

TRADELINK PTY LIMITED – TERMS AND CONDITIONS OF SALE

By submitting a credit application and/or ordering goods ("**goods**") or services ("**services**") from Tradelink Pty Limited (ACN 000 003 832) ("**Tradelink**"), the Customer agrees that the following terms and conditions of sale ("**Conditions**" or "**Terms and Conditions of Sale**") will apply to the supply.

1. DEFINITIONS AND INTERPRETATION

In these Conditions, and any other associated or collateral documents (unless a contrary intention is stated):

"**Anti-Corruption Law**" means any law prohibiting or relating to bribery, corruption, kickbacks, secret commissions or money laundering, including without limitation, the *Foreign Corrupt Practices Act 1977* (US), the *Bribery Act 2010* (UK), the *Criminal Code Act 1995* (Cth), the *Crimes Act 1961* (NZ), the *Secret Commissions Act 1910* (NZ), and any anti-corruption regulations and provisions applicable in the European Union or in any other locations in which any Fletcher Group Member carries on business;

"**Australian Consumer Law**" means the Australian Consumer Law in the *Competition and Consumer Act 2010* (Cth);

"**Consumer**" means a consumer as that term is defined in the Australian Consumer Law;

"**Consumer Contract**" means a contract for the supply of goods or services to an individual whose acquisition of the goods or services is wholly or predominantly for personal, domestic or household use or consumption. However, if the relevant parts of the definition of 'Consumer Contract' under the Australian Consumer Law are amended at any time, this definition is also amended accordingly;

"**Contract**" has the meaning given to that term in clause 3(a);

"**Customer**" means a person (or its successor or assignee) whose order for the purchase of goods or services is accepted by the Supplier;

"**Fletcher Group**" means Fletcher Building Limited (ARBN 096 046 936) and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth));

"**Fletcher Group Member**" means any member of the Fletcher Group;

"**Force Majeure Event**" means any event outside a party's reasonable control including acts of God, declared or undeclared war, act of terrorism, fire, flood, storm, earthquake, hurricane, cyclone, riot, power failure, industrial action, pandemic, epidemic, change of law, defaults of manufacturers or suppliers, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond a party's control that may prevent or delay a party from performing their obligations under any Contract;

"**Guarantor**" means each of the persons who execute a credit agreement between the Customer and the Supplier as guarantor;

"**Interest Rate**" means the rate of 8% above the cash rate last published by the Reserve Bank of Australia (as at the due date);

"**Law**" means any Commonwealth or Australian state or territory legislation regulations and the general law and includes in particular the *Competition and Consumer Act 2010* (Cth) and regulations as amended from time to time and the PPSA and regulations as amended from time to time;

"**Personal Information**" has the meaning given in the *Privacy Act 1988* (Cth);

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

"**Purchase Monies Securities Interest**" or "**PMSI**" has the meaning given in section 14 of the PPSA as amended from time to time;

"**Small Business Contract**" has the meaning given in the Australian Consumer Law;

"**Supplier**" means Tradelink and any member of the Fletcher Group that is named as the party making or accepting an order.

2. INTERPRETATION

- (a) The headings used do not form part of the Conditions and are for convenience only.
- (b) Where the context admits or requires words importing the singular number will include the plural number, those denoting a given gender will include all other genders and those denoting natural persons will include corporations.
- (c) "Including" is not a term of limitation.

3. CONTRACTS AND QUOTES

- (a) The contract between the Customer and the Supplier is constituted by:
 - (i) the Conditions;
 - (ii) the terms of any credit agreement between the Customer and the Supplier ("Credit Terms"); and
 - (iii) the extent to which the Supplier accepts an order in accordance with clause 3(b) (each a "Contract").

