

# Brightwater Engineering

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Standard Terms and Conditions of Sale



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### 1. Incorporation

- 1.1 These terms and conditions between Brightwater Manufacturing Pty Ltd ABN 82 071 509 790 or nominee (referred to herein as “we” “our” or “us”) and the Customer (referred to herein as “the Customer”) shall apply to all orders for Goods and/or services provided by us.
- 1.2 Any contract of sale, order, or quotation made or accepted by or on behalf of us will be subject to these terms and conditions of sale.
- 1.3 Any terms or conditions put forward by the Customer, whether in a purchase order, specification or otherwise, will not be binding on us in so far as they purport to amend, annul or augment any of these terms and conditions unless specifically agreed to in writing by us.

### 2. Prices

- 2.1 Unless otherwise agreed in writing all freight, insurance, delivery and travel charges (including demurrage fees and storing and handling charges) will be additional to any price quoted.
- 2.2 Unless otherwise agreed in writing any quoted price may be altered prior to delivery of Goods to the Customer, or before the completion of repairs or services by us, if our costs fluctuate materially.
- 2.3 Unless we otherwise specify in a quotation or agree in writing:
  - (a) we are entitled to withdraw any quotation before it is accepted; and/or
  - (b) any quotation will lapse 30 days after it is given without further action or notice by us.
- 2.4 Unless we otherwise specify in a quotation or agree in writing, the price for Goods and any other sums payable by the Customer under or in relation to a quotation are exclusive of all national, federal, state, local, or other taxes and assessments of any jurisdiction, including sales or use taxes, property taxes, withholding taxes as required by international tax treaties, customs or other import or export taxes, value added taxes, goods and services tax and amounts levied in lieu thereof based on charges set, services performed or to be performed or payments made or to be made under this Agreement (“**Taxes**”), and Taxes will be payable by the Customer in addition to those sums. Unless we otherwise specify in a quotation or agree in writing, all prices do not include goods and services tax, sales tax or other government imposts unless otherwise indicated.
- 2.5 The price for Goods and services will be either as quoted to the Customer in writing or if no written quote is provided then pursuant to our standard charges applicable at the time.
- 2.6 Prices are for Goods ex-works unless otherwise agreed in writing in a quotation by us.
- 2.7 No Purchase Order or quotation is binding upon us unless and until signed by the Customer and confirmed by us in writing.

### 3. Payment

- 3.1 Unless it is otherwise agreed by us in writing the Customer must pay for:
  - (a) all Goods ex-works at time of delivery or upon lodgement of claim by us for progress payments; and
  - (b) any deposit required by us must be paid at the time when the Customer signs a Purchase Order.
- 3.2 No discount is given for early payment.
- 3.3 We will provide you with a tax invoice in respect of Goods when they are ready for dispatch upon completion. Payment in full of the invoice is due by the 20<sup>th</sup> day of the month following the date on which all Goods are ready for despatch upon completion.
- 3.4 If the Goods are to be despatched in instalments, we will issue a tax invoice on a pro rata basis as and when the Goods are ready for despatch. We are entitled to immediate payment for such progress or instalment payments for the value of work completed and the value of materials to hand for each item of equipment, such payment being due on the 20<sup>th</sup> day of the month following date of invoice.
- 3.5 If full payment for the Goods or services is not made on the due date then without prejudice to any other remedies available to us then:
  - (a) we are entitled to cancel or withhold supply of further Goods; and
  - (b) we are entitled to suspend or cancel work (including despatch) on other orders without prejudice to any other right or remedy available to us including the right to receive payment for all work carried out to that date plus the right to recover any sums unpaid on any previous orders; and
  - (c) we may charge interest on monies overdue charged on a daily rate calculated by reference to the current Australia and New Zealand Banking Group Limited’s overdraft rates plus 5% per annum and any other costs including solicitor’s fees incurred by us in recovery of any monies due.
- 3.6 We have a full right of set-off in respect of amounts owed by the Customer to us against any monies owing by us to the Customer, howsoever arising. The Customer’s obligation is to pay the full amount owing to us free and clear of all deductions or rights of set-off.

