

PBK (WA) PTY LTD – Terms & Conditions of Trade

The Client has agreed to purchase Goods from the Company in accordance with the following Terms and Conditions:

1. Definitions

- 1.1. "Attachment" has the same meaning as it is given in section 19 of the *Personal Property Securities Act 2009*.
- 1.2. "Customer" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3. "Company" means Prime Roofing WA, its employees and its agents.
- 1.4. "Contract" means any contract or agreement, whether formal or informal, whether written, oral, or partly written and partly oral, formed between the Customer and the Company to supply Goods, or in accordance with clauses 6.1 to 6.7.
- 1.5. "Financing Statement" has the same meaning as it is given in section 10 of the *Personal Property Securities Act 2009*.
- 1.6. "Goods" means all Goods or Services supplied by the Company to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.7. "Price" means the Price payable for the Goods as agreed between the Company and the Customer in accordance with clause 7 below.
- 1.8. "Prime Roofing WA" means PBK (WA) PTY LTD (ACN 140 087 850) ATF the PBK Unit Trust (ABN) 80 149 604 678), its successors and assigns or any person acting on behalf of and with the authority of PBK (WA) PTY LTD (ACN 140 087 850) ATF the PBK Unit Trust (ABN) 80 149 604 678).
- 1.9. "Quotation" means a quote for Goods issued to the Customer by the Company.
- 1.10. "Security Interest" has the same meaning as it is given in section 12 of the *Personal Property Securities Act 2009*.
- 1.11. "Secured Party" has the same meaning as it is given in section 10 of the *Personal Property Securities Act 2009*.
- 1.12. "Terms and Conditions" means the Company's Terms and Conditions set out herein.
- 1.13. "Verification Statement" has the same meaning as it is given in section 155 of the *Personal Property Securities Act 2009*.
- 1.14. "Writing" means hard copy, signed by a person authorised in writing, or electronic, transmitted by a person authorised in writing.

2. Operation

- 2.1. Any Agreement shall be upon these Terms and Conditions and these shall operate to the exclusion of any Terms and Conditions to the contrary effect expressed in any of the Customer order forms or others documentation and shall supersede all prior Arrangements.
- 2.2. The continued operation of these Terms and Conditions shall not be affected by any repudiation of any Agreement or transaction relating to the Products and/or Services between the Company and the Customer.

3. Acceptance

- 3.1. The Customer agrees that it is not entitled to any credit facilities until it receives written notice from the Company stating that credit facilities have been given and specifying these Terms and Conditions apply.
- 3.2. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms and Conditions if the Customer places an order for or accepts delivery of the Goods.
- 3.3. These Terms and Conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.
- 3.4. No provision has been made in the Quotation to supply or erect scaffolding to any section of the construction. Should any trade statutory authority insist upon scaffolding for roofing then this is to be supplied and erected by the Client.

4. Change in Control

- 4.1. The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

5. Quotations and Pricing

- 5.1. The Company may at any time and at its absolute discretion accept or reject in whole or in part any request from the Customer for a Quotation and any Quotations given do not involve any obligations by the Company.
- 5.2. Quotations shall lapse without notice after 30 days from their date of issue by the Company, unless the Company specifies otherwise in writing. Any Quotation may be withdrawn earlier by notice from the Company at its absolute discretion.
- 5.3. The Company reserves the right to withdraw, change or re-issue a Quotation if supply of the quoted Goods does not start within 30 days after the date of the Quotation.
- 5.4. The Company reserves the right to change the pricing in the Contract for the whole or any part of the Contract if:
 - a) Supply of the quoted Goods does not start within 30 days after the date of the written order acknowledgement;
 - b) Supply under the Contract is stopped or suspended for more than 30 days;
 - c) Supply under the Contract is changed in any way before, during or after commencement of supply, including but not limited to re-design of the project, the start date of supply, the completion date of supply and the agreed rate of supply of the Goods; or
 - d) Supply under the Contract has not been completed within twelve (12) months of the date of Quotation.
- 5.5. Where the Quotation has been based on critical dimensions supplied by the Customer, once on site, any variation to those dimensions will mean a hold point and the Company will have the right to exercise the following:
 - a) Estimate the difference and process as a variation; or
 - b) Re-estimate the total project price and work method for formal acceptance by the Customer prior to restarting the supply of Goods.
- 5.6. The price quoted is subject to the Customer ordering the whole quantity of the Goods described in the Quotation. If the Customer orders less than the whole quantity of Goods specified in the Quotation, then the Company reserves the right to revise the pricing for such Goods.

