

Northern Iron & Brass Foundry Pty Ltd Terms and Conditions of Sale

By submitting a credit application and/or ordering goods ("goods") or services ("services") from Northern Iron & Brass Foundry Pty Ltd (ABN 83 078 991 803) ("NIBF") the Customer agrees that the following terms and conditions of sale ("Conditions") will apply to the supply.

1. DEFINITIONS

In these Conditions, 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 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 any of 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, 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.

"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 NIBF and includes any member of the Fletcher Group that is named as the party making or accepting an order.

2. INTERPRETATION

- (a) "Including" is not a term of limitation.
- (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) The headings used do not form part of the Conditions and are for convenience only.

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 this 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 do not sign them promptly or at all.

- (b) A quotation by the Supplier 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 including an order acknowledgment 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 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 Contract (including 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) 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

- (a) Subject to these Conditions, the amount payable for goods and services will be the agreed price which will be included on the Supplier's invoice. The price is exclusive of any freight charges, packing charges, 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, vary the prices specified on the Supplier's quotation or invoice (as applicable) to reflect its new updated price list.
- (c) The Customer may consider any variation referred to in clause 4(b) (and 8(h)(i) where applicable) 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.
- (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.

5. PAYMENT TERMS

- (a) The Supplier will issue a tax invoice to the Customer for the goods and services. All goods and services must be paid for:
 - (i) on a cash on delivery or performance basis; or
 - (ii) if a credit facility has been granted, within 30 days of the end of the month in which the goods and services were supplied to the Customer or in accordance with any written credit agreement between the parties, whichever is later.
- (b) All payments must be made in Australian dollars.
- (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 solicitor/agent/client basis), stamp duties and other expenses payable in connection with the enforcement of the Contract or any guarantee or other security granted by the Customer, together with any collection costs or dishonoured cheque fees.

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.
- (d) This PMSI does not lose its priority as a result of the renewal, refinance, 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 (s.95);
 - (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 Part 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. DEFAULT

- (a) If:
 - (i) there is any default or failure by the Customer in making a payment to the Supplier and the Customer fails to make such payment within a further 5 days of the due date for payment;
 - (ii) the Customer fails to take delivery of any goods;
 - (iii) an administrator, liquidator, provisional liquidator or external manager is appointed in respect of the Customer;
 - (iv) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer;
 - (v) the Customer goes into bankruptcy or is wound-up;
 - (vi) 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;
 - (vii) subject to clause 7(a)(i), there is a material breach by the Customer of the Contract or any other agreement between the Customer and the Supplier or another Fletcher Group Member; or
 - (viii) contractual performance by either the Supplier or the Customer is delayed or prevented due to any Force Majeure Event,
 then:
 - (ix) 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;

- (x) the Supplier and any Fletcher Group Member may without prejudice to any other rights it may have do any or all of the following:
 - (A) suspend or withdraw any credit facilities which may have been extended to the Customer;
 - (B) immediately terminate or suspend the whole or any outstanding part of any Contract;
 - (C) withhold any further delivery of goods or performance of services;
 - (D) in respect of goods already delivered in 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;
 - (E) 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 sales to other customers;
 - (F) exercise such rights as are afforded to the Supplier under the PPSA; and
 - (G) register a default with any credit reference facility.

- (b) If the Contract is a Consumer Contract or Small Business Contract and either:

- (i) an administrator, liquidator, provisional liquidator or external manager is appointed in respect of the Supplier;
- (ii) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Supplier;
- (iii) contractual performance by the Supplier is prevented due to any Force Majeure Event; or
- (iv) 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.

8. DELIVERY

- (a) 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 other cause whatsoever whether or not beyond the control of the Supplier provided such goods or services are

delivered and performed (as applicable) within a reasonable time.

- (b) Provided delivery 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.
- (c) 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.
- (d) The Customer will pay to the Supplier packing, (other than the standard packing of the Supplier), 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 the Supplier may charge a reasonable amount to the Customer. The Supplier may charge a reasonable amount for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.
- (e) 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.
- (f) 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 acknowledgment will be conclusive evidence of the Customer's acceptance of the goods delivered.
- (g) The Supplier reserves the right to deliver goods by installments and each installment will be deemed to be sold under a separate Contract. Subject to clause 7(b), failure to deliver any installment or deliver any installment on time will not entitle the Customer to repudiate the Contract in whole or in part.
- (h) Where a Customer proposes to delay delivery of goods beyond the estimated delivery date, the Customer must immediately notify the Supplier. The Supplier is under no obligation to agree to any extension of the estimated delivery date. The Supplier may, as a condition of its approval to the new delivery date, by written notice to the Customer:
 - (i) vary the prices specified on the Supplier's quotation or invoice (as relevant) to reflect the Supplier's current prices and charges as at the new delivery date and clause 4(c) will apply; and

- (ii) charge the Customer for any additional costs to the Supplier for such delay including any temporary storage fees.