The Conditions, the Credit Terms and the extent to which the Supplier accepts the order govern all contracts for the supply of goods and/or services by the Supplier to the Customer and constitute the entire agreement in connection with the supply of goods and/or services between the Supplier and the Customer. To the extent of any inconsistency, the order of precedence set out in clause 3(a)(i) to 3(a)(iii) applies. All prior representations, trade custom or previous dealings between the Supplier and the Customer are excluded and are not applicable in the interpretation of the Contract. No modification or variation to the Conditions or the Credit Terms, any additional terms or conditions or any terms inconsistent with the Conditions or the Credit Terms provided by the Customer (whether put forward in the order, the Customer's specification or otherwise) will bind the Supplier, unless expressly and specifically agreed to in writing by the Supplier. The Conditions and the Credit Terms supersede any terms and conditions which have previously governed a contract for the sale of goods or services by the Supplier to the Customer. The Conditions and Credit Terms will prevail to the extent of any inconsistency between them and any quotation, order or other documents from the Customer. The Conditions and Credit Terms bind the Customer even if the Supplier or the Customer does not sign them promptly or at all.

- (b) A quotation will not constitute an offer to sell goods or services to the Customer. No contract for the supply of goods or services will exist between the Supplier and the Customer until a Customer's order for goods or services has been accepted by the Supplier (such acceptance of the Customer's orders may be made and communicated by the Supplier in writing or by overt act of acceptance). If only part of an order is accepted, the Supplier will notify the Customer of this. The Customer is deemed to have agreed to only part of the order being accepted unless written notice is received by the Supplier that the Customer wishes to cancel the whole order within 5 days of the date of issue of the Supplier's notice. The Customer will be under no obligation to place an order with the Supplier. The Supplier may accept or refuse any order for goods or services

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in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.

- (c) Subject to clause 4, the Supplier may vary the Conditions or Credit Terms by notice in writing to the Customer. If the Contract is a Consumer Contract or a Small Business Contract, then the Customer may consider the variation and, if not acceptable, may elect not to proceed with the purchase of the goods or services ordered before the date of the variation but which are intended to be subject to the variation. If the Contract is not a Consumer Contract or a Small Business Contract, the Customer agrees that goods delivered and services performed and/or ordered after the date of the notice of the variation will be subject to the variation and acceptance of the goods or services or the placing of the order will be deemed to be an acceptance of such varied terms and conditions.
- (d) Should there be any variation to any of the information supplied by the Customer to the Supplier in any credit application or there has been a change of control of the Customer or in the structure or nature of the Customer's business (such as a conversion to or from a company or trust) the Customer will notify the Supplier in writing within 28 days of the variation occurring.
- (e) The Conditions and all obligations under any Contract will be binding on the Customer's personal representatives, successors and permitted assigns and will be for the benefit of the Supplier's successors and assigns.

4. PRICING/PAYMENT

- (a) Subject to these Conditions, the amount payable for goods and services will be the agreed price at the time of acceptance of the Customer's order by the Supplier. The price is exclusive of any freight charges, payment surcharges, customs duty and GST or similar taxes, which the Customer will pay in addition to the price at the same time and in the same manner as the price.
- (b) Except where expressly agreed otherwise, at any time prior to delivery, the Supplier may, upon giving the Customer not less than 30 days prior written notice (which the Customer agrees may be given by electronic direct mail), vary the prices specified on the Supplier's quotation, order confirmation or invoice (as applicable) to reflect the Supplier's new updated prices. The Customer may consider such price variation and, if it is not acceptable, may elect by written notice to the Supplier within 10 days of receipt of the written notice of the variation, not to proceed with the purchase of the goods and/or services affected by the price variation. If no such written notice is received by the Supplier during the relevant 10 days, the Customer is deemed to accept the relevant price variation(s). The Supplier may at its discretion pause or suspend orders impacted by price variation under this clause until the Supplier has received confirmation from the Customer that the price variation is accepted by the Customer or the requisite 10 days have passed. The Supplier shall not be liable to the Customer for any delays such pause or suspension may have on the Customer.
- (c) Any variations in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other imposts will be to the Customer's account. Any such price change will only be applicable to Customer orders not yet accepted by the Supplier, provided the Customer is given 30 days prior notice of the price change.
- (d) The Customer must not assert any right of set off against the Supplier and will pay all amounts owing to the Supplier without deduction.
- (e) Where credit is extended to the Customer, all account invoices and statements will be submitted by the Supplier electronically ("**E-invoice**") to the Customer via the Customer's nominated email address.
- (f) The Supplier will not, generally, send a paper copy of the invoice or statement unless the Customer requests it. The

