

Standard Terms and Conditions of Trade

1. Definitions and Interpretation

In these Conditions, singular words include the plural and vice versa. A mention of anything after "include", "includes" or "including", does not limit what else might be included or described.

ACL means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement means the agreement between the Supplier and the Customer for the supply of Goods and/or Services as set out in the Conditions.

Business Day means a day other than a Saturday, Sunday or official holiday in Western Australia.

Conditions means these terms and conditions and where applicable includes the terms of any Supplier Invoice, Quote, Purchase Order, Credit Application or guarantee, and includes the whole of this document as amended, supplemented or varied by the Supplier from time to time, provided that the terms of this document shall prevail in the event of any inconsistency between such terms.

Consequential Loss means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.

Confidential Information means all or any information, data, documents, invoices and other things whatever whether reduced to writing or not relating to or in any way connected with or concerning the Supplier or any Agreement, other than information in the public domain.

Credit Application means the Supplier's credit application form with the heading "Credit Application & Guarantee".

Credit Facility means the credit provided to the Customer by the Supplier for the supply of Goods and/or Services to the Customer subject to the Conditions pursuant to the terms of the Credit Application.

Customer means the party named in the Credit Application or any other party who has ordered Goods or Services from the Supplier or to whom the Supplier has supplied Goods and/or Services, and includes any of that party's authorised persons, successors and assigns.

Fees means the fees payable by the Customer to the Supplier for Goods and/or Services pursuant to any Invoice, Quote or Purchase Order.

FTA means the *Fair Trading Act 2010* (WA).

Goods means any goods sold, supplied, bailed or supplied on consignment to the Customer by the Supplier.

Guarantor/s means, if the Customer is a company or a trust with a company as trustee, then all of the directors of that company, and if the Customer is a trust with individual/s as trustee/s then that or those individuals, and includes any person or entity who signs a Credit Application.

Insolvency Event means, for the Customer, as applicable, being placed, or applying, or resolving to apply, to be placed in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth) ("**Corporations Act**") or analogous person appointed to the

Customer or any of the Customer's property, being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Customer becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), entering into a compromise or arrangement with, or assignment with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

Intellectual Property includes but is not limited to all trademarks, patents, copyright, designs, marks, processes, know-how, methodology, concepts, models, specifications, statements, formulae, trade secrets, manner of new manufacture, drawings, artwork and data or other like property or rights owned or held by the Supplier. These rights include but are not limited to:

- (a) marks, logos, images, service marks, trade names, business names, internet domain names, slogans, symbols, brand names, copyright or other trade indicia; and
- (b) all rights in information, know-how, processes, procedures, compositions, devices, methods, formulae, protocols, techniques, software, designs, drawings, programs, source code, dynamic link libraries, graphical user interfaces, trade secrets or data whether or not protectable by patent application design registration, copyright, circuit layouts or otherwise, whether unregistered, registered or registrable.

Invoice means a tax invoice for Goods and/or Services provided to the Customer by the Supplier.

Loss means any expense, cost or damage of any kind and howsoever arising, and includes Consequential Loss, pure economic loss, and a fine or penalty imposed by a statutory or other authority.

Party or Parties means a party or parties to an Agreement.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Purchase Order means a formal order placed by the Customer for Goods and/or Services.

Quote means a written quotation for Goods and/or Services provided by the Supplier to the Customer.

Real Property means all legal and equitable interest/s (including as trustee or beneficial owner, both present and future) of whatsoever nature in all real property held by the Customer or a Guarantor.

Related Bodies Corporate has the same meaning as given to that term in the *Corporations Act*.

Services mean any services provided by the Supplier to the Customer.

Site means the location nominated by the Customer for the Services to be provided or the Goods delivered.

Supplier means in connection with the supply of any Goods or Services, **Swift Flow Pty Ltd (ACN 167 014 477)** as Trustee for the Swift Flow Unit Trust, or any Related Body Corporate making the supply to the Customer.

2. Acceptance of Conditions

Any request for Goods and/or Services is subject to acceptance by the Supplier. On receipt of a Purchase Order, any of the following

will be deemed to communicate acceptance by the Supplier constituting an Agreement:

- (a) The Supplier communicating acceptance of the Purchase Order in writing to the Customer; or
- (b) The Supplier providing Goods or Services to the Customer pursuant to the Purchase Order.

