

GENERAL CONDITIONS OF SALE (2021)**1. CONTRACT FOR SUPPLY OF GOODS AND/OR SERVICES**

(a) In response to an enquiry by a person wishing to place an order to purchase Goods and/or Services ("Customer"), Tetlow Kiln Pty Ltd ABN 26 166 832 300 (the "Supplier") will provide a quotation, proposal, estimates, specifications, drawings, tables and/or related documentation (as the case may be) (collectively, "Supplier's Quotation") to the Customer. If the Customer wishes to accept the Supplier's Quotation and place a purchase order ("Order") it must so notify the Supplier, and that notification must be in writing if the Supplier so requests. A legally binding contract ("Contract") between the Supplier and the Customer for the supply of Goods and/or Services is formed when the Supplier accepts in writing the Customer's Order made in response to the Supplier's Quotation, but such Contract is also subject to the Supplier approving in writing the creditworthiness of the Customer (by way of a credit application made by the Customer to the Supplier or otherwise). These General Conditions of Sale ("General Conditions") apply to every Order and form part of every Contract between the Supplier and the Customer, unless otherwise agreed in writing by the Supplier.

(b) The Contract for the supply of Goods and/or Services constitutes the entire agreement between the Supplier and the Customer with respect to that Contract. All prior negotiations, proposals, dealings and correspondence are superseded by and will not affect the interpretation of that Contract.

(c) If at any time in relation to the supply of Goods and/or Services the Customer provides, refers to, submits or otherwise uses terms and conditions other than the General Conditions, such terms and conditions shall not apply and will not form part of, or be incorporated into the Order or the Contract.

(d) For the purposes of the Contract:

- "Goods" includes all plant, equipment, products and goods manufactured and/or supplied or agreed to be manufactured and/or supplied from time to time in the future (namely, after-acquired Goods) by the Supplier to the Customer and includes all of the Goods detailed in the invoices issued from time to time by the Supplier to the Customer; and
- "Services" includes any advice, recommendation, information or assistance provided by the Supplier; and
- "Price of Goods" shall the aggregate of the price of the individual components that are ordered to make up the Goods, which are assembled and supplied to the Customer's specifications."
- "Price of Services" shall the aggregate of the price of the individual components that are ordered to make up the Services, which are supplied to the Customer's specifications.

2. QUOTATION OF PRICES & SPECIFICATIONS

(a) Unless otherwise stated, the Supplier's Quotation shall include a Price of Goods or a Price of Services (or both as the case may be).

(b) Unless otherwise stated by the Supplier, prices and terms and conditions specified in the Supplier's Quotation are valid for a period of thirty (30) days from date of the Supplier's Quotation (or for such other period as may be specified by the Supplier) after which period, such quotation and terms and conditions must be reconfirmed by the Supplier in writing in order to be valid for acceptance by the Customer.

(c) The Supplier has a policy of continuous improvement to its products and reserves the right to alter its designs and specifications or, to discontinue any items, without prior notice. Notwithstanding, all illustrations, descriptions, designs and specifications (if any) provided by the Supplier are by way of example only and are neither binding on the Supplier nor necessarily applicable to the goods (including the Goods) being offered.

(d) All modifications variations or additions to Goods and/or Services which are agreed to be supplied by the Supplier and may be requested specified or authorised by the Customer must be made in writing. The Supplier is not bound to accept any such requests, specifications or authorisations which are not in writing or at all, but if it does so accept, then a condition of such acceptance is that the Customer must first agree to an equitable adjustment to the technical performance, price, payment terms, delivery date and/or period, and the period in which the proposed modifications variations or additions (or any other activities or tasks) are to be undertaken or completed, prior to such modifications variations or additions being made. The price as specified in the Contract shall be adjusted by the Supplier as may be reasonably necessary having regard to the nature and extent of such modifications variations or additions and the then stage of manufacture, and the additional price shall form part of the Price of Goods or the Price of Services (or both, as the case may be), and not be treated as a separate item with a separate price, unless the modification variation or addition to the Goods or Services (or both, as the case may be) is requested within 12 months from the supply or installation (whichever is the later) of the initial Goods or initial Services (or both, as the case may be). In any event and notwithstanding such modifications variations or additions, all other conditions of the Contract shall continue to apply.

3. PRICES

(a) Any and all prices specified by the Supplier are subject to alteration or variation by the Supplier at any time prior to a Contract being entered into. Unless otherwise stated on the Supplier's invoice, all prices are "EXW - the Supplier's warehouse, Melbourne, Australia" (Incoterms® 2020), in Australian currency and exclude the costs of delivery, storage, duties, imposts, excise, fees, charges, levies and taxes (including any goods and services tax). Notwithstanding, all international sales of Goods outside Australia are sold "EXW - the Supplier's warehouse Melbourne, Australia" (Incoterms® 2020), unless otherwise stated in the Supplier's Quotation or in any Tax Invoice of the Supplier (as the case may be).

