

LAMINEX GROUP PTY LIMITED

A.B.N. 98 004 093 092.

STANDARD TERMS AND CONDITIONS OF SALE

By submitting a credit application and/or ordering goods or services ("Goods") from Laminex Group Pty Ltd (ABN 98 004 093 092) ("Laminex") or any of its related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth)), the Customer agrees that the following standard terms and conditions of sale ("**Terms**") will apply.

1. INTERPRETATION

1.1 In these Terms:

- (a) "Application" means the approved Application for Credit Account and Agreement set out in Section A for purchasing Goods on credit;
- (b) "Australian Consumer Law" means the Australian Consumer Law being schedule 2 in the *Competition and Consumer Act 2010* (Cth);
- (c) "Consumer" means a consumer as that term is defined in the Australian Consumer Law;
- (d) "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' under the Australian Consumer Law are amended at any time, this definition is also amended accordingly.
- (e) "Contract" has the meaning given to that term in clause 2;
- (f) "Force Majeure Event" means any event outside a party's reasonable control including acts of Gods, declared or undeclared war, act of terrorism, fire, flood, storm, earthquake, hurricane, cyclone, epidemic, pandemic, (Covid-19), government directive, riot, power failure, industrial action, 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 provided that lack of funds for whatever reasons is not considered a Force Majeure Event;
- (g) "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));
- (h) "Goods" means goods supplied by us to you from time to time;
- (i) "Intellectual Property Rights" means all intellectual property rights throughout the world, whether present or future, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.
- (j) "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.
- (k) "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- (l) "Purchase Monies Securities Interest" or "PMSI" has the meaning given in section 14 of the *PPSA* as amended from time to time.
- (m) "Special Conditions" means any special conditions issued by the Supplier from time to time that may apply to a particular transaction including but not limited to the

eCommerce Special Conditions; Special Conditions for Haven Kitchens by Formica™

(n) "Small Business Contract" means a contract for the supply of goods or services where:

(1) at the time the contract is entered into, at least one party to the contract is a business that employs fewer than 20 persons; and

(2) either of the following applies:

(A) the upfront price payable under the contract does not exceed \$300,000;

(B) the contract has a duration of more than 12 months and the upfront price payable under the contract does not exceed \$1,000,000.

However, if the relevant parts of the definition of 'Small Business Contract' under the Australian Consumer Law are amended at any time, this definition is also amended accordingly;

(o) "we", "us", "our" or "the Supplier" means Laminex Group Pty Limited (ABN 98 004 093 092) trading as The Laminex Group and any member of the Fletcher Group that is named as the party making or accepting an order;

(p) "you", "your" means the Customer stated in the Application or order and any other person(s) acting on your behalf.

2. SUPPLY

2.1 The contract between you and the Supplier is constituted by: (i) these Terms; (ii) the Application; (iii) any Special Conditions, and (iii) the extent to which the Supplier accepts an order in accordance with clause 3.4 (each a "**Contract**"). The Terms, the Application, the Special Conditions and the extent to which the Supplier accepts the order govern all contracts for the supply of Goods by the Supplier to you and constitute the entire agreement in connection with the supply of Goods between you and the Supplier. All prior representations, trade custom or previous dealings between you and the Supplier are excluded and are not applicable in the interpretation of the Contract. No modification or variation to the Terms or the Application, any additional terms or conditions or any terms inconsistent with the Terms or the Application provided by you (whether put forward in the order, your specification or otherwise) will bind the Supplier, unless expressly and specifically agreed to in writing by the Supplier. The Terms and the Application supersede any terms and conditions which have previously governed a contract for the sale of Goods between you and the Supplier. The Terms and Application will prevail to the extent of any inconsistency between them and any quotation, order or other documents from you. The Terms and Application bind you even if you or the Supplier do not sign them promptly or at all.

2.2 You will purchase and we will supply Goods to you on the terms of each Contract. However, we are not obliged to supply goods to you when requested to do so.

