

## TERMS AND CONDITIONS OF SALE

### THE PARTIES AGREE:

#### 1. DEFINITIONS

1.1. In these Terms unless inconsistent with the context or subject matter:

- (a) **“Account Customer”** means a Customer who has applied for a credit account which the Supplier has accepted and has entered into the Supplier’s Commercial Credit Application Agreement including the Guarantee and Indemnity contained therein.
- (b) **“ACL”** means the Australian Consumer Law (as set out in Quote 2 to the Competition and Consumer Act 2010 (Cth));
- (c) **“Claim”** means any claim, action, demand or proceeding however arising (including under contract, statute, common law or equity);
- (d) **“Customer”** means the client or customer identified in the Quote, and if there is more than one client or customer named, is a reference to each client or customer jointly and severally;
- (e) **“Customer’s Address for Service”** means the email address or address of the Customer set out in the Quote;
- (f) **“Customer-owned Tooling”** means all tools and equipment necessary to produce individual components to assemble a final product, and is paid for and owned by the Customer.
- (g) **“Force Majeure”** means an act, omission or circumstance over which the Supplier could not reasonably have exercised control;
- (h) **“Goods”** means any goods (such as window packers) supplied by the Supplier to the Customer from time to time;
- (i) **“GST”** has the meaning given to it in the GST Act;
- (j) **“GST Act”** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (k) **“Insolvency Event”** means:
  - i) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
  - ii) a liquidator or provisional liquidator is appointed in respect of a person;
  - iii) any application (that is not withdrawn or dismissed within seven days is made to a court for an order, or an order is made, or a meeting is convened or a resolution is passed, for the purpose of (i) appointing a person referred to in paragraph i) or ii) of this definition; (ii) winding up or deregistering a person; or (iii) proposing or implementing a scheme of arrangement of a person, other than with the prior approval of the Agent under a scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
  - iv) any action, proceedings, procedure or step is taken for the purpose of implementing or agreeing (i) a moratorium of any indebtedness of a person; (ii) any other composition, compromise, assignment or arrangement with any creditor or creditors of a person; or (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of its creditors or a trustee;
  - v) any event occurs in relation to a person in any jurisdiction that is analogous, or has a substantially similar effect, to those set out in paragraphs i) to iv) of this definition (inclusive); or
  - vi) a person is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts

- (l) **“Loss”** includes (without limitation) the following, whether direct or indirect, special or consequential in nature:
- i) loss, damage, costs (including legal costs on a solicitor and own client basis), action or expense of any kind; and
  - ii) to the extent not covered in the preceding subclause, loss of profits, opportunity, use, revenue, goodwill, bargain, production, sales turnover, income, reputation (or damage to it), employment, corruption or destruction of data, customers, loss relating to or in connection with any other contract, business or anticipated savings, reduction in value, any delay or financing costs or increase in operating costs, or any other financial or economic loss; and
  - iii) anything referred to in the preceding subclauses relating to or arising out of or in connection with:
    - A. personal injury (including death or disease) to the Customer;
    - B. personal injury (including death or disease) to any third party; or
    - C. loss of or damage to the property of the Supplier, the Customer or any third party; and
    - D. a breach or non-compliance by the Supplier or the Customer with any law;
- (m) **“Personnel”** means the directors, officers, employees, contractors, suppliers, advisers or agents of a party, and in the case of the Customer, includes without limitation any person engaged by them and any of their Personnel;
- (n) **“Plans”** means any drawings, specifications, documents, instructions or information (including verbal instructions or descriptions) provided by the Customer (or its Personnel) to the Supplier or otherwise provided by the Supplier to the Customer;
- (o) **“PPSA”** means the Personal Property Securities Act 2009 (Cth) and its regulations as amended and in force from time to time;
- (p) **“PPS Register”** means the Personal Property Securities Register established under the PPSA;
- (q) **“Quote”** means any quote or price list provided by the Supplier to the Customer;
- (r) **“Services”** means any services supplied by the Supplier to the Customer, from time to time and includes without limitation the supply of the Goods (and the Goods themselves);
- (s) **“Site”** means the principal place of business at which the Services are to be provided or Goods are to be manufactured, located at 8 Ivedon Street, Banyo QLD 4014, Australia;
- (t) **“Supplier”** means QLDPLAS Pty Ltd ABN 78 661 964 165;
- (u) **“Supplier’s Address for Service”** means the registered address, located at 136 Zillmere Road, Boondall QLD 4034, Australia;
- (v) **“State”** means the state or territory from which the Supplier supplies the Services;
- (w) **“Tax Invoice”** has the same meaning as in the GST Act;
- (x) **“Terms”** means these Terms and Conditions of Sale.

1.2. In these Terms unless inconsistent with the context or subject matter:

- (a) References to a party to any agreement or document include that party’s permitted assignees and successors, including executors and administrators and legal representatives.
- (b) Words denoting the singular include the plural and words denoting the plural include the singular.
- (c) Words denoting any gender include all genders.