### 4. Retention of Title

- 4.1 Notwithstanding clause 4.14 the Customer agrees that property in, and ownership of, the Goods will remain with us and shall not pass to the Customer until:
  - (a) the Customer has paid in full all amounts owing for the particular Goods;
  - (b) the Customer has met all other obligations of the Customer to us in respect of the Goods.
- 4.2 The Customer will, from the time those Goods are collected by the Customer or once those Goods have been delivered by us, take custody of the Goods and retain custody of them as our fiduciary agent and bailee. The Customer will ensure that the Goods do not lose their identity as, and are clearly identifiable as, our property and are properly stored, protected and insured.
- 4.3 When the Customer has custody of Goods as our fiduciary agent and bailee under clause 4.2, the Customer may re-sell such Goods but only as our fiduciary agent. The Customer cannot, however, incur any liability for us or on



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- our behalf to any third party by contract or otherwise. Any re-sale of Goods under this clause 4.3 must be at arm's length, on market terms, and in the ordinary course of the Customer's business.
- 4.4 Where the Customer re-sells Goods under clause 4.3, then, with respect to the proceeds of the Goods re-sold ("**Proceeds**"), the Customer will hold on trust for us:
- (a) the Proceeds, up to an amount equal to the amount owed to us in respect of those Goods ("**Unpaid Purchase Price**"); and
  - (b) where the Proceeds are less than the Unpaid Purchase Price, such part of the debt or other property received by the Customer as a result of the re-sale that equals in value the Unpaid Purchase Price minus the Proceeds.
- The receipt on trust of the Proceeds, debt and other property in respect of Goods re-sold under clause 4.4 discharges, by an amount equal in dollar terms to that received on trust, the Customer's debt owing to us in respect of those Goods.
- 4.5 The Customer will maintain records to ensure that trust money and trust property are clearly identifiable as being held on trust for us. Moneys held on trust on our behalf will be kept separate until they are paid to us.
- 4.6 If:
- (a) the Customer fails to pay us for the Goods or any part thereof in full by the due date for payment;
  - (b) an Insolvency Event occurs in relation to the Customer;
  - (c) the Customer parts with possession of Goods held under clause 4.2 otherwise than in accordance with clause 4.3; or
  - (d) the Customer breaches any of the other provisions of this Agreement,
- we shall have the immediate right to:
- (a) demand that the Customer immediately account to us for any money or property (including, but not restricted to, any Goods, Proceeds and any debt) held on trust for us;
  - (b) demand that the Customer immediately account to us for any money owed to us as a result of a breach of this Agreement;
  - (c) re-take possession of Goods held by the Customer under clause 4.2 without notice to the Customer and for that purpose we may enter upon any premises occupied by the Customer or any other place where such Goods are stored free from trespass;
  - (d) sell Goods held by the Customer under clause 4.2 or sell Goods which have not yet been collected by, or delivered to, the Customer and apply the sale proceeds (after deducting all expenses of sale and enforcement costs) in or towards reduction of amounts due and payable on any account whatsoever to us by the Customer; and
  - (e) be indemnified by the Customer from and against (and the Customer must pay on demand to us) all loss, damage, costs or expenses which we may suffer or incur in exercising its rights under this clause 4.6.
- 4.7 The Customer must allow our representatives, free from trespass, to enter any premises where Goods held under clause 4.2 are stored and inspect such Goods at any time.
- 4.8 If an Insolvency Event occurs in relation to the Customer, the insolvency practitioner must immediately conduct a stocktake of all property (including trust property) belonging to us in the Customer's custody and provide us with access to the results of that stocktake.
- 4.9 We are irrevocably appointed by the Customer as its true and lawful attorney to recover any proceeds of Goods sold under clause 4.3 to any person and to exercise the Customer's rights against such person, including, without limitation, the right to re-take possession of those Goods.
- 4.10 The Customer must comply with any reasonable directions given by us to ensure compliance with this clause 4.
- 4.11 Our rights under this clause 4 in no way limit any other of its rights against the Customer.
- 4.12 The Customer must, at its own cost, do whatever we require in order to more satisfactorily secure our rights under this contract with respect to the Goods, which includes, without limitation, doing anything that may be required in order to successfully register our interest over Goods under the *Personal Property Securities Act 2009* (Cth) when the relevant registration provisions become operational.
- 4.13 Where we supply services to the Customer, the Customer agrees that we have legal and equitable title to the Customer's goods or machinery that has been serviced at a value equal to the contribution of the services to the value of the Customer's goods or machinery or property until the Customer pays for the services in full without deduction or set-off.
- 4.14 Delivery by us to a carrier accepted by the Customer or delivery from our premises when we advise we are ready to deliver constitutes delivery. The risk in the Goods will pass to the Customer upon the Goods being loaded onto transport, except where delivered by our own transport when risk will pass on delivery of the Goods to the place designated by the Customer.
- 4.15 Goods may be delivered in installments and in such case each delivery will be regarded as a separate contract, subject to the same payment terms. Failure or delay by us in making delivery at a specified time of one or more installments shall not cancel or repudiate the contract.
- 4.16 Insurance and the cost of carriage of the Goods ex-works to the place of delivery designated by the Customer will be to the Customer's account unless otherwise stated in this quotation and the Customer will not hold us responsible for any loss or damage that may occur while the Goods are under the risk of the Customer.
- 4.17 When Goods are stored by us at the request of or fault of the Customer after the Goods are ready for dispatch, the Customer will pay all applicable storage, transport and other charges. Storage will not entitle the Customer to postpone payment of any sums due to us.
- 4.18 Lien: All goods delivered to or held in our possession, for work or for repair or servicing are all subject to a lien for all sums owing by the Customer to us for work and/or repairs and/or servicing carried out on the goods. Where we hold a lien over any of the Customer's goods and the Customer is more than 30 days overdue with any monies owing then we are entitled to proceed to sell those goods forthwith in such manner and upon such terms as we



