



**NOTICE OF KEY TERMS AND CONDITIONS**

The below table sets out the key terms and conditions that apply to the supply of goods or services by Tri Underground Australia Pty Ltd ABN 87 098 505 509 (“the Supplier”, “us”, “we”, “our”) to the customer/applicant (“Customer”, “you”, “your”). These key terms and conditions may substantially prejudice your interests. We recommend that you carefully consider these key terms and conditions before placing an order with us.

Term or condition	Effect
<b>Privacy Act Authorisation</b>	
<p>Page 7 - The applicant specified on page 6 (Customer) agrees that for the purposes of Tri Underground Australia Pty Ltd (Company) assessing this Credit Application and the credit worthiness of the Customer and for the purpose of managing and administering any credit which is provided to the Customer, the Customer authorises the Company to:</p> <ol style="list-style-type: none"> <li>1. Obtain a report from a credit reporting body and any other information relating to the Customer, its commercial activities and/or commercial credit worthiness; and</li> <li>2. Give to and obtain from any credit provider named in this application or any potential credit provider to whom the Customer has given consent, information about the Customer, its credit arrangements, including information about its credit worthiness or credit standing.</li> </ol>	<p>If we need to assess this Credit Application and your credit worthiness, we can:</p> <ol style="list-style-type: none"> <li>1. use your data to obtain a credit report or other information about you, your commercial activities and/or commercial credit worthiness; and</li> <li>2. give or receive information about you and your credit arrangements, including information about your credit worthiness or credit standing, to or from any credit provider named in this application or any potential credit provider to whom you have given consent.</li> </ol>
<b>Terms and Conditions</b>	
<p>2.3. The Supplier takes no responsibility for any omissions or errors in respect of the description of the goods or the price set out in the quote/order.</p>	<p>If there are mistakes or missing information related to the goods or the price set out in a quote or order, we will not be responsible for those mistakes or missing information.</p>
<p>3. Notwithstanding any prior acknowledgement by the Supplier of the price of goods, the prices specified for goods may at the Supplier’s option be subject to alteration to reflect the Supplier’s prices and charges at the time of delivery.</p>	<p>We may vary the price you are required to pay for goods to reflect any changes to our prices and charges as at the time of delivery of goods. We may do this even if we have previously acknowledged what the price of goods will be.</p>
<p>5.1. Goods will be delivered or deemed to be delivered when they are delivered to the delivery address nominated by the Customer or when the goods are ready for collection at the Supplier’s premises and the goods are at the risk of the Customer from and including delivery.</p>	<p>The goods are at your risk from and during delivery. If the goods are damaged during delivery, you will be responsible for this damage. Goods are considered delivered when they are delivered to your nominated delivery address or when they are ready for collection at our premises.</p>
<p>5.3. The Customer shall not be relieved of any obligation to accept or pay for the goods by reason of any delay in delivery.</p>	<p>You will be required to accept and pay for any goods that are delivered to you (even if there is a delay in the delivery of the goods).</p>
<p>5.4. The Customer authorises the Supplier to deliver goods to the delivery address nominated by the Customer and to leave the goods at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.</p>	<p>We may leave goods at your nominated delivery address, even if there is no one at that address to accept delivery. If you suffer any loss after delivery of the goods to your nominated address, we will not be liable for that loss.</p>
<p>6.1. We accept no liability for short delivery or damage to goods unless you notify us in writing within 5 days after delivery of the goods to you and a satisfactory inspection of the goods is carried out by us subsequently.</p>	<p>If there are items missing from your delivery or damage to goods, we will not be liable for the missing items or damage unless you notify us in writing within 5 days after delivery of the goods and we carry out a satisfactory inspection of the goods.</p>
<p>6.2. Our liability for non-delivery, short delivery or damaged goods (other than through damage by the Customer) is limited to the replacement of the goods in question within a reasonable</p>	<p>If we are liable for non-delivery, any items missing from your delivery or damage to goods, we are only required to replace the goods within a reasonable time. However, this liability does not</p>



