

# BridgeFAB Pty Ltd– Terms & Conditions of Trade

<p><b>1. Definitions</b></p> <p>1.1 "Manufacturer" means BridgeFAB Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of BridgeFAB Pty Ltd.</p> <p>1.2 "Client" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by the Manufacturer to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.4 "Price" means the Price payable for the Goods as agreed between the Manufacturer and the Client in accordance with clause 5 below.</p> <p><b>2. Acceptance</b></p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the Manufacturer's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Manufacturer.</p> <p>2.3 Goods are supplied by the Manufacturer only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.</p> <p><b>3. Electronic Transactions (Queensland) Act 2001</b></p> <p>3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p><b>4. Change in Control</b></p> <p>4.1 The Client shall give the Manufacturer not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, the Client's name, address, contact details, telephone or fax numbers, or business practice). The Client shall be liable for any loss incurred by the Manufacturer as a result of the Client's failure to comply with this clause.</p> <p><b>5. Price and Payment</b></p> <p>5.1 At the Manufacturer's sole discretion the Price shall be either:</p> <p>(a) as indicated on invoices provided by the Manufacturer to the Client in respect of Goods supplied;</p> <p>(b) the Manufacturer's quoted Price (subject to clause 5.2) which shall be binding upon the Manufacturer providing that the Client shall accept the Manufacturer's quotation in writing within thirty (30) days.</p> <p>5.2 The Manufacturer reserves the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be supplied is requested;</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans or specifications, change to scope of works) is requested;</p> <p>(c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations or changes to accessing the site or site conditions, availability of machinery, safety considerations, prerequisites for the start of work, or any other change of design, hidden pipes and wiring in walls etc) which are only discovered on commencement of the Services.</p> <p>5.3 At the Manufacturer's sole discretion a non-refundable deposit may be required.</p> <p>5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Manufacturer, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) on completion of the Services;</p> <p>(c) by way of instalments/progress payments in accordance with the Manufacturer's payment schedule and claims made under BCIPA;</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) any other date, or the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Manufacturer.</p> <p>5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Manufacturer.</p> <p>5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Manufacturer an amount equal to any GST the Manufacturer must pay for any supply by the Manufacturer under this or any other agreement for the sale of the Goods. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p><b>6. Delivery</b></p> <p>6.1 Subject to clause 6.2 it is the Manufacturer's responsibility to ensure that the Services start as soon as it is reasonably possible to ensure that the Services commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Manufacturer claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Manufacturer's control, including but not limited to any failure by the Client to:</p> <p>(a) respond to requests for information (thus delaying drafting times); or</p> <p>(b) have the site ready for the Services; or</p> <p>(c) notify the Manufacturer that the site is ready.</p> <p>6.2 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.</p> <p>6.3 At the Manufacturer's sole discretion the cost of delivery is included in the Price.</p> <p>6.4 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Manufacturer shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>6.5 At the Manufacturer's sole discretion the Goods may be delivered in separate instalments.</p> <p>6.6 Any time or date given by the Manufacturer to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Manufacturer will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.</p> <p><b>7. Risk</b></p> <p>7.1 If the Manufacturer retains ownership of the Goods under clause 11, the risk for the Goods shall immediately pass to the Client on delivery and the Client must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Goods are delivered by the Manufacturer or the Manufacturer's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).</p> <p>7.2 If the Client requests the Manufacturer to leave Goods outside the Manufacturer's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.</p> <p>7.3 The Manufacturer shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Manufacturer accepts no responsibility for any loss, damages or costs however resulting from these inaccurate plans, specifications or other information.</p> <p>7.4 Where the Client is to supply the Manufacturer with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. The Manufacturer shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client. The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed. If for any</p>	<p>reason (including the discovery of asbestos, or dangerous access to installation sites) that the Manufacturer, or employees of the Manufacturer, reasonably believe on the opinion that the Client's premises is not safe for the installation of Goods to proceed then the Manufacturer shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.2 above) until the Manufacturer is satisfied that it is safe for the installation to proceed. The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. The Manufacturer will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.</p> <p>7.5 The Client acknowledges that Goods supplied may:</p> <p>(a) fade or change colour over time; and</p> <p>(b) expand, contract or distort as a result of exposure to heat, cold, weather, and</p> <p>(c) mark or stain if exposed to certain substances; and</p> <p>(d) be damaged or disfigured by impact or scratching.</p> <p><b>Access</b></p> <p>8.1 The Client shall ensure that the Manufacturer has clear and free access to the work site at all times to enable them to deliver the Goods. The Manufacturer shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Manufacturer.</p> <p>8.