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think fit, and are entitled to utilise the sale proceeds to repay all amounts owing to us together with any expenses of sale."

### 5. Delivery, Non-Delivery and Shortage

- 5.1 Unless otherwise agreed the Customer is responsible for the cost of and arranging transportation of all Goods ready for despatch. We will not be liable for any delays in meeting quoted despatch dates due to causes beyond our control.
- 5.2 We will make every reasonable effort to meet quoted despatch dates but we will not be liable to the Customer for any loss or damage whatsoever (including consequential loss) caused by a delay in or prevention of despatch of Goods, including delays in repair, installation or removal of Goods at the Customer's site. The term "consequential loss" includes, but is not limited to, loss of profit, loss of production, loss or use of revenue, cost of capital, loss of or damage to property or equipment, and loss of reputation.
- 5.3 The Customer will be deemed to have accepted delivery of Goods referred to in any invoice or advice note unless the Customer makes a claim to us within thirty (30) days from the date of the invoice or advice note, except when part of the Goods referred to therein are delivered by us to the Customer, in which case any claim with respect to the Goods received in accordance with the relevant invoice or advice note must be made within three days of the delivery.
- 5.4 We will not accept liability for any damage to Goods while in transit at our risk or other discrepancies between invoice particulars and Goods received unless such damage or discrepancy is reported to us within three days of receipt of the Goods.
- 5.5 Where Goods are placed with an independent carrier, the carrier will be deemed to be our agent and not an agent of the Customer for the purposes of Sections 50, 51 and 52 of the *Goods Act 1958* (Vic) (and all other equivalent or similar State legislation).

### 6. Warranty

- 6.1 We warrant that Goods of our own manufacture (but no other goods) will be fit for the purpose for which they are intended for a period of 12 months from the date of delivery unless otherwise specified in the Purchase Order or any quotation provided by us.
- 6.2 We warrant that we will supply Goods in accordance with the descriptions contained in the Purchase Order or attached to the contract for the purpose and agreed by us.
- 6.3 During the warranty period, we will replace, or at our option repair, Goods supplied under this contract that are defective and make good any defect in workmanship, supply, installation or repair, provided that the Customer notifies us in writing of any such defect within thirty (30) days of defect becoming apparent.
- 6.4 Any parts not of our manufacture incorporated in our Goods or sold by us carry their manufacturer's warranty only, if any.
- 6.5 None of the warranties or obligations in this clause 6 shall apply:
  - (a) where the defect or failure is caused by or contributed to by the Customer's misuse, negligent maintenance or not using the Goods in accordance with rating and installation instructions or other specifications of use or care or where the Customer has used the Goods for purposes for which they have not been designed and manufactured;
  - (b) where the defect or failure of the Goods is due to instructions or designs supplied by the Customer; or
  - (c) where the claim does not relate to specific defects in the Goods (for example arising from faulty materials or workmanship) but when the claim is linked to the price of the Goods or services or replacement of the Goods or services.
- 6.6 Where we elect to remedy defects or faults or warrant a third party to do so, the Customer will in such cases still agree to pay us for the full price of the order agreed between the parties for our execution of the order and provision of the Goods or services.
- 6.7 Goods returned to us subject to a claim under warranty will be accepted on the condition that, should the claim be rejected, all costs incurred including transport to and from our premises and inspection will be to the Customer's account.
- 6.8 Subject to clause 6.9, the Customer acknowledges and agrees that any term, warranty, condition, representation or obligation whether express or implied and whether as to quality, fitness for any particular purpose or otherwise relating to Goods which is not expressly stated herein is expressly excluded from this Agreement, to the extent permitted by law.
- 6.9 If we are held liable in respect of Goods for a breach of a condition or warranty implied by Division 2 of Part V of the *Trade Practices Act 1974* (Cth) or the *Goods Act 1958* (VIC) or equivalent statutes of any relevant jurisdiction, any liability for such breach will be limited at our option to any of the following as determined in our sole discretion:
  - (a) the replacement of those Goods or services or the supply of equivalent Goods or services;
  - (b) the payment of the value of the Goods or services or of replacing the Goods or services or of acquiring equivalent Goods or services;
  - (c) the repair or restoration of the Goods; or
  - (d) the payment of the cost of having the Goods repaired or restored.

