

Application for Credit Facility for 30 Day Nett Trading Account

Ancon Building Products Pty Ltd ABN: 41 000 496 079



Company Information

Applicant Business is a:

Company Partnership Sole Trader Business

Company Name _____

Registered Address _____

Date of Registration _____ ABN _____

If Member of a Group _____

Trading Name _____

Trading Address _____

Delivery Address _____

Contact Details

Name _____

Phone _____

Fax _____

Email _____

Do you insist that an order number is given when placing orders?

Yes No

Value of first order _____

Requested monthly credit limit _____

Bank Details

Name _____

BSB _____ Account _____

Trading References

1. Company Name _____ Phone _____ Fax _____

Address _____

2. Company Name _____ Phone _____ Fax _____

Address _____

3. Company Name _____ Phone _____ Fax _____

Address _____

Application for Credit Facility for 30 Day Nett Trading Account

Ancon Building Products Pty Ltd ABN: 41 000 496 079



Declaration

I/We solemnly and sincerely declare that:

All statements made by me/us are true and complete in every particular.

I/We hereby authorise Ancon to investigate the references listed pertaining to my/our credit and financial responsibility and to carry out any further investigation now or from time to time as may be deemed prudent on my/our credit and financial position.

That I/We are authorised on behalf of the above named to complete and sign this application for credit facility.

That I/We have read the Conditions of Sale attached to this application form and agree to abide by same.

I/We agree that payments will be made in accordance with Invoice Terms.

To the extent of any inconsistency between the Invoice Terms and the Conditions of Sale attached to this application form, the Invoice Terms will prevail.

Signature of applicant _____ Position _____

Please Print Name _____ Date _____

Guarantee and Indemnity by Directors

In consideration of Ancon Building Products Pty Ltd agreeing to make this credit facility available to the applicant, I/We irrevocably Guarantee jointly and severally the due and proper performance and observation by the applicant of the terms and conditions governing such facility, including but not limited to, the due date and punctual payment of all monies owing from time to time by the applicant to Ancon Building Products Pty Ltd. I/We will jointly and severally indemnify Ancon against losses, damages, costs and expenses which may be incurred by Ancon by reason of any default by the applicant under this facility

I/We agree that this is a continuing Guarantee and that my/our liability hereunder shall not be realised by any neglect or forbearance by Ancon in enforcing my/our obligations hereunder or the applicants obligations as set out above or any other thing which under the law relating to sureties would, but for this provision, have the effect of so relating me/us.

1. Signature of Guarantor (Director) _____

Full Name _____

Address _____

Witness _____ Date _____

2. Signature of Guarantor (Director) _____

Full Name _____

Address _____

Witness _____ Date _____

ANCON BUILDING PRODUCTS PTY LTD ABN 41 000 496 079
CONDITIONS OF SALE

CONDITIONS OF CONTRACT governing all contracts for the sale or supply of Goods and/or provision of Design Services by Ancon Building Products Pty Ltd ABN 41 000 496 079 (“the Company”).

“Acknowledgement of Order” means the written acceptance of order provided by the Company to the Buyer.

“ACL” means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) and its associated Regulations as amended.

“Buyer” means any person at whose request goods are supplied or design services provided by the Company; and services/workmanship supplied to the Buyer under a Contract.

“Conditions” means these Conditions of Sale.

“Contract” means a contract between the Buyer and the Company comprising these Conditions.

“Designs” means designs, drawings and/or calculations provided by the Company following a request from the Buyer for a quotation or an order and submitted to the Buyer for approval in accordance with clause 8 below.

“Goods” means any goods or replacements thereof and/or any services/workmanship (including Design Services) supplied by the Company to the Buyer under a Contract.

“GST” means the goods and services tax payable pursuant to the GST Act.

“GST Act” means *A New Tax System (Services and Services Tax) Act 1999* (Cth).

“PPSA” means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended.

“Security Interest” for the purposes of clauses 22 and 23 of these Conditions has the same meaning as prescribed by the *Personal Property Securities Act 2009* (Cth).

“Tax Invoice” means an invoice that complies with the GST Act.

These Conditions shall apply to every Contract entered into with the Company except as varied by express agreement in writing signed by an authorised person on behalf of the Company. The headings are for convenience only and shall not affect construction of these Conditions. References to the provision of any statute or legislation shall be construed as reference to such statute or legislation as amended, consolidated or re-enacted (without substantial amendment) from time to time.

