

The *Supplier* agrees to supply the *Goods* requested by the *Client* on the terms and conditions set out below. Words in *ITALICS* are defined at clause 27.1 below.

1. Quotations, Purchase Orders, Acceptance & Contracts

- 1.1 Clauses 3.2, 5.2, 8.1, 8.3, 9.5, 14.1, 14.4, 18.3(c), 20.4, 22.1, 24.1 and 25.1 shall apply to the *Agreement* unless or to the extent the *Quotation* or *Purchase Order* expressly specifies otherwise.
- 1.2 The *Client* acknowledges that the submission of a *Quotation* by the *Supplier* is not an offer the acceptance of which will give rise to a contract.
- 1.3 A *Purchase Order* in relation to a *Quotation* or offer to enter into an *Agreement* may be made by the *Client* verbally or in writing.
- 1.4 A *Purchase Order* or offer is accepted when the *Client* receives from the *Supplier* an acceptance of the *Purchase Order* in writing, or if no written acceptance of the *Purchase Order* is received, verbal acceptance or delivery of the *Goods*, whichever occurs first ("**the Order Acceptance**").
- 1.5 When a *Purchase Order* or offer is accepted by an *Order Acceptance* an *Agreement* will be made and wholly documented by (in descending order of precedence) the *Quotation*, any specific terms agreed in writing and set out in the *Purchase Order* and these terms and conditions, which documents shall constitute the entire *Agreement* and will supersede all prior negotiations, proposals and correspondence between the parties.
- 1.6 Despite the *Client* at any time providing, referring to, submitting or otherwise using or purporting to use any standard form terms and conditions other than these terms and conditions, such terms and conditions will not form part of, or be incorporated into, the *Agreement*.

2. Supply of Goods

- 2.1 The *Supplier* shall supply the *Goods* in accordance with the *Agreement*. The *Client* and the *Supplier* agree that the items referred to as *Exclusions* in the *Quotation*, if any, are excluded from the *Agreement*.
- 2.2 The *Supplier* shall not be required to supply the *Goods* until the *Client* has paid the deposit, if any, in accordance with clause 3.2.
- 2.3 Subject to clauses 2.2 and 10, the *Supplier* shall supply the *Goods* within a reasonable time and as far as reasonably possible commence the supply on the Delivery Date specified in the *Quotation*, if any.

3. Contract Price & Deposit

- 3.1 The *Client* shall pay to the *Supplier* the Contract Price and other money that becomes payable under the *Agreement* (without any set off) in the manner and at the times stated in the *Agreement*.
- 3.2 The *Client* shall pay to the *Supplier* the deposit specified in the *Quotation*, if any, within seven (7) days of the *Order Acceptance*.

4. Accuracy of Contract Documents

- 4.1 The party responsible for the preparation of a *Contract Document* warrants that it is accurate and correct.
- 4.2 In the event of any inconsistency between the *Contract Documents*, or any detail not being given, the *Supplier* shall give notice to the *Client* detailing the problem. The *Client* must within two (2) *Business Days* of receiving such notice give written instructions as to how the *Supplier* is to proceed with the supply of *Goods*.
- 4.3 In the event that the *Client* refuses or fails to give written instructions to the *Supplier* within two (2) *Business Days* of a notice pursuant to Clause 4.2, the *Client* authorises the *Supplier* to determine the required detail necessary to resolve the error, ambiguity or inconsistency, however, the *Supplier* shall not be obliged to act under that authority.
- 4.4 If the required detail, as determined by the *Client* or the *Supplier* necessitates a change to the manner in which *Goods* are supplied, that change is deemed to be a *Variation*.

5. Delivery & Inspection of Goods

- 5.1 Delivery of the *Goods* is taken to occur when:
 - (a) the *Supplier* or the *Supplier's* nominated carrier delivers the *Goods* to the *Site* or address or third party nominated by the *Client* even if the *Client* is not present at the address, or
 - (b) the *Client* or its nominated carrier takes possession of the *Goods*.
- 5.2 The cost of delivery is payable by the *Client* in addition to the *Contract Price*.
- 5.3 The *Supplier* shall make reasonable efforts to deliver the *Goods* to the *Client* or its designated agent in accordance with any agreement between the parties, or in the absence of any specific agreement, within a reasonable time, but shall not be liable for:
 - (a) any failure to deliver or delay in delivering the *Goods* for any reason,
 - (b) any damage or loss due to unloading or packaging (unless risk in the *Goods* had not passed to the *Client* at the relevant time), or