3. Ordering Procedure and Delivery

(a) In requesting Goods or Services, the Customer must provide the Supplier with a written request containing all information necessary for the Supplier to provide an accurate fee estimate, including as applicable:

- i. Any specifications for the Goods or Services including a clear set of technical plans relating to the Goods or the Site;
- ii. Clear and accurate details regarding the Site including the location and any relevant details regarding access to the Site;
- iii. A proposed date and time for delivery of any Goods; and
- iv. Any special requirements that may apply to the Customer's request, or to delivery of the Goods or provision of Services at the Site.

(a) After receiving a written request for Goods or Services from the Customer, the Supplier shall issue the Customer with a Quote for providing such Goods or Services. Any Quote issued by the Supplier is valid for 30 days from the date of its issue, unless withdrawn earlier by the Supplier at its sole discretion. Any Quote accepted by the Customer after 30 days of its issue may be subject to revised terms and additional fees, at the Supplier's discretion. For the avoidance of doubt, any Quote issued by the Supplier may be withdrawn or cancelled by the Supplier at any time notwithstanding whether or not the Customer has indicated its willingness in any way to proceed with the terms of the Quote.

(b) On receipt of a Quote the Customer shall provide a Purchase Order confirming the Goods or Services to be supplied by the Supplier. If the Supplier chooses, at its sole discretion, to provide the Goods or Services as described in the Purchase Order, it may do so without further notice to the Customer.

(c) All Purchase Orders supplied by the Customer are subject to acceptance by the Supplier. In the absence of express notification of acceptance of a Purchase Order by the Supplier to the Customer, the Supplier providing Goods or Services pursuant to a Purchase Order will constitute the Supplier's acceptance of the Purchase Order.

(d) Any variation, inaccuracy or inconsistency in a Customer's instructions or request for Goods or Services, may result in additional fees being incurred and charged to the Customer. The Supplier shall not be liable for any Loss arising out of any inaccurate or misleading information provided by the Customer including any defect, mistake or omission in any instructions, including as applicable any specifications, plans or measurements.

(e) All Goods and Services shall be provided to or at the Site by the Supplier or its nominated carrier. If the Supplier is unable to provide any Goods or Services due to any of the following:

- i. The Customer is not present at the Site at the time and location agreed by the Parties;
- ii. The Supplier is unable to gain access to the Site;

iii. The Customer has failed to pay any deposit by its due date for payment; or

iv. Owing to any reason beyond the Supplier's control; then

the Supplier shall be entitled, at its sole discretion, to refuse to provide any Services, to return or retain any Goods, or to unload the Goods at a location of its choice, including a location in the vicinity of the Site, or a warehouse or other storage facility.

(f) If the Supplier is prevented from providing any Goods or Services owing to any of the circumstances described in clause 3(e)(i – iv), then it shall be entitled to charge an additional amount for costs incurred for transport, labour, storage and for any subsequent provision of Goods or Services.

(g) The Supplier may deliver Goods by separate instalments and each separate instalment will incur delivery costs. The Customer agrees to promptly pay all costs of transporting and delivering the Goods, including if applicable the costs of any insurance coverage arising therefrom, on demand.

(h) The Customer must inspect all Goods on delivery and notify the Supplier in writing of any defect or error with regard to the Goods. If the Customer fails to provide written notice to the Supplier within forty eight (48) hours of their delivery, then:

i. The Goods shall be presumed to be free from any error, defect or damage, and the Customer will be deemed to have unconditionally accepted the Goods as such; and

ii. The Supplier shall be released from any and all liability with regards to the Goods including for their replacement, return or exchange.

(i) If a Customer wishes to utilise or benefit from any Goods or Services prior to their completion, they must first provide the Supplier with a certificate of practical completion for those Goods or Services the Customer proposes to utilise. The Customer acknowledges and agrees that the warranty period, if any, for any Goods it chooses to utilise pursuant to this clause, commences on and from the date the certificate of practical completion is provided to the Supplier.

4. Payment

(a) The Customer must pay any Fees on their due date for payment. Where no due date is stipulated by the Supplier, the Customer must make payment within 30 days of the date of the Invoice.

(b) Payment of all Fees must be made by electronic funds transfer to the Supplier's bank account, being the Westpac bank account with BSB no. 036-019 and account no. 209-896, or to such other account nominated by the Supplier in writing.

(c) Notwithstanding clauses 4(a) and (b) above, the Supplier may require a deposit to be paid by the Customer prior to the Supplier providing any Goods or Services. The terms of any deposit requested by the Supplier shall be at the Supplier's sole discretion. To the maximum extent permitted by law, any deposit paid by the Customer to the Supplier is non-refundable in any circumstance.