(b) The Supplier shall be entitled to charge for and to recover from the Customer all Goods and Services Tax ("GST") payable in respect of the supply by the Supplier of Goods or Services unless the Customer first provides in writing all details as may be required by the Supplier of any valid GST exemption certificate. For the purposes of the Contract:

- (i) Unless otherwise stated, all amounts payable under the Contract are expressed to be exclusive of GST. If the GST is payable on a Taxable Supply, the amount payable will be the amount expressed in the Contract plus GST;
- (ii) The Customer will not be required to pay any amount to the Supplier (as the supplier) in respect of GST unless the Customer has received a Tax Invoice from the Supplier;
- (iii) Each of the Supplier and the Customer warrants to the other that it is registered for GST purposes; and
- (iv) For the purposes of these General Conditions, the terms "GST", "Taxable Supply", and "Tax Invoice" have the meanings given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

4. TERMS OF PAYMENT

(a) In relation to Goods ordered by the Customer, and unless otherwise specified in the Supplier's Quotation but subject always to the Customer at all times during the term of the Contract being and remaining creditworthy (in the reasonable opinion of the Supplier), the terms of payment shall be: 30% of contract price ("Deposit") payable at the time an Order is provided to the Supplier; and thereafter, monthly progress payments up to 70% of Contract price prior to delivery. The Supplier shall be under no obligation to commence or continue to perform (as the case may be) work in respect of the provision of Goods and/or Service until all amounts due and payable under the Contract had been paid by the Customer. As to payment for any Goods and/or Services supplied by the Supplier, and except for the Deposit which is payable at the time an Order is provided to the Supplier, the Supplier's terms of payment shall be: net cash thirty (30) days from the date of invoice. In any event, any amounts remaining unpaid as at the due date for payment shall accrue interest at the rate of two percent above the rate of interest fixed from time to time under the *Penalty Interest Rates Act 1983* (Vic) until payment in full is received by the Supplier.

(b) All payments due from the Customer are to be made without deduction or set-off.

(c) Without limiting its rights under the Contract or at law, the Supplier may apply all or any payments made by the Customer to indebtedness of the Customer arising other than under the Contract.

5. CANCELLATION OR SUSPENSION OF CONTRACT

(a) Without prejudice to the Supplier's rights, no Order which been received and accepted by the Supplier may be cancelled or suspended except by written notice given by the Customer to the Supplier. Any such cancellation or suspension shall only be accepted by the Supplier if the Customer shall first have paid or indemnified (in a form satisfactory to the Supplier) the Supplier against all of its loss and damage which it has suffered or could suffer as a direct or indirect result of such cancellation or suspension. Without limiting the generality of the foregoing, the Customer agrees to pay to the Supplier immediately on cancellation or suspension (as the case may be) an amount equating to 130% of the costs and expenses (including, without limitation, demobilisation costs) actually incurred or committed to by the Supplier up to and after the date of such cancellation or suspension, which sum the Customer hereby acknowledges and agrees includes an allowance on account of overhead and profit of the Supplier in relation to the Contract. The Supplier will, on request, provide reasonable evidence of such costs and expenses.

(b) In the event the Customer suspends an order in accordance with this paragraph 5, the Supplier may, at any time and without any liability whatsoever, terminate the Contract upon giving 7 days' written notice to the Customer.

6. DELIVERY

(a) Unless otherwise agreed in writing, delivery of the Goods sold shall be "EXW - the Supplier's warehouse, Melbourne, Australia" (Incoterms® 2020), namely, when the Goods are placed at the Customer's disposal and are available for collection at the Supplier's warehouse in Melbourne.

(b) The terms of delivery referred to in paragraph 6(a) shall apply notwithstanding that delivery of the Goods may be staggered or that the Customer may not have signed a receipt for the Goods.

- (c) If the Supplier and the Customer agree to delivery other than in accordance with paragraph 6(a) then the costs of freight, delivery, insurance, unloading and storage of the Goods on their arrival at the agreed place of destination shall be borne by the Customer and the Customer shall reimburse the Supplier for all such costs which it incurs on the Customer's behalf.
- (d) While the Supplier will use its best endeavours to deliver by the delivery date mentioned in any document, such date shall be indicative only and will not give rise to any legal obligation to supply on that date. No liability shall be accepted by the Supplier in the event the estimated delivery date or time is exceeded for any reason. The Supplier reserves the right to deliver using any mode of transport and/or by instalments. The Supplier and the Customer agree that Supplier may, at any time and for time to time and without incurring any liability whatsoever, suspend delivery whilst any payment due under the Contract remains unpaid. Provisions in the Contract as to time for performance by the Supplier are not of the essence.
- (e) In addition to any other right conferred on the Supplier by these General Conditions, and provided the Supplier is not in default of its obligations, if payment for any invoice or instalment is overdue and unpaid by the Customer, the Supplier may suspend work having first given written notice advising the Customer that, if payment is not made within 7 days, that work will be suspended, including delivery of any further components that comprise the Goods. Should any instalment remain outstanding for more than thirty (30) days the Supplier may, without incurring any liability whatsoever, issue proceedings for the recovery of any overdue instalment and any consequential loss suffered by the Supplier. The Supplier shall keep the Customer informed of any revised delivery timing and schedule.
- (f) If the Customer is unable or fails for any reason to accept delivery of the Goods, the Supplier may deliver the Goods to a place of storage nominated by the Customer and failing such nomination to a place nominated by the Supplier ("alternative storage") and the Customer shall be liable for all costs incurred by the Supplier in transporting the Goods to, and storage at, the alternative storage. Such delivery to the alternative storage shall, for the purposes of the Contract, be deemed to be sufficient delivery.
- (g) Provisions in the Contract as to time for performance by the Customer are of the essence.