- (c) any damage to property caused upon entering premises to deliver the *Goods*, unless caused by the *Supplier's* negligent act or omission.
- 5.4 The *Client* shall accept delivery of the *Goods* even if late. In the event that the *Client* fails to take delivery of the *Goods* at the time of delivery the *Client* shall reimburse the *Supplier* for any costs incurred by the failure and the *Supplier* shall be entitled to charge a reasonable fee for redelivery and/or storage of the *Goods*.
- 5.5 The *Client* must inspect the *Goods* on delivery. The *Client* must notify the *Supplier* in writing within seven (7) days of delivery and setting out full details of all relevant matters if:
- (a) the *Goods* are damaged, faulty or defective in any manner,
 - (b) the *Goods* do not comply with any description by which they were sold and/or specified to in the *Quotation*, or
 - (c) there is any discrepancy in quantity.
- 5.6 The *Client* must notify the *Supplier* in writing of any other defect in the *Goods* as soon as reasonably possible after any such defect becomes apparent.
- 5.7 Where a notice is given under clauses 5.5 or 5.6 the *Client* shall allow the *Supplier* to inspect the *Goods*.
- 5.8 Where the *Purchase Order* is for a quantity of 20 or more of an item, the *Client* shall take delivery of the *Goods* delivered notwithstanding that the quantity delivered shall be either greater or lesser than the quantity ordered provided that:
- (a) such discrepancy does not exceed 5%, and
 - (b) the *Contract Price* is adjusted in proportion to the discrepancy.

6. Passing of Risk

- 6.1 The risk in the *Goods* will pass to the *Client* upon the earlier of:
- (a) the delivery of the *Goods* to the *Client* or its agent (including all risks associated with unloading), and
 - (b) the passing of title to the *Goods* to the *Client*.
- 6.2 Notwithstanding clause 6.1, if the *Client* directs the *Supplier* to deliver the *Goods* to an unattended location the *Goods* shall be left at the *Client's* sole risk and responsibility. In the event that such *Goods* are lost, damaged or destroyed the replacement of the *Goods* shall be at the *Client's* expense.
- 6.3 Where the *Supplier* retains ownership pursuant to clause 7 of *Goods* in respect of which risk has passed to the *Client*, the *Client* must maintain adequate insurance in relation to the *Goods* and provide evidence of such insurance to the *Supplier* on request.

7. Retention of Title

- 7.1 Notwithstanding the delivery of *Goods*, until the *Client* has paid all monies payable to the *Supplier* under the *Agreement* in cleared funds:
- (a) the legal and equitable title to the *Goods* will remain with the *Supplier*;
 - (b) a fiduciary relationship will exist between the *Client* and the *Supplier*; and
 - (c) the *Client* agrees to hold the *Goods* as bailee for the *Supplier* and keep the *Goods* separate and in good condition.
- 7.2 Until ownership of the *Goods* passes to the *Client*:
- (a) the *Client* shall not charge or grant any encumbrance over the *Goods*,
 - (b) the *Client* must return the *Goods* to the *Supplier* on request, and
 - (c) the *Supplier* may without demand retake possession of the *Goods*.
- 7.3 For the purposes of recovering possession of the *Goods* and without limiting the generality of this clause 7, the *Client* irrevocably authorises and licenses the *Supplier* and its servants and agents to enter any premises where the *Supplier* believes the *Goods* may be stored and to take possession of the *Goods*.

8. Payment Claims

- 8.1 The *Supplier* may issue a *Payment Claim* in respect of *Goods* supplied by the *Supplier* on or after:
- (a) the date of delivery of the *Goods* or any part of the *Goods*, and
 - (b) receipt of a *Purchase Order* and every seven (7) days thereafter.
- 8.2 The *Supplier* may serve a *Payment Claim* on the *Client* by any method that it is entitled to give notice under the *Agreement*.
- 8.3 The *Client* must pay the *Contract Price* progressively as claimed by the *Supplier* within seven (7) days, or such other period as specified in the *Quotation*, of service of a *Payment Claim* on the *Client*.