Customer can obtain a paper copy of the invoice or statement by sending a written request to the Supplier. The Customer acknowledges that the Supplier will charge a \$5 service fee for the delivery of paper copies of invoices or statements ("**Service Fee**") and agrees to pay such fee on demand. The Supplier may vary the Service Fee to reflect changes in administration costs from time to time by written notice to the Customer.

- (g) Where the Supplier submits an E-invoice to the Customer's nominated email address, the E-invoice will be deemed to have been received by the Customer on the date it was sent unless the Supplier receives a notification that the email did not reach its intended recipient and the records of the Supplier will be conclusive in this regard.
- (h) It is the Customer's responsibility to ensure that the contact information provided to the Supplier is current and accurate including the Customer's nominated email address, which the Supplier will use to submit the E-invoice. The Customer agrees to promptly notify the Supplier of any changes to the Customer's contact information.
- (i) Unless otherwise agreed to by the Supplier, the only accepted means of paying accounts will be by cash, bank cheque, BPAY, Visa, Mastercard, American Express, or electronic funds transfer.
- (j) A payment surcharge is payable by the Customer if accounts are paid using Visa, Mastercard or American Express credit accounts or accounts using contactless payments (ie: PayWave, PayPass). The payment surcharge is a percentage of the amount being paid and varies depending on the payment method used. The current surcharge rate will be notified by the Supplier in the 'Monthly Payment Statement', 'E-Invoice' or any other document from the Supplier before the payment is due. The payment surcharge is payable at the same time as the account to which it relates is due.
- (k) Payments received by the Supplier will be applied first in payment of interest and any costs of and incidental to debt recovery and any amounts payable pursuant to clause 4(j) and then in reduction of the principal.
- (l) Payments received without remittance advice will be applied first to the oldest balance owing by the Customer.

5. ACCOUNT TERMS

- (a) Until the Supplier confirms that a credit facility has been granted to the Customer, all goods and services must be paid for on a cash on delivery or performance basis. If a credit facility has been granted, unless otherwise agreed in writing by the Supplier, the Supplier will issue a tax invoice for the goods and services and the Customer will pay for all goods delivered or collected and services performed in any calendar month on or before the last trading day in the following month.
- (b) Credit extended to the Customer for all goods sold and services performed will be made in accordance with the Credit Terms. In all other respects, the Conditions will apply.
- (c) If the Customer does not pay the Supplier by the due date, the Customer will pay interest on monies due, charged on a daily basis at the Interest Rate from the due date for payment until the actual date of payment. If the Customer has an account with the Supplier, the Supplier may debit the Customer's account monthly or at such other times it chooses for such interest and it will be payable together with the overdue amount. The parties agree that any such interest is a genuine pre-estimate of the loss that will be suffered by the Supplier for late payment.