<p>time and is subject to clauses 12 and 13.</p>	<p>extend to goods that have been damaged by you.</p> <p>This clause is also subject to the other restrictions and requirements in clauses 12 and 13 of the terms and conditions so this liability may be further excluded, or additional requirements may apply, under those clauses.</p>
<p>9.1. The Customer agrees that these Terms constitute a security agreement for the purpose of section 20 of the PPSA and that a security interest exists in all goods (and their proceeds) previously supplied by us to you and in all future goods supplied, together with a security interest in all of your present and after-acquired property.</p>	<p>By entering into the terms and conditions, you grant us a security interest in all:</p> <ol style="list-style-type: none"> <li>1. goods we have previously supplied to you (and their proceeds);</li> <li>2. future goods supplied by us to you; and</li> <li>3. your present and after-acquired property (this includes all your personal property that can be registered on the Personal Property Securities Register either at the time the registration is made, or in future).</li> </ol> <p>In summary, this means we may be able to take the above property if your obligations under the terms and conditions are not met.</p>
<p>9.3. We may on demand, obtain reimbursement from you for all costs and expenses incurred by us in relation to registering, maintaining or releasing our security interest or the repossession of goods or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that we may have with you.</p>	<p>If we take any action to:</p> <ol style="list-style-type: none"> <li>1. register, maintain or release a security interest;</li> <li>2. repossess goods; or</li> <li>3. exercise, enforce or preserve a right or interest we have under the terms and conditions or any other contract we have with you,</li> </ol> <p>you will be required to reimburse us for all costs and expenses incurred in taking those actions.</p>
<p>9.4. The Customer waives its rights under the following provisions of the PPSA and agrees that the following provisions of the PPSA will not apply to the enforcement of a security interest, to the extent that it is permitted by law to:</p> <ol style="list-style-type: none"> <li>a. Receive a notice of intention of removal of an accession and when a person with an interest in the whole may retain an accession (section 95 and section 96 respectively);</li> <li>b. Receive a notice that we decide to enforce our security interest in accordance with the land law (section 118);</li> <li>c. Receive a notice of enforcement of security in liquid assets (section 120);</li> <li>d. Receive a notice of enforcement action against liquid assets (section 121(4));</li> <li>e. Receive a notice to seize collateral (section 123);</li> <li>f. Obligation to dispose of or retain collateral (section 125);</li> <li>g. Seizure by higher priority partners - notice (section 127);</li> <li>h. Receive a notice of disposal of goods by us purchasing the goods (section 129);</li> <li>i. Receive a notice to dispose of goods (section 130);</li> <li>j. Receive a statement of account following disposal of goods and contents of statement (section 132 (2) and (3));</li> <li>k. Receive a statement of account if no disposal of the goods for each 6-month period (section 132 (4));</li> <li>l. Proposal of secured party to retain collateral (section 134(2));</li> <li>m. Receive a notice of any proposal by us to retain the goods</li> </ol>	<p>Parties can contract out of certain provisions under the <i>Personal Property and Securities Act 2009 (Cth) (PPSA)</i>. This clause sets out a list of the provisions in the PPSA that you will be contracting out of under the terms and conditions. The effect of contracting out of a provision varies depending on the particular provision in question but doing so may mean you lose certain rights you would otherwise have under the PPSA (such as rights to receive notices/statements).</p>