9. Variations

- 9.1 A *Variation* occurs if:
- (a) the *Agreement* deems a *Variation*,
 - (b) the *Client* requests a *Variation* and subsequently the *Supplier* performs the *Agreement* in accordance with the *Client's* request, or
 - (c) the *Client* and the *Supplier* agree in writing to a *Variation*, including *Agreement* as to the price of the *Variation*.
- 9.2 If the *Client* has requested a *Variation* and the *Supplier* has provided the *Client* with a cost proposal in respect of the *Variation*, unless the cost proposal is rejected by the *Client* in writing within two (2) *Business Days* the amount of the cost proposal is deemed to be the price of the *Variation* for the purposes of clause 9.1(b).

- 9.3 If there is insufficient time to calculate the price of a *Variation*, or this Contract deems a *Variation*, the price of the *Variation* will be charged to the *Client* at the *Supplier's* reasonable cost plus a *Profit Margin*.
- 9.4 There shall be a deemed *Variation* if:
- (a) the requirements of any statutory or other *Authority* necessitate a change in the *Goods* supplied, such *Variation* being that work required to effect that change, and
 - (b) after the *Agreement* is made a statutory or other *Authority* introduces or increases any tax, charge, levy or other regulation or any requirement that affects the supply of *Goods* that causes any increase in the costs of the supply of *Goods*.
- 9.5 The *Client* acknowledges that the *Contract Price* has been agreed on the basis of the *Supplier* supplying the *Goods* during the *Supplier's* ordinary operating hours. The *Supplier* will be entitled to a *Variation* if the supply of *Goods* is required to be carried out outside the aforementioned working hours to comply with any subsequent directions by the *Client*.
- 9.6 Where extra cost in materials, labour and overhead is occasioned to the *Supplier* by virtue of the acceleration of a supply schedule or of the presence of obstructions or conditions which could not reasonably have been anticipated by the *Supplier* the *Agreement* is deemed to have been varied and the *Contract Price* shall be adjusted accordingly.
- 9.7 Notwithstanding any other clause herein, the *Supplier* is under no obligation to perform a *Variation* requested by the *Client*.

10. Acknowledgement of Possible Delays

- 10.1 The *Client* acknowledges that the supply of *Goods* may be suspended by the *Supplier* pursuant to clause 11 or delayed by any cause beyond the control of the *Supplier* including; (a) a *Variation* or a request by the *Client* for a *Variation*; (b) an act of God, fire, explosion, earthquake or civil commotion; (c) an industrial dispute; (d) anything done or not done by the *Client*; (e) the *Contract Documents* not being fully completed or made available to the *Supplier* by the date of the *Agreement*.
- 10.2 The *Supplier* shall not be liable for the failure to supply the *Goods* or the *Agreement* to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the *Supplier* because of a circumstance referred to in clause 10.1.
- 10.3 Where the costs of the supply of *Goods* has increased due to any delay beyond the control of the *Supplier*, there shall be a deemed *Variation* and the *Supplier* shall be entitled to a reasonable increase in the *Contract Price*.

11. Suspension

- 11.1 If the *Client* is in breach of the *Agreement* the *Supplier* may suspend the supply of *Goods* and must promptly give to the *Client* written notice of the suspension and details of the breach.
- 11.2 The *Supplier* must recommence the supply of *Goods* within a reasonable time after the *Client* remedies the breach and gives the *Supplier* written notice of that fact.

12. Dispute Resolution

- 12.1 The parties must attempt to resolve any dispute or claim arising out of or under the *Agreement* by negotiation in good faith before either party commences any litigation in relation to the dispute or claim. Accordingly, if a party considers that a dispute or claim has arisen under the *Agreement* they must give written notice to the other party adequately setting out and providing details of the dispute.
- 12.2 The *Supplier* and the *Client* must meet within ten (10) *Business Days* of the giving of a notice pursuant to clause 12.1 to attempt to resolve the dispute or claim or to agree on methods of doing so. The parties must be represented at the meeting by a person with authority to agree to a resolution of the dispute.
- 12.3 If the dispute is resolved the parties must write down the resolution and sign it.
- 12.4 The parties agree that anything done or said in the negotiations can not be revealed in any other proceedings.
- 12.5 Nothing in this clause affects the rights of the parties pursuant to the *Security of Payment Law* or prevents either party from commencing urgent injunctive or interlocutory proceedings in a competent Court.