7. SUPPLIER WARRANTY & INDEMNITIES

- (a) In relation to Goods agreed to be supplied by the Supplier, and subject to all amounts due and payable under the Contract first having been paid by the Customer to the Supplier:
- (i) Subject to paragraphs 7(a)(ii) to 7(vi)(inclusive) and unless otherwise agreed in writing, the Supplier offers a warranty ("Supplier Warranty") that the Goods manufactured and supplied by it are free of defects in design, engineering, materials and workmanship for the shorter of the following periods ("Warranty Period"):
- A. the period of twelve (12) months (which the Supplier has assessed as being a reasonable period in all the circumstances) from either the date of Acceptance on Delivery or the date of Acceptance on Installation (as described in paragraphs 9(a) and 9(b)) (as applicable); and
 - B. 1920 hours of use or operation of the Goods from either the date of Acceptance on Delivery or the date of Acceptance on Installation (as described in paragraphs 9(a) and 9(b)) (as applicable),
- fair wear and tear excepted, and provided that, except as required by law, in no event shall the Warranty Period exceed eighteen (18) months from the date of delivery EXW (or such other delivery term as may be agreed between the Supplier and the Customer) of the relevant Goods.
- (ii) Notwithstanding paragraph 7(a)(i), the Supplier Warranty shall, subject to law, end upon the expiration of the period of eighteen (18) months from the date of delivery EXW (or such other delivery term as may be agreed between the Supplier and the Customer) and shall in any event not apply to:
- A. subject to law, any plant and equipment proprietary to any third party which is supplied but not manufactured by the Supplier;
 - B. any defects or failures caused directly or indirectly by negligence, accidents, abuse, improper installation, improper operation, improper maintenance, improper electrical/mechanical interfacing of the Supplier's plant and equipment with other products, electrical failure, or abnormal conditions of moisture, temperature, dirt and corrosive matter (where these are not acts or omissions of the Supplier);
 - C. any defects or failures caused directly or indirectly by Goods which have been tampered with or altered, modified or repaired by any person, without the prior written approval of the Supplier; and
 - D. any defects or failures caused directly or indirectly by Goods damaged in shipment in transit or otherwise (where that is not due to an act or omission by the Supplier).
- (iii) A. A claim by the Customer under the Supplier Warranty must be made in writing to and be received by the Supplier strictly within the Warranty Period. Goods the subject of any such claim must, except as required by law or except where not reasonably practicable, be returned at Customer's cost in the manner reasonably directed by the Supplier (noting that the return of Goods and the dismantling and packing of such Goods for return shall be at the Customer's cost) failing which the Supplier Warranty shall not apply and the Supplier shall be discharged from all liability under the Supplier Warranty.
- B. Notwithstanding the foregoing, the following items are excluded from the Supplier Warranty:
- Items or components of a proprietary nature purchased from third parties for incorporation by the Supplier into the Goods provided that, for those items (if any) the Supplier will use its best endeavours to pass to the Customer the best warranties obtainable by the Supplier from that third party; and
 - Items which are in the opinion of the Supplier (acting reasonably) of a consumable or routine replacement or maintenance nature.
- (iv) Notwithstanding the foregoing, the Customer acknowledges and agrees that all liability (if any) of the Supplier arising under or in terms of the Contract shall be limited at the Supplier's option to:
- A. in the case of any warrantable defects reasonably deemed by the Supplier to be of a minor nature or which can be remedied using locally available or in-house technical personnel ("Minor Defects"): the cost of repair or replacement of parts EXW Melbourne, Australia (Incoterms® 2020); and
 - B. in the case of any warrantable defects which are not Minor Defects, the reasonable cost of repair or replacement.
- (v) Except as expressly provided to the contrary in the Contract, all representations, warranties, guarantees and implied terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- (vi) The Customer agrees that if it is aware (or ought reasonably to be aware) that the Goods the subject of an Order are for a particular purpose (including, but not limited to, use as a component part of another product or in conjunction with other plant and equipment) or are required to possess special or unique specifications or characteristics, the Customer will specify in writing those characteristics at the time it makes an initial enquiry with the Supplier and in any event prior to placing any such Order. The Customer agrees that, unless expressly agreed by the Supplier in writing, the Customer has made its own enquiries in relation to the use and suitability of the Goods for the Customer's own purposes (whether or not those purposes are disclosed to the Supplier) and does not rely on representations by the Supplier in relation to their suitability for a particular purpose or any steps which may need to be taken in relation to their use. The Customer agrees that the Supplier Warranty shall not, to the full extent permitted by law, apply to any Goods the use or application of which differs from that originally specified in or inferred by the Order.
- (b) In relation to Services agreed to be performed by the Supplier:
- (i) The Customer acknowledges and agrees that in respect of all Services, the Supplier makes no representation or warranty of any kind including the Services' fitness for purpose or compliance with description, and to the full extent permitted by law, the Supplier excludes all implied conditions and warranties other than any non-excludable rights which might be expressed by or implied by law or statute or any warranties agreed elsewhere in writing between the parties.
 - (ii) The Supplier's liability to the Customer for breach by the Supplier of any express provision of the Contract or any term, condition or warranty that cannot be excluded by statute is limited, at the Supplier's option, to re-performing those Services or otherwise refunding the price of the Services in respect of which breach occurred.
 - (iii) The Supplier reserves the right at any time to refuse any Services requested by the Customer which are not specified in the Contract.
- (c) The Supplier and the Customer agree:
- (i) Subject only to paragraph 7(c)(ii) and except to the extent that liability cannot legally be limited or excluded at law, the Supplier's liability to the Customer arising out of or in connection with any Contract for the supply of Goods or any Contract for the supply of Services (or both) (whether in contract, tort, negligence, under an indemnity, at common law, in equity, under statute or otherwise) is capped, in respect of any such liability, to the amount recovered by the Supplier under any policy of insurance required to be effected and maintained by it, namely: public liability insurance policy and product liability policy (each with limit of liability of \$5,000,000) and professional indemnity policy (with limit of liability of \$5,000,000).
 - (ii) In the event that the liability of the Supplier to the Customer under the Contract is not indemnified under any policy of insurance required to be effected and maintained by the Supplier (if any), the liability of the Supplier to the Customer is capped in an amount equal to one hundred per cent (100%) of the amount paid under the relevant Contract.
 - (iii) Notwithstanding any other provision contained in the Contract, and to the maximum extent permitted by law, the Supplier shall not be liable to the Customer in any circumstances for any special, indirect, economic, incidental, special or consequential loss or damage, including without limitation, any loss of revenue, loss of production, loss of business, loss of use, loss of the benefit of a contract, loss of profits, loss of goodwill, loss of opportunity, or expenses incurred, whether arising from negligence, breach of contract, statute or otherwise in connection with or arising out of or in any way related to the supply of Goods or Services (or both) unless and to the extent that any such loss and damage is an insured risk covered by a policy of insurance as contemplated by paragraph 7(c)(i).