9. PROPERTY AND RISK

- (a) Risk in the goods ordered by the Customer will pass to the Customer as soon as they are delivered or deemed to be delivered.
- (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 goods 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 goods; 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.

10. SPECIAL ORDERS

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, comply with any relevant standards or legal or regulatory requirements, and do not infringe upon the intellectual property rights of any party including any copyright, patents, designs or trademarks of a third party.

11. RETURN OF GOODS-CONSUMERS

If the Customer is a Consumer, the provisions of this clause 11 apply.

- (a) Subject to clause 11(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 11(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.

12. RETURN OF GOODS- NON CONSUMERS

If the Customer is not a Consumer, the provisions of this clause 12 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 (time being of the essence) from the

date of delivery of goods or the 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 failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise, or for any other breach of the Contract or of a non-excludable condition or warranty, is in all cases 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.
- (f) Subject to the other terms of the Contract (including clause 12(e)) and to the extent permitted by Law, if the Contract is not a Consumer Contract or a Small Business Contract, the Supplier will not be liable to the Customer or any other person for any loss, cost, damage or expense whatsoever arising directly or indirectly as a result of or in connection with any Contract, including but not limited to loss, costs, damages or expenses arising directly or indirectly from the supply of the goods or services by the Supplier, the use or performance of the goods, a breach of any Contract (including any implied warranty, representation, term or condition in relation to the goods), 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 operation instructions and manuals provided with the goods or the negligence or willful act of the Supplier (including its employees or agents), the Customer or any third party, including in relation to the installation of the goods.

13. 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 judgment 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; or
- (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.

14. 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 requesting 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 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) Without limiting clause 14(a), 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.
- (f) To the extent permitted by law, despite any clause to the contrary in the Contract, 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 or 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.

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 the Contract.
- (c) The Supplier's website may be hosted, or some data may be stored overseas for reasons of uniformity and convenience for the Fletcher Group. All Personal Information or credit information derived from Australia will still be treated in accordance with the Supplier's Privacy Policy 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. GST

- (a) In the Conditions, the expressions "GST", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the *A New Tax System, (Goods and Services Tax) Act 1999*.
- (b) With the exception of any amount payable under this clause 16, 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.

17. TRUST AND TRUSTEES

Where the Customer is a trustee:

- (a) the Customer agrees to produce a stamped copy of the trust deed (with all amendments) if and when requested by the Supplier; and
- (b) the Customer warrants that it has full power and authority to enter into each Contract on behalf of the trust and that it will be bound by each Contract both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into any credit agreement with the Supplier.

18. LAWS TO GOVERN PROVISIONS OF AGREEMENT

Each Contract will be governed by and construed in accordance with the laws of Queensland. The parties submit to the exclusive jurisdiction of the courts of Queensland.

19. NOTICE

- (a) Notice to be given by the Customer to the Supplier may be delivered personally or sent by electronic transmission to the credit manager of the Supplier at the Supplier's address as follows:

PO Box 5160
Brendale QLD 4500

and unless the contrary is proved will be taken as delivered on the third business day following posting.

- (b) Notice 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 will be taken as delivered on the third business day following posting. Invoices and statements are deemed received by the Customer on the third business day after posting by ordinary prepaid post.

20. 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.

21. 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.

22. CERTIFICATE

If the Contract is not a Consumer Contract or a Small Business Contract, a statement in writing signed by the Supplier's credit manager stating monies payable by the Customer to the Supplier will be prima facie evidence of the amounts so payable and binding on the parties in the absence of manifest error.

23. TOOLING

Where tooling is manufactured for use by the Supplier (notwithstanding that the Customer may have contributed to the cost of development or manufacture of such tooling), the tooling will, unless otherwise agreed, be and remain the property of the Supplier (including all intellectual property rights in the tooling) and the Supplier will be entitled to deal with such tooling as it so determines.

24. PACKING

- (a) The Supplier retains the right of possession of any Supplier owned boxes, pallets or skips used for delivery of the goods. The Customer agrees to be responsible for the cost of replacing any boxes, pallets or skips not returned in good condition (subject to fair wear and tear and any damage caused prior to delivery) to the Supplier within 14 days of delivery of the goods.

- (b) If packing is charged for and is returnable, an allowance will only be made for the return of such packing when it has been received by the Supplier in good condition (subject to fair wear and tear and any damage caused prior to delivery).

25. GENERAL

- (a) 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 a 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 indulgency 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 or 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.

26. 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 an investigation or enforcement proceedings by an 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 26(b) are, or might reasonably be expected to be, no longer correct.