13. Default & Termination of Contract

- 13.1 Without limiting clause 13.2, a party may terminate the *Agreement* if:
- (a) the other party is in default of the *Agreement*,
 - (b) the non-defaulting party has served notice in writing on the party setting out details of the default and stating that the party will be entitled to terminate the *Agreement* unless the default is remedied within a specified time of not less than 14 days,
 - (c) the party fails to remedy the default within 14 days of receiving a notice under clause 13.1(b), or such longer period as may be specified in the notice, and
 - (d) the non-defaulting party serves written notice of termination whilst the default remains unsatisfied.
- 13.2 If the *Client* fails to pay any money under the *Agreement* within seven (7) days of the due date for payment:
- (a) the *Supplier* may terminate the *Agreement* by notice in writing to the *Client*,
 - (b) the *Supplier* shall be entitled to interest on the outstanding amount at the rate of 2.5% per calendar month calculated daily from the due date for payment and compounding monthly on the first day of each month until payment is received,

- (c) may without notice sell any *Goods* that the *Supplier* has recovered pursuant to clause 7 on such terms and in such manner as it determines and, after deducting all expenses incurred, shall offset such proceeds from the balance owing from the *Supplier*,
- (d) the *Client* shall indemnify the *Supplier* from and against all costs and disbursements incurred or payable by the *Supplier* in connection with the recovery of monies owing by the *Supplier* (including, without limitation, legal fees on an indemnity basis, collection agency costs and bank dishonour fees), and
- (e) the *Supplier* may cancel all or any part of the supply of *Goods* in connection with any other contract or contracts made with the *Client* to which these terms and conditions apply whereafter all amounts payable by the *Client* to the *Supplier* shall become payable immediately.

13.3 The *Client* agrees to pay to the *Supplier*, as genuine pre-estimate of the *Supplier's* costs:

- (a) a processing and handling fee of \$20.00 in respect of each payment made under the *Agreement* that is not in satisfaction, or in satisfaction of the balance, of a *Payment Claim*, and
- (b) a default fee of \$50.00 in respect of any failure by the *Client* to pay a *Payment Claim* by the due date for payment or by the corresponding day of each subsequent calendar month until the *Payment Claim* is paid in full.

14. Warranties & Representations

14.1 The *Client* warrants that the supply of *Goods* relate to 'construction work' or 'related goods and services' within the meaning of the *Security of Payment Law* and that the *Security of Payment Law* will apply to the *Agreement*.

14.2 Except as expressly provided to the contrary in the *Contract Documents*, all representations, warranties, guarantees and conditions in relation to the *Goods* (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.

14.3 If the *Client* is aware (or should be aware) that the *Goods* are for a particular purpose or are required to possess particular or uniform characteristics, the *Client* agrees to clearly specify that purpose or those characteristics in writing in the *Order*.

14.4 The *Client* warrants that it has made its own enquiries in relation to the suitability of the *Goods* and has not relied on any representation made by the *Supplier* in relation to their suitability for any particular purpose.

15. Return of Goods

15.1 Subject to any applicable statute, unless the *Supplier* agrees otherwise in writing, the *Supplier* will only accept a return of the *Goods* if:

- (a) the *Client* has complied with clauses 5.5 and 5.6,
- (b) the *Supplier* acting reasonably has agreed that the *Goods* are defective and not reasonably capable of repair,
- (c) the *Goods* are returned at the *Client's* expense and within an reasonable time, and
- (d) the *Goods* are returned, as far as possible, in the same condition as the *Goods* were delivered.

15.2 If the *Supplier* agrees in its absolute discretion to accept the return of any non-defective *Goods*, the *Client* shall:

- (a) indemnify the *Supplier* in relation to any freight expense, and
- (b) if required by the *Supplier*, pay handling fees of up to 15% of the price of the *Goods* returned.

16. Limitation of Liability

16.1 The *Supplier's* liability to the *Client* (and any party claiming through the *Client* against the *Supplier*) for any claim for loss or damage (including legal expenses), whether arising in contract, tort or otherwise, in connection with the *Agreement* shall be limited to the lesser of the cost of:

- (a) replacement of the goods or the supply of equivalent goods,
- (b) repair of the *Goods*,
- (c) payment of the costs of replacing the goods or acquiring equivalent goods, or
- (d) payment of the costs of having the goods repaired.