1. FORMATION AND PARTIES

(a) The Buyer’s order to the Company (in whatever manner communicated) is an offer to enter into a contract upon these Conditions. Acceptance occurs and the Contract is formed only upon the Company dispatching to the Buyer its Acknowledgement of Order. Any terms or conditions proffered at any time by the Buyer are hereby excluded.

(b) A quotation by the Company does not constitute an offer. Quotations are valid for a period of 30 days from date of issue, and may be withdrawn at any time. If no quotation is rendered, the price set out on the Company’s price list in force at the date of delivery of Goods shall apply.

(c) The Buyer shall not assign the benefit of the Contract without the Company’s prior written consent.

(d) The Contract may not be cancelled by the Buyer without the express written consent of an authorised person on behalf of the Company and subject to sub-clause 1(e) below.

(e) If the Company agrees cancellation by the Buyer, the Buyer shall indemnify the Company in full against all expenses incurred or losses suffered by the Company as a result of such cancellation less such scrap or residual value as determined by the Company.

(f) The Company’s employees are not authorised to make any representations concerning the Goods. The Buyer hereby disclaims any right to rescind or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Buyer by any servant or agent of the Company.

2. PRICE

(a) Prices quoted are in accordance with the Company’s current price list and exclusive of GST.

(b) The Company may at its discretion vary the price of the Goods by any amount attributable to a change in or insufficiency of the Buyer’s instructions. Such amount is to be determined by the Company.

3. DELIVERY

(a) Delivery dates are estimates only. Unless otherwise stated, delivery periods commence from the date of Acknowledgement of Order. Time of delivery is not of the essence of this Contract. The Company shall use its reasonable endeavours to deliver the Goods by any stated or agreed delivery date(s), but may suspend or delay delivery and shall not be liable for any loss howsoever arising in the event of late or non-delivery of Goods and/or any instalment due to any occurrence whatsoever beyond its control. The Buyer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.

(b) The Company may at its option deliver by instalments and each instalment shall constitute a separate contract on these Conditions. Lateness of delivery or non-delivery of any instalment(s) shall not

constitute a breach of contract and shall not entitle the Buyer to cancel any subsequent instalment(s) or refuse to accept delivery of such instalment(s) or otherwise treat the contract as repudiated.

- (c) Delivery shall take place and risk shall pass upon the earliest of the following:-
- (i) the Company handing the Goods to the Buyer or its agent at the Company's premises; or
 - (ii) the Goods leaving the Company's premises; or
 - (iii) on the eighth day following notification that the Goods are ready for dispatch.
- (d) The Buyer warrants that if an import licence or other authorisation is required for the importation of the Goods into the country of destination, such licence or authorisation has been obtained or will be obtained prior to shipment.
- (e) Unless otherwise agreed in writing carriage charges shall be as detailed on the Company's quotation.
- (f) Unless otherwise agreed in writing all export orders will be delivered f.o.b. at an Australian Port to be notified by the Company.
- (g) In the case of wall ties, deviations in quantity of Goods delivered of 10% or less by value from that set out in the contract shall not entitle the Buyer to reject Goods delivered or to claim damages and the Buyer shall accept the Goods delivered and pay the Company for such Goods at the contract rate or otherwise pro rata to the total contract price.
- (h) If the Buyer has failed to collect the Goods on the expiry of the seventh day following notification of readiness for dispatch, the Company shall be entitled to treat the contract as repudiated by the Buyer. Until the contract is so terminated the Company may, at its option, either store the Goods itself or have them stored by a third party on such terms as it in its absolute discretion thinks fit. The cost of storage and any addition transportation will be added to the price of the Goods and be payable by the Buyer. If the Company elects to treat the Contract as repudiated, the Company shall be entitled to sell the Goods and retain the proceeds of such sale.

4. LOSS OR DAMAGE IN TRANSIT

The Company shall not be liable for loss or damage to Goods in transit unless:-

- (a) the Company has agreed in writing to effect delivery to a place other than the Company's premises; or
- (b) the loss or damage occurs prior to arrival or delivery point; and either
- (c) damage or shortage is reported within 3 days of arrival of delivery point; and
- (d) in the case of total loss, non-arrival is notified to the Company within 7 days after dispatch of the advice note.