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify the Manufacturer against all costs incurred by the Manufacturer in recovering such vehicles in the event they become bogged or otherwise immovable.</p> <p><b>Underground Locations</b></p> <p>9.1 Prior to the Manufacturer commencing any work the Client must advise the Manufacturer of the precise location of all underground services on the site and clearly mark the same. The underground mains &amp; services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>9.2 Whilst the Manufacturer will take all care to avoid damage to any underground services the Client agrees to indemnify the Manufacturer in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.</p> <p><b>Compliance with Laws</b></p> <p>10.1 The Client and the Manufacturer shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services. The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.</p> <p>10.2 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p><b>Title</b></p> <p>11.1 The Manufacturer and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid the Manufacturer all amounts owing to the Manufacturer;</p> <p>(b) the Client has met all of its other obligations to the Manufacturer.</p> <p>11.2 Receipt by the Manufacturer of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>11.3 It is further agreed that:</p> <p>(a) the Client agrees that the Goods pass to the Client in accordance with clause 11.1 that the Client is only a bailee of the Goods and must return the Goods to the Manufacturer on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Manufacturer and must pay to the Manufacturer the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Client must, if so requested, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Manufacturer and must pay or deliver the proceeds to the Manufacturer on demand;</p> <p>(d) the Client irrevocably authorises the Manufacturer to enter any premises where the Manufacturer believes the Goods are kept and recover possession of the Goods;</p> <p>(e) the Manufacturer may recover possession of any Goods in transit whether or not delivery has occurred;</p> <p>(f) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Manufacturer;</p> <p>(g) the Client must immediately and at its own expense to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p><b>Personal Property Securities Act 2009 ("PPSA")</b></p> <p>12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>12.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Manufacturer for Services – that have previously been supplied and that will be supplied in the future by the Manufacturer to the Client.</p> <p>12.3 The Client must immediately and at its own expense:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Manufacturer may reasonably require to;</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Manufacturer for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Manufacturer;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Manufacturer;</p> <p>(e) immediately advise the Manufacturer of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>12.4 The Manufacturer and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions;</p> <p>12.5 The Client must immediately notify any party to whom notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>12.7 Unless otherwise agreed to in writing by the Manufacturer, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>12.8 The Client must immediately notify any actions taken by the Manufacturer under clauses 12.3 to 12.5.</p>	<p>12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p><b>Security and Charge</b></p> <p>13.1 In consideration of the Manufacturer agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>13.2 The Client indemnifies the Manufacturer from and against all the Manufacturer's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Manufacturer's rights under this clause.</p> <p>13.3 The Client irrevocably appoints the Manufacturer and each director of the Manufacturer as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Client's behalf.</p> <p><b>Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</b></p> <p>14.1 The Client must inspect the Goods on delivery and must within 7 (seven) days of delivery notify the Manufacturer in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after such other defect becomes evident. Upon such notification the Client must allow the Manufacturer to inspect the Goods. The Client shall provide the Manufacturer with the right of first refusal on any claim of commercial credit.</p> <p>14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (<b>Non-Excluded Guarantees</b>).</p> <p>14.3 The Manufacturer acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Manufacturer makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Manufacturer's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>14.5 If the Client is a consumer within the meaning of the CCA, the Manufacturer's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>14.6 If the Manufacturer is required to replace the Goods under this clause or the CCA, but is unable to do so, the Manufacturer may refund any money the Client has paid for the Goods.</p> <p>14.7 If the Client is not a consumer within the meaning of the CCA, the Manufacturer's liability for a defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by the Manufacturer at the Manufacturer's sole discretion;</p> <p>(b) limited to any warranty to which the Manufacturer is entitled, if the Manufacturer did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>14.8 Subject to this clause 14, returns will only be accepted provided:</p> <p>(a) the Client has complied with the provisions of clause 14.1; and</p> <p>(b) the Manufacturer has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>14.9 Notwithstanding clause 14.7, but subject to the CCA, the Manufacturer shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods;</p> <p>(b) the Client using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to the Client;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by the Manufacturer;</p> <p>(e) the workmanship is repaired, altered or overhauled without the Manufacturer's consent;</p> <p>(f) fair wear and tear, any accident, or act of God.</p> <p>14.10 Notwithstanding anything contained in this clause if the Manufacturer is required by law to accept a return then the Manufacturer will only accept a return on the conditions imposed by that law.