16.2 Notwithstanding any other term of the *Agreement* but subject to any applicable statute, the *Supplier* shall not be liable for any defect, fault or damage to the *Goods* of any nature whatsoever:

- (a) in respect of which notice was not provided in accordance with clauses 5.5 or 5.6, or
- (b) resulting from or caused or contributed to in any way by: (i) the *Client* failing to properly maintain or store the *Goods* after delivery, (ii) the *Client* using the *Goods* for any purpose other than that for which the *Goods* were designed, (iii) the *Client* continuing to use the *Goods* after any defect became apparent or ought reasonably to have become apparent, (iv) the *Client* failing to following any instructions or guidelines provided by the *Supplier* or the manufacturer of the *Goods*, or (v) fair wear and tear or any accident or act of God.

16.3 The *Supplier's* liability shall be limited to the lesser of the liability of the manufacturer of the *Goods* to the *Supplier* and the liability determined under clause 16.1.

16.4 Unless the *Quotation* contains an express warranty, the *Client* acknowledges that the *Goods* supplied may exhibit variations in shade, colour, texture, surface and finish and may fade or change colour over time. The *Supplier* shall make reasonable efforts to match batches of products supplied and minimise such variations but shall not be liable in any what whatsoever where such variations occur.

16.5 The *Supplier* shall not be liable for any indirect, special or consequential loss or damage of any nature whatsoever resulting from or caused in any way by the supply of the *Goods*.

17. Guarantee

17.1 In consideration for the *Supplier* entering into the *Agreement*, the *Guarantor* guarantees to the *Supplier* the performance by the *Client* of all of the *Client's* obligations under the *Agreement* including any *Variation*.

17.2 If the *Client* does not pay any money due under the *Agreement* the *Guarantor* must pay that money to the *Supplier* on demand without deduction, set-off or counterclaim even if the *Supplier* has not tried to recover payment from the *Client*.

17.3 Even if the *Supplier* gives the *Client* extra time to comply with an obligation under the *Agreement* or does not insist on strict compliance with the terms of the *Agreement* the *Guarantor's* obligations will not be affected.

17.4 Where a payment made by the *Client* or the *Guarantor* to the *Supplier* is set aside by law, the parties are restored to their respective positions prior to the payment being made and are entitled to exercise all rights which they had under the *Agreement*.

17.5 If there is more than one (1) *Guarantor*:

- (a) this guarantee shall be binding on each of them jointly and severally, and
- (b) the release by the *Supplier* of any *Guarantor* from this guarantee does not affect the liability of any other *Guarantor*.

17.6 The *Guarantor's* liability under this clause is continuing and unlimited.

18. Personal Property Security

18.1 In this clause '*amendment demand*', '*attaches*', '*financing statement*', '*financing change statement*', '*security agreement*', '*security interest*' and '*verification statement*' have the meanings given to them by the *PPSA*.

18.2 The *Client* and the *Guarantor*, if any, hereby charge the *Goods* and all of their respective *personal property* as security for the performance by the *Client* of the *Client's* obligations under the *Agreement*.

18.3 The *Client* acknowledges and agrees that:

- (a) the *Agreement* constitutes a *security agreement* for the purposes of the *PPSA*, and
- (b) a *security interest* exists in all *Goods* (and their proceeds) previously supplied by the *Supplier* to the *Client* (if any) and in all future *Goods* supplied (and their proceeds),
- (c) the *Client* has received or will receive value as at the date of first delivery of the *Goods* (or any part of the *Goods*) and that the *Supplier* has not agreed to postpone the time the *security interest attaches* to the *Goods*, and
- (d) where the *Supplier* has rights in addition to those under Chapter 4 of the *PPSA*, those rights will continue to apply.

18.4 The *Client* shall:

- (a) promptly sign all documents and provide any further information that the *Supplier* may reasonably require to register a *financing statement* or *financing change statement* in relation to a *security interest* granted to the *Supplier* under the *Agreement* or any other document required to be registered under the *PPSA*,
- (b) notify the *Supplier* in writing of any intention to change the *Client's* business practices to include the sale or leasing of goods of like kind to the *Goods* (or any part thereof) in the ordinary course of the *Client's* business, and
- (c) on demand reimburse the *Supplier* for all costs and expenses incurred in registering a *financing statement* or *financing change statement*.

18.5 The *Client* must not, without the *Supplier's* prior written consent:

- (a) register or permit to be registered a *financing statement* or *financing change statement* in relation to the *Goods* in favour of a third party,
- (b) register or cause to be registered a *financing change statement* in respect of a *security interest* granted under the *Agreement*, or
- (c) issue or permit any other person to issue an *amendment demand* to the *Supplier* unless all monies payable by the *Client* under the *Agreement* have been received by the *Supplier* in cleared funds.