- (d) Notwithstanding any other provision of the Supplier's Quotation (including without limitation these General Conditions), the Customer shall indemnify and keep indemnified the Supplier and hold the Supplier harmless from and against all actions, suits, causes of action, claims, demands, costs, charges and expenses of every description made against or suffered by the Supplier due to the improper or negligent use, improper operation, disabling or bypassing of safety features and failure by the Customer (including any of its directors, officers, employees, agents and contractors) to observe procedures for use in respect of any Goods which may be supplied by the Supplier to the Customer.
- (e) To the full extent permitted by law, the Supplier's liability (if any) under these General Conditions and the Contract shall be reduced to the extent that any claim, loss and/or damage suffered or incurred by the Customer were caused by the negligence, breach of contract or wilful misconduct by or on the part of:
- (i) the Customer;
 - (ii) Customer's directors, officers, employees, agents and subcontractors (or any of them); and/or
 - (iii) any Related Body Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) of the Customer.
- (f) Paragraphs 7(a)(iii) and 7(b)(ii) and 7(c) shall not apply if the provisions of paragraph 8 apply.

8. AUSTRALIAN CONSUMER LAW TERMS

- (a) (i) This paragraph 8 applies to the supply of Goods and/or Services when and only to the extent that the supply of Goods and/or Services is to a Customer who is also a "consumer" (as that term is defined in the *Australian Consumer Law*, which is contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) ("Consumer"), in respect of that supply of Goods and/or Services.
- (ii) The Consumer's right to undisturbed possession of the Goods shall not apply to the extent that the Supplier maintains a valid security interest in the Goods pursuant to paragraph 17 of these General Conditions.
- (iii) The Supplier warrants that any Goods supplied by it are of acceptable quality, reasonably fit for the purpose for which they are made and are free of defects. The Consumer must ensure that the Goods supplied by Supplier are suitable for the Customer's specific purpose, which specific purpose the Customer must make known in writing to the Supplier prior to or at the time an Order is placed or committed to by the Customer.
- (iv) Supplier warrants that any Services provided by it will be rendered with due care and skill and will be reasonably fit for the purpose for which the Services are being acquired by the Consumer as are made known in writing by the Consumer to Supplier prior to or at the time an Order is placed.
- (b) To the extent that Goods supplied by the Supplier are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then:
- (i) the Supplier's liability for any failure to comply with a Consumer Guarantee (other than those guarantees as to title, undisturbed possession and undisclosed securities) is limited, at the sole discretion of the Supplier, to repair, replacement or resupply of the Goods; payment of the cost of replacing or acquiring equivalent goods; or payment of the cost of having the goods repaired; and
 - (ii) to the extent that the Goods comprise a service (not being Services of a professional nature supplied by a qualified engineer), the Supplier's liability for any failure to comply with a Consumer Guarantee is limited, at the sole discretion of the Supplier, to supplying the service again or payment of the costs of having the service supplied again.
- (c) Paragraph 8(b) shall not apply if the Consumer establishes that it would not be fair and reasonable for the Supplier to rely on the applicable clause, in which case it is acknowledged by the Supplier and the Consumer that in agreeing to supply the Goods or the Services (or both, as the case may be) to the Consumer, the Supplier has relied on the Consumer's representation that the maximum loss, including consequential loss, arising from any breach of the Consumer Guarantees (or any of them) under the Australian Consumer Law shall not exceed the lesser of (1) A\$1,000 and (2) ten per centum (10%) of the total amount or price (however expressed, and excluding GST) paid by the Consumer to the Supplier for the Goods or Services (or both, as the case may be) (the "Representation"), and it is on the basis of the Representation that the Supplier has agreed to enter into this Contract and to supply the Goods or the Services (or both, as the case may be). It is acknowledged that but for the Representation the Supplier would not have entered into this Contract and supplied the Goods or the Services (or both, as the case may be).