### 7. Cancellation

No order accepted by us shall be cancelled without our consent and in such cases, the Customer will be liable to reimburse us for all costs and expenses we incur in fulfilling the order up until and including the date of cancellation. If an order is cancelled with our consent, but the order of Goods cannot be cancelled in time from the original manufacturer, the Customer will be held liable for the cost of the Goods in total.



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### 8. Return of Goods

Any Goods which have been supplied in accordance with a Customer's order but which are subsequently returned may be credited at our discretion, provided that they are delivered to us within thirty (30) days of delivery, at the Customer's cost, in the same condition and packaging in which they were dispatched, with a copy of the invoice. When we agree to returns we will charge an administration, restocking and freight fee of 20% of our invoiced price for the Goods. No specially manufactured or specially ordered products, or products modified to a Customer's requirements, or products which would be unsaleable by us to another party, will be accepted for credit.

### 9. Confidentiality

All written instructions, drawings, designs, specifications, manuals and other information which we supply in connection with a quotation or order are confidential. They remain our property and must not be disclosed to any third person or used in any manner whatsoever whether in complete form or in any way adapting or altering it without our written permission and the Customer accepts that any such disclosure is likely to cause damage to our business which we will be entitled to recover from the Customer.

### 10. Variations to Work

- (a) The Customer may request changes by way of extra work beyond that specified in the contract created by the Purchase Order or any quotation by us, including additions to or deletions from the Goods originally ordered or in the specifications or drawings relating to those Goods. If any such change causes an increase or decrease in the cost or alters the time required for our performance and delivery hereunder, then an equitable adjustment shall be made in the price or performance timetable. We are entitled to charge for any changes at the normal rates applied by us at the time when such change or variation is requested.
- (b) Nothing contained herein compels us to proceed with the change prior to negotiation of any adjustment with us.
- (c) All changes must be agreed in writing.
- (d) In the event of the suspension or cancellation of the work by the Customer's instructions or lack of instructions, then we are entitled to increase the contract price to cover any extra expense thereby incurred and delivery date revised.

### 11. On Site Installation

- 11.1 The Customer indemnifies and holds us harmless against all costs, expenses, losses and damage which may be sustained by us and against all claims and demands made against us in respect of any injury or damage to persons or property which may be caused by the need for us to attend on installation at premises or equipment nominated by the Customer.
- 11.2 Installation of Goods by us does not in any way postpone the passing of risk in the Goods affected.

### 12. Intellectual and Industrial Property Rights

- 12.1 If Goods supplied by us which are to the Customer's design, instructions or specifications infringe or are alleged to infringe any patent or registered design rights or copyright the Customer will indemnify and hold us harmless against all damages and costs incurred by us as a result of the infringement or allegation. The Customer will provide to us every assistance in meeting an infringement claim brought against us.
- 12.2 The Customer shall also indemnify us against any other damages, costs or expenses in respect of which we may be liable by following such designs, instructions or specifications.
- 12.3 The Customer acknowledges that any and all of our trademarks, trade names, copyrights, patents, designs and any of our other intellectual property and proprietary rights, whether registered or unregistered, and whether arising by legislation, law or any other manner in or arising out of, the Goods or any process incorporated in the Goods shall be and remain our sole property.