- (d) If the Customer is in default of any payment, the Customer will pay any legal costs (on a full indemnity basis), stamp duties, any bank charges or merchant fees or like charges levied on the Supplier by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying the Supplier any amounts on any account and any other expenses payable of and incidental to the performance or enforcement of or any litigation on the Contract or any credit application or any security documents signed by the Customer or any Guarantor together with any other collection costs and dishonoured cheque fees.
 - (e) The Customer is liable for all purchases made under its account number and/or account name. It is not the responsibility of the Supplier to confirm authority for the purposes of supplying goods or services to the Customer, its agent(s) or those who the Supplier deems to be its agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of their account number or name.
 - (f) If the Customer's account is overdue by 5 days or more following the due date for payment, the Supplier may in its absolute discretion charge a late payment administration fee ("**Late Payment Fee**"). The Late Payment Fee will be \$10 per month or such lesser amount as determined by the Supplier. The Supplier may debit the Late Payment Fee to the Customer's account annually in advance or at such other times as the Supplier determines.
- 6. PERSONAL PROPERTY SECURITIES ACT**
- (a) The Customer agrees that the Conditions may create a PMSI in the goods (and their proceeds) supplied presently and in the future by the Supplier to the Customer and a security interest in the personal property of the Customer.
 - (b) The Customer agrees to do all things necessary and execute all documents reasonably required to register the security interests granted by the Customer under the Conditions and to ensure that the Supplier acquires perfected security interests under the PPSA.
 - (c) The Customer will, upon demand, pay all of the Supplier's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the Supplier's security interests and all other costs associated with protection and enforcement of the Supplier's security interests created by the Conditions or by undertaking an audit under the provisions of the PPSA which the Supplier considers reasonably necessary in order to protect its legitimate interests under the Contract, or the repossession of the goods the subject of the Conditions or the exercise, enforcement or preservation of any right or interest under the Conditions or any contract that the Supplier has with the Customer.
 - (d) This PMSI does not lose its priority as a result of the renewal, refinancing, consolidation or restructure of the subject matter of the Conditions and any purchase money obligations.
 - (e) The Customer waives its rights under the following provisions of the PPSA, to the extent that it is permitted by Law to:
 - (i) receive a notice of intention of removal of an accession (s95);
 - (ii) receive a notice that the Supplier has determined to enforce its security interest in accordance with land law (s118);
 - (iii) receive a notice of enforcement action against liquid assets (s121(4));
 - (iv) receive a notice of disposal of goods by the Supplier purchasing the goods (s129);
 - (v) receive a notice to dispose of the goods (s130);
 - (vi) receive a statement of account following disposal of the goods (s132(2));
 - (vii) receive a statement of account if no disposal of the goods, six monthly (s132(4));
 - (viii) receive notice of any proposal by the Supplier to retain the goods (s135(2));
 - (ix) object to any proposal by the Supplier to either retain and dispose of the goods (s137(2));
 - (x) redeem the goods (s142);
 - (xi) reinstate the security agreement (s143); and
 - (xii) receive a notice of any verification statement (s157(1) and 157(3)).
- (f) To the extent permitted by the PPSA, the Conditions exclude any provisions of the PPSA which may be excluded in the Supplier's discretion and which would otherwise confer rights on the Customer.
 - (g) The Customer further agrees that where the Supplier has rights in addition to those under Parts 2.2 and 4 of the PPSA, those rights will continue to apply.
 - (h) The Customer's right to possession of goods still owned by the Supplier under the Conditions will cease if:
 - (i) where the Customer is an individual, the Customer commits an act of bankruptcy;
 - (ii) where the Customer is a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Customer's assets, any proceedings are instituted for winding up of the Customer or the Customer enters into a Deed of Company Arrangement;
 - (iii) the Customer ceases or threatens to cease conducting business in the normal manner or applies for deregistration or receives a deregistration notice;
 - (iv) any cheque the Customer provides to the Supplier or any Fletcher Group Member is dishonoured for payment;
 - (v) the Customer fails to comply with any demand for payment issued by the Supplier or any Fletcher Group Member for an amount which is overdue under the Contract; or
 - (vi) the Customer materially breaches any of the Conditions and/or any other agreement between the Supplier or any other Fletcher Group Member and the Customer.
 - (i) The Customer expressly and irrevocably agrees that, until such time as title in the goods passes to the Customer, if an event set out in clause 6(h) occurs, the Supplier may require the Customer to return the goods to it on demand and is entitled to enter any premises where the goods supplied by the Supplier are located to repossess, remove and sell such goods. The Customer (its successors and assigns, including any external manager or administrator) will not object to the Supplier, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the goods pursuant to the Conditions including any claims brought by third parties.
 - (j) The Customer agrees that repossession and retention of the goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Customer as is equivalent to the Supplier's estimation of the market value of the goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Supplier has on the value of the goods recovered.

