic and other works, including all physical works, production materials and subject matter created solely or jointly with others, by the Supplier in the course of or in relation to a Contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations and adaptations of such works or subject matter (whether currently existing or created in the future).