5. INSPECTION

- (a) The Buyer shall inspect the Goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked "not examined") subject to sub-clause 5(b) below be deemed to have accepted the Goods as delivered.
- (b) The Company shall not be liable for defects or shortages discovered on reasonable inspection unless the Buyer notifies the Company before the expiry of 3 days following receipt of any Goods alleged to be defective or lacking conformity with the Contract.
- (c) The Company shall make good shortages notified to it under sub-clause 5(b) as soon as reasonably practicable but shall not be liable for any other loss whatsoever arising from such shortage.
- (d) The Company's liability for defects and shortages notified to it under sub-clause 5(b) above shall in all circumstances be limited to (at the Company's option) the repair or replacement of the Goods in question or crediting the Buyer with the invoice value thereof.

6. WARRANTY

- (a) If within 3 days following delivery a material defect in the Goods shall be discovered and:-
 - (i) the Buyer notifies the Company within 7 days following discovery giving particulars and either at its own expense and risk returns the Goods to the Company; or (at the Company's sole option) permits the Company to inspect the same; and
 - (ii) such defect has arisen from faulty materials employed or workmanship carried out by the Company (other than defects arising from compliance with specific instructions, drawings, specifications issued by the Buyer) existing but not reasonably discoverable upon inspection at the time of receipt then the Company shall at its option remedy the defect by repair or replacement or credit to the Buyer's account with the Company or refund to the Buyer the purchase price paid for the defective Goods, provided that in the case of replacement the Company shall be entitled to collect all the defective Goods in question whereupon the same shall become the absolute property of the Company.
- (b) In respect of Goods which have been repaired or replaced by the Company hereunder, the Company shall guarantee such items for a period of 18 months from the date of repair or replacement provided always that under no circumstances shall the Company's obligations hereunder extend beyond a date

of 24 months after first delivery of the original item.

- (c) The Company's liability for defective Goods is limited in all circumstances to (at the Company's option) delivery of replacement or crediting or refunding of the invoice value to the Buyer and the Buyer shall accept such of the aforementioned remedies as the Company shall proffer as fulfillment of the Company's obligations under the Contract.
- (d) The Company's liability under this warranty condition applies only to defects appearing before the Buyer makes any modification or alteration to the Goods and whilst the Goods are being properly used or stored and in particular (but without limitation) the Company shall not be liable in the case of defects arising from normal deterioration or improper or faulty handling or processing of the Goods by the Buyer.
- (e) The above warranty does not extend to parts, materials or components forming part of the Goods, which are not of the Company's manufacture. In respect of such items, the Buyer shall be entitled only to the benefit of any manufacturer's warranty or guarantee which the Company is able to obtain and pass to the Buyer.
- (f) Where the Company undertakes to carry out work or provide services of any kind on premises other than its own, it shall be under no liability whatsoever for any loss or/and damage occasioned to the Buyer, his contractors, servants, employees, invitees or otherwise arising from any cause connected in any way with the execution of such works or provision of such services, and the Buyer shall indemnify the Company against any claim by third parties under any statute or at common law.
- (g) To the extent permitted by law, the Company disclaims all other warranties whether express, implied or statutory in respect of all matters including the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or any contractual remedy for their failure.
- (h) The warranty period is 24 months from delivery to the Buyer.

7. ITEMS SUPPLIED BY BUYER

The Buyer shall be liable for all designs, drawings, specifications and instructions issued by the Company whether pre-quotation or with orders or otherwise pursuant to the Contract and shall indemnify and keep indemnified the Company against all loss arising directly or indirectly out of any error in or omission from such drawings specifications and instructions, and against all costs, claims demands and expenses whatsoever in respect of the infringement or potential infringement of any patent, copyright, registered design, design right or other third party right arising out

of the Company's use of such drawings, specifications or instructions when in producing the designs, the Goods or any of them.