- (k) Until ownership of the goods passes, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.
- (l) The Customer agrees not to change the Customer name or undertake any changes to any documents that the Supplier has registered, requires to be registered or are capable of being registered without the prior written consent of the Supplier.

7. FORCE MAJEURE EVENT

- (a) A party is not liable for any failure to observe its obligations under this Contract where such failure is wholly or substantially due to a Force Majeure Event provided that the party seeking to rely on the benefit of this clause:
 - (i) as soon as reasonably practicable, notifies the other party of the extent to which it is unable to perform its obligations; and
 - (ii) uses its best endeavours to mitigate the adverse effects of the Force Majeure Event and perform its obligations under this Contract as quickly as possible.
- (b) Where the Force Majeure Event prevents a party from performing a material obligation under this Contract for a period in excess of 60 days, then the other party may by notice terminate this Contract and/or any purchase order, which will be effective immediately, unless otherwise stated in the notice.

8. DEFAULT

If:

- (a) there is any default or failure by the Customer in making a payment to the Supplier and the Customer fails to make such payment with a further 5 days of the date for payment; or
- (b) the Customer fails to take delivery of the goods; or
- (c) an administrator, liquidator or provisional liquidator or external manager is appointed in respect of the Customer; or
- (d) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer; or
- (e) the Customer goes into bankruptcy or is wound up; or
- (f) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due; or
- (g) subject to clause 8(a), there is a material breach by the Customer of the Contract or any other agreement between the Customer and the Supplier or any other Fletcher Group Member,

then:

- (h) all monies payable by the Customer to the Supplier may, at the Supplier's election, become immediately due and payable notwithstanding the due date for payment will not have expired; and
- (i) the Supplier and any Fletcher Group Member may, without prejudice to any other rights it may have, do any or all of the following:
 - (i) suspend or withdraw any credit facilities which may have been extended to the Customer;
 - (ii) immediately terminate or suspend the whole or any outstanding part of any Contract;
 - (iii) withhold any further delivery of goods or performance of services;

- (iv) in respect of goods already delivered, and which title has not passed to the Customer, require the Customer to return the goods to it on demand or enter onto the Customer's premises to recover and resell the goods for its own benefit;
- (v) recover from the Customer the cost incurred by the Supplier for materials or goods acquired for the purpose of future deliveries of goods or the performance of services which the Supplier will not otherwise be able to recover from refunds or future sale to other customers;
- (vi) exercise such rights as are afforded to the Supplier under the PPSA; and
- (vii) register a default with any credit reference facility.

If the Contract is a Consumer Contract or Small Business Contract and either:

- (j) an administrator, liquidator, provisional liquidator or external manager is appointed in respect of the Supplier;
- (k) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Supplier; or
- (l) the Supplier commits a breach of a material term of the Contract which is not rectified within 5 days of such breach,

the Customer may immediately terminate or suspend the whole or any outstanding part of any Contract.

9. DELIVERY

- (a) Goods will be delivered, or deemed to be delivered, when they are delivered to the delivery place nominated by the Customer. If no such address is nominated, then delivery will be deemed to occur at the time when the goods are ready for collection at the Supplier's premises.
- (b) The Customer will pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates as at the date of dispatch. If there is no current rate, then a reasonable delivery charge will be paid by the Customer.
- (c) The Supplier reserves the right to charge the Customer a reasonable fee for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.
- (d) The Customer authorises the Supplier to deliver goods to the place nominated by the Customer and to leave the goods at such place whether or not any person is present to accept delivery. Subject to the other terms of the Contract, the Supplier will not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- (e) The Supplier will not be obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement will be conclusive evidence of the Customer's acceptance of the goods delivered.
- (f) Any times quoted for delivery are estimates only and the Supplier will not be liable to the Customer for any failure to deliver or for delay in delivery of goods or performance of services occasioned by any cause whatsoever whether or not beyond the control of the Supplier provided such goods are delivered and services performed (as applicable) within a reasonable time.