5.7. Unless otherwise agreed in writing, the price charged for Goods is the price applying at the date of dispatch. Any price indications or price lists are subject to alteration in accordance with these Terms and Conditions.

6. The Contract

- 6.1. An order of offer to purchase Goods can be made by the Customer in writing or verbally.
- 6.2. An order or offer made by the Customer does not constitute a binding contract until the Company has accepted such order or offer in accordance with these Terms and Conditions.
- 6.3. An order or offer made by a Customer is accepted by the Company only if the Company:
 - a) Formally accepts the order by written acknowledgment; or
 - b) Delivers the ordered Goods described in the order or offer, whichever occurs first.
- 6.4. The Customer is not entitled to cancel or change part or all of any order or offer accepted by the Company, unless the Company consent in writing.
- 6.5. The Contract when created, is wholly documented by:
 - a) Any specific terms agreed by the parties;
 - b) The Quotation (if applicable);
 - c) These Terms and Conditions; and
 - d) The credit terms applying to the Customer (if applicable).
- 6.6. Previous dealings between the Company and the Customer have no effect on the Contract.
- 6.7. Trade custom and/or trade usage is superseded by the Contract and is not applicable in interpretation of the Contract.

7. Price and Payment

- 7.1. At the Company's sole discretion the Price shall be either:
 - a) as indicated on any invoice provided by the Company to the Customer; or
 - b) the Company's quoted price (subject to clause 7.2) which will be valid for the period stated in the Quotation or otherwise for a period of thirty (30) days.
- 7.2. The Company reserves the right to change the Price if a variation to the Company's Quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation due to unforeseen circumstances, or due to fluctuations in the currency exchange rate, or due to any changes in quantities or measurements, or as a result of increases to the Company in the cost of materials and labour) will be charged for on the basis of the Company's Quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 7.3. At the Company's sole discretion a non-refundable deposit may be required.
- 7.4. Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which will be 15 days from the date of the invoice.
- 7.5. The Company reserves the right to charge additional administration fees (such as commercial credit account keeping fees) as determined by the Company from time to time.
- 7.6. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and the Company.
- 7.7. Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7.8. The Customer is not entitled to, and must not demand or hold, any sum on account of retention for completion of the Contract to be performed by the Company or against any pending or unsecured claim against the Company. If the Customer withholds any money as retention money, the Company reserves the right to withhold further supply under the Contract or any other contract between the Company and the Customer.
- 7.9. Where the Customer is a company, the company directors personally guarantee the payment of all costs and expenses referred to in clause 7.
- 7.10. The Customer and the guarantors hereby charge and mortgage in favour of the Company to secure the repayment of the debt and all monies which may become owing by the Customer to the Company hereunder all the Customer's estate and interest in property both real and personal, present and future.