- (d) To the extent that paragraph 8(b) does not apply, the Supplier acknowledges that the Goods come with guarantees that cannot be excluded under the Australian Consumer Law. In relation to Goods, the Consumer is entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. The Consumer is also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. In relation to Services, the Consumer is entitled either to recover compensation for any reduction in the value of such Services or terminate the contract for a major failure, as well as compensation for any other reasonably foreseeable loss or damage. The Consumer is also entitled to have such Services re-performed and to recover the reasonable costs of such re-performance, if the Services provided do not amount to a major failure. Any claims for loss incurred shall be subject to paragraph 8 (c).
- (e) If during the first thirty (30) days from their date of delivery (or such other period that is reasonable in the circumstances) the Goods prove to be defective, the Supplier will honour its obligations as set out in this paragraph 8 or in the Australian Consumer Law, as applicable. Where reasonably practicable, and except as required by law, Goods must be returned within a reasonable time. This timeframe may vary from product to product and may depend on the type of Goods purchased and the price paid. If any Goods cannot be easily returned to Supplier due to their size, the fault or because they have been affixed or installed in the Consumer's premises, the Consumer must contact the Supplier to arrange an inspection to assess the Goods. Goods returned for repair will be assessed and/or repaired within a reasonable time. The Consumer may be provided with an indicative repair time, which time may vary due to reasons beyond the Supplier's reasonable control, such as part availability and incorrect fault description by the Consumer. The Consumer may be required to pay labour, assessment and/or freight fees, such as where Goods are assessed to have been damaged by misuse or accident, or where the Consumer's rights under the Australian Consumer Law or any manufacturer's warranty do not apply. The Supplier may provide the Customer with an indicative fee, which fee may vary due to reasons beyond its control.
- (f) In order to make a claim the Consumer must telephone the Supplier on: +61 (0)3 9544 2922 or by e-mail: info@fumace.com.au (or at such telephone number and/or e-mail address as the Supplier may from time to time specify). The Consumer must support its claim by providing to the Supplier written details of the Goods, the date of supply, a description and evidence of the defect, proof of purchase and appropriate contact details. Within a reasonable time of the receipt of a claim, the Supplier will review the claim and notify the Customer as to whether or not it is accepted. Upon accepting the claim (or upon a valid claim being lodged with the Supplier), the Supplier shall assist the Consumer with the appropriate remedy.
- (g) All Goods the subject of a claim just be accompanied by the satisfactory proof of purchase. While this may take a number of forms, it is preferable to provide a legible receipt or invoice.
- (h) Unless the cost of doing so is unreasonably significant, the Consumer must return the Goods at its expense. In all other cases, the Supplier will collect the Goods at its expense.

9. ACCEPTANCE OF GOODS

- (a) Unless otherwise agreed in writing, Goods shall be accepted or be deemed to have been accepted by the Customer, and the Contract completed, when delivered by the Supplier to the place specified for delivery in accordance with Supplier's Quotation ("Acceptance on Delivery").
- (b) Unless otherwise agreed in writing, and where the Contract provides for or any one of more of installation, erection, testing and commissioning (or as the case may be) of the Goods and provided that the Customer has fully performed its obligations under and in terms of the Contract (including the Supplier's Quotation), Goods installed, erected, tested and/or commissioned (as the case may be) by the Supplier at the Customer's site will be deemed for the purposes of the Contract (including the Supplier's Quotation) as having been accepted by the Customer:
- (i) when the Supplier, in its sole discretion, determines that installation, erection, testing and/or commissioning (as the case may be) of the Goods has occurred or has been completed in accordance with the Contract; or
 - (ii) when the Goods are deemed by the Supplier, in its sole discretion and acting reasonably, of being capable of being operated, whichever is the earlier date ("Acceptance on Installation").
- (c) Acceptance by the Customer (as contemplated by paragraphs 9(a) and 9(b)) shall not be delayed by any conditions or minor omissions or defects which do not prevent the use or operation of the Goods, which in any event shall be subject to any Supplier Warranty. If acceptance as contemplated by paragraphs 9(a) and 9(b) is delayed for more than three (3) months after delivery to the Customer in accordance with either the terms of the Contract or these General Conditions for reasons outside the reasonable control of the Supplier, payment in full of the Contract price shall become immediately due and payable (if such payment has not already become due and payable, or made) and any security provided by the Supplier shall immediately be returned to the Supplier.