- (g) Provided delivery or performance (as applicable) is made within a reasonable time, the Customer will not be relieved of any obligation to accept or pay for goods or services by reason of any delay in delivery or performance.
- (h) The Supplier reserves the right to deliver goods by instalments and each instalment will be deemed to be sold under a separate Contract. Subject to clause 9(g), failure to deliver any instalment, or deliver any instalment on time, will not entitle the Customer to repudiate the Contract in whole or in part.
- (i) The Supplier will deliver goods to a ground floor location only at a nominated delivery place that is safely accessible from a location where the delivery vehicle can park (without incurring a parking charge or otherwise). This includes smooth, stable ground that can be safely traversed with a trolley or walked with an unobstructed view. Failure to nominate such a delivery place within a reasonable time may result in delivery delays, return of the goods to the Supplier's premises (at the Customer's cost), the Supplier declining delivery and requiring Customer pick up from the Supplier's premises or additional delivery charges.

10. PROPERTY AND RISK

- (a) Risk in the goods ordered by the Customer will pass to the Customer as soon as they are collected from the Supplier's premises, or delivered by the Supplier to the Customer's nominated delivery location or to the Customer's agent.
- (b) Property in and title to the goods will not pass to the Customer until those goods and all other amounts owed to the Supplier by the Customer under the Contract have been paid for in full and until then:
 - (i) the Customer will hold the goods as fiduciary and bailee for the Supplier;
 - (ii) the goods must be stored separately and in a manner enabling them to be identified as goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product; and
 - (iii) the Customer may sell the goods in the ordinary course of its business as bailee for the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds.
- (c) The Customer will insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Customer whichever occurs first and the Supplier will be entitled to call for details of the insurance policy. Excluding Consumer Contracts and Small Business Contracts, if the Customer does not insure the goods or fails to supply details of its insurance policy, the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the goods supplied to the Customer.

11. SPECIAL ORDERS AND SPECIFICATIONS IN GENERAL

- (a) The Customer warrants to the Supplier that all drawings and specifications and other design information provided to the Supplier for the manufacture of special orders or tooling are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of a third party.
- (b) Subject to the other terms of this Contract, the Customer acknowledges and agrees that, unless the Supplier has not commenced the special order, the Customer will:
 - (i) not be entitled to a refund for a cancellation of any special order for customised or bespoke products that have been accepted by the Supplier and such acceptance is communicated to the Customer; and

- (ii) be liable to pay the Supplier for the balance due under the special order on demand by the Supplier for the fulfilment of the special order by the Supplier.

12. RETURN OF GOODS - CONSUMERS

If the Customer is a Consumer, the provisions of this clause 12 apply:

- (a) Subject to clause 12(e), unless agreed in writing by the Supplier, the Supplier will not accept the return of goods. Goods accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier and recoverable from the Customer.
- (b) The proof of purchase from the Customer must accompany all goods returned to the Supplier.
- (c) The goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage in accordance with the Australian Consumer Law. The Customer is entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The Customer is entitled to have services re-supplied or be paid for the cost of having the services re-supplied if the services do not comply with the guarantees.
- (d) The guarantees under the Australian Consumer Law are given by the Supplier.
- (e) If the Customer believes the goods or services do not comply with the statutory guarantees, they must contact the Supplier and the parties may make arrangements for the return of the goods. Any returned goods must be accompanied by proof of purchase. If the Supplier agrees that the goods or services do not comply with the statutory guarantee the Supplier will refund the costs of returning the goods to the Supplier and, in all other respects, act in accordance with its obligations under the Australian Consumer Law.
- (f) Subject to clause 12(d), all other terms, representations, warranties, guarantees and conditions that might otherwise be granted or implied by Law are expressly excluded to the maximum extent permitted by Law, unless agreed by the Supplier in writing. The Supplier does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between the Supplier and the Customer by Law.

13. RETURN OF GOODS (NON CONSUMERS)

If the Customer is not a Consumer, the provisions of this clause 13 apply:

- (a) Unless agreed in writing by the Supplier, the Supplier will not accept the return of goods. Goods accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Supplier and debited to the credit account of the Customer.
- (b) The proof of purchase from the Customer must accompany all goods returned to the Supplier.
- (c) All claims for the Supplier's failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to the Supplier within fourteen (14) days from the date of delivery of goods or performance of services. If the Customer fails to provide such notice then the Customer will be deemed to have accepted the goods and services.