18.6 Any requirement under the *PPSA* on the part of the *Supplier* to give a notice to the *Client* or any *Guarantor* shall not, to the extent that the requirement may be contracted out of (including, without limitation, under Section 115(1) of the *PPSA*), apply to the *Agreement*. Further, to the extent that that the *Client* and/or the *Guarantor* may waive the right to receive a notice under the *PPSA* (including, without limitation, notice in relation to a *verification statement* under Section 157(1) of the *PPSA*), the *Client* and the *Guarantor* waives that right.

18.7 The *Client* irrevocably authorises and licenses the *Supplier* to enter upon the *Client's* property or premises, without notice, and without being in any way liable to the *Client*, if the *Supplier* has cause to exercise any of the *Supplier's* rights under Section 123 of the *PPSA*, and the *Client* shall indemnify the *Supplier* from any claims made by any third party as a result of such exercise.

18.8 The *Supplier* and the *Client* agree to treat information of the kind referred to in Section 275(1) of the *PPSA* as confidential. Neither the *Supplier* or the *Client* will disclose, send or make available any of the information referred to in Section 275(1) of the *PPSA* to any person except as required by law or the *Agreement*.

18.9 The *Supplier* and the *Client* acknowledge and agree that clause 18.8 constitutes a confidentiality agreement pursuant to Section 275(6) of the *PPSA*.

19. Real Property Security

- 19.1 The *Client* and the *Guarantor*, if any, hereby charges all their right, title and interest in any real property or other assets capable of being charged that they, or any of them, own or hereafter own either solely or jointly, in favour of the *Supplier* as security for the performance of the *Client's* obligations pursuant to the *Agreement* and authorises the *Supplier* to register a Caveat over the title of any such property in the event of a default by the *Client* under the *Agreement*.
- 19.2 The *Client* shall indemnify the *Supplier* from and against all costs and disbursements incurred or payable by the *Supplier* in connection with exercise of the *Supplier's* rights under clause 19.1 (including, without limitation, legal fees on a solicitor-client basis, stamp duty and registration fees).

20. Intellectual Property

- 20.1 Where the *Supplier* has designed, drawn or developed unique and/or original designs or drawings in connection with any *Goods*, copyright in such designs or drawings shall vest in the *Supplier*.
- 20.2 The *Client* warrants that the *Supplier* is entitled to use all documents and drawings provided by the *Client* for the purposes of supplying the *Goods* and that such use will not infringe any third party's intellectual property rights.
- 20.3 The *Client* shall indemnify the *Supplier* from and against all claims and all losses and damages incurred by the *Supplier* as a consequence of any claim against the *Supplier* for infringement of a third party's intellectual property rights in connection with the supply of the *Goods* in accordance with a document that is; supplied by, prepared under the instruction of, or prepared from sketches provided by, the *Client*.
- 20.4 The *Client* authorises the *Supplier* to use any documents, designs, drawings or goods that the *Supplier* has created for the *Client* including photographs thereof for the purposes of marketing the *Supplier's* business or entry into any competition.

21. Subcontracting & Assignment

- 21.1 The *Supplier* may subcontract the whole or any part of the supply of *Goods* but remains responsible for all of the supply of *Goods*.
- 21.2 The *Supplier* may assign the *Agreement* to any person. In the event of the assignment the *Client* may, if it has reasonable grounds to believe that the assignee will not comply with the *Agreement*, within seven (7) days of receiving notice of the assignment terminate the *Agreement* by 30 days written notice to the *Supplier* whereafter the termination will be effective unless the assignment is withdrawn.

22. Cancellation

- 22.1 Notwithstanding any other clause herein the *Supplier* may cancel any agreement to which these terms and conditions apply at any time before the *Goods* are delivered by giving written notice to the *Client* whereafter any deposit or other amount paid by the *Client* on account of the *Goods* shall become immediately repayable to the *Client*. The *Supplier* shall not be liable for any consequential loss or damage in relation to any such cancellation.
- 22.2 If the *Client* purports to cancel the *Agreement*, without limiting any other right available to the *Supplier*, the *Client* shall be liable to the *Supplier* for any and all loss or damage suffered by the *Supplier* in connection with the cancellation including, without limitation, loss of profit in respect of the supply of the *Goods* and/or loss of profits in respect of orders and opportunities foregone as a result of the scheduling of the supply of *Goods*.