(d) Unless stated otherwise in writing, all Fees are inclusive of GST.

(e) Reasonable additional charges for Goods or Services may apply if the circumstances of any Agreement are materially altered to the detriment of the Supplier, due to the action or inaction of the Customer. This includes where the Customer causes unnecessary delays, varies or misrepresents the Services required, alters dates or times for completion of any Services without providing reasonable notice to the Supplier, defaults on any payment owed to the Supplier, or otherwise causes the Supplier to incur loss.

- (f) The Customer agrees that it must:
- i. pay, without any deduction or set-off of any kind, any Fees charged by the Supplier for Goods or Services supplied to the Customer on delivery or performance, or if credit terms are offered, within 30 days following the end of the month during which the Goods or Services are supplied or provided.
 - ii. pay any stamp or other duty assessed on this document or any fee required to register or maintain any security interest (as that term is defined in the PPSA) held by the Supplier in respect of Goods or Services supplied to the Customer.
- (b) The Customer has no entitlement to credit unless in the Supplier's sole discretion the Supplier extends credit to the Customer. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods or Services or both to the Customer on credit terms, or to vary the credit limit that the Supplier has provided to the Customer. If the Supplier does decline to give the Customer further credit or to vary the Customer's credit limit, then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.
- (c) The Customer accepts and acknowledges that the Credit Facility shall remain in the name stated by the Customer in its Credit Application until the Supplier is notified otherwise in writing, and consents to any change in writing, at the sole discretion of the Supplier.

5. Overdue Accounts, Interest and Security

- (a) Any amount owing by the Customer to the Supplier and not paid by the due date for any reason, shall incur interest at a rate of 10% per annum, or part thereof, on the unpaid amount. Such interest shall be calculated on the daily balance of the outstanding amount on the basis of a 365 day year and is payable immediately.
- (b) The Customer agrees to pay all costs and expenses (including legal costs on a full indemnity basis, commissions paid by the Supplier or its Related Bodies Corporate to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 5(c).
- (c) As security for the due and punctual payment of any amounts due to the Supplier from time to time and the performance of the obligations and liabilities of the Customer hereunder, the Customer and the Guarantors hereby charge all of their legal and equitable interest (including as trustee or beneficial owner, both present and future) of whatsoever nature held in any and all Real Property and any of their personal property (including present and after-acquired property), in favour of the Supplier.
- (d) Without limiting the generality of the charge created by clause 5(c), the Customer and the Guarantors agree, on request by Supplier, to execute any and all documents and do any and all things reasonably required by the Supplier to perfect the charges created by clause 5(c) including registering a mortgage or mortgages, absolute caveats or both over any Real Property. In the event that the Customer or Guarantor fails to execute and deliver the requested documents, the Customer and the Guarantors hereby appoint the Supplier to be the Customer's and the Guarantors' lawful attorney for the purposes of executing and registering any documents and taking all such steps in that regard. The Customer and the Guarantors also hereby undertake to indemnify and keep indemnified the Supplier on a full indemnity basis from and against any and all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such mortgage or other security documents.
- (e) The Customer and the Guarantors consent unconditionally to the Supplier lodging an absolute caveat or caveats noting its interest in any Real Property, pursuant to the charging provisions of this clause.
- (f) A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of that statement, shall be sufficient evidence of the amount so due or owing unless the contrary is proven.
- (d) If the Customer fails to comply with these Conditions or suffers an Insolvency Event or makes any misrepresentation to the Supplier, or the Credit Facility is assigned without the consent of the Supplier, the balance of the Customer's account to the Supplier will immediately become due and payable upon demand by the Supplier.
- (e) The Customer agrees that it must advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control as soon as practicable and not later than within 2 Business Days of such event or change occurring. The Customer acknowledges that, despite any such event or change the Customer remains liable to pay the Fees for all Goods or Services supplied.