8. Variations

- 8.1. Any variation to the Contract must be in writing and signed by both parties.
- 8.2. Any variations made after the signing of the Contract will incur an administration fee of \$50.00 to be charged by the Company in addition to the costs of the variation separately charged.
- 8.3. Where any variation to the Contract is necessary:
 - a) To comply with any written direction lawfully given by a person acting under a written law; or
 - b) By virtue of circumstances that could not reasonably have been foreseen by the Company at the time when the Contract was entered into. Then the Company shall be entitled to payment for such variation provided that before carrying out the work relating to the variation, the Company gives to the Customer a statement setting out the reason for, and the cost to be incurred on account of the variation, together with a copy of any written direction referred to in clause 8.1.
- 8.4. The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

9. Delivery of Goods

- 9.1. If the Company quotes the price as "ex works", the Customer must collect the Goods from the Company's nominated premises at the time notified by the Company to the Customer.
- 9.2. If the Company quotes the price as "delivered", it will deliver the Goods to the Customer's nominated site, and the Customer must:

- a) Nominate the site for delivery in writing to the Company prior to the delivery (**Nominated Site**);
 - b) Ensure that an area is available which complies with all applicable occupational health, safety and welfare legislation; and
 - c) Ensure that its representative is available at the time of delivery to acknowledge delivery by signing a delivery receipt.
- 9.3. If the Company's obligation is to deliver the Goods, and the Customer or its representative is not in attendance when the Goods are delivered at the Customer's nominated site, the Company reserves the right to unload the Goods and leave the Goods at the nominated site.
- 9.4. Where the Customer does not accept delivery of Goods which it has ordered from the Company when such Goods are ready for delivery or performance, the Customer is liable for any additional charges that the Company may incur for storage and/or double handling, at the Company's then current rates.
- 9.5. Goods are to be dispatched "ex works" they are deemed to be delivered at the premises of the Company when the Company notifies the Customer that the Goods are ready for collection at the Company's premises.
- 9.6. If Goods are to be delivered by the Company, they are deemed to be delivered:
- 9.6.1. If the parties agree that the Customer or the Customer's representative will unload the Goods, when the Company delivers the Goods on a truck to a site adjacent to the Customer's nominated site; or
 - 9.6.2. When the Company has unloaded the Goods at or adjacent to the Customer's site to a ground level, flat area.
- 9.7. If Goods are to be delivered by the Company then, unless otherwise provided, the Customer must at its cost unload the Goods.
- 9.8. The Company will make all reasonable efforts to have the Goods delivered to the Customer as agreed between the parties but the Company is not liable for:
- 9.8.1. Any failure or delay in delivery of part or all of the Contract for any reason; or
 - 9.8.2. Any damage or loss due to unloading or packaging; or
 - 9.8.3. Damage to property caused upon entering premises to deliver the Goods.
- 9.9. Delivery times quoted by the Company are estimates only and the Company may extend delivery times at its discretion.
- 9.10. At the Company's sole discretion the cost of delivery is included in the Price.
- 9.11. The Company may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these Terms and Conditions.
- 9.12. Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Company will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

10. Risk

- 10.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery, or deemed delivery of the Goods to the Customer in accordance with clause 9, whichever occurs first, and the Customer must insure the Goods on or before Delivery.
- 10.2. The Company will not be responsible for any claim from the Customer arising from or in any way relating to the unloading of the Goods.
- 10.3. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 10.4. If the Customer requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 10.5. If the Company's offers, agents or employees enter upon any property at the actual or implied request of the Customer, the Company accepts no responsibility for any damage suffered by the Customer or the Customer's officers, agent or employees or to the Customer's property as a result of or in connection with the Company's officers, agents or employees entering such property.
- 10.6. Where ceilings are fitted into buildings prior to sheeting it is the Customer's responsibility to provide and fit tarpaulin covers to protect those ceilings

11. Access

- 11.1. The Customer shall ensure that the Company has clear and free access to the work site at all times to enable them to undertake the works. The Company shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Company.
- 11.2. Any claims of damage to the site must be given to the Company in writing within seven (7) days of the occurrence of such damage. Such claims must then be jointly investigated by the Company and the customer and liability, if any, determined.

12. Underground Locations

- 12.1. Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2. Whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.