23. Privacy Act 1988 (Cth)

- 23.1 Despite clause 1.5, this clause applies upon the making of a *Purchase Order* before and after any *Order Acceptance*.
- 23.2 The *Client* and the *Guarantor*, if any, consent to the *Supplier* obtaining a Credit Report from a credit reporting agency in relation to the *Client* and the *Guarantor* respectively for the purpose of:
- (a) assessing the creditworthiness of the *Client*, and
 - (b) the collection of payments that are overdue in respect of commercial credit.
- 23.3 The *Client* and the *Guarantor*, if any, agree that the *Supplier* may exchange information about the *Client* and the *Guarantor* with those credit providers either named as trade referees by the *Client* or named in a Credit Report issued by a credit reporting agency for the following purposes:
- (a) to assess an application for commercial credit by the *Client*,
 - (b) to notify other credit providers of a default by the *Client*,
 - (c) to exchange information with other credit providers, where the *Client* is in default with other credit providers, and
 - (d) to assess the creditworthiness of the *Client*.
- 23.4 The *Client* and the *Guarantor*, if any, consent to the *Supplier* using any personal information collected by the *Supplier* for the following purposes or as required by law:
- (a) the supply of *Goods*,
 - (b) the marketing of the supply of *Goods* by the *Supplier*,
 - (c) the analysing, verifying and checking of the *Client's* credit and/or payment status in relation to the supply of *Goods*,
 - (d) the processing of any payment instructions, direct debit facilities and/or credit facilities requested by the *Client*, and
 - (e) enabling the daily operation of the *Client's* account and/or the collection of amounts outstanding in the *Client's* account in relation to the supply of *Goods*.

23.5 The *Supplier* may give information about the *Client* and the *Guarantor* to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the *Client* and/or the *Guarantor*, or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the *Client* and/or the *Guarantor*.

24. GST

24.1 The *Contract Price* and all other monies payable by the *Client* pursuant to the *Agreement* are exclusive of *GST*.

24.2 If The *Supplier* incurs a liability to pay *GST* in connection with a supply to the *Client* pursuant to the *Agreement*, the consideration that the *Client* must pay to the *Supplier* for the supply is increased by an amount equal to the *GST* liability that the *Supplier* incurs in making the supply and the amount of the *GST* liability is payable at the same time and in the same manner as the consideration in respect of the supply is payable.

24.3 The *Supplier* shall provide the *Client* with a tax invoice for any *GST* included in any payment made pursuant to the *Agreement*.

25. Notices

25.1 The parties agree that email shall be the primary method of contact and communication in relation to any matters arising under the *Agreement*.

25.2 A notice is deemed to have been given or serviced if the notice is:

- (a) delivered by hand to the other party,
- (b) posted by ordinary prepaid mail to the other party's address (including a Post Office Box) stated in the *Quotation* or *Order* on the second *Business Day* following the date of posting, or
- (c) sent by facsimile transmission to the parties' facsimile number stated in the *Quotation* or *Purchase Order* upon receiving confirmation of delivery of the transmission, or
- (d) sent by email to the parties' email address stated in the *Quotation* or *Purchase Order* upon receiving confirmation of delivery of the email without error.

26. General

26.1 Payments may only be made by cash, bank cheque, electronic funds transfer or credit card (unless the *Supplier* agrees otherwise in relation to a payment). The *Client* agrees to pay a surcharge equal to 2.5% in respect any payment made via credit card.

26.2 The *Client* may not; (a) set off against or deduct from any monies payable under the *Agreement* any sums owed or claimed to be owed by the *Supplier* to the *Client*, or (b) withhold payment of any *Payment Claim* because the *Payment Claim* or part of it is in dispute.

26.3 The *Agreement* embodies the whole agreement between the parties relating to the subject matter of the *Agreement* and supersedes any and all oral and written negotiations and communications by or on behalf of any of the parties.

26.4 The terms in the *Agreement* may not be varied, waived, discharged or released, except with the prior written consent of the parties.

26.5 No right under the *Agreement* is waived or deemed to have been waived in relation to any particular instance unless in writing and signed by the party waiving the right. A party does not waive its right under the *Agreement* by granting an extension of time or any other forbearance to another party.