<p>(section 135 );  n. Retaining collateral free of interest (section 136(3), (4) and (5));  o. Persons entitled to notice may object to proposal (section 137);  p. Redeem the goods (section 142);  q. Reinstate the security agreement (section 143); and  r. Receive a notice of any verification statement (section 157 (1) and section 157 (3)).</p>	
<p>9.5 The Customer expressly and irrevocably agrees that the Supplier is entitled to enter any premises where the goods supplied are located to repossess, remove and sell such goods. The Customer (its successors and assigns, including any external manager or administrator) shall 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 these terms and conditions including and claims brought by third parties.</p>	<p>If we supply you with goods, we can enter onto any premises where those goods are located to repossess, remove and sell those goods if you breach your obligations under the terms and conditions.</p> <p>If we remove, repossess or sell any of those goods, you must indemnify us for any claims, actions or costs (including any claims brought by third parties) that arise as a result of us taking that action.</p>
<p>10. If:  a) The Customer being an individual, commits any act of bankruptcy; or  b) The Customer being a company or a trust, circumstances arise where a receiver, manager, administrator; or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for the winding up, or the Customer entering into a Deed of Company Arrangement; or  c) The Customer failing to comply with any demand for payment issued by the Supplier; or  d) The Supplier has any reasonable grounds to believe that the Customer may not be able to make due and punctual payments to the Supplier of any monies owing; or  e) There is a breach by the Customer of these Terms, then all monies payable by the Customer to the Supplier shall become immediately due and payable on demand, notwithstanding that the due date for payment shall not have expired;  then, the Supplier may without prejudice to any other rights they may have do any or all of the following:  ...  k) register a default with any credit reference facility.</p>	<p>If any of the circumstances listed in clause 10 (a) to (e) occur (i.e. you default under the terms and conditions) then we may use your data to register a default with a credit reference facility.</p>
<p>11. The Customer agrees that it does not rely on the advice, recommendation, information or assistance provided by the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever. The Supplier gives no warranties either express or implied as to merchantability, fitness for purpose or otherwise with respect to the goods other than as required by any applicable legislation.</p>	<p>If we provide you with any advice, recommendation, information or assistance, we are not liable for this. We do not give any warranties regarding the merchantability (i.e. suitability for sale), fitness for purpose (i.e. if the goods can be used for their intended purpose) or otherwise of the goods except where we are required to do so by legislation.</p>
<p>12.4 The Supplier will under no circumstances incur liability for</p>	<p>If you suffer any loss or damage, we will under no circumstances</p>



<p>any loss or damage suffered by the Customer including but not limited to costs to remove the goods from installation or any costs associated with re-installation of repaired or replaced goods, loss of profits, damage to property or personal injury arising from that supply, whether arising directly, incidentally or consequently.</p>	<p>be liable for that loss or damage.</p>
<p>12.6 All warranties and conditions whether implied by statute or otherwise are excluded to the extent permitted by law.</p>	<p>Any warranties or conditions that may be available to you under applicable laws or otherwise are excluded to the extent it is possible to do so. This means you will not receive any benefits under those warranties or conditions that you may otherwise be entitled to.</p>
<p>12.10 To the maximum extent permitted by law, the Customer indemnifies and agrees to hold the Supplier, its officers and employees (Those Indemnified) harmless against and from all Claims which may arise as a result of or in connection with the Supplier's supply of the goods. The Supplier holds the benefit of this indemnity on trust for Those Indemnified and Those Indemnified will be entitled to rely on the indemnity and have the Customer pay for all costs (including but not limited to legal costs on a solicitor and own client or indemnity basis) prior to Those Indemnified having incurred and paid such costs.</p>	<p>If a Claim arises as a result of, or in connection with, our supply of goods to you, you must indemnify us, our officers and employees against and from those Claims. You cannot hold us, our officers or employees liable for any of those Claims.</p> <p>You will need to pay for all costs in relation to those Claims prior to us (including our officers and employees) incurring or paying those costs.</p>
<p>14.1 The Customer warrants that all drawings and specifications and other design information supplied by it to the Supplier are accurate in all respects, comply with any relevant standards or legal or regulatory requirements and do not infringe upon the intellectual property rights of any party including any copyright, patents, designs or trademarks of a third party. The Customer fully indemnifies the Supplier for any claims made against the Supplier or loss suffered by the Supplier due to its breach of this clause 14.1.</p>	<p>If you supply us with any drawings and specifications or other design information, you warrant to us that those drawings, specifications or other design information are accurate, comply with any relevant standards or legal or regulatory requirements and do not infringe upon the intellectual property rights of any party.</p> <p>If there are any claims made against us or we suffer any loss because you breach clause 14.1, you must fully indemnify us for those claims and loss.</p>
<p>18 The Customer hereby charges to the Supplier all of the Customer's right, title and interest (whether existing or future) in any property both presently owned by the Customer and that which the Customer may hereafter acquire either in its own right or as a beneficial interest (Property) and grants a security interest to the Supplier in any of its Property which is personal property, to secure payment of any and all money owing by the Customer to the Supplier under these Terms (Charge)...</p>	<p>You charge all of your rights, title and interest in any property you own (and which you acquire, or acquire an interest in, in future), and grant us a security interest in any of that property which is personal property, to secure payment of any money you owe us under the terms and conditions.</p> <p>In summary, this means we may be able to take or sell the above property if you owe us money under the terms and conditions.</p>