### 13. Termination

- 13.1 We may terminate this contract immediately on written notice to the Customer if:
  - (a) the Customer defaults in its payments due to us; or
  - (b) the Customer suffers an Insolvency Event.
- 13.2 Termination of this contract shall not relieve the Customer of its obligations to pay all money owed by it to us on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this contract shall not relieve the Customer from liability arising from antecedent breach of the terms of this contract.
- 13.3 Upon termination of this contract for any reason, all rights of the Customer granted under this contract shall terminate and the Customer will not be entitled to receive any rebate or refund of the whole or any part of the money paid by it pursuant to this contract.
- 13.4 Clauses 4, 6, 9, 12, 17 and 19 survive termination of this contract.

### 14. Force Majeure

We shall not be liable for any delay in the production or delivery of the Goods directly or indirectly caused by force majeure which is to include: acts of god, fire, riot, war, embargo, strikes, labour disputes, theft, delays in delivery by sub-suppliers, prohibition of export or import, confiscation, action or interference by any governmental or other authority or any other occurrences (whether or not similar in nature to those specified above) beyond our control. In such event we shall be entitled to determine the contract on giving reasonable written notice or to make delivery of the Goods which the Customer agrees to accept whenever such cause of delay has been remedied.



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### 15. Limitation of Liability

- 15.1 We will be under no liability to the Customer (whether in contract, tort or otherwise), for any injury, loss or damages (including but not limited to incidental, special, consequential or general damages) in connection with or arising out of the supply or use of Goods howsoever arising (including but not limited to injury, loss or damages suffered as a result of advice given by us to the Customer in relation to the type of Goods or services the Customer requires or the design of the Customer's systems), whether or not caused by the negligence of us, our employees or agents. The term "consequential damages" includes, but is not limited to, loss of profit, loss of production, loss or use of revenue, cost of capital, loss of or damage to property or equipment, and loss of reputation.
- 15.2 No liquidated damages are payable unless specifically agreed by us in writing.
- 15.3 The Customer agrees to indemnify and hold us and our servants and agents and each of them harmless against:
- all claims, losses, costs, expenses or damages arising directly or indirectly out of the Customer's use possession or ownership of the Goods or any part thereof;
  - any liability, loss, damage, cost or expense we suffer or incur as a result of the us taking any action or exercising any of our rights under this contract, including but in no way limited to any debt collection costs and related legal costs; and
  - any actions, proceedings, claims or demands for loss, damage, cost or expense whether direct, indirect or consequential (including for loss of profits, business or anticipated savings) brought, made or threatened against us by any third party arising directly or indirectly out of or in respect of our use or custody of the Goods or the purchase and supply of the Goods.
- 15.4 We (including our employees, agents and subcontractors) to the extent permitted by law, shall not accept responsibility and shall not be liable in contract, tort (including negligence or breach of statutory duty) under statute or otherwise for any loss damage, cost or expense of any kind and howsoever arising whether direct, indirect or consequential (including loss of profits, business or anticipated savings) which is caused, contributed to, or was:
- arising directly or indirectly out of or in respect of the use or custody of the Goods or the supply of Goods;
  - caused directly or indirectly by the defect or inadequacy of Goods for any purpose or any defect in the Goods, and the Customer releases and forever discharges us from all such responsibilities and liabilities and any claims, demands or causes of action in respect thereof; or
  - attributable to any negligent act or omission on our behalf or our employees, agents and/or subcontractors, except to an amount strictly limited in respect of all Goods and services supplied by us whether under this contract or otherwise to a total sum of the value invoiced for the Goods and services or to a total sum of \$5,000.00 (whichever is the lesser).
- 15.5 Nothing in this contract, whether express or implied, shall be taken to exclude, restrict or modify any non-excludable conditions, warranties or rights contained in any applicable State or Commonwealth legislation.
- 15.6 To the maximum extent permitted by law, in no event, regardless of the form of the claim or cause of action (whether based in contract, infringement, negligence, strict liability, or otherwise), shall our liability to the Customer and/or its Customers exceed the price paid by the Customer for the specific Goods giving rise to the claim or cause of action, and the Customer indemnifies us for any damages exceeding the price paid by the Customer for those Goods.

### 16. Recovery of Increased Costs

- Statutory Requirements - Any increase in costs due to a requirement to conform with any Commonwealth or State based legislation or to any order regulation or by-law made with statutory authority by government departments of by local body or other authorities, introduced since the date of quotation for the supply of Goods, shall be to the Customer's account.
- Variation in input costs, taxes, Custom or other Duties, Sales Taxes, Insurance and Freight Charges - Imported items per inclusion in a quotation are based on rates of exchange, Customs or other duties, sales taxes, insurance and freight charges ruling at the date of quotation and any variation in these rates, taxes and charges up to the date on which payment is made shall be to the Customer's account.