The word ‘person’ includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government Agency. Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.

- (d) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.
- (e) No provision of these Terms will be construed adversely to a party because that party was responsible for the drafting of that provision or these Terms.
- (f) If a period of time begins on a given day or the day of an act or event, the period is to be calculated exclusive of that day.
- (g) A reference to time is a reference to time in the capital city of the relevant State.
- (h) A reference to a day is a reference to a day in the capital city of the relevant State.
- (i) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (j) If any act is required to be performed under these Terms on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.
- (k) A reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.
- (l) Where these Terms are agreed on behalf of a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- (m) A reference to writing or written includes communication by email.
- (n) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## **2. APPLICATION**

- 2.1. These Terms, including any Quote, will become binding on the Customer on the earlier of the date that a) the Customer indicates that they accept the Quote; b) the Customer instructs the Supplier to proceed with this provision any Services; or c) the Customer pays any amount to the Supplier in respect of the Services.
- 2.2. These Terms apply to all Services provided by the Supplier to the Customer at any time following the time when these Terms become binding on the Customer. These Terms may be updated by the Supplier at any time, however any changes will not apply retrospectively.
- 2.3. The Customer cannot amend unilaterally these Terms except to the extent as expressly permitted by these Terms.
- 2.4. The Customer acknowledges and agrees that the supply of Services remains subject to availability and if, for any reason the Supplier is unable to proceed with the supply, the Supplier reserves the right to cancel the Services (and issue a refund for the cancelled Services if applicable). This is the Customer's only remedy in these circumstances and the Supplier will not be liable to pay any other amount to the Customer.
- 2.5. No invoice, terms or other document issued by or on behalf of the Customer (including the terms on any warranty or other agreement given to the Supplier) will vary or form part of these Terms unless otherwise agreed by the Supplier in writing. These Terms replace and supersede any invoice, terms or other document given by the Customer to the Supplier whether before or after the time that these Terms are supplied to the Customer.
- 2.6. All Quotes are valid for acceptance for 30 days from the date of the quotation unless otherwise stated in the Quote.

## **3. PROVISION OF SERVICES**

- 3.1. The Supplier and the Customer agree that the Supplier will provide the Services to the Customer on the terms and conditions contained in these Terms.
- 3.2. The scope of the Services is as agreed by the parties in writing (including via a Quote).

- 3.3. The Quote may contain additional terms which form part of these Terms. In the event of any inconsistency between these Terms and any Quote, the terms contained in the Quote will prevail to the extent of such inconsistency.
- 3.4. The Supplier may subcontract, delegate or perform the Services through any person without the prior written consent of the Customer.
- 3.5. The Supplier warrants that the Services will be fit for the purpose for which they are generally used and any other special purpose the Customer has specified in writing to the Supplier and which the Supplier has accepted in writing, and that the Services are of merchantable quality.
- 3.6. The provision of Services to a third party nominated by the Customer shall be deemed to be provision of the Services to the Customer for the purpose of these Terms.

#### **4. FEES**

- 4.1. The fees payable by the Customer to the Supplier for the Services is the amount specified in a Quote.
- 4.2. The Supplier reserves the right to vary the fees payable, even after the Customer has accepted a Quote or instructed the Supplier to proceed with the Services, in the event of:
  - (a) modifications to the Services requested (including the specifications of the Goods); and
  - (b) any increase to the Supplier's cost of labour or materials, or fluctuations in currency exchange rates, inaccurate Plans provided by the Customer, or where additional Services are required due to unforeseen circumstances which are beyond the Supplier's control.
- 4.3. Such increases will be charged for on the basis of the Supplier's Quote or then current price list as applicable, and will be shown as amendments on the invoice.

#### **5. PAYMENT**

- 5.1. The Customer must pay the fees for the Services at the time/s as specified in the Quote. If no time/s are stated or no Quote given, then all fees must be paid immediately upon acceptance of the Quote/before the Services commence, except for Account Customers. Account Customers must pay the fees for the Services within 30 days end of month in which the Account Customer receives an invoice from the Supplier, whether or not the Services have been supplied (and whether or not they have been supplied within the time requested).
- 5.2. At the Supplier's sole discretion a non-refundable deposit may be required. If a deposit is set out in the Quote, the Customer must pay the deposit immediately upon accepting a Quote, and the Customer acknowledges that the Supplier will not order or manufacture the Goods or undertake the services until payment is received.
- 5.3. Payment may be made by any other method as agreed to between the Supplier and all the Customer fees are non-refundable to the extent permitted by law.
- 5.4. The Customer will also pay to the Supplier, on demand, on a full indemnity basis, all amounts that the Supplier may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis and any debt collection agency costs/commissions) as a result of the Customer defaulting on any of the provisions within these Terms.
- 5.5. If payment is not made in accordance with this clause 5, the Supplier may (without limitation to its other rights):
  - (a) require the Customer to pay the Supplier interest on all outstanding monies from the due date until the date of payment at the rate of 12% per annum accruing daily;
  - (b) demand payment and all money payable under these Terms or any Quote to the Supplier shall immediately become due and payable;
  - (c) refuse to supply any further part of the Services to the Customer until all outstanding monies, including any accrued interest, is paid in full; or
  - (d) terminate the supply of any Goods or Services ordered by the Customer are payable by the customer pursuant to whereupon the full price for the Goods or Services then supplied, whether or not the time for payment under these Terms has arrived, will be immediately due and payable.