**Note:** This notice sets out the key terms in our Credit Account Application Package. There are other important terms in our Credit Account Application Package that are not set out in this notice. In addition to reading this notice, you should also read our full Credit Account Application Package before placing an order with us.

## **TRI UNDERGROUND AUSTRALIA PTY LTD TERMS AND CONDITIONS**

These terms and conditions apply to the supply of goods by Tri Underground Australia Pty Ltd ("the Supplier", "us", "we") ABN 87 098 505 509 to the customer ("the Customer", "you"). These terms and conditions of sale ("Terms") replace any previous terms and conditions of sale, unless expressly agreed by the Supplier in writing. These Terms govern all dealings between us and you. No other terms govern our relationship except those terms varied by us.

### **1. ALTERATIONS TO STANDARD TERMS**

- 1.1 We may at any time and from time to time alter these Terms by posting updated Terms on our website: [www.triunderground.com.au](http://www.triunderground.com.au).
- 1.2 The placing of an order will indicate your acknowledgement and agreement to these and any amended Terms.

### **2. QUOTES AND ORDERS**

- 2.1. A quotation is an offer to sell goods to the Customer. No contract for the supply of goods shall exist between the Supplier and the Customer until a Customer's order for goods has been accepted by the Supplier.
- 2.2. The Customer acknowledges that it has checked all quotations/orders and is satisfied that all goods required by the Customer are set out in the quote/order.
- 2.3. The Supplier takes no responsibility for any omissions or errors in respect of the description of the goods or the price set out in the quote/order.
- 2.4. The Supplier may accept or refuse any order for goods at its discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.

### **3. PRICING**

Notwithstanding any prior acknowledgement by the Supplier of the price of goods, the prices specified for goods may at the Supplier's option be subject to alteration to reflect the Supplier's prices and charges at the time of delivery.

### **4. GST**

All goods are subject to GST which will be added to the price of the goods and any additional charges. The Customer must pay an additional amount to the Supplier equal to the GST payable on the taxable supply. The additional amount must be paid at the same time as the consideration for the taxable supply or on the date on which the Supplier delivers a tax invoice (whichever is later).

### **5. DELIVERY AND RISK**

- 5.1. Goods will be delivered or deemed to be delivered when they are delivered to the delivery address nominated by the Customer or when the goods are ready for collection at the Supplier's premises and the goods are at the risk of the Customer from and including delivery.
- 5.2. The Supplier will endeavour to ensure the goods are available by the agreed delivery date. Any times quoted for delivery are estimates only and the Supplier shall not be liable for any delays in supply or delivery of the goods.
- 5.3. The Customer shall not be relieved of any obligation to accept or pay for the goods by reason of any delay in delivery.
- 5.4. The Customer authorises the Supplier to deliver goods to the delivery address nominated by the Customer and to leave the goods at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- 5.5. The Supplier reserves the right to deliver goods by instalments.