8. APPROVAL OF DESIGNS

- (a) All Designs are submitted to the Buyer for its approval, consideration and evaluation; it is the responsibility of the Buyer to satisfy itself that the Designs are suitable for its purposes.
- (b) Where a quotation and/or order for Goods requires design input by the Company, the Company shall not commence manufacture of the Goods (except as permitted under sub-clause 8(f) below) until approval of the Design has been received by the Company from the Buyer.
- (c) Upon the Company's receipt of written comments from the Buyer appertaining to the Design, the Company shall make such revisions as are reasonable and acceptable within the scope of the Design, and the revised document shall be submitted to the Buyer for approval within a reasonable time.
- (d) The Design or revisions thereof pursuant to clause 8(c) herein may be deemed at the discretion of the Company to be approved by the Buyer, unless the Buyer notifies the Company with any detrimental written comments before the expiry of 14 days following dispatch for approval of the Design of revisions thereof.
- (e) Whilst the Company shall make every effort to deliver Goods manufactured in accordance with the Design within the time period requested by the Buyer, the Company shall accept no liability for delays incurred as a result of the implementation of this approval procedure.
- (f) Where the Buyer's delivery requirements are such that manufacture of Goods must necessarily commence prior to the receipt by the Company of approval of the Design, then such manufacture shall be preceded by authorisation in writing by the Buyer, and the Buyer shall be deemed to accept responsibility for the cost of any subsequent alterations to the Design.
- (g) The Buyer shall be liable for the cost of any alterations to the Design requested after the commencement of the manufacture of the Goods, and for any costs which result from revisions of the Designs requested by the Buyer. The Company shall notify the Buyer prior to implementing any such alterations or revisions that additional costs may be incurred and shall give to the Buyer an estimate of such costs. The Buyer shall provide the Company with written acceptance of those costs prior to implementation.
- (h) Approval and/or comment by the Architect or Engineer for the project in question shall be deemed to constitute approval and/or comment by the Buyer.

- (i) Instructions to proceed with manufacture, notification of no comment, failure to advise detrimental written comments and requests for delivery shall be deemed to constitute approval by the Buyer. Instructions to incorporate comments shall be deemed to constitute approval by the Buyer on the condition that the comments are incorporated into the Design.

9. INTELLECTUAL PROPERTY

- (a) All patents, trade marks, trade names, copyrights, designs, topography rights whether registered or unregistered in or relating to the Goods or the Designs or any of them are and shall remain the absolute property of the Company.
- (b) The Buyer shall upon request by the Company and in any event immediately upon the Buyer deciding not to submit an order for the Goods or to cancel an order for the Goods in accordance with sub-clauses 1(d) and 1(e) above return to the Company all Designs and associated documents and information and any copies thereof in its possession, custody and control.
- (c) The Buyer warrants that it holds all necessary intellectual property rights in any document or material (including, but not limited to, plans and drawings) that are supplied to the Company for the purpose of the provision of Goods and/or Design Services and that there is and will be no infringement of any rights or entitlements held by any third party.

10. LIMITATION OF LIABILITY

- (a) The Goods and/or the Designs are supplied strictly on the terms that the Buyer has satisfied itself of their suitability for the Buyer's intended purpose and the Buyer acknowledges that it buys the Goods relying solely upon its own skill and judgement. The Buyer acknowledges that all details issued to the Buyer by the Company are approximate and the Company accepts no liability whatsoever arising therefrom.
- (b) Subject to clauses 10(d), 10(e) and 10(g), the Company's liability under clauses 5 and 6 herein shall be accepted by the Buyer in lieu of any warranty or condition whether express or implied by law, as to the quality or fitness for any particular purpose of the Goods.
- (c) Subject to clauses 10(d), 10(e), and 10(g), the Company's liability for any loss or damage arising out of any action or proceedings relating to any defective goods supplied to the Buyer or other failure by the Company shall not exceed the net cost of the Goods supplied and valued at the time of the supply.
- (d) If the Buyer is a consumer nothing in these Conditions restricts, limits or modifies the Buyer's rights or remedies against the Company for failure of a statutory guarantee under the ACL.

- (e) If the Buyer on-supplies the Goods to a consumer and:

- (i) the Goods are not of a kind ordinarily acquired for the personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Company's liability to the Buyer;
- (ii) the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, payment of any amount required under section 274 of the ACL is the absolute limit of the Company's liability to the Buyer,

howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the Goods by the Buyer or any third party.