- 5.6. The Customer may not withhold payment or make any deduction from any amount owing without the Supplier's prior written consent, irrespective of any claim the Customer may have against the Supplier.
- 5.7. The Customer must pay all duties, taxes and fees, which in any way relate to these Terms, any supply made under these Terms or any transaction contemplated by these Terms. Unless otherwise stated the consideration for any supply under or in connection with these Terms does not include GST.
- 5.8. To the extent that any supply made under or in connection with these Terms is a taxable supply, the amount payable by the recipient is the consideration provided under these Terms for that supply (unless it expressly includes GST) plus an amount (**Additional Amount**) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the Additional Amount at the same time as the consideration to which it is referable, and on the issue of an invoice relating to the supply.

## **6. ACCOUNT CUSTOMERS**

- 6.1. The terms of this clause 6 apply only to Customers who are Account Customers.
- 6.2. The Customer may obtain Services from the Supplier on credit up to the amount of the Customer's credit limit authorised by the Supplier upon acceptance by the Supplier of the Customer's application for credit. The Supplier reserves the right to refuse to supply Services on credit and may (in its discretion) suspend the provision of credit in the event of breach of any term of these Terms or if the Customer exceeds the credit limit.
- 6.3. The Customer remains liable to pay all amounts due to the Supplier regardless of whether the Customer has exceeded the Customer's credit limit.
- 6.4. If the Customer defaults in any payment obligations under these Terms, the Customer's credit facilities may be suspended or withdrawn without prior notice and upon any subsequent resumption of such facilities these terms and conditions shall apply to such further facilities.
- 6.5. The Customer hereby charges in the Supplier's favour all monies due and payable to the Customer under any head-contract held by the Customer in respect of which the Customer purchased goods from the Supplier and the Customer hereby agrees that the Supplier will be entitled to all rights, powers and remedies conferred upon sub-contractors under any legislation in any State or Territory in Australia as if all monies due and owing to the Customer were monies due and owing under a sub-contract.
- 6.6. The Customer (and in the case of a company each of the Customer's officers and sureties) gives consent to the Supplier:
  - (a) disclosing and obtaining personal information to and/or from another credit provider or credit reporting agency including information relating to the commercial creditworthiness and personal creditworthiness of them;
  - (b) using any information obtained for the purposes of assessing the Customer's credit, collecting payments due under these Terms and notifying other credit providers; and
  - (c) disclosing information where it has a duty to the public to disclose that information, and/or where it is required by law.
- 6.7. The credit reporting agencies to which the Supplier is likely to disclose the Customer's repayment history information include:
  - (a) Veda Advantage;
  - (b) Dunn & Bradstreet; and
  - (c) Building Industry Credit Bureau.
- 6.8. The Customer (and in the case of an incorporated company each of the Customer's officers and sureties) may at any time gain access, upon request, to the information held about the Customer.

- 6.9. Should the Customer be advised by the Supplier in writing that the Customer is entitled to a settlement discount, payment must be made by the Customer to the Supplier not later than the last working day of the month following the month a statement of account is issued i.e. June statement invoices are due the last working business day of July (whether or not the Services have been supplied within the time specified by the Customer).
- 6.10. In practice, a settlement discount should be deducted by the Customer at the time of payment, provided that payment is received by the Supplier in accordance with its settlement discount policy (which may be revised by the Supplier from time to time). For the avoidance of any doubt, a settlement discount cannot be applied retrospectively and can be applied only in the month that payment is made in accordance with the Supplier settlement discount policy.

## **7. PLANS & MODIFICATIONS**

- 7.1. The scope of the Services being provided will be as agreed upon in the Quote and where Plans are provided, all fees quoted or calculated are based on such Plans.
- 7.2. All customary plastic injection moulding industry tolerances shall apply to the dimensions and measurements of the Goods unless tolerances have been specified on the Plans or the Supplier and the Customer agree otherwise in writing.
- 7.3. The Supplier shall be entitled to rely on the accuracy of any Plans provided by the Customer.
- 7.4. Where the Supplier prepares any Plans, the Customer is solely responsible for reviewing them and ensuring that they are fit for the Customer's purposes and are in all respects suitable for the Customer's purposes and correct. The Supplier is not liable for any defect in the Plans, even if the Supplier prepares the Plans.
- 7.5. If the Supplier determines that additional Services are required to be carried out, or if for any reason there is a defect or error in the Plans (or the Services requested by the Customer which formed the basis for the Quote are incorrect or not ultimately suitable such as where there is an error in the Plans), then the Supplier reserves the right to increase the fees payable for the Services by providing the Customer with written notice and such increases in the fees are payable immediately on demand by the Supplier (unless otherwise agreed by the Supplier).
- 7.6. Despite this, the Supplier shall be under no obligation to vary the Services set out in a Quote even if the Supplier becomes aware of the requirement for additional Services or a defect or error in the Plans. The Customer is solely responsible for ensuring the Plans and scope of Services are suitable.
- 7.7. The Customer is solely liable for the payment of any additional Services outside of the scope as agreed upon in the Quote.