26.6 The *Agreement* shall be governed by and constructed pursuant to the laws of the State or Territory in which the *Purchase Order* is received. The parties irrevocably submit to the jurisdiction of the Courts of that State or Territory in connection with any dispute relating to the *Agreement*. The parties further agree that the Court of competent jurisdiction located closest to the *Supplier's* principal place of business in the relevant State or Territory shall be the appropriate Court for the hearing of any claims in connection with this *Agreement*.

26.7 The parties agree that a construction of the *Agreement* that results in all provisions being enforceable is to be preferred to a construction that does not so result.

26.8 If, despite the application of clause 26.7, a provision of the *Agreement* is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed, and the remainder of the *Agreement* continues in force.

27. Definitions & Interpretation

27.1 In these terms and conditions:

- (a) "*Agreement*" means the agreement between the *Client* and the *Supplier* arising from the *Supplier's* acceptance of a *Purchase Order* from the *Client*;
- (b) "*Authority*" means the Local Government, State or Federal Government, or any Government agency that has power to affect the supply of *Goods*;
- (c) "*Business Day*" means any day other than Saturdays, Sundays or public holidays;
- (d) "*Contract Documents*" means these terms and conditions, the *Purchase Order*, the *Quotation*, the *Order Acceptance* and the catalogues and specifications, if any, specified in the *Quotation*;

- (e) *"Contract Price"* means the amount or rates stated as the price in the *Quotation*, or if there was no written *Quotation*, in the *Purchase Order*;
- (f) *"Exclusions"* means the exclusions described in the *Quotation*;
- (g) *"Goods"* means any equipment, goods and other parts and components to be supplied by the *Supplier* as part of or in connection with the supply of *Goods* or otherwise described in the *Contract Documents*;
- (h) *"GST"* has the same meaning as given to it in the *A New Tax System (Goods and Services Tax) Act 1999*.
- (i) *"Guarantor"* means the person or persons who have signed the *Purchase Order* as *Guarantor* and includes their executors, administrators, successors and assigns;
- (j) *"Purchase Order"* means a purchase order in writing issued by the *Supplier* in relation to a *Quotation*,
- (k) *"Order Acceptance"* is defined in clause 1.4.
- (l) *"PPSA"* means the *Personal Property Securities Act 2009 (Cth)*;
- (m) *"Profit Margin"* means a margin of 25% plus *GST* or such other margin specified in the *Quotation*.
- (n) *"Payment Claim"* means a tax invoice as defined in the *A New Tax System (Goods and Services Tax) Act 1999*;
- (o) *"Quotation"* means the proposal, if any, provided by the *Supplier* to the *Client* in respect of the *Goods* to which the *Purchase Order* relates;
- (p) *"Client"* means the party named as the *Client* or customer in the *Quotation*, or if there was no written *Quotation*, in the *Purchase Order*;
- (q) *"Security of Payment Law"* means the laws in the State or Territory applying to the *Agreement* governing the rights of parties in the building and construction industry to obtain security for payment and, in Victoria being the *Building and Construction Industry Security of Payment Act 2002*;
- (r) *"Site"* means the address at which the *Goods* are to be supplied as specified in the *Quotation* or if there was no written *Quotation*, in the *Purchase Order* or the *Order Acceptance*;
- (s) *"Supplier"* means Bayside Benders Pty Limited as trustee for The FM Unit Trust ABN 79237438860, its successors and assigns;
- (t) *"Variation"* means to vary the supply of *Goods* by, omitting any part of the supply of *Goods*, changing the *Site* for delivery or changing the scope of the supply of *Goods*.

27.2 In the *Agreement*, unless otherwise indicated by the context: (a) the singular includes the plural and vice versa; (b) a reference to one gender includes a reference to all other genders; (c) headings to clauses are included for the sake of convenience only and will not affect the interpretation of the clauses to which they relate; (d) references to any statute or statutory provision include that statute or statutory provision as amended, extended, consolidated or replaced by subsequent legislation and any *Orders*, regulations, instruments or other subordinate legislation made under the relevant statute; (e) the word person means and includes a natural person, a company, a firm or any other legal entity whether acting as a trustee or not; (f) the *Agreement* will bind each party's legal personal representatives, successors and assigns; and (g) where a party comprises two (2) or more persons the rights and obligations of such persons pursuant to the *Agreement* will ensue for the benefit of and bind each of them jointly and severally.