2.3 We may at any time, and from time to time, alter these Terms, the Application and/or Special Conditions by notice in writing to you. If the Contract is a Consumer Contract or a Small Business Contract, then you may consider the variation and, if not acceptable, may elect not to proceed with the purchase of Goods 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, you agree that Goods delivered and/or ordered after the date of a notice of variation will be subject to the variation and acceptance of the Goods or the placing of the order will be deemed to be an acceptance of such varied terms and conditions.

3. QUOTATIONS AND ORDERS

3.1 Any quotation or price list given by us to you does not constitute an offer to sell goods to you. We reserve the right to alter the quote or price list without notice to you.

3.2 Any quotation or price list provided by us to you applies strictly to Goods ordered and delivered to a location within the same State as your address and to which the quotation or price list applies.

- 3.3 A quotation by the Supplier is an estimate only and will not constitute an offer to sell Goods to the Customer. No contract for the supply of Goods will exist between the Supplier and the Customer until a Customer's order 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). The Customer will be under no obligation to place an order with the Supplier. The Supplier reserves the right to accept or refuse any order for goods or services in its absolute discretion and may make its acceptance of an order conditional upon the earlier of it receiving a satisfactory credit assessment of the Customer or payment in full as contemplated under clause 5.1.
- 3.4 By placing an order with us, you are making a binding irrevocable offer to purchase those Goods.
- 3.5 We reserve the right to modify the design of goods and cease to manufacture or supply goods without notice. If the Contract is a Consumer Contract or a Small Business Contract and we modify the design of Goods after we have accepted your order for those Goods:
- we will give you notice of the modification in writing; and
 - you may consider the modification and, if not acceptable, may elect not to proceed with the purchase of Goods ordered before the date of the notice, but which are intended to be subject to the modification.
- 3.6 The Customer warrants that all drawings, measurements, specifications and other design information provided to the Supplier are accurate and correct in all respects, comply with any relevant codes, Australian Standards and Laws, and do not infringe upon the Intellectual Property Rights of any party including any copyright, patents, designs or trademarks of a third party.
- 4. PRICES, GST, FREIGHT AND INSURANCE**
- 4.1 Unless otherwise expressly agreed in writing, the price of the Goods will be the price specified in our invoice plus the amount which we are required to pay on account of any charges which may be levied by any government authority (domestic or foreign) plus any amount that reflects any increase in exchange rates, costs of labour, materials and overheads. If the Contract is a Consumer Contract or a Small Business Contract, then you may consider any alterations to the price referred to in this clause or clause 3.2, prior to the date of dispatch of goods or the performance of services and, if not acceptable, may elect not to proceed with the purchase of Goods ordered before the date of the alteration, but which are intended to be subject to the alteration by providing written notice to us.
- 4.2 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.
- 4.3 You are responsible for all freight costs. If you nominate a carrier, this must be advised to us in writing in the absence of which we will choose a carrier.
- 4.4 Unless otherwise expressly stated, all amounts stated to be payable by you under any Contract are exclusive of GST.
- 4.5 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.
- 4.6 In this clause 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*.
- 5. PAYMENT**
- 5.1 You agree that until we confirm that a credit facility has been granted to you, all Goods are supplied on a cash before delivery basis.
- 5.2 Unless otherwise agreed, all amounts owing to the Supplier for Goods supplied to you via a trading account are due and payable 30 days of the end of month in which Goods are delivered or collected.
- 5.3 You may pay by Visa or MasterCard or American Express. However, a payment surcharge is payable by the Customer if accounts are paid using Visa, Mastercard or American Express credit accounts or accounts using contactless payments (ie: PayWave, PayPass). The payment surcharge is a percentage of the amount being paid and varies depending on the payment method used. The current surcharge rate will be notified by us from time to time. As at the date of these Terms, the surcharge rate is, 1.25% for Visa or Mastercard and 2.97% - American Express. The surcharge is payable at the same time as the account to which it relates is due.
- 5.4 You agree that if you fail to pay in accordance with this clause 5, without prejudice to any of our rights, we may:
- charge interest on debts at four percent (4%) above the rate prescribed pursuant to the *Penalty Interest Rates Act (Vic) 1983* from time to time;
 - charge a dishonour handling fee at the rate advised by us from time to time where we are unable to obtain payment from your credit card provider or a cheque is not paid by your bank;
 - withhold supply;
 - sue for the money owing on the Goods.
- 5.5 The late payment fee and any interest will be charged daily from the due date for payment until the actual date of payment and will be payable together with the overdue amount. The parties agree that the fees and interest charged pursuant to clause 5.4 are a genuine pre-estimate of the loss that will be suffered by the Supplier for late payment.
- 5.6 Any forbearance by us in charging any of the fees set out in clause 5 does not constitute a waiver of our right to do so in the future.
- 5.7 The Customer must pay for its own legal, accounting and business costs and all of the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including dishonoured cheque fees, collection costs, debt recovery fees and legal costs on an indemnity basis. The Customer must also pay for all stamp duty and other taxes payable in connection with any Contract and credit agreement (if any).
- 5.8 Any payments by, or on behalf of, the Customer will be applied by the Supplier as follows:
- firstly, in payment of any and all collection costs and legal costs in accordance with clause 5;
 - secondly, in payment of any interest incurred in accordance this Contract;
 - thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by the Supplier in its absolute discretion.
- 5.9 Despite any other clause in the Contract, the Supplier may without notice alter the Customer's credit limit for any reason at its discretion (including to meet the Customer's then buying needs) or, if the Customer is in breach of a condition of the Contract, withdraw the Customer's credit facilities.
- 6. DELIVERY**
- 6.1 The Customer acknowledges and accepts that any period or date for delivery stated by the Supplier is intended as an estimate only and is not a contractual commitment. The Supplier will not in any circumstances be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated delivery of goods or performance of services.
- 6.2 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.