10. CLAIMS & RETURNS

- (a) Upon delivery of the Goods (or any part thereof), the Customer must inspect the Goods and within seven (7) days of delivery deliver to the Supplier notice in writing of any claim against the Supplier under either paragraph 7(a) or paragraph 8. If no such notice is received by the Supplier within the said period the Goods shall be deemed to be in all respects in accordance with the Contract and the Customer shall be liable to accept and pay for the Goods and, subject to paragraphs 7 and 8 of these General Conditions, the Customer shall have no claims against the Supplier.
- (b) The return of Goods in accordance with paragraph 10(a) will not be accepted by the Supplier unless the Goods are returned in accordance with paragraph 7(a)(iii) or 8(e) (as applicable).
- (c) The failure of any delivery or the rejection by the Customer of any Goods delivered or part thereof shall not vitiate or affect the Contract regarding the balance of the Goods to be delivered, and payment therefor.
- (d) Other than as set out in these General Conditions, no Goods may be returned to the Supplier without its prior written approval and then only on such terms as the Supplier may by written notice specify.

11. RISK AND TITLE

Until payment in full of all amounts and moneys owing by the Customer to the Supplier on any account whatsoever:

- (a) the title in the Goods shall not pass to the Customer and the Customer shall keep the Goods as bailee and as trustee for the Supplier. The Goods shall nevertheless be at the risk of the Customer from the time of delivery, and the Customer shall keep the Goods fully insured for their full replacement value. The Customer shall indemnify the Supplier against all loss or damage to the Goods whatsoever occurring after delivery;
- (b) the Customer must store the Goods so as to clearly identify them as the property of the Supplier, and ensure that the Customer and/or any third party is not, nor is deemed to be, a reputed owner of the Goods;
- (c) the Customer irrevocably authorises the Supplier or its servants or agents to enter the Customer's premises and recover and dispose of the Goods and the Customer will not make any claim against the Supplier in respect of such entry or disposal. The Customer also appoints the Supplier and its directors from time to time as its attorneys jointly and severally to do all such acts and things as are necessary to enable the Supplier to recover and dispose of the Goods; and
- (d) the Customer shall hold the Goods as trustee for the Supplier and may only sell the Goods in the ordinary course of business as agent for the Supplier. Furthermore, the Customer must hold the proceeds of any such sale on trust for the Supplier in a separate named account for, and to the account of, the Supplier, and the Customer must take all steps necessary to keep such proceeds separate from other moneys and pay over such proceeds to the Supplier to the extent necessary to discharge in full the Customer's indebtedness to the Supplier.

12. FORCE MAJEURE

The Supplier shall not be liable for (and shall be entitled to such extension of time in which to perform its obligations (if any) under the Contract which in its sole opinion is reasonable in the circumstances) any failure or delay in performance caused wholly or partially by such force majeure events as unavailability of freight or shipping space, failure of any third party manufacturer/supplier to supply whole or part of any goods to the Supplier, (provided the Supplier uses its best endeavours to prevent or mitigate any such failure), prohibitions or restrictions under any law or by any government or authority or inability to obtain any necessary export licence or import licence, or any other act or event of force majeure including, but without limitation strikes, lockouts, shortage of labour, flood, fire, earthquakes, explosion, accident, breakdown of machinery, rioting, civil or industrial disturbances, acts of war (whether declared or not), epidemic, pandemic, acts of God or any other causes whether or not of a similar nature or, provided such events were beyond the Supplier's control. In the event of any failure or delay, or any effect or consequence of any failure or delay, caused by a force majeure event which was not reasonably foreseeable at the time the relevant Order was accepted in writing by the Supplier, and to the extent that the Supplier has taken reasonable steps to mitigate such failure or delay, the Supplier may at its discretion and without liability terminate whole or any part of its performance under the Contract or postpone its performance. If after a period of six (6) months a force majeure event persists, then either the Supplier or the Customer may, without prejudice to any accrued rights of the parties, by written notice given to the other terminate the Contract. This paragraph 12 does not apply to any obligation of the Customer to pay money. For clarity, the Customer shall be liable to pay for all Goods supplied or Services rendered (or both) by the Supplier up to and including the date of any such termination under this paragraph 12.

13. NOTICES, FEES AND STATUTORY REQUIREMENTS

The requirements of Australian statutory bodies such as those for the protection of the environment and the regulation of labour will insofar as is possible be considered by the Supplier in any design and manufacture. Notwithstanding, and unless otherwise agreed between the Supplier and the Customer, the Customer shall conform with all requirements of such and any other relevant statutory bodies (whether Australian or otherwise) and, for obtaining all necessary planning, operating or building or other consents or permits which may be necessary (unless agreed otherwise in writing) and, for the payment of any applicable fees or charges, for the purpose of completing the contracted work in terms of the Contract.

14. LABOUR; MATERIALS; OVERTIME; SITE AGREEMENTS

(a) During the period from the date of contract between the Supplier and the Customer to the date of the Supplier's final invoice, the Supplier reserves the right to adjust its prices as described in the Contract to take account of any adjustment:

- (i) in any labour award or employment contracts relevant to the Supplier or the Contract;
- (ii) in the cost to the Supplier of materials used in the manufacturing industry for the purpose of the Contract; and/or
- (iii) of any price inputs (including, without limitation, those caused by prevailing foreign exchange rates, customs duties and tariffs).