- (f) If clauses 10(d) or 10(e) do not apply, then other than as stated in the Conditions or any written warranty statement the Company is not liable to the Buyer in any way arising under or in connection with the manufacture, sale, installation, use of, storage or any other dealings with the Goods by the Buyer or any third party.
- (g) The Company is not liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- (h) The Buyer acknowledges that:
 - (i) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Company in relation to the Goods or their use or application; and
 - (ii) it has not made known, either expressly or by implication, to the Company any purpose for which it requires the Goods and it has the sole responsibility of satisfying itself that the Goods are suitable for the use of the Buyer.
- (i) Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of Goods or supply of services which cannot be excluded, restricted or modified.

11. INDEMNITY

- (a) The Buyer shall indemnify and keep indemnified the Company against all actions, claims, costs, damages, demands and expenses or other loss arising out of:-

- (i) defect in the Goods (including, without limitation, all liability incurred under the ACL) to the extent occasioned or contributed to by any act or omission of the Buyer, its servants, agents or persons under its control; or
- (ii) any claim by any third party of any intellectual property rights of such third party arising from the use, modification, adaptation of the Goods or incorporation of the Goods into other products by the Buyer.

12. INFORMATION AND INSTRUCTIONS

Written information and instructions are available from the Company concerning the Goods, the Company's products and their use and the conditions necessary to ensure that they are dealt with so as to be safe and without risk to health. Should the Buyer not possess such information or instructions, they should immediately obtain them from the Company.

13. RETENTION OF TITLE

- (a) Until the Company has received payment in full, in cash or cleared funds, of all sums owed to it on any account by the Buyer, whether arising out of this or any other contract, legal and beneficial title to the Goods shall remain in the Company; such Goods are referred to in this condition as "retained Goods".
- (b) Retained Goods:-
 - (i) are held by the Buyer as fiduciary for the Company and the Buyer shall not pledge or in any way charge by way of security for indebtedness, any retained Goods;
 - (ii) shall be at the Buyer's risk, insured by the Buyer from the date of delivery at its own expense for their full replacement value against all usual risks; and kept safe in good condition and stored separately and clearly identifiable as the Company's property and with all identifying marks intact and legible; and
 - (iii) may, subject to sub-clause (c) below be used or sold by the Buyer in the ordinary course of its business on the basis that the Buyer shall hold the proceeds of sale in trust for the Company absolutely.
- (c) The Buyer's powers of use and sale of retained Goods shall terminate:-
 - (i) forthwith on notice of the occurrence of any of the following:-
 - (A) if the Buyer is in default in performance of any of its obligations under this or any other contract with the Company; or
 - (B) if the Company has reasonable doubts as to the ability or willingness of the

- Buyer to pay any sum to it on the due date.
- (ii) automatically upon the occurrence of any of the events specified in sub-clause (d) below ("the Events").
- (d) The Events are:-
 - (i) if the Buyer causes a meeting of or makes any arrangement or composition with its creditors;
 - (ii) if the Buyer becomes insolvent or bankrupt or appears to be unable to pay a debt or to have no reasonable prospect of paying a debt; or, being a Company, appears unable to pay its debts;
 - (iii) if there is presented a petition for the winding up of the Buyer or for the appointment of an Administrator of its undertakings; or
 - (iv) if the Buyer has an Administrator or Receiver appointed over any of its assets or undertakings or a winding up order made against it or it goes into voluntary liquidation (otherwise than for the purpose of bona fide reconstruction or amalgamation of a solvent company).
- (e) The Company may, at any time on giving prior notice, enter the Buyer's premises for the purposes of inspecting retained Goods and identifying them as the Company's property and the Buyer irrevocably authorises the Company to enter upon its premises for that purpose.
- (f) Upon suspension and revocation of determination of the Buyer's power of sale and use under this condition the Buyer shall place all the retained Goods in its possession or under its control at the Company's disposal and shall be deemed irrevocably to authorise the Company to enter upon any of the Buyer's premises, with or without vehicles, for the purpose of removing such Goods.
- (g) The repossession of retained Goods by the Company in accordance with this Condition shall be without prejudice to all or any of the Company's other rights against the Buyer under the Contract.

14. PAYMENT

- (a) Subject to satisfactory trade, bankers and other requisite references, and where no other terms of payment have been specifically agreed in writing, the Company's terms are that a cash payment be made in full by the end of the month following the month on invoice, namely net monthly account. The Company is entitled to invoice the Buyer for the Goods at any time following delivery as defined in sub-clauses 3(c) and 3(h) herein.
- (b) Unless specifically agreed in writing payment for export orders shall be irrevocable letter of credit confirmed by a bank acceptable to the

Company and issued under the inciters then in force.