### **6. DAMAGE AND SHORT DELIVERY**

- 6.1. We accept no liability for short delivery or damage to goods unless you notify us in writing within 5 days after delivery of the goods to you and a satisfactory inspection of the goods is carried out by us subsequently.
- 6.2. Our liability for non-delivery, short delivery or damaged goods (other than through damage by the Customer) is limited to the replacement of the goods in question within a reasonable time and is subject to clauses 12 and 13.

### **7. TERMS OF PAYMENT**

- 7.1. The Supplier shall issue a Tax Invoice for the goods and the Customer shall pay for all goods delivered within 30 days of the end of the month in which the goods were supplied, or in accordance with any written credit agreement between the parties, whichever is later.
- 7.2. All credit we afford you is entirely at our discretion. The Supplier reserves the right to withdraw any credit facility or vary the credit limit with immediate effect at any time by notice in writing to you.
- 7.3. If the Customer does not pay the Supplier by the due date, the Customer shall pay interest on monies due, charged on a daily basis at 5% per annum above the Westpac Banking Corporation Base Rate (as at the due date) from the due date for payment until actual date of payment.
- 7.4. The Customer shall pay any legal costs (on a solicitor/agent/client basis), duties and other expenses payable together with any other collection costs.

### **8. TITLE**

Title and property in all goods delivered by the Supplier to the Customer will not pass to the Customer until all goods supplied by the Supplier to the Customer have been paid for in full.

### **9. PERSONAL PROPERTY AND SECURITIES ACT 2009 (PPSA)**

- 9.1. The Customer agrees that these Terms constitute a security agreement for the purpose of section 20 of the PPSA and that a security interest exists in all goods (and their proceeds) previously supplied by us to you and in all future goods supplied, together with a security interest in all of your present and after-acquired property.
- 9.2. We may register on the Personal Properties Security Register a security interest or purchase money security interest in the goods, and an all present and after acquired property security interest against the Customer.
- 9.3. We may on demand, obtain reimbursement from you for all costs and expenses incurred by us in relation to registering, maintaining or releasing our security interest or the repossession of goods or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that we may have with you.
- 9.4. The Customer waives its rights under the following provisions of the PPSA and agrees that the following provisions of the PPSA will not apply to the enforcement of a security interest, to the extent that it is permitted by law to:
- a. Receive a notice of intention of removal of an accession and when a person with an interest in the whole may retain an accession (section 95 and section 96 respectively);
  - b. Receive a notice that we decide to enforce our security interest in accordance with the land law (section 118);
  - c. Receive a notice of enforcement of security in liquid assets (section 120);
  - d. Receive a notice of enforcement action against liquid assets (section 121(4));
  - e. Receive a notice to seize collateral (section 123);
  - f. Obligation to dispose of or retain collateral (section 125);
  - g. Seizure by higher priority partners - notice (section 127);
  - h. Receive a notice of disposal of goods by us purchasing the goods (section 129);
  - i. Receive a notice to dispose of goods (section 130);
  - j. Receive a statement of account following disposal of goods and contents of statement (section 132 (2) and (3));
  - k. Receive a statement of account if no disposal of the goods for each 6-month period (section 132 (4));
  - l. Proposal of secured party to retain collateral (section 134(2));
  - m. Receive a notice of any proposal by us to retain the goods (section 135 );
  - n. Retaining collateral free of interest (section 136(3), (4) and (5));
  - o. Persons entitled to notice may object to proposal (section 137);
  - p. Redeem the goods (section 142);
  - q. Reinstate the security agreement (section 143); and
  - r. Receive a notice of any verification statement (section 157 (1) and section 157 (3)).
- 9.5 The Customer expressly and irrevocably agrees that the Supplier is entitled to enter any premises where the goods supplied are located to repossess, remove and sell such goods. The Customer (its successors and assigns, including any external manager or administrator) shall 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 these terms and conditions including any claims brought by third parties.
- 9.6 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 as is equivalent to the Supplier's estimation of the market value of the goods as it is at the date of the repossession.
- 9.7 The Customer agrees to give us not less than 14 days' notice of the proposed change in your name or any other details which may affect the registration of the security.