</p> <p><b>Default and Consequences of Default</b></p> <p>15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Manufacturer's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>15.2 If the Client owes the Manufacturer any money the Client shall indemnify the Manufacturer from and against all costs and disbursements incurred by the Manufacturer in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Manufacturer's contract defence, and any other costs).</p> <p>15.3 Without prejudice to any other remedies the Manufacturer may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Manufacturer may suspend or terminate the supply of Goods to the Client. The Manufacturer will not be liable to the Client for any loss or damage the Client suffers because the Manufacturer has exercised its rights under this clause.</p> <p>15.4 The Client agrees that the Manufacturer's other remedies at law or the Manufacturer shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Manufacturer shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Manufacturer becomes overdue, or in the Manufacturer's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p><b>Cancellation</b></p> <p>16.1 The Manufacturer may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Manufacturer shall repay to the Client any money paid by the Client for the Goods. The Manufacturer shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>16.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Manufacturer as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>16.3 Cancellation of orders for Goods made to the Client's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p><b>Privacy Act 1988</b></p> <p>17.1 The Client agrees for the Manufacturer to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Manufacturer.</p> <p>17.2 The Client agrees that the Manufacturer may exchange information about the Client with those credit providers and with related body corporates for the following purposes:</p>	<p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.</p> <p>17.3 The Client consents to the Manufacturer being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>17.4 The Client agrees that personal credit information provided may be used and retained by the Manufacturer for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods.</p> <p>17.5 The Manufacturer may give information about the Client to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Client including credit history;</p> <p>17.6 The information given to the CRB may include:</p> <p>(a) personal information as outlined in 17.1 above;</p> <p>(b) name of the credit provider and that the Manufacturer is a current credit provider to the Client;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Client's application for credit or request for a loan (if it is a date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue account payments; and</p> <p>(g) information that, in the opinion of the Manufacturer, the Client has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>17.7 The Client shall have the right to request (by e-mail) from the Manufacturer:</p> <p>(a) a copy of the information about the Client retained by the Manufacturer and the right to request that the Manufacturer correct any incorrect information; and</p> <p>(b) that the Manufacturer does not disclose any personal information about the Client for the purpose of direct marketing.</p> <p>17.8 The Manufacturer will destroy personal information upon the Client's request. By e-mail if the Client is no longer required unless it is required in order to fulfil the obligations of the agreement or is required to be maintained and/or stored in accordance with the law.</p> <p>17.9 The Client can make a privacy complaint by contacting the Manufacturer via e-mail. The Manufacturer will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the Manufacturer's response, the Client can make a complaint to the Information Commissioner at <a href="http://www.oaic.gov.au">www.oaic.gov.au</a>.</p> <p><b>Unpaid Seller's Rights</b></p> <p>18.1 Where the Client has left any item with the Manufacturer for repair, modification, exchange or for the Manufacturer to perform any other service in relation to the item and the Manufacturer has not received or been tendered the amount of any monies owing to it by the Client, the Manufacturer shall have, until all monies owing to the Manufacturer are paid:</p> <p>(a) a lien on the item; and</p> <p>(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.</p> <p>18.2 The lien of the Manufacturer shall continue despite the foregoing notwithstanding any judgement or judgment of monies owing to the Manufacturer having been obtained against the Client.</p> <p><b>Dispute Resolution</b></p> <p>19.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days of receipt of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:</p> <p>(a) referred to the Arbitrator to be nominated by the President of the Australian Institute of Arbitrators;</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p> <p><b>Building and Construction Industry Payments Act 2004</b></p> <p>20.1 At the Manufacturer's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Payments Act 2004 may apply. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.</p> <p><b>General</b></p> <p>21.1 The failure by the Manufacturer to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Manufacturer's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>21.2 These terms and conditions and any contract to which they apply shall be governed by the law of Queensland and in which the Manufacturer has its principal place of business, and are subject to the jurisdiction of the courts in Queensland.</p> <p>21.3 Subject to clause 14, the Manufacturer shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Manufacturer of these terms and conditions (alternatively the Manufacturer's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>21.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Manufacturer nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>21.5 The Manufacturer may license or sub-contract all or any part of its rights and obligations under these terms and conditions in which the Client agrees that the Manufacturer may amend these terms and conditions at any time. If the Manufacturer makes a change to these terms and conditions, then that change will take effect from the date on which the Manufacturer notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Manufacturer to provide Goods to the Client.</p> <p>21.6 The Client shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>21.7 The Client warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.</p>
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