### 17. Privacy

The Customer acknowledges that we may use any personal information we collect from the Customer for the purposes of administering our business, marketing and promoting our goods and or services. Please submit any questions on privacy to enquiries@brightwater.co.nz.

### 18. Address for Service of Notices

Any notice or demand given by us to the Customer may be served by us posting such notice to the Customer's registered office or place of business as advised by the Customer in its application for credit account facilities, or at its normal place of business.

### 19. Disputes

If at any time any question, dispute or difference whatsoever shall arise between the Customer and us, in relation, or in connection with any contract arising from this quotation either party may give to the other notice in writing of the existence of such question, dispute or difference and in the first instance the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At such time a representative with the authority to agree the matter shall be present. Failing agreement, the same shall thereupon be referred to arbitration in Victoria. Subject to the provisions of this clause 19, arbitration shall be effected:

- by a single arbitrator to be agreed between us and the Customer; or
- if we are not able to agree with the Customer on an arbitrator, then by an arbitrator appointed by the President for the time being of the Law Institute of Victoria; or



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(c) by any person nominated by the said President as his lawful deputy or failing such appointment then by a single arbitrator appointed in accordance with the provisions of the *Commercial Arbitration Act 1984* of the State of Victoria for the time being in force.

The award under such arbitration shall be final and binding upon all parties to this Deed. The costs of and incidental to the reference and award as between solicitor and client shall be at the discretion of the arbitrator. Except as specifically provided in this Deed, the provisions of the *Commercial Arbitration Act 1984* (Vic) for the time being in force shall apply to the arbitration and this Clause shall be deemed to be a submission to arbitration within the meaning of that Act.

### 20. General

- 20.1 Our failure to enforce or exercise, at any time or for any period of time, any term of any contract incorporating these terms and conditions will not constitute, and will not be construed as, a waiver of such term and will in no way affect our right later to enforce or exercise it.
- 20.2 The invalidity or unenforceability of any of these terms and conditions will not affect the enforceability of the remainder of these terms and conditions.
- 20.3 The Customer shall not, in relation to the supply of the Goods by us, give or make any undertaking, assertion or representation in relation to the Goods without our prior approval in writing and the Customer shall indemnify and hold us harmless against any liability or cost we incur as a result of any breach by the Customer of this provision.
- 20.4 This document will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.
- 20.5 To the extent that they may be applicable sections 6 to 10 inclusive of the Contractual Remedies Act 1979, are hereby expressly excluded and in the event of any liability of whatsoever nature be established against us in any way whatsoever under this Agreement, the Customer's remedies shall be limited to the remedies provided in this Agreement PROVIDED HOWEVER that where this Agreement does not provide for a remedy for the matters referred to in Sections 6 to 10 inclusive of the Contractual Remedies Act 1979, the Customer's sole and exclusive remedy for misrepresentation or repudiation or breach of contract or for any of the other matters to which Sections 6 to 10 inclusive relate shall be damages and such damages shall be limited to the sum of \$100.
- 20.6 The Customer agrees that this contract is a contract for the supply of "related goods and services" and is a "construction contract" (as defined in *Building and Construction Industry Security of Payment Act 2002* (Vic) and other equivalent statutes of any relevant jurisdiction).
- 20.7 The headings in this contract are inserted for convenience of reference only and are not intended to be part of or to affect the meaning and interpretation of any of the terms and conditions of this contract.

### 21. Definitions

In the Agreement, these terms will have the following meaning:

"Goods" means all products or goods supplied from time to time by us to the Customer.

"Insolvency Event" means any of the following events:

- (a) a person becomes insolvent (or insolvent under administration) as defined in the *Corporations Act 2001* (Cth) or states that it is insolvent or is presumed insolvent under an applicable law;
- (b) a person is wound up, dissolved or declared bankrupt or commits an act of bankruptcy;
- (c) a liquidator, provisional liquidator, controller, administrator, receiver, receiver and manager, encumbrancer, trustee for creditors, trustee in bankruptcy or other similar person is appointed to, or takes possession or control of, any or all of a person's assets or undertakings;
- (d) an application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), a meeting is called, resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in an Insolvency Event; or
- (e) a person is taken, under Section 459F(1) of the *Corporations Act 2001* (Cth), to have failed to comply with a statutory demand,

unless the event occurs as part of a solvent reconstruction, amalgamation, merger or consolidation that we have approved in writing.