- (c) No discount or allowance will be made unless specifically stated by the Company in writing. Interest will be charged on all sums due under or by way of damages for breach of the contract at the rate of 5% per annum above the base rate of the Company's principal bankers from time to time in force and shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment (whether made before or after judgment has been obtained by the Company against the Buyer).
- (d) Time for making payment shall be of the essence of the contract.
- (e) The Company may at any time in its absolute discretion, appropriate any payment made by the Buyer in respect of Goods to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary by the Buyer.
- (f) The Company shall be entitled to cancel the Contract or to postpone any delivery until payment in respect thereof has been received in the event that the Company has reasonable doubts about the Buyer's ability or willingness to pay on the due date calculated by reference to sub-clause 14(a).
- (g) The Company reserves the right at any time at its discretion to demand security for payment before continuing with an order or delivering the Goods or any instalment.
- (h) GST will be charged at the rate applicable at the time of dispatch of the Goods. Upon presentation of a GST compliant Tax Invoice, the Buyer must pay any applicable GST to the Company in addition to the quoted price at the same time as the amount to which it relates is also payable.

15. CANCELLATION

Without prejudice to any of the Company's other rights or remedies, the Company shall be entitled forthwith upon the happening of any of the events detailed in clause 13 herein, to cancel the Contract or (in its absolute discretion) suspend further deliveries under this or any other contract with the Buyer, without liability, and if Goods have been delivered, but not paid for, the price thereof shall become immediately due and payable, notwithstanding any previous agreement to the contrary.

16. FORCE MAJEURE

- (a) The Company shall not be liable to the Buyer for any failure or delay in carrying out any provision of the Contract resulting from circumstances beyond its control including (but without limitation) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock out, strike, stoppage or other action by employees or third parties in contemplation of furtherance of any dispute or owing to any inability to procure

parts or materials required for the performance of the Contract.

- (b) The Company shall notify the Buyer as soon as reasonably practicable after circumstances preventing performance arises. During the continuance of such a contingency the Company may, in its absolute discretion, withhold, reduce or suspend performance of its contractual obligations, so far as prevented or hindered by such contingency, without liability to the Buyer for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding reduction or suspension.
- (c) Should such contingency continue for more than three months either party may (subject to the Company repaying to the Buyer any advance payments made for undelivered Goods and the Buyer paying for Goods delivered) cancel the Contract without further liability to the other.

17. NO WAIVER

No waiver of the Company's rights under the Contract shall be effective unless in writing signed by a Director of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of a Company's rights in relation to different circumstances or the recurrence of similar circumstances.

18. NOTICES

Any notices under these Conditions shall be properly given if in writing and sent by first class post, recorded delivery or via facsimile transmission to the address of the intended recipient as stated in the Contract or to such address as the Company and the Buyer from time to time notify each other as their respective addresses and shall be deemed served in the case of postal notice, on the expiry of 48 hours from the time of posting and in the case of facsimile transmissions on the expiry of 1 hour from completion of transmission by the sender.

19. CONSTRUCTION AND JURISDICTION

All Goods and Design Services supplied by the Company are subject to the laws of the State of New South Wales and are governed by and construed in accordance with the laws of the State of New South Wales and the Parties agree to submit to the exclusive jurisdiction of the Courts of that State.

20. EXCLUSION OF THIRD PARTY RIGHTS

The Buyer shall indemnify the Company in respect of any claims, demands, proceedings, costs, charges and other expenses caused by, arising out of or in any way connected with any special, consequential, direct or indirect loss, damage, harm or injury suffered by any other person in relation to the supply of the Goods and/or Design Services.