## 10. DEFAULT

If:

- a) The Customer being an individual, commits any act of bankruptcy; or
  - b) The Customer being a company or a trust, circumstances arise where a receiver, manager, administrator; or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for the winding up, or the Customer entering into a Deed of Company Arrangement; or
  - c) The Customer failing to comply with any demand for payment issued by the Supplier; or
  - d) The Supplier has any reasonable grounds to believe that the Customer may not be able to make due and punctual payments to the Supplier of any monies owing; or
  - e) There is a breach by the Customer of these Terms,
- then all monies payable by the Customer to the Supplier shall become immediately due and payable on demand, notwithstanding that the due date for payment shall not have expired;
- then, the Supplier may without prejudice to any other rights they may have do any or all of the following:
- f) withdraw any credit facilities which may have been extended to the Customer;
  - g) withhold any further deliveries and terminate all outstanding orders;
  - h) may enter the Customer's premises or any other premises for the purpose of recovering the possession of the goods already delivered;
  - i) recover the cost of materials or goods manufactured or acquired for the purpose of future deliveries;
  - j) exercise such rights as are afforded to the Supplier under the PPSA and the *Corporations Act 2001* (Cth); and
  - k) register a default with any credit reference facility.

## 11. FITNESS FOR PURPOSE

The Customer agrees that it does not rely on the advice, recommendation, information, or assistance provided by the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information, or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever. The Supplier gives no warranties either express or implied

as to merchantability, fitness for purpose or otherwise with respect to the goods other than as required by any applicable legislation.

## **12. WARRANTY AND INDEMNITY**

- 12.1 The Supplier hereby provides to the Customer the benefit of all warranties granted to it by its suppliers.
- 12.2 The Supplier expressly warrants that all goods manufactured by it will be free from defects in material and workmanship for a period of 12 months from dispatch.
- 12.3 The warranty will apply to the extent of repair or replacement of any defective goods at the option of the Supplier.
- 12.4 The Supplier will under no circumstances incur liability for any loss or damage suffered by the Customer including but not limited to costs to remove the goods from installation or any costs associated with re-installation of repaired or replaced goods, loss of profits, damage to property or personal injury arising from that supply, whether arising directly, incidentally, or consequently.
- 12.5 This warranty will not apply and be absolutely void if in the Supplier's opinion the goods have been subject to abnormal wear and tear, damaged, modified or any decals or identification marks have been removed.
- 12.6 All warranties and conditions whether implied by statute or otherwise are excluded to the extent permitted by law.
- 12.7 Where the Customer is a consumer for the purposes of the Schedule 2 of the Competition and Consumer Act 2010 (Cth) (Australian Consumer Law), the goods comes with guarantees that cannot be excluded. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonable foreseeable loss or damage. The Customer is also 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.
- 12.8 For the purposes of clause 12.7 if the Customer is a consumer within the meaning of that term in the Competition and Consumer Act 2010 (Cth) and the Australian Consumer Law, the Supplier makes each guarantee required of a supplier to a consumer under Part 3-2 of the Australian Consumer Law but only to the extent required by the nature of the goods and the nature of the Customer.
- 12.9 To the extent permitted by law, and subject to clauses 12.7 and 12.8, the Supplier's liability to the Customer, whether for a breach of these Terms or otherwise, will at the discretion of the Supplier, be limited to the supply of equivalent goods or the replacement of the goods supplied to the Customer.
- 12.10 To the maximum extent permitted by law, the Customer indemnifies and agrees to hold the Supplier, its officers and employees (Those Indemnified) harmless against and from all Claims which may arise as a result of or in connection with the Supplier's supply of the goods. The Supplier holds the benefit of this indemnity on trust for Those Indemnified and Those Indemnified will be entitled to rely on the indemnity and have the Customer pay for all costs (including but not limited to legal costs on a solicitor and own client or indemnity basis) prior to Those Indemnified having incurred and paid such costs.
- 12.11 For the purpose of these Terms, Claims means in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

## **13. RETURN OF GOODS**

Return of goods, for any other reason not covered under warranty will be at the discretion of the Supplier and may incur a fee for re-stocking and re-packaging. The amount of this charge will be determined by the Supplier and be deducted from the amount of credit allowed to the Customer.