13. Customer Obligations

- 13.1. The Customer agrees to:
 - a) ensure that the site and system of work complies with all the regulations and Acts of Parliament and rules applicable thereto; and
 - b) carry out all the preparatory work as is necessary prior to the commencement of work or delivery of material and to ensure that the roof structure and plumbing is in conformity with all regulations and Acts of Parliament and rules applicable thereto and that the rafters and battens are level to receive sheeting and accessories; and
 - c) provide adequate vehicular access to the site; and
 - d) warrant the correctness of the details set out in the Bill of Quantities and or measurements in Quantities or measurements indicated in the sketch of the roof; and
 - e) clean up the site on completion of the works by the Company; and
 - f) specify at acceptance of the Quotation whether Sislation or anti condensation blankets are required; and

- g) indemnify the Company against all liability, loss and damage of whatsoever nature arising from or as a result of any late delivery, delay or failure to commence work promptly.

14. Title

- 14.1. The Company and the Customer agree that ownership of the Goods shall not pass until:
 - a) the Customer has paid the Company all amounts owing to the Company; and
 - b) the Customer has met all of its other obligations to the Company.
- 14.2. Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 14.3. It is further agreed that:
 - a) until ownership of the Goods passes to the Customer in accordance with clause 14.1 that the Customer is only a bailee of the Goods and must return the Goods to the Company on request.
 - b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.
 - d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.
 - e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.
 - f) the Company may recover possession of any Goods in transit whether or not delivery has occurred.
 - g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company.
 - h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

15. Personal Property Securities Act 2009 ("PPSA")

- 15.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2. Upon assenting to these Terms and Conditions in writing the Customer acknowledges and agrees that these Terms and Conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Company to the Customer.
- 15.3. The Customer undertakes to:
 - a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to;
 - b) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - i) register any other document required to be registered by the PPSA; or
 - ii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - c) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - d) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
 - e) not 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 without the prior written consent of the Company;
 - f) immediately advise the Company of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 15.4. The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms and Conditions.
- 15.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7. Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8. The Customer must unconditionally ratify any actions taken by the Company under clauses 15.3 to 15.5.
- 15.9. Subject to any express provisions to the contrary nothing in these Terms and Conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1. The Company shall be entitled at any stage during the continuance of this agreement to request such security or additional security as the Company shall in its discretion think fit and shall be entitled to withhold supply of any goods or credit arrangements until such security or additional security shall be obtained.
- 16.2. In consideration of the Company agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Terms and Conditions (including, but not limited to, the payment of any money).
- 16.3. The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 16.4. The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Customer's behalf.