7. Retention of title

- (a) The Supplier retains full legal and equitable title in and to any and all Goods supplied to the Customer, until payment of the Fees in full for or in connection with the supply of the relevant Goods has been received by the Supplier. Until payment of the Fees has been received, the following terms apply:
- i. The Supplier is irrevocably entitled at any time and from time to time, to inspect and/or to recover and retake possession of any or all such Goods as are referred to in paragraph (a) above, and otherwise to exercise in relation to any or all such Goods, any and all of its legal and equitable rights whether those rights are as owner and/or unpaid seller or otherwise, and whether those rights are conferred by common law, contract, statute or in any other way.
 - ii. In order to exercise such rights and entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter into or upon any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier, and hereby agrees and undertakes to indemnify and keep indemnified the Supplier and its agents from and against any and all claims, costs, damages, losses or liability of whatsoever kind, arising or resulting in any way from any entry into or upon such third parties' premises or vehicles.
 - iii. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the fullest extent that this liability may be disclaimed by law, are and will not be liable for any damage or injury of any kind, caused to such premises by the removal of the Goods, and the indemnity given above by the Customer shall extend equally to such removal.
- (b) This reservation of title and ownership is effective and fully enforceable, regardless of whether or not the Goods have been altered from their supplied form, or commingled with other goods.

8. Personal Property Securities Act

- (a) In this clause, capitalised terms that are not otherwise defined in these Conditions have the same meaning as ascribed to them in the PPSA unless the context otherwise requires, and references to sections are to sections of the PPSA.
- (b) The retention of title arrangement described in clause 7 above, constitutes the grant of a Purchase Money Security Interest by the Customer in favour of the Supplier in respect of all present and after-acquired Goods supplied to the Customer by the Supplier.
- (c) The Customer further acknowledges that the Agreement constitutes a Security Agreement and creates a general Security Interest in all of the Customer's present and after acquired Personal Property.
- (d) The Customer must immediately, if so requested by the Supplier, sign any and all documents, provide any and all necessary information and do anything else required by the Supplier to ensure that each of the Supplier's Security Interests are Perfected.
- (e) The Customer will not enter into any Security Agreement that permits any other person to have or to register any Security Interest in respect of the Goods until the Supplier has Perfected its Security Interests.
- (f) The parties agree to contract out of the application of sections 125, 132(3)(d), 132(4), 135, 142, 143, 129(2) and (3), 132, 133(1)(b) (as it relates to the Security Interest of the Secured Party), 134(2), 135, 136(3 to 5) of the PPSA.
- (g) The Customer hereby waives any rights the Customer may otherwise have to receive any notice under the PPSA (including notice pursuant to section 95 or 130 of the PPSA and notice of a verification statement) unless that notice is mandatory.
- (g) The Customer and any Guarantor hereby indemnify the Supplier against any costs the Supplier incurs in perfecting and maintaining any Security Interest in the Goods or other Personal Property under the PPSA and any costs the Supplier may incur, including legal costs, in the course of enforcing any of its rights under the Agreement, the PPSA or at law generally.

9. Risk

Subject at all times to the Supplier's reservation of title and ownership, risk in relation to any Goods passes to the Customer on delivery of the Goods.

10. Third party involvement

- (a) The Supplier will notify the Customer of the need to engage any third party or use any third party goods, materials or equipment as the need arises, and shall disclose details of any additional costs that may be incurred as a result of such third party involvement.
- (b) The Supplier shall obtain all necessary rights or licences required by any third party, and the Customer hereby appoints the Supplier as agent of the Customer where necessary in order to meet such requirements.
- (c) Any agreement reached between the Supplier and a third party on behalf of the Customer constitutes a contractual relationship between such third party and the Customer.
- (d) If there is any defect in any third party licences, services or other materials, the Customer agrees to seek any remedy from the relevant third party, not the Supplier. The Customer hereby indemnifies and holds harmless the Supplier from and against any and all Loss they may incur arising out of any use of third party materials or equipment or otherwise out of any third party engagement undertaken pursuant to this clause.
- (e) The Supplier may assign, license or sub-contract all or any part of its rights and/or obligations under any Agreement (including pertaining to the provision of the Goods and/or Services) to any third party without the Customer's consent.

11. Exclusion of implied terms

The Customer may have the benefit of consumer guarantees under the ACL. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Conditions or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention, are hereby fully and expressly excluded.

12. Limitation of liability

To the maximum extent permitted by law the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions or arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for breach of these Conditions or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:

- (a) the Supplier shall have no liability to the Customer for any Consequential Loss;
- (b) the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods or Services that gave rise to the Loss in question.

13. Limitation of liability under Australian Consumer Law Guarantees

To the extent that Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the ACL, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have the benefit of, under the ACL (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities)), is limited, at the option of the Supplier, to one or more of the following:

- (a) replacement of the Goods or the supply of equivalent Goods;
- (b) the repair of the Goods;
- (c) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; or
- (d) equivalent Goods; or
- (e) the payment of the cost of having the Goods repaired.