## **8. COLLECTION & DELIVERY**

- 8.1. Unless delivery is expressly noted in the Quote, delivery of the Goods is not included in the Quote and the Customer must collect the Goods from the Supplier at the Supplier's business address on the date nominated by the Supplier.
- 8.2. In the event that the Quote notes that delivery of the Goods is included, then the Goods will be delivered by the Supplier to the Site nominated in the Quote or otherwise agreed by the Supplier in writing. The Customer may not change the delivery address without the Supplier's written consent, and additional charges may apply in the event of any changes.
- 8.3. At the Supplier's sole, absolute and unfettered discretion, delivery of the Goods shall be deemed to take place when:
- (a) the Customer or its Personnel takes possession of the Goods at the Supplier's address; or
  - (b) the Goods are delivered by the Supplier at the Customer's address (in the event that the Goods are to be delivered to the Customer). The Supplier will not be responsible for any lost or stolen Goods once they have been delivered to the Customer's address (regardless of whether the Customer or its Personnel were available to accept delivery of them).

- 8.4. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage. Where this occurs, the Supplier will store the Goods at the risk of the Customer until delivery takes place again.
- 8.5. The Supplier may deliver the Goods in separate instalments.
- 8.6. Any timelines for delivery of Goods given by the Supplier to the Customer are an estimate only and shall not be binding on the Supplier and are subject to change without notice. The Supplier endeavours to provide the Goods on time, however it cannot guarantee the Goods will be delivered by such delivery dates. The Customer must still accept delivery of the Goods even if late and the Supplier will not be liable for any Loss or damage incurred by the Customer as a result of the delivery being late.

## **9. OWNERSHIP, RISK AND ASSESSMENT**

- 9.1. Notwithstanding anything to the contrary express or implied in these Terms, the parties agree that the Supplier retains full title to the Goods and title will not at any time pass to the Customer until the purchase price for the Goods and all other amounts owing in respect of the Goods are paid to the Supplier notwithstanding:
- (a) the delivery or collection of the Goods to/by the Customer (as the case may be); and/or
  - (b) the possession and use of the Goods by the Customer.
- 9.2. Receipt by the Supplier 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.
- 9.3. Even if the Supplier retains title of the Goods, all risk for the Goods passes to the Customer:
- (a) on delivery of the Goods to the Customer or the nominee of the Customer; or
  - (b) if the Supplier's nominated delivery carrier is unable to deliver the item to the place nominated by the Customer for any reason, when the Supplier's nominated delivery carrier makes their first attempt to deliver the Goods to the Customer
- 9.4. The Customer must insure the Goods on or before delivery. If the Customer requests the Supplier to leave Goods outside the Supplier'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.
- 9.5. If any of the Goods are damaged or destroyed following delivery but prior to title passing to the Customer, the Supplier is entitled to:
- (a) receive payment for the Goods; and
  - (b) for any shortfall of the payment of the Goods, receive the insurance proceeds payable for the Goods (for the amount of the shortfall). The production of these Terms by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries
- 9.6. The Customer acknowledges and agrees that in the case of the Goods prior to ownership passing to the Customer:
- (a) it holds the benefit of the Customer's insurance of the Goods on trust for the Supplier, and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (b) it will, if requested by the Supplier, return the Goods to the Supplier following non-fulfilment of any obligation of the Customer (including payment of monies) without limiting any other right the Supplier may have; and
  - (c) the Supplier may recover as a debt due and immediately payable by the Customer all amounts owing by the Customer to the Supplier in any respect even though title to the Goods has not passed to the Customer.

## **10. PERSONAL PROPERTY SECURITIES**

- 10.1. The Customer acknowledges and agrees that notwithstanding any other provision of these Terms:

- (a) the PPSA applies to any performance of Services of any kind and the supply of Goods by the Supplier to the Customer;
- (b) by agreeing to and/or accepting or adopting these Terms the Customer grants to the Supplier:
  - i) a purchase money security interest in the Goods; and
  - ii) a purchase money security interest in the Customer-owned Tooling ;  
to secure the Supplier's interest in the Goods and Customer-owned Tooling and all moneys owing or payable by the Customer under these Terms and any other monies payable by the Customer to the Supplier from time to time on any account whatsoever.
- (c) if a purchase money security interest is not able to be claimed by the Supplier in respect of the Customer-owned Tooling or in respect of the Goods for any reason, the Supplier will have a security interest in the Customer-owned Tooling or the Goods as the case may be;
- (d) the Customer agrees that the Supplier's security interest in Customer-owned Tooling and the Goods covered by these Terms may be registered on the PPS Register and the Customer agrees to do all things necessary and required by the Supplier to effect registration of the Supplier's security interest on the PPS Register in order to give the Supplier's security interest the best priority possible and anything else the Supplier requests the Customer to do in connection with the PPSA without delay;
- (e) the Customer warrants that all information provided by the Customer to the Supplier, including but not limited to the Customer's details, including the entity, name, ACN or ABN and address set out in the Quote is correct in all respects and must not change its name, address or other details set out in the Quote without providing the Supplier with at least 20 business days prior written notice;
- (f) the Customer unconditionally and irrevocably appoints the Supplier as its attorney to do any of acts and matters set out in this clause 10 in the event that the Customer fails, delays or declines to execute such documents or do such acts;
- (g) the Customer agrees that it will not grant a security interest or other encumbrance in the Customer-owned Tooling or the Goods whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of the Supplier, which the Supplier may refuse to provide or grant in its absolute and unfettered discretion. The Supplier may request, and the Customer must provide any information that the Supplier requires, acting reasonably, in order to fully consider whether to grant its consent;
- (h) the Supplier's security interest in the Goods and the Customer-owned Tooling extends to any proceeds in all present and after acquired property including without limitation book debts and accounts receivable arising from the selling or hiring of the Goods and/or the Customer-owned Tooling by the Customer;
- (i) it has received value as at the date of provision of the Services and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to the Supplier under these Terms;
- (j) the Goods and the Customer-owned Tooling are located in Australia at the date of the supply of the Goods and Customer-owned Tooling and the Customer warrants that the Goods and Customer-owned Tooling will remain located in Australia for the duration of these Terms;
- (k) neither the Supplier nor the Customer will disclose any information to any interested person unless required to do so under the PPSA;
- (l) the Customer waives its right under the PPSA:
  - i) to receive a copy of any verification statement, financing change statement, or any notice on enforcement of the security or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of; and
  - ii) to object to a proposal by the Supplier to dispose of or purchase or retain the Goods and/or the Customer-owned Tooling in satisfaction of any obligation owed by the Customer to the Supplier.



iii) will not give (or allow any person to give) to 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 PPS Register a financing change statement under the PPSA; and

(m) a default under any other security agreement under which it has granted a security interest to any other party in respect of the Goods or Customer-owned Tooling is deemed to be a breach of these Terms.

10.2. The parties agree that the Supplier is not required to respond to a request made under Section 275 of the PPSA and that neither party will disclose information of the kind set out in Section 275(1) of the PPSA.

#### 10.3. Further Supplies/Services

The parties acknowledge and agree that any supply of Goods, or Customer-owned Tooling or performance of Services of any kind by the Supplier to the Customer which is not specifically set out in the Quote but for which the Supplier has or later issues a Tax Invoice or any other documentation to the Customer is deemed to form part of these Terms and is subject to the terms of these Terms.

#### 10.4. Enforcement

(a) The enforcement provisions contained in these Terms are in addition to any rights available to the Supplier under the PPSA and apply to the maximum extent permitted by law.

(b) Without limitation to clause 10.4(a) and any other provision of these Terms section 125, 129(2), 142 and 143 of the PPSA are contracted out of.

#### 10.5. Power of Attorney

The Customer irrevocably nominates constitutes and appoints the Supplier and/or its officers and/or its nominees severally to be the true and lawful attorneys of the Customer on behalf of and in the name of the Customer to do all things necessary and sign all such documents as may be necessary to deal with the Goods and the Customer-owned Tooling in accordance with the enforcement provisions of these Terms, the PPSA or otherwise, if the Customer is in default of these Terms.

#### 10.6. Interpretation

A term used in this clause 10 is taken to have the meaning defined under the PPSA.

### 11. PERFORMANCE OF SERVICES

11.1. The provision of Services by the Supplier to the Customer will take place at a time agreed between the Supplier and the Customer.

11.2. The provision of Services to a third party nominated by the Customer shall be deemed to be provision of the Services to the Customer for the purpose of these Terms.

11.3. Any times provided by the Supplier to the Customer in respect of the provision of the Services are estimates only and are non-binding on the Supplier. Whilst the Supplier attempts to provide all Services at the agreed times, sometimes delays are inevitable and the Supplier will not be responsible for any Losses suffered by the Customer in the event of delay.

11.4. The Services will be provided in accordance with the Plans. In the event that the Plans are defective, the Supplier will not be liable to the Customer for any Loss that they suffer and the Customer will still be liable to pay the entirety of the fees for the entirety of the Services to the Supplier even if the Supplier is unable to properly or fully provide the Services (such as where the Goods do not fit within their designated space so they cannot be installed). The Customer acknowledges that upon a Quote being accepted, the Supplier allocates resources and time to the fulfillment of that Quote.

### 12. CUSTOMER-OWNED TOOLING

12.1. The Supplier hereby irrevocably transfers and assigns to the Customer, and agrees to transfer and assign to Customer, all right, title, and interest in any physical Customer-owned Tooling.