- 6.3 Goods will be delivered or deemed to delivered upon the earlier of when the Goods are delivered to the delivery place nominated by the Customer or the Goods are collected by the Customer or its agent from the Supplier's premises. If no such address is nominated or the Customer fails to collect the Goods then delivery will be deemed to occur at the time when the goods are ready for collection at the Supplier's premises.
- 6.4 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. If we do not receive delivery instructions sufficient to enable us to dispatch the Goods within fourteen (14) days of you being notified that the Goods are ready for delivery, you will, from the fifteenth day after notification:
- (a) be deemed to have taken delivery of the Goods; and
 - (b) assume risk in the Goods.
- 6.5 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. The Supplier will not be liable on any basis whatsoever for loss suffered by the Customer after delivery.
- 6.6 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.
- 6.7 The Supplier reserves the right to deliver goods by instalments and each instalment will be deemed to be sold under a separate Contract. Failure to deliver any instalment or deliver any instalment on time will not entitle the Customer to repudiate the Contract in whole or in part.
- 6.8 The Customer must make all arrangements necessary to take delivery of the goods when they are tendered for delivery. 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, vary the prices specified on the Supplier's quotation or invoice (as relevant) to include any additional costs to the Supplier including to reflect the Supplier's current prices and charges as at the new delivery date and any temporary storage fees.
- 6.9 Containers (which includes but is not limited to stillages, formers and pallets) in or on which Goods are delivered and for which a deposit charge is made, remain our property. Upon the containers' return in good order the deposit will be returned to you. We reserve the right to deduct moneys from your deposit to compensate us for any damage to the container(s).
- 7. CLAIMS AND LIABILITIES**
- 7.1 Any claim by you as to breach of Contract including any failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made to us in writing within seven (7) days of delivery, for which time is of the essence, except in the case of a claim involving a Consumer or Small Business Contract alleging a breach of the guarantees under the Australian Consumer Law.
- 7.2 If you do not notify us of any claim within seven (7) days of delivery in accordance with clause 7.1, the Goods are deemed accepted by you in compliance with the terms of the Contract.
- 7.3 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 either debited from your credit account payable on a cash before return delivery basis.
- 7.4 Your proof of purchase must accompany all Goods returned to the Supplier.
- 7.5 If you are a Consumer, the provisions of this clause 7.35 apply:
- (a) The Goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. You are 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. You are 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. You are also 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.
 - (b) The guarantees under the Australian Consumer Law are given by the Supplier.
 - (c) If you believe the Goods or services do not comply with the statutory guarantees, you 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 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.
 - (d) Subject to clause 7.5(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 you and the Supplier by Law.
- 7.6 If you are not a Consumer, the provisions of this clause 7.6 apply:
- (a) 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 you and the Supplier by law.
 - (b) The Supplier's liability for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one of the following:
 - (i) the replacement of the Goods or the supply of equivalent Goods;
 - (ii) the repair of the Goods;
 - (iii) the payment of the cost of providing replacement Goods or of acquiring equivalent Goods; or
 - (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
 - (c) Subject to clause 7.6(b) 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 wilful act of