- (d) All terms, representations, warranties and conditions that might otherwise be granted or implied by Law are expressly excluded to the maximum extent permitted by Law, unless the Supplier agrees in writing. The Supplier does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between the Supplier and the Customer by Law.
- (e) The Supplier's liability for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one of the following:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of providing replacement goods or of acquiring equivalent goods;
 - (iv) the payment of the cost of having the goods repaired; or
 - (v) in the case of services, the re-supply of the services or paying for the cost of re-supplying the services.

14. INSTALLATION INDEMNITY

Without limiting clauses 18(a) and (b), the Customer indemnifies the Supplier for any loss, cost, damage or expense suffered by the Supplier arising from any failure to install the goods in accordance with their applicable installation instructions and manuals provided with the goods or to operate the goods in accordance with their applicable operation instructions and manuals provided with the goods, or in connection with the negligence of the Customer including in relation to the installation or operation of the goods.

15. PRIVACY

- (a) The Customer acknowledges and agrees that the Supplier may collect Personal Information and credit information about the Customer and its directors, officers, partners and the Guarantors (each a "Relevant Party").
- (b) The Supplier's Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters ("**Supplier's Policies**") are available on its website or upon request to the Supplier and form part of these Conditions.
- (c) The Supplier's web site may be hosted, or some data may be stored, overseas for reasons of uniformity and convenience for the Fletcher Group. All Personal Information and credit information derived from Australia will still be treated in accordance with the Supplier's Policies while being stored overseas.
- (d) In accordance with the Supplier's Policies, the Customer agrees that the Supplier may use or disclose information to the Fletcher Group and to third parties as set out in the Supplier's Privacy Policy.
- (e) The Customer warrants to the Supplier that it has obtained the consent of each of the Relevant Parties to the collection, use and disclosure of their Personal Information and credit information by the Supplier in accordance with this clause 15 and the Supplier's Policies.

16. FITNESS FOR PURPOSE

If:

- (a) the Customer is not a Consumer; and
- (b) the Contract is not a Consumer Contract or a Small Business Contract,

then the Customer agrees that:

- (c) it does not rely on the skill or judgement of the Supplier in relation to the suitability of any goods for a particular purpose; and
- (d) any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.

If:

- (a) the Customer is a Consumer; and
- (b) the Contract is a Consumer Contract or a Small Business Contract,

then the Customer acknowledges and agrees that:

- (c) it must install the goods in accordance with their applicable installation instructions and manuals provided with the goods or to operate the goods in accordance with their applicable operation instructions and manuals provided with the goods; and
- (d) any advice, recommendation, information or assistance provided by the Supplier is provided in good faith, relying upon the accuracy and completeness of information provided by Customer to Supplier.

17. GST

- (a) Any expression used in this clause or clause 4(a) and which is defined in the "A New Tax System, (Goods and Services Tax) Act 1999" has the same meaning in clause 4(a) and this clause 17.
- (b) With the exception of any amount payable under this clause 17, unless otherwise expressly stated, all amounts stated to be payable by the Customer under any Contract are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with any Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with the Contract, subject to the provision of a tax invoice by the supplier to the recipient.

18. INDEMNITY

- (a) If the Customer defaults in the performance or observance of its obligations under any Contract of which these Conditions form part, then:
 - (i) the Supplier will give the Customer notice of such default and request that the Customer remedies any breach within the time stipulated in these Conditions or, if no time is stipulated, a reasonable time; and
 - (ii) if that breach is not remedied within the time stipulated in the notice, then the Customer will indemnify the Supplier in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that the Supplier has suffered arising therefrom.
- (b) The Customer's liability to indemnify the Supplier under a provision of the Contract (including these Conditions) will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by the Supplier or a breach of the Supplier's obligations under the Contract or the Supplier's breach of Law has contributed to the claim, loss, damage, or cost which is the subject of the indemnity.
- (c) Each indemnity in a Contract is a continuing obligation separate and independent from the Customer's other obligations and survives the termination or performance of any Contract of which these Conditions form part.
- (d) For each indemnity in a Contract, the Supplier will take steps to mitigate its loss and damage and act reasonably in relation to the applicable default by the Customer.
- (e) To the extent permitted by law, neither the Customer or Supplier are liable to the other for:

- (i) any loss, cost, damage or expense to the extent that it is for indirect, special, economic or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every plaintiff in a like situation would suffer; and
- (ii) any loss of revenue, business or profits of any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property.

19. LAWS TO GOVERN PROVISIONS OF AGREEMENT

- (a) Unless varied by notice in writing by the Supplier, each Contract will be governed by and construed in accordance with the laws of Queensland. The parties submit to the exclusive jurisdiction of Brisbane, Queensland.
- (b) The parties agree that proceedings may be commenced in any such Court of Queensland and consent to that Court having jurisdiction by virtue of clause 19(a).

20. NOTICE

- (a) Notices to be given by the Customer to the Supplier may be delivered personally or sent to the National Credit Manager of the Supplier at the Supplier's address at **1051 Nudgee Road, Banyo, Queensland 4014** and, unless the contrary is proved, notice will be taken as delivered on the third business day following posting.
- (b) Notices to be given to the Customer by the Supplier may be delivered personally or sent to the last address supplied by the Customer and, unless the contrary is proved, notice will be taken as delivered on the third business day following posting. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

21. SEVERANCE

In the event that the whole or any part or parts of any provisions in any Contract should be held to be void or unenforceable in whole or in part such provision or part thereof will to that extent be severed from that Contract but the validity and enforceability of the remainder of that Contract will not be affected.

22. SUB-CONTRACTING

The Supplier reserves the right to sub-contract the manufacture and/or supply of the goods or services or any part thereof to a third party.

23. GENERAL

- (a) Excluding Consumer Contracts and Small Business Contracts, the Supplier will be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever.
- (b) The Supplier may waive any right or remedy it has under the Contract at any time and will notify the Customer in writing of any waiver.
- (c) The failure of the Supplier to exercise a right or remedy, or any delay by the Supplier in exercising a right or remedy, or the exercise by the Supplier of only part of a right or remedy, or the granting of any indulgence by the Supplier in favour of the Customer does not:
 - (i) affect the Supplier's rights against the Customer;
 - (ii) constitute a waiver of any term or condition; or
 - (iii) prohibit the Supplier from exercising that right or remedy in relation to that breach or any other breach.
- (d) A waiver of a breach of a term or condition does not constitute a waiver of another breach of the same term or any other term.

- (e) The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.
- (f) The Customer must not do, permit or procure anything which does or may damage or harm the Supplier's reputation, goodwill, and brand positioning, or which does or may bring the Supplier into disrepute. If the Contract is a Consumer Contract or Small Business Contract, then the Supplier must not do, permit or procure anything which does or may damage or harm the Customer's reputation, goodwill, and brand positioning, or which does or may bring the Customer into disrepute.

24. ANTI-CORRUPTION

- (a) The Customer agrees to comply with the Anti-Corruption Law and must not commit any act or omission which causes or would cause it or the Supplier to breach, or commit an offence under, any Anti-Corruption Laws.
- (b) The Customer warrants and represents that it has not been convicted of any offence, and has not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence, under Anti-Corruption Laws.
- (c) The Customer must, to the extent permitted by Law, promptly notify the Supplier in writing if it becomes aware at any time during the term of any Contract that any of the representations or warranties in clause 24(b) are, or might reasonably be expected to be, no longer correct.

25. ELECTRONIC EXECUTION

Each party consents and agrees that this Contract may be formed through the use of an online system such as a web-based portal, or by way of email or other electronic means, and in each case it must be considered an original and each party is legally bound by it as if the Contract was delivered as an original document with original signatures.