- 12.2. The Supplier agrees to locate the Customer-owned Tooling at the Supplier's Site and apply the same standard of care to the Customer-owned Tooling that the Supplier applies to its own property.
- 12.3. Without the Customer's prior written consent, the Supplier shall not at any time use any Customer-owned Tooling for the production of Goods or the performance of Services for or on behalf of any third party or for any purposes other than for the Customer pursuant to this Agreement.
- 12.4. The Supplier agrees to use commercially reasonable efforts to maintain any Customer-owned Tooling in good condition and repair and will provide all necessary maintenance services such as calibration or cleaning.
- 12.5. The Customer shall be responsible for insurance, repair or extraordinary costs of maintenance of the Customer-owned Tooling. If the Customer-owned Tooling requires a replacement component, the Supplier will first seek approval from the Customer to proceed and the associated cost will be charged to the Customer.

### **13. DEFECTIVE SERVICES**

- 13.1. The Customer must inspect the provision of the Services (including the Goods) immediately on the completion of the provision of the Services (being upon collection of the Goods by the Customer or upon delivery by the Supplier).
- 13.2. The Customer may reject as defective any Services delivered to it that do not comply with the requirements of these Terms provided that the Customer gives notice of rejection by the earlier of:
  - (a) seven days following the completion of the Services; and
  - (b) the date that you have incorporated the Goods with any other goods or materials, or otherwise installed or had them installed.
- 13.3. Upon such notification of defective Services, the Customer must:
  - (a) provide any photographic evidence requested by the Supplier; and
  - (b) allow the Supplier to inspect the Services supplied to determine whether they are defective (this includes granting the Supplier unimpeded access to inspect such Goods).
- 13.4. If the Customer is aware or ought reasonably to be aware that the Services are defective for any reason, then the Customer must take all necessary steps to mitigate any Loss. The Customer must not attempt to repair any Goods itself except where directed to do so by the Supplier in writing.
- 13.5. Except as required by law, for each Service that is deemed defective in accordance with this clause, the Supplier's liability will be limited to the supplying of the relevant Services again or the payment of the cost of having the relevant Services supplied again (to remedy such defect) and such replacement Services will not be carried out until the Customer's account is paid in full.
- 13.6. Subject to the terms of this clause, the Services will be dealt only with in accordance with this clause provided that:
  - (a) the Customer has complied with the other terms of this clause;
  - (b) the Supplier has agreed (in its reasonable opinion) that the Services are defective;
  - (c) the Goods to which the defective Services relates to are returned within 14 days to the Supplier (if necessary) at the Customer's cost; and
  - (d) the returned Goods are accompanied by all original delivery documentation.
- 13.7. Notwithstanding the above clauses, the Supplier will not be liable for or required to accept any return for any defect or damage in any case where such defect or damage is caused or partly caused by or arises as a result of:
  - (a) the Customer's acts or omissions, including the Customer failing to take reasonable steps to prevent them from becoming defective or the Customer failing to follow the Supplier's instructions or best industry practice or any other obligations set out in these Terms;
  - (b) the Supplier following any instructions supplied by the Customer, including the Plans;

- (c) the Customer altering, modifying or repairing the Goods without the written consent of the Supplier;
- (d) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a prudent operator or user;
- (e) wilful damage, negligence, or incorrect storage;
- (f) fair wear and tear; or
- (g) any accident or circumstance outside the reasonable control of the Supplier.

13.8. The Customer is solely responsible for ensuring that the provision of the Services is suitable or adequate for its purposes. The Customer acknowledges that prior to execution of the Services has satisfied itself by independent investigation as to the suitability of the Services for its purposes and as to the requirements of any applicable legislation or any relevant government authority. To the fullest extent permitted by law all warranties as to suitability and as to adequacy otherwise applicable are expressly negated.

13.9. Where the Customer arranges for the logistics of the transfer of the Goods, the Customer takes sole responsibility for such, and the Supplier expressly excludes all warranties with respect to any defect or damage that occurs as a result of the logistics of the transfer arranged by the Customer.

#### 13.10. Other Exclusions

Notwithstanding any other clause in these Terms, the Supplier will be responsible only for defects in the Services, Goods and components that the Supplier supplies. To the extent permitted by law the Supplier will not be liable for or required to provide any remedy for:

- (a) any components or materials supplied by the Customer;
- (b) any services carried out by third parties;
- (c) any defect or damage where such defect or damage is caused by or arises as a result of the Customer (or the Customer fails to take reasonable steps to prevent them from becoming defective), fair wear and tear, or any accident or circumstance outside the reasonable control of the Supplier; or
- (d) any consequential, indirect or special losses.