- the Supplier (including its employees or agents), the Customer or any third party, including in relation to the installation of the goods.
- (d) to the extent permitted by Law, if the Contract is not a Consumer Contract or a Small Business Contract, the Supplier is not liable to you or any other person:
- (i) for 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) for 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.
- 7.7 If the Contract is not a Consumer Contract or Small Business Contract, you indemnify the Supplier for any loss, cost, damage or expense suffered by the Supplier arising from or in connection with:
- (a) any breach of Contract or negligence by you or persons under your control;
 - (b) any breach of Law by you or persons under your control;
 - (c) any breach of third-party Intellectual Property Rights;
 - (d) the death or injury to any person or damage to any property arising from the performance or non-performance by you of your obligations under any Contract; and
 - (e) any failure to install the Goods in accordance with their applicable code, Australian Standard, Law, 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 your negligence or the negligence of any third party, including in relation to the installation or operation of the Goods.
- 7.8 We will not be responsible for non-delivery or delay in delivery of any Goods due to any cause beyond our reasonable control, notwithstanding that the cause may be operative at the time of entering the Contract. Where such non-delivery or delay occurs, we may deliver the Goods not delivered or delayed at any subsequent time and you must accept and pay for them.
- 8. RETURNED GOODS**
- 8.1 You may only return Goods with the prior written approval of the Supplier. Goods accepted for return by the Supplier must be returned within 14 days from the date of delivery in an unsoiled, undamaged and resalable condition and, where appropriate, in the original packaging. You may be charged handling fee for any returned Goods. The amount of this charge will be determined by the Supplier and debited to your credit account.
- 8.2 Your proof of purchase must accompany all Goods returned to the Supplier.
- 8.3 Where Goods are returned to us, credit will only be issued subject to the following conditions set out in clauses 8.3 to 8.8:
- RETURN AUTHORISATION:
- (a) A Goods Return Credit ("GRC") authority number must be obtained from the supply point prior to the return of any Goods. We may refuse to give a GRC authority or accept the return of any Goods.
 - (b) You must provide the invoice number and date of purchase before a GRC will be issued.
 - (c) The GRC authority number must be clearly marked on the packaging of Goods returned to us. Failure to comply with this requirement could result in our refusing to accept delivery of the returned Goods.
- 8.4 CREDIT:
- All claims for credit must be supported by:
- (a) carrier's consignment note or similar receipt of delivery;
 - (b) our relevant invoice number; and
 - (c) the GRC number issued by us.
- 8.5 UNACCEPTABLE RETURNS:
- Without in any way limiting our discretion to refuse to accept the return of any Goods, the following Goods will not be returnable:
- (a) any Goods that have been held by you or your agent for more than seven (7) days; or
 - (b) any Goods which are not in original condition; or
 - (c) any Goods that are manufactured as made to order ("mto") items unless faulty. Any manufacturing surcharge is non refundable.
- 8.6 FAULTY GOODS:
- If you are not a Consumer, we will only recognise claims for faulty Goods that are lodged within seven (7) days of you receiving the Goods.
- 8.7 CARRIER:
- Goods must be returned by the carrier specified by us.
- 8.8 RESTOCKING / REPACKAGING FEE
- You agree to pay us a restocking and/or repackaging fee at the rate advised by us from time to time.
- 9. OWNERSHIP & RISK**
- (a) The risk of loss or damage to the Goods passes to you on the earlier of the date and at the time that the Goods are delivered (or deemed delivered) to you or at the date and time the Goods are collected from the Supplier's warehouse.
 - (b) Ownership of any Goods supplied by us will not pass to you until all amounts owing by you to us has been received by us.
 - (c) Until ownership passes to you, the Goods supplied are held by you for us as bailee and, if required, you will store the Goods so that it is clear they belong to us.
 - (d) If you wish to resell any Goods before ownership passes, you may do so only by way of bona fide sale in the ordinary course of business and as our agent, but you must not represent to any other person that you are acting for, or have any authority to bind, us. The installation or resale of the Goods does not relieve the Customer of its obligations to pay.
 - (e) You will hold the proceeds of sale on trust for us and you must account to us for the proceeds of any sale of the Goods.
 - (f) The Customer will insure the Goods for their full replacement value against loss, theft or damage until such time as the Customer has paid for the Goods in full or until the Goods are installed or sold by the Customer whichever occurs first and the Supplier will be entitled to call for details of the insurance policy.
- 10. PERSONAL PROPERTY SECURITIES ACT 2009**
- (a) You acknowledge that by assenting to the terms of the Contract, the Customer grants a security interest to the Supplier in all Goods (and their proceeds) supplied now or in the future by the Supplier to the Customer (or to its account) and a security interest in the personal property of the Customer.
 - (b) The Customer undertakes to execute all documents, provide any information or do anything else the Supplier requests, to ensure that any security interest created in the Supplier's favour by these Terms is, to the fullest extent

- possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
- (c) Unless the Customer has obtained the Supplier's prior written consent, the Customer undertakes not to:
- (i) register a financing change statement in respect of a security interest contemplated or constituted by these Terms; nor
 - (ii) create or purport to create any security interest in the goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.
- (d) To the extent permitted by law, you waive your rights under the following provisions of Part 4 of the PPSA:
- (i) to receive a notice of intention of removal of an accession (section 95);
 - (ii) to receive a notice that we decide to enforce our security interest in accordance with land law (section 118);
 - (iii) to receive a notice of enforcement action against liquid assets (section 121(4));
 - (iv) our obligation to dispose of or retain collateral (section 125);
 - (v) to receive a notice of disposal of goods by us purchasing the Goods (section 129);
 - (vi) to receive a notice to dispose of Goods (section 130);
 - (vii) to receive a statement of account following disposal of Goods (section 132(2));
 - (viii) to receive a statement of account if no disposal of Goods for each 6-month period (section 132(4));
 - (ix) to receive notice of any proposal of ours to retain Goods (section 135(2));
 - (x) to object to any proposal of ours to either retain or dispose of Goods (section 137(2));
 - (xi) to redeem the Goods (section 142);
 - (xii) to reinstate the security agreement (section 143);
 - (xiii) to receive a notice of any verification statement (section 157(1) and section 157(3)).
- (e) You further agree that where we have rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- (f) Until ownership of the Goods passes, you must not give to us a written demand or allow any other person to give us a written demand requiring us to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- (g) You acknowledge that you have received value as at the date of first delivery of the Goods and have not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to us under the Terms.
- (h) 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 Terms or by undertaking an audit under the provisions of the PPSA.
- (i) For the avoidance of doubt, the Supplier's interest constitutes a PMSI pursuant to the PPSA.
- (j) This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of the Terms and any purchase money obligations.
- (k) The Customer's right to possession of goods still owned by the Supplier under the Terms 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 dishonored for payment;
 - (v) the Customer fails to comply with any demand for payment issued by the Supplier or any Fletcher Group Member; or
 - (vi) the Customer breaches any term of the Contract or is in default of any other agreement between the Supplier or any other Fletcher Group Member and the Customer.
- (l) The Customer expressly and irrevocably agrees that, until such time as title in the goods passes to the Customer, the Supplier is entitled to enter any premises where the goods supplied by the Supplier are located in repossess, remove and sell such goods if we have cause to exercise any of our rights under sections 123 and/or 128 of the PPSA. 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 Terms including any claims brought by third parties, except to the extent that the Supplier has been negligent or breached the Law or the Contract. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against the Supplier, its employees, servants or agents.
- (m) The Customer agrees that where the Goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Customer on those Goods, and the Customer hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the Goods bearing the name or trademark of the Customer.
- (n) 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.