17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 17.1. The Customer hereby warrants that the information comprised in the Commercial Credit Account Application and Personal Guarantee is true, accurate and correct and is supplied for the purpose of obtaining credit.
- 17.2. The Customer warrants that the persons appearing on this application are duly authorised by the Customer to apply for credit on his/her behalf.
- 17.3. The Company makes no express warranties to the Customer, except those expressly set out in these Terms and Conditions.
- 17.4. The Company warrants the quality of Goods of its own manufacture for a period of 90 days so long as:
- Defects have arisen solely from faulty materials or workmanship;
 - The Goods have not received maltreatment, inattention or interference;
 - Accessories of any kind used by the Customer are manufactured by or approved by the Company; and
 - Any defects to Goods are reported to the Company in accordance with this clause.
- 17.5. The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Company in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Company to inspect the Goods.
- 17.6. The Company will endeavour to rectify inaccuracies or short supply within seven (7) days of notification, but will not be responsible for any loss or damage (including consequential loss) however caused arising out of or resulting from such inaccuracies or short supply of Goods.
- 17.7. If, due to any cause whatsoever, the Company is unable to supply any part of the Goods by the nominated date or at all, it is entitled, at its option:
- To supply to the Customer similar Goods which in the opinion of the Company are an appropriate substitute without prior reference to the Customer;
 - Not to supply part or all of the Goods; or
 - Delay supply of part or all of the Goods.
- 17.8. Unless defects in clause 17.5 herein occur, this warranty is restricted to any one of the following, at the Company's determination:
- In the case of any Goods supplied by the Company pursuant to the Contract:
 - The replacement of the relevant Goods or supply of equivalent Goods; or
 - The repair of the Goods; or
 - After prior arrangement between the Company and the Customer, payment of the cost of replacing or repairing or having the Goods replaced or repaired; or
 - Reimbursement of some or all amounts paid by the Customer in respect of the Goods.
- 17.9. Duration of life after installation is not covered by any guarantee or warranty.
- 17.10. The Company will not be liable in any circumstances for any loss or damage whatsoever allegedly incurred and including the following:
- Conditions, warranties and terms implied by the statute or general law or custom (including, without limitation the CCA) except any implied condition or warranty the exclusion of which would contravene any statute or case this clause to be void (**Non-Excludable Condition**);
 - Alleged liability to the Customer in contract for consequential or indirect damages arising out of or in connection with these Terms and Conditions even if the Company knew they were possible or they were otherwise unforeseeable, including without limitation, lost profits and damages suffered as a result of claims by a third party;
 - Claims by the Customer in negligence for acts or omissions of the Company or its employees, Agents, or contractors arising out of or in connection with these conditions; and
 - In contract, tort, warranty, strict liability, or any other legal theory for any indirect, consequential, incidental, punitive or exemplary damages, or for any claim for loss of profits.
- 17.11. The Company is not liable for the design, lifting and/or positioning of any pre-fabricated elements at the Customer's site, including but not limited to manually tied and/or welded components.
- 17.12. Subject to clause 17.4 and Part 3-5 of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) the Company is not liable to the Customer for any loss or damage, whether direct, indirect, liquidated, special or consequential and including loss or damage arising as a result of death or personal injury, however caused (including negligent or reckless conduct or omission) which the Customer or any other person may suffer or incur and which may, without limiting the generality of the foregoing, arise directly or indirectly in respect of the Goods or in respect of any failure or omission by the Company or any of its officers, agents or employees to comply with the Contract or any obligation imposed by law.
- 17.13. Goods which are not manufactured by the Company are subject solely to the warranties (if any) specified by the manufacturers or the third party suppliers to the Company, and the Customer acknowledges that, to the extent permitted by law, the Company gives no warranties beyond such manufacturers' or suppliers' warranties.
- 17.14. The Customer acknowledges that the Company makes no representations or warranties as to the fitness or suitability for any purpose of any of the Goods described in the Quotation or Contract.
- 17.15. Except as expressly set out in these Terms and Conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these Terms and Conditions including but not limited to the quality or suitability of the Goods. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.16. If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.17. If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods.
- 17.18. If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Customer by the Company at the Company's sole discretion;
 - limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods;
 - otherwise negated absolutely.
- 17.19. Subject to this clause 17, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 17.1; and
 - the Company has agreed that the Goods are defective; and
 - the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and

- d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 17.20. Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- a) the Customer failing to properly maintain or store any Goods;
 - b) the Customer using the Goods for any purpose other than that for which they were designed;
 - c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - d) the Customer failing to follow any instructions or guidelines provided by the Company;
 - e) fair wear and tear, any accident, or act of God.
- 17.21. Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.
- 17.22. This clause 17 survives the termination or natural expiration of the Contract.

18. Default and Consequences of Default

- 18.1. Should the Customer default in the payment of any statement on due date then all monies due to the Company shall immediately become due and payable and shall be paid by the Customer within seven (7) days of the date of demand.
- 18.2. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.3. If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 18.4. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these Terms and Conditions the Company may suspend or terminate the supply of Goods to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 18.5. Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
 - b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

19. Compliance with Laws

- 19.1. The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 19.2. The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 19.3. The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 19.4. All Goods supplied and fixed by the Company shall be in accordance with the current Standard, Association of Australian Code and appropriate State or Federal legislation regulations and rules. the Company will not accept any liability or give any guarantee where supply or fixing is specified by the Client contrary to this clause.