#### 14. WARRANTIES

14.1. The Customer warrants to the Supplier that as at the date of these Terms and for the duration of these Terms:

- (a) the Plans are true and correct and do not contain errors or defects and contain all information that any reasonable person in the Supplier's position would need to know in order to quote and supply the Services;
- (b) the information contained in these Terms is true and correct and it has disclosed all relevant information to the Supplier to assess the credit-worthiness of the Customer;
- (c) it has the legal right and authority to enter into these Terms;
- (d) the execution, delivery and performance of these Terms by the Customer has been duly and validly authorised by all necessary corporate action on its part;
- (e) these Terms constitute a valid and binding agreement on the Customer, enforceable in accordance with its terms;
- (f) the Customer is not suffering an Insolvency Event and no Insolvency Event is imminent; and
- (g) it has the capacity to make the payment in accordance with these Terms.

14.2. Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value

14.3. You are also entitled to be compensated for any other reasonably foreseeable loss or damage.

14.4. If the failure does not amount to a major failure, you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

## **15. INDEMNITY AND RELEASE**

- 15.1. Except as provided under these Terms and to the extent permitted by law the Customer releases the Supplier and its officers, employees and agents from any and all Claims by the Customer or any of its officers, employees, agents or invitees, except to the extent (if any that) the Loss the subject of the Claim is caused by the fraudulent act, negligence or omission of the Supplier.
- 15.2. The Customer indemnifies the Supplier against, and holds the Supplier harmless from, any Losses (including any direct, indirect, special or consequential Losses) and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses suffered or incurred by the Supplier arising out of or in connection with:
- (a) any Claim made against the Supplier and/or the Customer by a third party arising out of or in connection with the provision of the Services and/or these Terms;
  - (b) the Customer's breach or negligent performance or non-performance of these Terms, including any failure to pay any fees on time;
  - (c) any event or cause, beyond the control of the Supplier including a Force Majeure (see 18.2(d));
  - (d) any reliance by the Customer or a third party on the Services or any advice, information or deliverable provided in connection with the provision of the Services and/or these Terms;
  - (e) the enforcement of these Terms; and
  - (f) any act, omission or wilful misconduct of the Customer or the Customer's Personnel (including any negligent act or omission).
- 15.3. The Customer must make payments under these Terms:
- (a) in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by law; and
  - (b) in the currency in which the payment is due, and otherwise in Australian dollars, in cleared funds.
- 15.4. The indemnities in this clause:
- (a) are continuing obligations of the Customer, independent from its other obligations under these Terms and survive termination or expiry of these Terms; and
  - (b) are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging or affecting the liability of the Customer.

## **16. DISCLAIMER**

- 16.1. The Supplier provides the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. The Customer relies on the Services at its own risk.
- 16.2. Without limiting the other terms of this clause, the Customer acknowledges and agrees that:
- (a) any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Services supplied is given in good faith, is based on the Supplier's own knowledge and experience and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services. Such advice, recommendations, information and assistance is followed or acted upon entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation;

- (b) the Supplier reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Supplier's specification, which do not materially affect their quality or performance;
- (c) that Goods supplied may
  - i) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and
  - ii) mark or stain if exposed to certain substances; and
  - iii) be damaged or disfigured by impact or scratching.

## **17. EXCLUSION AND LIMITATION OF LIABILITY**

- 17.1. The Supplier excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in these Terms to the maximum extent permitted by law.
- 17.2. Without limiting the generality of clause 17.1, the Supplier expressly excludes any liability in contract, tort or otherwise for any injury, damage, Loss, delay or inconvenience caused directly or indirectly by:
  - (a) any act or omission of the Customer or its Personnel, including any delay caused by the Customer or its Personnel;
  - (b) any problem caused by misuse, abuse, wear and tear or abnormal movement; and
  - (c) any defect in, or problem caused by, materials or goods supplied by the Customer or its Personnel.
- 17.3. Subject to the other terms of this clause, the Supplier's total maximum aggregate liability to the Customer for any Loss or damage or injury arising out of or in connection with the supply of services under these Terms, including any breach by the Supplier of these Terms however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual charges paid by the Customer to the Supplier under these Terms in the 12-month period preceding the matter or event giving rise to the claim.
- 17.4. Nothing in these Terms are intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Supplier in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- 17.5. If the Supplier is liable to the Customer in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, or is otherwise liable for any matter that cannot be excluded, the Supplier's total liability to the Customer for that failure is limited to, at the option of the Supplier the costs of the resupply of the relevant Services to which the liability relates or the payment of the costs of resupply of the relevant Services.
- 17.6. Without limitation to the other terms of these Terms, the Supplier excludes any liability to the Customer, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential Loss arising under or in connection with these Terms.

## **18. CANCELLATION & TERMINATION**

- 18.1. The Supplier may cancel all or part of any order to which these Terms apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Services which are cancelled. The Supplier shall not be liable for any Loss or damage whatsoever arising from such cancellation.
- 18.2. The Supplier may in its absolute discretion, by written notice to the Customer, immediately terminate these Terms or one or more Quotes (and shall have no liability for any Loss suffered by the Customer due to the termination):

- (a) if the Customer fails to make payment of any amount due under these Terms on time or otherwise in accordance with these Terms;
- (b) if the Customer suffers an Insolvency Event;
- (c) if the Customer breaches these Terms or a Quote and fails to rectify the breach within 7 days of being given a notice to do so; or
- (d) in the event of Force Majeure (such as if there are issues with the weather) and the Supplier is unable to supply the agreed Services, the Supplier is not bound to terminate if this occurs.