In that regard, the Supplier may adjust its prices described in the Contract for any change in the Manufacturing Industries Producer Price Index 6427.0 Table 14, ANZIC Group 274-276 (fabricated metal products)(Australian Bureau of Statistics).

(b) Any price quoted by the Supplier is based upon the work being executed during ordinary working hours. Overtime or weekend work undertaken at the Customer's request shall be in addition to the price set out in the Contract and shall be to the Customer's account.

(c) The Supplier reserves the right to adjust its prices as set out in the Contract to take account of third party site and/or workplace agreements that provide wages and benefits (such as, for example, site allowances), that are more favourable to employees of the Supplier than those specified in the Contract.

(d) The Customer shall be liable to pay the Supplier on demand for any increase in prices specified in the Supplier's Quotation caused by any variations in foreign exchange rates and/or customs duties or tariffs between those ruling at date of the Supplier's Quotation and as at date of actual payment to any third party by Supplier for goods supplied (including, without limitation, componentry and materials) or services rendered by any such third party and forming part of the Contract.

15. DEFAULT BY A PARTY

(a) The Supplier or the Customer will be in Default if:

- (i) it breaches a material term of any Contract and such breach is not remedied within 14 days of receiving notice from the other party requiring it to do so, unless such breach arises out of the supply of defective Goods, in which case the Supplier shall remedy the breach within such time as is reasonable in the circumstances;
- (ii) in the case of the Customer being a body corporate, it becomes an externally-administered body corporate (including by a receiver) or has an application for winding up filed against it;
- (iii) in the case of the Customer being an individual, it commits an act of bankruptcy or becomes an insolvent under administration;
- (iv) in the case of the Customer, payment for the Goods has not been received by the Supplier by the due date for payment; or
- (v) in the case of the Customer, any representation or warranty made by it in or in connection with a Contract, or any information provided by it to the Supplier in or in connection with an Order is incorrect, misleading or deceptive (whether by omission or otherwise) in any material respect.

(b) If a party Defaults, the other party may:

- (i) treat an Order or the whole of the Contract as repudiated and sue for breach of contract;
- (ii) being the Supplier, refuse to supply any Goods to the Customer on credit or at all;
- (iii) being the Supplier, claim the return of any Goods in the Customer's possession where title has not passed to the Customer or exercise any other right or remedy available to it under the Contract, the PPSA or any other applicable law, including to enforce the security interests created by the Contract; and/or
- (iv) being the Supplier, by notice to the Customer declare all moneys owing by the Customer to the Supplier on any account immediately due and payable.

(c) Termination of a Contract (including, without limitation, pursuant to this paragraph 16) shall not affect any other accrued rights or remedies which the parties may have.

16. INTELLECTUAL PROPERTY

(a) Goods offered for sale by the Supplier may be the subject of patents, registered designs, trademarks, copyright or other proprietary and legal protection and the Customer must immediately notify the Supplier of any suspected infringement of such rights.

(b) The Customer acknowledges the Supplier's sole and exclusive ownership of the Intellectual Property. The Customer disclaims all and any interest in the Intellectual Property. The supply of Goods or the performance of Services by the Supplier shall not confer on the Customer the right to use maintain or copy the Intellectual Property and the Customer must not challenge the validity or claim ownership rights by virtue of use of the Intellectual Property, or take any action prejudicial to the rights of the Supplier in and to the Intellectual Property.

(c) Notwithstanding paragraph 16(b), in certain limited circumstances, the Supplier may agree to grant a non-exclusive non-transferable time-limited licence to the Customer to enable it to use, or to use and maintain (but not reproduce or reverse-engineer) some or all of its Intellectual Property. If the Supplier agrees to do so, it will specify in writing to the Customer those terms and conditions which shall govern the use (but not reproduction or reverse engineering) of any such Intellectual Property.

(d) The Customer acknowledges that from time to time it may have access to certain information (whether written or oral) relating to the Goods or the Intellectual Property of the Supplier or the affairs of the Supplier or its customers and which information is not generally known to the public including, without limitation, price quotations, lists of the Supplier's customers and confidential or commercially sensitive methods and know-how. The Customer agrees with and undertakes to the Supplier not, without the prior written consent of the Supplier, to disclose such information to any third party or use such information for the Customer's own benefit or for the benefit of any other person or in any way exploit such information, nor will the Customer provide any person with a copy of or disclose to any person the contents of any document containing such information.

(e) For the purposes of this paragraph 16 "Intellectual Property" means the Supplier's proprietary interests in and relating to the Goods or in connection with the provision of Services, whether arising under statutory or common law, including without limitation: the Supplier's trade marks, trade names and brands; the Supplier's patents and patent applications; know-how; technical and design specifications; manufacturing methods; formulations; research and development; quality control procedures; technical documentation; trade secrets and the right to keep confidential the proprietary information referred to in paragraph 16(c).