20. Cancellation

- 20.1. If:
- a) The Customer refuses or fails to pay any amounts when due under the Contract; or
 - b) The Customer defaults in performing any of its obligations under the Contract; or
 - c) In the Company's reasonable opinion, the Customer is insolvent or suffering from financial issues including but not limited to, if the Customer is an individual, the Customer commits an act of bankruptcy, or, if the Customer is a company, it becomes an externally-administered body corporate within the meaning of section 9 of the Corporations Act 2001 (Cth) or passes a resolution to wind up; or
 - d) The Customer is in breach of the Contract, then, in addition to and without prejudice to any other rights it has by law, the Company:
 - e) Is entitled to treat the whole of the Contract as repudiated;
 - f) May refuse to supply the Goods to the Customer;
 - g) Is entitled to treat any other contract between the Company and the Customer as repudiated; and
 - h) Is entitled to claim return of any Goods in the Possession of the Customer where title has not passed to the Customer.
- 20.2. The Company may cancel any contract to which these Terms and Conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4. Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 20.5. The Customer is not entitled to terminate, suspend or cancel part or the entire Contract for any reason (including for convenience) except if the Company has failed to remedy its breach of the Contract within a reasonable period after the Customer gives it written notice of such breach. If the Customer purports to wrongly terminate or rescind part or all of the Contract or refuses to take delivery of any goods delivered in accordance with

the Contract, the Company may recover from the Customer the total amount of the order placed on the Company, less any amounts already paid by the Customer.

- 20.6. Unless agreed otherwise in writing, the Company may, by written notice, terminate the Contract 12 months after the date of the first delivery of the Goods.

21. Confidentiality and Privacy

- 21.1. The Company and the Customer agree that a Contract and any other information furnished by one party to the other pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
- Prior approval in writing has been obtained from the other party;
 - Disclosure is required by law; or
 - The information is in the public domain prior to the disclosure by the party.
- 21.2. The expression "any third party" does not include the financial or legal advisers of a party or related body corporate of a party.
- 21.3. The Customer agrees to comply and ensure that its officers, employees, agents and subcontractors comply with the *Privacy Act 1988* (Cth), as amended from time to time, and do (or refrain from doing) anything required to ensure that the Company is able to comply with its obligations under that Act.
- 21.4. The Customer shall only collect and hold information for its own use and hereby warrants that that information supplied by the Company will remain for the Customer's own use and shall not be redistributed for any reason.
- 21.5. The Customer authorises the Company to obtain from a credit reporting agency, a credit report containing information in relation to the Customer's commercial activities or commercial credit-worthiness. The Company shall comply with the *Privacy Act 1988*, as amended from time to time, and shall only use personal information, files and credit reports for the primary purpose of assessing whether or not to provide Goods to the Customer.
- 21.6. The Customer agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.
- 21.7. The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Customer.
 - The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988*.
- 21.8. The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) *Privacy Act 1988*).
- 21.9. The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and the Company or required by law from time to time):
- the provision of Goods; and/or
 - the marketing of Goods by the Company, its agents or distributors; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 21.10. The Company may give information about the Customer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer;
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 21.11. The information given to the credit reporting agency may include:
- personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Customer's application for credit or commercial credit and the amount requested;
 - advice that the Company is a current credit provider to the Customer;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - that credit provided to the Customer by the Company has been paid or otherwise discharged.

22. Construction Contracts Act 2004

- 22.1. At the Company's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the *Construction Contracts Act 2004* may apply.
- 22.2. Nothing in this agreement is intended to have the effect of contracting out of any provisions of the *Construction Contracts Act 2004* of Western Australia, except to the extent permitted by the Act where applicable.