- 18.3. The Customer may not cancel the Services at any time except where expressly permitted by these Terms.
- 18.4. Upon termination of these Terms the Customer shall be liable to pay to the Supplier for all Services supplied by the Supplier up until the date of termination, and such amounts shall be a debt immediately due and owing. In the event that the Supplier terminates these Terms except for due to an event of Force Majeure, then the Customer will also be liable to pay the Supplier all amounts which would have otherwise been payable under the Quote had it not been terminated and such amount shall be a debt immediately due and owing.
- 18.5. The termination of a Quote does not affect any other Quote/s which shall continue in full force and effect.
- 18.6. The rights and remedies of the parties contained in this clause are in addition to any other rights and remedies by law, in equity or under these Terms.

## **19. INTELLECTUAL PROPERTY**

- 19.1. Where the Plans relate to Customer-owned Tooling in which the Customer has not paid the Supplier for the Supplier generated Plans, the Supplier will own the Plans and retain all rights in them.
- 19.2. Where the Plans relate to product design in which the Customer has paid the Supplier for the Supplier generated Plans, the Customer will own the Plans and retain all rights in them.
- 19.3. The Customer warrants that all Plans given to the Supplier will not cause the Supplier to infringe any intellectual property rights or third party rights of any third party and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 19.4. The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any photographs of the Goods installed at the Customer's premises which the Customer provides (or the Supplier takes).

## **20. NO ASSIGNMENT**

- 20.1. The Customer must not transfer or assign its rights under these Terms to anyone else, without the prior written consent of the Supplier, which may be granted or withheld by the Supplier in its sole, absolute and unfettered discretion. The Customer must provide any information the Supplier requires to consider whether to grant its consent.
- 20.2. Any change in 50% or more of the shareholding of the Customer will constitute a deemed assignment which requires the Supplier's prior written consent in accordance with clause 20.1.
- 20.3. The Customer acknowledges and agrees that the Supplier may transfer, assign or otherwise dispose of its interest in these Terms upon giving written notice to the Customer.

## **21. NOTICES**

- 21.1. All notices authorised or required under these Terms to be given by a party to the other shall be in writing sent by email or delivered personally or sent by pre-paid registered post and in each case addressed to the other party at that party's Address for Service or as the case may be at such other address as a party may from time to time notify to the other.
- 21.2. The following shall constitute proof of receipt:
- (a) proof by posting by registered post; or
  - (b) proof of dispatch by email.

21.3. Receipt of a notice given under these Terms will be deemed to occur:

- (a) in the case of a communication sent by pre-paid registered post, on the third business day after posting;
- (b) in the case of an email, on the business day immediately following the day of dispatch.

21.4. If a notice is sent via post, it must also be sent via email.

## **22. GENERAL**

### **22.1. Variation**

An amendment or variation of any term of these Terms must be in writing and signed by each party.

### **22.2. No Waiver**

- (a) No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with these Terms unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is effective only to the extent set out in that waiver.
- (b) Words or conduct referred to in clause 22.2(a) include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.

### **22.3. Counterparts**

These Terms may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute these Terms by signing any counterpart. The date on which the last counterpart is executed is the date of these Terms. Communication of the fact of execution to the other parties may be made by sending evidence of execution by email.

### **22.4. Costs**

Each party must bear its own costs of and incidental to the negotiation, preparation and execution of these Terms.

### **22.5. Severability**

- (a) If the whole or any part of a provision of these Terms are or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.
- (b) Clause 22.5(a) does not apply if the severance of a provision of these Terms in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under these Terms.

### **22.6. No Merger**

On completion or termination of these Terms, the rights and obligations of the parties set out in these Terms will not merge and any provision that has not been fulfilled remains in force.

### **22.7. Survival**

Any clause which by its nature is intended to survive termination or expiry of these Terms will survive such termination or expiry.

### **22.8. Further Action**

Each party must do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to give full effect to these Terms and the transactions contemplated by these Terms.

### **22.9. Time of the Essence**

Time is of the essence in these Terms in respect of any date or time period and any obligation to pay money.

#### 22.10. Relationship of the Parties

Nothing in these Terms gives a party authority to bind any other party in any way. Nothing in these Terms imposes any fiduciary duties on a party in relation to any other party.

#### 22.11. Remedies Cumulative

Except as provided in these Terms and permitted by law, the rights, powers and remedies provided in these Terms are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of these Terms.

#### 22.12. Entire Agreement

These Terms states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

#### 22.13. No Reliance

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in these Terms.

#### 22.14. Governing Law and Jurisdiction

These Terms are governed by the law in force in the relevant State. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with these Terms.