11. CHARGE

11.1 The Customer charges in favour of the Supplier all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with payment of all monies which are now or in the future become owing to the Supplier whether pursuant to these terms and conditions or otherwise until all such monies are paid in full by the Customer.

11.2 As security for the payment of the amount of its indebtedness to the Supplier from time to time, the Customer irrevocably appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).

11.3 Where the Customer has previously entered into an agreement with the Supplier by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Customer under this agreement. The Supplier may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

12. SET OFF

You agree that:

12.1 we may set-off any credit amount that we owe to you against any debit due by you to us; and

12.2 you are not entitled to withhold payment of any money in respect of any set-off or claim you might have against us.

13. FITNESS FOR PURPOSE

13.1 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:

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

13.2 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:

- (i) it must install the Goods in accordance with their applicable codes, Australian Standards, Laws, 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
- (ii) any advice, recommendation, information or assistance provided by the Supplier is provided in good faith, and is not relying upon the accuracy

and completeness of information provided by Customer to Supplier.

14. ACTS OF DEFAULT

14.1 If:

- (a) you fail to pay for any Goods on the due date or the Supplier has reasonable grounds to believe that you may not be able to make due and punctual payment to the Supplier of any monies owing by you; or
- (b) you exceed your credit limit at any time;
- (c) you otherwise breach any warranty, undertaking or a material term of any Contract with us or any agreement between you and any member of the Fletcher Group; or
- (d) you cancel the delivery in breach of the Contract or fail to take delivery of any Goods; or
- (e) you commit an act of bankruptcy; or
- (f) you allow a trustee in bankruptcy, receiver or receiver and manager to be appointed to you or any of your personal property; or
- (g) you allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against your property including under the PPSA; or
- (h) you are a company and:
 - (i) proceedings are commenced to wind you up or any of your subsidiaries; or
 - (ii) a controller, receiver, administrator, liquidator or similar officer is appointed to you or in respect of any part of your property; or
- (i) contractual performance by either you or the Supplier is delayed or prevented due to a Force Majeure Event,

then the Supplier and any member of the Fletcher Group may, without prejudice to any other rights they may have do any or all of the following:

- (j) all monies payable by you to the Supplier may, at the Supplier's election, become immediately due and payable, notwithstanding that the due date for payment may not have expired;
- (k) vary, suspend or withdraw any credit facilities that may have been extended to you;
- (l) immediately terminate or suspend the whole or any outstanding part of any Contract;
- (m) withhold the delivery of further Goods;
- (n) enter upon your premises (doing all that is necessary to gain access) where Goods supplied under any Contract are situated at any time and retake possession of any or all of the Goods we have supplied to you in which title has not passed to you and we reserve the right to resell the Goods concerned;
- (o) recover from you the cost of materials or goods acquired for the purpose of future deliveries of goods to you;
- (p) exercise such rights as are afforded to the Supplier under the PPSA;
- (q) register a default with any credit reference facility;
- (r) charge interest to you at eight percent (8%) above the cash rate prescribed by the *Reserve Bank of Australia* calculated daily on any overdue amount and payable together with the overdue amount.

The parties agree that any interest charged by pursuant to clause 14.1(r) is a genuine pre-estimate of the loss that will be suffered by the Supplier for late payment.

14.2 If the Contract is a Small Business Contract and:

- (a) an administrator, liquidator or provisional liquidator or external manager is appointed in respect of the Supplier; or
- (b) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Supplier; or
- (c) the Supplier is wound up; or
- (d) the Supplier becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due; or
- (e) there is a breach by the Supplier of a material term of any Contract or agreement with you; or
- (f) contractual performance by either you or the Supplier is delayed or prevented due to any Force Majeure Event,

then you may, without prejudice to any other rights you may have, terminate or suspend the whole or any outstanding part of the Contract.

15. RESALES

15.1 If we conduct a re-sale pursuant to clause 14.1(n):

- (a) we may do so at our premises or place; and
- (b) the re-sale may, at our discretion, be by public or private sale; and
- (c) we may recover from you as liquidated damages for our loss of bargain, the difference between the re-sale price and the unpaid price (together with any incidental damages, such as holding expenses and charges but less expenses saved as a result of your breach).