23. General

- 23.1. The Parties agree that in the event of the Company, prior to approving credit, grants to the Customer time to pay for goods supplied then such supply shall not amount to a waiver by the Company of any of the terms of this agreement nor be construed or be taken either directly or by implication as a granting by the Company of credit facilities to the Customer and no credit facilities shall be granted unless so stated in the notice.
- 23.2. The failure by the Company to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.3. These Terms and Conditions and any contract to which they apply shall be governed by the laws of the state in which the Company has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 23.4. Subject to clause 17 the Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these Terms and Conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.5. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 23.6. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 23.7. The Customer agrees that the Company may amend these Terms and Conditions at any time. If the Company makes a change to these Terms and Conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to provide Goods to the Customer.
- 23.8. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

24. Miscellaneous

- 24.1. A notice under the Contract can only be in writing and can only be given to a party:
 - a) Personally;
 - b) By registered post to the last known place of business or residence or registered office. Such notice is deemed to be received at the time at which the letter is delivered in the ordinary course of post;
 - c) By facsimile transmission to the last known facsimile number. Such notice is deemed to be received when the sending machine confirms notice has been sent; and
 - d) By electronic transmission to the last known email address. Such notice is deemed to be received when the sending machine confirms notice has been sent.
- 24.2. The Contract is governed by the laws in the State of Western Australian and the courts of that jurisdiction have exclusive jurisdiction in connection with the Contract.
- 24.3. A party must not assign its benefits or obligations under the Contract without prior consent in writing of the other party and such other party must not unreasonably withhold its consent to an assignment.
- 24.4. A party waives a right under the Contract only by written notice that it waives that right.
- 24.5. If a provision of the Contract would, but for this clause 15.2, be unenforceable;
 - a) The provision must be read down to the extent necessary to avoid that result; and
 - b) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of the Contract.

25. Disputes

- 25.1. The parties agree not to commence proceedings in relation to any dispute arising in regard to the Contract without first having regard to the procedure set out in this clause 25.
- 25.2. Should any dispute or difference arise between the Customer and the Company in connection with the Contract, then:
 - a) The party that alleges they have suffered some loss or damage, or is otherwise aggrieved, shall serve the other party, by hand or by mail, with a Notice of Dispute in writing adequately identifying and providing details of the dispute.
 - b) Within 7 days of receipt of the Notice of Dispute, the parties must meet and take reasonable steps to resolve the dispute.
 - c) If the dispute cannot be resolved within 7 days of the meeting between the parties, then the parties agree to submit the dispute to arbitration.
 - d) If the dispute remains unresolved 14 days after service of the Notice of Dispute, the dispute must be arbitrated in accordance with this clause 25.
 - i) Arbitration shall be effected by a single arbitrator who shall be mutually agreed upon by the parties or, in the event that they fail to agree within 7 days, then the arbitrator shall be the President for the time being of the WA Chapter of the Institute of Arbitrators and Mediators Australia ("IAMA") or his appointee.
 - ii) The parties agree to submit to the arbitration procedures and guidelines adopted by the IAMA.
 - iii) The rules of evidence will not apply strictly to the arbitration, but may be considered by the arbitrator in determining the weight to be attached to each item of evidence.
 - iv) The Arbitration shall be conducted within the State of Western Australia and the Western Australian Courts have jurisdiction in respect of any legal dispute arising from these Terms and Conditions.
 - e) If the dispute is not resolved within 90 days of service of the Notice of Dispute (or any longer period as agreed to by the parties), either party who has complied with this clause may end this dispute resolution process by written notice to the other party and immediately thereafter commence court proceedings in relation to this dispute.

26. Acknowledgment of these Terms and Conditions

- 26.1. The Customer hereby acknowledges receipt of these Terms and Conditions, having read and agreed to be bound by them. The Customer accepts these Terms and Conditions in acknowledgement that they are legally binding and presently enforceable. The Customer further acknowledges that we have had the opportunity of obtaining independent legal advice and that we understand the Terms and Conditions outlined above.