To the extent that Services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited, at the option of the Supplier to:

- (a) the supply of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

Nothing in these Conditions is intended to have the effect of contracting out of any applicable provisions of the ACL or the FTA, except to the extent permitted by those Acts where applicable.

14. Privacy disclosure and consent

For the purposes of this clause, 'Customer' includes any Guarantor.

In carrying out its business the Supplier collects personal information about its customers. This personal information may include a customer's name, street and postal address, telephone and fax numbers, email addresses and bank account details. The Supplier respects the privacy of its customers and is committed to protecting their personal information. The Supplier collects personal information in order to provide and market its services to its customers. The Customer has the right to access personal information collected about it and may request the Supplier to access or change any personal information which the Supplier holds.

The Customer authorises the Supplier to:

- (a) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given by or on behalf of the Customer;
- (b) use, disclose or exchange with other credit providers information about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts; and
- (c) disclose the contents of any credit report on the Customer to other Related Bodies Corporate of the Supplier and any of their solicitors, other professional advisors, bankers and/or financiers, and mercantile agents.

If the Customer does not provide the information requested in this document the Supplier may be unable to process or grant the application.

15. Force Majeure

The Supplier is not obliged to perform any obligation pursuant to these Conditions to the extent and for the period that, by reason of any fact, circumstance, matter or thing beyond the Supplier's reasonable control, the Supplier is unable to perform, in whole or in part, that obligation. The Supplier is not liable to the Customer for any Loss or damage which is or may be suffered by the Customer whether as a direct or indirect result of any event or circumstance that is or was beyond the Supplier's control.

16. Confidential Information

No Party may (save as this clause provides) without the consent of the other Parties at any time divulge, communicate or suffer or permit any of its officers, employees, agents, contractors, consultants or auditors to divulge or communicate to any person all or any Confidential Information except for the disclosure of any information:

- (a) that at the time of disclosure is in the public domain;
- (b) that is required by law to be communicated to a person who is authorised by law to receive it;
- (c) to a court arbitrator, expert board of enquiry or administrative tribunal in the course of proceedings before them or it;
- (d) to any person who is required or authorised by the Agreement to perform any function under the Agreement;
- (e) that is necessary to be disclosed to any bank or other financial institution in connection with the organisation of that Party's financial affairs;
- (f) that is necessary to be disclosed to any legal counsel, accountant or other professional adviser in connection with the Party's affairs provided that the disclose is bound by an obligation or confidentiality in regards to the information disclosed; or
- (g) that is necessary to be disclosed to the Party's officers, employees, agents, contractors, consultants, auditors and other persons for the purpose of all or any of the matters pertaining to the Agreement or any business to be conducted hereunder.

17. Intellectual Property

All intellectual property rights subsisting in the Goods and/or Services and any document, matter or thing prepared or written for the Conditions or developed by the Supplier for the supply of the Goods and/or Services are, as between the Customer and the Supplier, the sole and exclusive property of the Supplier. The Customer indemnifies and will keep indemnified the Supplier against all Loss (including legal costs on a solicitor client basis) or claims made by any third party in relation to any Intellectual Property supplied by the Customer to the Supplier.

18. Dispute Resolution

- (a) Subject to clause 18(h), if any dispute arises out of or in connection with the Agreement ("Dispute"), a Party cannot commence any court

proceedings relating to a Dispute unless this clause has first been complied with, except where that Party seeks urgent interlocutory relief.

- (b) A Party claiming that a Dispute has arisen must give notice in writing to the other party specifying the nature of the Dispute.
- (c) On receipt of that notice by the other Party, all of the Parties must use all reasonable efforts to expeditiously resolve the Dispute.
- (d) If the Parties have not resolved the Dispute within thirty (30) days of receipt of the notice referred to in clause 18(b), or further period as is agreed in writing by them, the Dispute must (at the instigation of any Party) go to arbitration in accordance with clauses 18(e) and (f).
- (e) The arbitrator appointed to resolve the Dispute will be:
 - i. either as agreed in writing by the Parties; or
 - ii. failing agreement within seven (7) days of a request by any Party to do so, then as appointed by the President for the time being of the Law Society of Western Australia or their nominee.
- (f) The costs of the arbitrator will be borne equally by the parties to the Dispute and each Party must bear its own legal costs.
- (g) Any legal action between the Parties must be commenced in the jurisdiction of Western Australia.
- (h) Where a Dispute relates to payment:
 - i. any amount, whether partial or otherwise that is not disputed must be paid strictly in accordance with the terms of payment set out in the Agreement; and
 - ii. the provisions of the *Construction Contracts Act 2004* (WA) ("CCA") relating to disputes and adjudication will apply.
- (i) Nothing in the Agreement is intended to have the effect of contracting out of any provisions of the CCA except to the extent permitted by law.