17. PPSA

- (a) The Customer acknowledges that the Contract (including these General Conditions) constitutes a security agreement and gives rise to a security interest in favour of the Supplier (namely, a purchase money security interest to the extent that it secures payment of the amounts owing in relation to Goods) under the *Personal Property Securities Act 2009* (Cth)(as amended) ("PPSA") and otherwise in and all Goods (or their proceeds) that have been supplied, that are agreed to be supplied and that will be supplied in the future (namely, after-acquired Goods), by the Supplier to the Customer. Until title in and to the Goods passes to the Customer under paragraph 11 of these General Conditions, this security interest secures all moneys owing by the Customer to the Supplier (including the purchase price of the Goods) under any Contract or otherwise.
- (b) The Customer hereby consents to the Supplier effecting a registration on the register maintained under the PPSA (in any manner the Supplier deems appropriate) as collateral in relation to any security interests contemplated by this paragraph 17 and the Customer agrees to provide all assistance required to perfect each registration.
- (c) The security interests arising under this paragraph 17 attach to the Goods when the Customer takes possession of the Goods and the Customer and the Supplier acknowledge that they have not agreed that any security interest arising under this paragraph 17 attach at any later time.
- (d) The Customer must not without the Supplier's prior written consent assign or grant a security interest (whether registrable under PPSA or otherwise) in respect of any accounts or other monies owed to it in relation to Goods. The Supplier holds a security interest in all such accounts to secure all amounts owing in relation to Goods.
- (e) The Customer agrees to indemnify the Supplier and pay the Supplier on demand for all loss, damage, costs, claims and expenses (including solicitor/own client costs on a full indemnity basis) suffered or incurred by the Supplier in connection with or arising out of:
- (i) any breach by the Customer of a Contract;
 - (ii) registration or amendment or discharge of any financing statement registered by or on behalf of the Supplier under PPSA or otherwise; and
 - (iii) enforcement or attempted enforcement of any security interest granted by the Customer to the Supplier.
- (f) Until ownership of the Goods passes:
- (i) The Customer waives its rights to receive notices (including where applicable statements of account under PPSA) under sections 95, 118, 121(4), 129, 130, 132(2), 132(3)(d), 132(4), 135, 137, 157(1) and 157(3) of the PPSA;
 - (ii) The Customer waives its rights as a grantor and/or debtor under sections 142 and 143 of the PPSA; and
 - (iii) The Customer and the Supplier agree that sections 96, 115 and 125 of the PPSA do not apply to the security interests held by the Supplier.
- (g) The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of its rights under sections 123 or 128 of the PPSA, and the Customer must indemnify the Supplier from any claims made by any third party as a result of such exercise.
- (h) In these General Conditions and for the purposes of the Contract, unless the context requires otherwise the terms "accounts", "attach", "collateral", "financing statement", "proceeds", "purchase money security interest", "register", "registration", "security agreement" and "security interest" used in this paragraph 17 have the same meaning given to them in the PPSA.

18. DISPUTE RESOLUTION

- (a) If a dispute or difference or question ("Dispute") arises under or in connection with the Contract, the Dispute must be referred to a senior executive or other authorised officer (including the Chief Executive Officer or a Director) of each party ("Authorised Representatives") for resolution by notice specifying that it is a notice given under this paragraph 18 giving full particulars of the nature and extent of the Dispute.
- (b) If the Dispute is not resolved by the Authorised Representatives within 30 days of the referral to them, either party may commence legal proceedings.
- (c) Unless otherwise agreed by the parties, all discussions involving the Authorised Representatives will be conducted on a "without prejudice" basis.
- (d) Decisions of the Authorised Representatives may only be made by their unanimous agreement.
- (e) Any decision of the Authorised Representatives which is recorded in writing and signed by each of them is binding on the parties except in the case of fraud or manifest error.
- (f) Neither party may commence legal proceedings unless the parties have undertaken the processes set out in paragraphs 18(a) and 18(b) and those processes have failed to resolve the Dispute.
- (g) Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Agreement, except only to the extent that lack of resolution of the Dispute prevents such performance.
- (h) Notwithstanding any other provision of these General Conditions, where (in the opinion of the Supplier) damages may be inadequate compensation for breach of the Contract or these General Conditions (or both), subject to the court's discretion, the Supplier may restrain by an injunction or similar remedy, any conduct or threatened conduct which is or will be a breach of the Contract or these General Conditions (or both, as the case may be).

19. FURTHER PROVISIONS

- (a) The Customer must not without the Supplier's prior written approval (which, in the sole discretion of the Supplier, may be given or withheld or be given subject to conditions), assign or transfer or purport to assign or transfer this Contract or the benefit thereof to any other person whatsoever.
- (b) No indulgence or forbearance extended to the Customer shall limit or prejudice any other right of claim to the Supplier.
- (c) No term or provision of the Contract will be construed against a party on the basis it was put forward or drafted by or on behalf of that party.
- (d) If any provision or part of a provision of the Contract should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down it shall be severed from the remainder of the Contract which shall not be effected by such severance. In these General Conditions, a clause or a paragraph is a reference to a clause or paragraph in these General Conditions, and the singular includes the plural and vice versa.
- (e) This Contract (including, for clarity, these General Conditions) shall be governed by the laws of the State of Victoria, Australia and the parties hereby submit to the non-exclusive jurisdiction of the Courts and tribunals of the said State and to the Courts and tribunals entitled to hear appeals therefrom.
- (f) The rights and obligations of the parties under this Contract shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods (1980).
- (g) All applicable delivery terms notified from time to time by the Supplier to the Customer shall be Incoterms® 2020 (or such other version of Incoterms® as is current as at the date of the Contract).