## **14. SPECIAL ORDERS**

- 14.1 The Customer warrants that all drawings and specifications and other design information supplied by it to the Supplier are accurate in all respects, comply with any relevant standards or legal or regulatory requirements and do not infringe upon the intellectual property rights of any party including any copyright, patents, designs or trademarks of a third party. The Customer fully indemnifies the Supplier for any claims made against the Supplier or loss suffered by the Supplier due to its breach of this clause 14.1.
- 14.2 Goods manufactured to special order of the Customer shall not be returnable to the Supplier.

## **15. FORCE MAJEURE**

The Supplier shall not be liable whatsoever for the consequences of any failure on its part for any delays directly or indirectly due to any event of "force majeure". Event of "force majeure" includes an act of God, epidemic, pandemic or public health emergency (including COVID-19), war, riot, strike, lockout, trade dispute, fire, break downs, mechanical failure, interruptions of transport, Government action or any other cause whatsoever, outside the reasonable control of the Supplier.

## **16. PRIVACY**

All information supplied by the Customer will be maintained by the Supplier in accordance with its obligations under the Privacy Act 1988 (Cth).

## **17. GENERAL**

- 17.1 The Customer shall notify the Supplier in writing, of any change in the structure or nature of the Customer's business.
- 17.2 These Terms shall be binding on the Customer's personal representatives, successors and permitted assigns.
- 17.3 A reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations.
- 17.4 These Terms will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the courts of Queensland.

17.5 If any part of these Terms is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and these Terms will remain otherwise in full force.

## 18. SECURITY

The Customer hereby charges to the Supplier all of the Customer's right, title and interest (whether existing or future) in any property both presently owned by the Customer and that which the Customer may hereafter acquire either in its own right or as a beneficial interest (**Property**) and grants a security interest to the Supplier in any of its Property which is personal property, to secure payment of any and all money owing by the Customer to the Supplier under these Terms (**Charge**). The Customer agrees upon request by the Supplier, to deliver to the Customer an executed mortgage over any Property or instrument of encumbrance in registrable form that incorporates the Supplier's standard covenants as prepared by the Supplier's solicitors, and as the Supplier may require to be executed by the Customer. The Customer acknowledges that the Supplier may lodge a caveat over any real estate assets forming part of the Property. If the Charge created by this clause is or becomes void or unenforceable, it may be severed from these Terms without any effect on their validity and the Customer will not be exonerated from complying with these Terms in whole or in part. Nor will the Supplier's rights, remedies or recourse against the Customer in any way be prejudiced or adversely affected by such severance.

## 19. INTELLECTUAL PROPERTY

19.1 The sale to and purchase by the Customer of any Goods does not confer on the Customer any license to the Intellectual Property Rights of the Supplier.

19.2 All Pre-existing IP Rights remain the sole property of the owner.

19.3 The Customer grants the Supplier a non-exclusive, royalty-free, non-transferable license to use the Pre-existing IP Rights owned by it for the sole purpose of providing the Goods.

19.4 For the purpose of these Terms:

a) Intellectual Property Rights means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including, without limitation, business, company or trade names, domain names, patents, inventions, copyright, design rights, know-how, trademarks, the right to sue for passing off and rights to use, and protect the confidentiality of, confidential information), whether registered or unregistered, and including the rights to apply for or renew the registration of any such rights and any rights the subject of any lapsed application or registration.

b) Pre-existing IP Rights means Intellectual Property Rights in all materials owned by the Customer or Supplier independent of these Terms