15.2 If applicable Goods cannot be sold within three (3) months of the first attempted sale, those Goods will be deemed to have a re-sale price of nil.

16. GOVERNING LAW

Each Contract is governed by the laws of Victoria. You and the Supplier irrevocably submit to the exclusive jurisdiction of the Victorian courts and federal courts sitting in Victoria.

17. CESSATION OF SUPPLY

Our agreement to continue to deliver or sell goods to you is always conditional upon our being satisfied of your ability to pay and comply with the Terms. If we cease to be satisfied we may suspend and/or terminate deliveries and will not be liable in any way for any claim, damage, expense or cost suffered by you.

18. SEVERANCE

Should any part of any Contract be held to be void or unlawful, the Contract will be read and enforced as if the void or unlawful provisions have been deleted.

19. ANTI-CORRUPTION

19.1 You agree to comply with the Anti-Corruption Law and must not commit any act or omission which causes or would cause you or the Supplier to breach, or commit an offence under, any Anti-Corruption Laws.

19.2 You warrant and represent that you have not been convicted of any offence, and have not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under Anti-Corruption Laws.

19.3 You must, to the extent permitted by law, promptly notify the Supplier in writing if you become aware at any time during the term of any Contract, that any of the representations or warranties in clause 19.2 are, or might reasonably be expected to be, no longer correct.

19.4 For the purpose of clause 19, "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) and any anti-corruption

regulations and provisions applicable in the European Union or in any other locations in which any member of the Fletcher Group carries on business.

20. PRIVACY

20.1 You acknowledge and agree that the Supplier may collect personal information and credit information about you and your directors, officers, partners and the Guarantors (as defined in Section A) (each a "Relevant Party").

20.2 The Supplier's Privacy Policy, available on its website or upon request to the Supplier, forms part of each Contract.

20.3 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 and credit information derived from Australia will still be treated in accordance with the Supplier's Privacy Policy while being stored overseas.

20.4 Without limitation to the Supplier's Privacy Policy, you agree that the Supplier may collect, use or disclose information to the Fletcher Group and to third parties for the purpose of processing the Application, providing the Goods, providing information about Goods; performing the Supplier's obligations under any Contract, ensuring you comply with your obligations under any Contract, sending information on the Fletcher Group and our services; performing our administrative and marketing operations; complying with legislative and regulatory requirements or as otherwise permitted or authorised by law; considering any other application you may make to the Supplier or any member of the Fletcher Group; managing the Supplier's rights and obligations in relation to external payment systems, e.g. credit card schemes and debit payment schemes; conducting market research or customer satisfaction research; developing, establishing and administering arrangements (including rewards programs) with other organisations in relation to the promotion, administration and use of the Fletcher Group's goods and services; and developing and identifying products and services that may interest you.

20.5 You warrant to the Supplier that you have 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 20 and the Supplier's Privacy Policy.

21. GENERAL

21.1 Either party may waive any term of a Contract at any time and will notify the other party in writing of any waiver.

21.2 The failure by a party to exercise a right or remedy, or any delay by a party in exercising a right or remedy, or the exercise by a party of only part of a right or remedy, or the granting of any indulgence by a party in favour of the other party does not:

- (a) affect the party's rights against the other party;
- (b) constitute a waiver of any term or condition; or
- (c) prohibit the party from exercising that right or remedy in relation to that breach or any other breach.

21.3 A waiver of a breach of a term or condition does not constitute a waiver of another breach of the same term or any other term.

21.4 The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

SCHEDULE OF FEES AND CHARGES

RESTOCKING FEE

A Return To Store ("RTS") fee calculated at ten percent (10%) of the invoiced value of the Goods returned with a minimum amount to be determined by us from time to time (exclusive of GST), where Goods are returned as a result of order errors made by the customer. Over ordered Goods may not be accepted after seven (7) days from the earlier date of delivery or invoice. Made to order, special order goods and half or cut down sheets will not be accepted for RTS.

LOGISTICS FEE

A logistics fee may be charged on orders for an amount to be determined by us from time to time – details are available from branch of despatch.