21. PRIVACY ACT

- (a) The Buyer and/or the Guarantor/s agree for the Company to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and

- Guarantor/s in relation to credit provided by the Company.
- (b) The Buyer and/or the Guarantor/s agree that the Company may exchange information about the Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (i) To assess an application by the Buyer;
 - (ii) To notify other credit providers of a default by the Buyer;
 - (ii) To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - (iv) To assess the credit worthiness of the Buyer and/or Guarantor/s.
- (c) The Buyer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 20E(3)(a) of the *Privacy Act 1988* (Cth)).
- (d) The Buyer agrees that personal data (including the Buyer and/or Guarantor(s) name, gender, date of birth, current known address, previous two addresses, current or last known employer, driver's license number) provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Buyer and Company or required by law from time to time:
- (i) provision of Goods and/or Design Services;
 - (ii) marketing of Goods and/or Design Services by the Company, its agents or distributors in relation to the Goods and/or Design Services;
 - (iii) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Goods/Design Services;
 - (iv) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
 - (v) enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods/Design Services.
- (e) The Company may give, information about the Buyer to a credit reporting agency for the following purposes:
- (i) to obtain a consumer credit report about the Buyer; and
 - (ii) allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

- 22. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)**
- (a) Notwithstanding anything to the contrary contained in these Conditions, the PPSA applies to these Conditions.
- (b) For the purposes of the PPSA:
- (i) terms used in clause 22 that are defined in the PPSA have the same meaning as in the PPSA;
 - (ii) these Conditions are a security agreement and the Company has a Purchase Money Security Interest in all present and future Goods supplied by the Company to the Buyer and the proceeds of the Goods;
 - (iii) the Security Interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time; and
 - (iv) the Buyer must do whatever is necessary in order to give a valid security interest over the Goods which is able to be registered by the Company on the Personal Property Securities Register.
- (c) The Security Interest arising under this clause 22 attaches to the Goods when the Goods are collected or dispatched from the Company's premises and not at any later time.
- (d) Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130,132(3)(d), 132(4), 135 and 157 of the PPSA.
- (e) The Company and the Buyer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply of these Conditions.
- (f) To the extent permitted by the PPSA, the Buyer agrees that:
- (i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which place obligations on the Company will apply only to the extent that they are mandatory, or the Company agrees to their application in writing; and
 - (ii) where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- (g) The Buyer must immediately upon the Company's request:
- (i) do all things and execute all documents necessary to give effect to the security interest created under these Conditions; and
 - (ii) procure from any person considered by the Company to be relevant to its security position such agreements and waivers (including as equivalent

to those above) as the Company may at any time require.

- (h) The Company may allocate amounts received from the Buyer in any manner the Company determines, including in any manner required to preserve any Purchase Money Security Interest it has in Goods supplied by the Company.
- (i) For the purposes of section 275(6) of the PPSA, the parties agree and undertake that these Conditions and any information pertaining to the sale of Goods and details of the Goods shall be kept confidential at all times. Neither party may disclose any information pertaining to these Conditions or the sale of the Goods, except as otherwise required by law or that is already in the public domain.

23. SECURITY AND CHARGE

- (a) Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
 - (i) Where the Buyer and/or the Guarantor (if any) is the owner of land or property (not being personal property as referred to in the PPSA) capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land or property to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these Conditions. The Buyer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - (ii) Should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor/client basis.
 - (iii) To give effect to the provisions of clause 23(a)(i) and (ii) inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Company or the Company's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Company and/or the

Company's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land or property in favour of the Company and in the Buyers and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Company and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Company's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

- (b) As security for the payment of the price of the Goods and/or Design Services and any other amount that is owed by the Buyer to the Company from time to time and as security for the performance by the Buyer of the obligations set out in these Conditions, the Buyer grants to the Company a Security Interest in the Goods and/or Design Services.

24. GUARANTEE

- (a) The Guarantor(s) (and if more than one, jointly and severally) acknowledge that they have read these Conditions and that the Company has agreed to supply the Goods and/or Design Services to the Buyer at the request of the Guarantor(s) on the terms and conditions contained in these Conditions. Each Guarantor (jointly and severally):
 - (i) Agrees that if there is anything which the Buyer has to do under these Conditions they will do it if the Buyer does not. This includes paying any monies that may be payable to the Company.
 - (ii) Agrees that if the Company is harmed in any way by the actions or inactions of the Buyer, the Guarantors will do whatever is necessary to make good the harm to the Company, including the payment of any money (including losses, damages, costs and expenses) to the Company which the Company has lost, but includes any other harm.
 - (iii) Acknowledges that the obligations of the Guarantors under this guarantee will continue until all of the obligations of the Buyer to the Company have been fully satisfied.

25. SEVERABILITY

If any provision in these Conditions is held by any court to be illegal, void or unenforceable, such determination shall not impair the enforceability of the remaining provisions of these Conditions.