19. Governing law

These Conditions are governed by and are to be interpreted according to the laws in force in Western Australia, and the Parties hereby irrevocably submit to the exclusive jurisdiction of those laws and the Courts enforcing them.

20. Joint and several liability

If the Customer comprises 2 or more persons or parties these Conditions bind each of them separately and any 2 or more of them jointly.

21. Variation

The Supplier may vary these Conditions at any time by written notice to the Customer. Notice may be sent by pre-paid post to the address of the addressee as set out in the Credit Application or sent by email to the last known email address of the Customer.

22. Guarantors

The Guarantors hereby agree to guarantee payment to the Supplier of the whole price charged by the Supplier for any and all Goods or Services supplied to the Customer from time to time, without any deduction or set-off whatsoever. The Guarantors also agree to guarantee payment of any and all other monies now or in the future owing by the Customer to the Supplier on any account whatsoever and the performance of any and all of

the obligations of the Customer pursuant under the Agreement and/or the Conditions.

23. Default and Termination

- (a) Any Agreement may be terminated at any time by mutual agreement between the Supplier and the Customer or by either party giving 30 days' notice in writing to the other party. Termination shall be without prejudice to any claim either party may have against the other party arising from any breach of the Agreement or any act, default or omission (including negligence) prior to the date of termination.
- (b) If an Insolvency Event occurs to the Customer the Supplier may, at its discretion, and without prejudice to any other rights it may have consequent upon the happening of any that event, immediately terminate the Agreement.
- (c) The Parties hereby agree not to take any action, including legal action, against the other Party for a default of the Agreement without first giving the defaulting Party written notice specifying the default and providing the defaulting Party with 14 days to rectify such.
- (d) Without prejudice to any other remedies available to the Supplier, if at any time the Customer is in breach of any obligation under an Agreement (including those relating to payment), the Supplier may suspend or terminate any or all of its obligations under any Agreement, including the obligation to provide Goods and/or Services to the Customer. The Supplier will not be liable to the Customer for any Loss the Customer suffers because the Supplier has exercised its rights under this clause.
- (e) On the occurrence of any of the following events and without prejudice to the Supplier's other remedies at law, the Supplier is entitled to immediately cancel all or any part of any Purchase Order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable:
 - i. Any money payable to the Supplier becomes overdue, the Supplier deems that the Customer is or will be unable to meet its payments as they fall due; or

- ii. The Customer becomes insolvent or suffers an Insolvency Event.

- (f) If the Supplier terminates the Agreement for any reason then the Customer shall pay to the Supplier all amounts outstanding for the supply of Goods and/or Services provided up to the date of termination, whether invoiced or not.

24. Return of Goods

- (a) Except for any provisions to the contrary contained in the Agreement or Conditions, the Supplier is not under any duty to accept Goods returned by the Customer. The Supplier will do so only on terms to be agreed in writing in each individual case.
- (b) If the Supplier agrees to accept returned Goods from the Customer under clause 24(a) the Customer must return the Goods to the Supplier at the Supplier's place of business.

25. Cancellation

The Supplier may cancel the Agreement or cancel delivery of the Goods or Services at any time before the Goods are delivered or the Services provided, by giving written notice to the Customer. On giving such notice the Supplier shall refund any Fees paid by the Customer for Goods or Services not provided, provided that the Supplier shall be entitled to apply any portion of the Fees towards payment of the Supplier for any Loss incurred due to the dishonest, reckless or misleading conduct of the Customer. The Supplier will not be liable to the Customer or any other entity for any Loss arising from such cancellation.

No order may be cancelled by the Customer except with the written consent of the Supplier. If there is a cancellation of an order by the Customer, the Supplier has the right to claim indemnity against all losses suffered by the Supplier as a result of such cancellation.

26. Indemnity

The Customer and any Guarantor shall indemnify the Supplier and its officers, employees and agents against any liability, loss, damage, costs (including the cost of any settlement and legal costs and expenses on a solicitor and own client basis), and expenses arising out of or in connection with a default or unlawful or negligent act or omission on the part of the Customer, its officers, employees or agents.