



Terms and Conditions of Supply

Jimel Transport Pty Ltd ACN 124 847 623 atf The O'Brien Family Discretionary Trust ABN 59 789 646 556 trading as "Jimel Transport" and "Bulk Landscape Supplies Brisbane" and its associated, related, subsidiary and parent companies, successors and assigns ("Supplier")

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These are the entire Terms and Conditions of Supply of all goods and services supplied by Jimel Transport Pty Ltd ACN 124 847 623 atf The O'Brien Family Discretionary Trust ABN 59 789 646 556 trading as "Jimel Transport" and/ or "Bulk Landscape Supplies Brisbane" and its associated, related, subsidiary and parent companies, successors and assigns ("the Supplier").

Clause 1 is a glossary to help the parties understand certain words in the Terms

1. DEFINITIONS AND INTERPRETATION

Additional Expenses means any duties, fees, taxes (including GST), imposed by these Terms, including delivery charges, barge fares, merchant fees and surcharges, freight charges, permit and licence fees, toll or other road charges, scaffolding or fence hire charges, spoil or other material removal fees, storage fees and environmental levies.

Credit Account means the approved commercial account You have with Us to purchase Goods and Services on credit pursuant to these Terms, or the number of trading days listed on Our invoice.

Customer means any person, firm or company placing an Order with Us for the purchase of Services pursuant to these Terms, including Your associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "You" and "Your").

Due Date means the date listed on Our invoice for Your payment of Goods and Services.

Equipment means any plant, motor vehicles, appliances, machinery and other equipment supplied by Us to Your Site for provision of the Services.

Force Majeure means something outside a party's reasonable control, including war, strikes, lockouts, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm or flood, theft and vandalism.

Goods means any goods, materials and merchandise supplied by Us to You pursuant to any Quote, Order and/or these Terms, including any containers or pallets used to transport or package Goods.

Insolvency Event means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances.

Loss means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

Order means a request to purchase Goods and Services placed by You.

PPSA means:

- (a) the *Personal Property Security Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of the PPS Act.

Quote means Our written description and price of the Goods and Services to be supplied to You, which is valid for 30 days.

Services means transport and delivery services provided by Us to You pursuant to any Quote, Order and these Terms, including any provision of Our Equipment to carry out the Services.

Site means any place at which You request Goods and Services to be supplied.

Supplier means the entity or entities specified in these Terms as supplying Goods and/or Services to You and includes any associated, related, subsidiary and parent companies, successors and assigns (all of which are referred to as "Us", "We" and "Our").

Terms means these Terms and Conditions of Supply, including any special terms and conditions that We list on Your Quote.

Website means www.jimeltransport.com.au and www.bulklandscapesuppliesbrisbane.com.au as redirected from time to time.

In these Terms:

- (a) A Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and/or Services are being supplied;
- (b) a reference to writing includes email and any communication through Our website;
- (c) a reference to a clause or paragraph is a reference to these Terms;
- (d) a reference to a party to these Terms or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings and any explanatory notes and paragraphs are for ease of reference only and do not affect the meaning or interpretation of these Terms;
- (g) a reference to 'including' does not convey any limitation and should be interpreted as if the word 'without limitation' also appear; and
- (h) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the preceding Business Day.

Duly signed and accepted in full on behalf of _____

Signature _____ Name _____ Position _____ Date _____

Clauses 2 and 3 outline the framework of the Terms, including our relationship, the governing law and how to make changes to the Terms

2. THIS AGREEMENT AND OUR RELATIONSHIPS

- (a) These are the entire terms and conditions of all Goods and Services supplied by Us to You. Except where the parties agree otherwise (which must be by a duly authorised officer and in writing), these Terms apply notwithstanding any provisions to the contrary which may appear on any other document.
- (b) You warrant that You have obtained all the necessary authorisations to enter into and perform the contract created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Goods and Services has Your authority and power to do so.
- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, for example by oral acceptance, making an Order, or by instructing Us to supply Goods or to commence/ continue Services.
- (d) You engage Us to provide Goods and Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) These Terms are interpreted according to the laws of the State or Territory as We may determine in Our sole discretion. Proceedings by either party may be commenced and/or continued in the State or Territory We determine in Our sole discretion. If We do not make any determination, You consent to any proceedings being commenced and heard by a Court in the State of Queensland applying the laws of that State.

3. CHANGES AND UPDATES TO THESE TERMS

- (a) From time-to-time, and at any time, We may update or alter these Terms. Any updated or altered Terms will apply from the date of alteration. A copy of current Terms can be found on Our Website or by requesting a copy from Us.
- (b) We will endeavour to notify You of any updated or altered Terms. However, there is no obligation whatsoever on Us to notify You of updated Terms and You agree that You must regularly inspect Our Website for any updated Terms.
- (c) You must notify Us in writing of any material change to Your organisation, including a change of director, bank account details or change of address.
- (d) We may assign and transfer all or any of Our title, estate, interest, benefit, rights, duties and obligations in these Terms to any person, provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (e) You must not assign, transfer, charge, encumber or otherwise deal with any of Your rights and obligations under these Terms, or attempt or purport to do so, without Our prior written consent.

Clauses 4 - 6 outlines the purchase process, including ordering, supply, delivery, risk and ownership

4. PRICES, QUOTATIONS AND ORDERS

- (a) You may purchase Goods and Services by placing an Order with Us verbally or in writing. You warrant that the person who places the Order is authorised by You to do so.
- (b) We may accept or decline any Order by notifying You in writing, by delivering the Goods to You or supplying the Services. The parties agree that these Terms apply to all Orders for the supply of Goods and Services.
- (c) We may issue a Quote to You, but a Quote is not an offer by Us to supply Goods and Services to You. We may vary or cancel any Quote before an Order is accepted.

- (d) You cannot cancel an Order after acceptance without Our written consent and at Our absolute discretion.
- (e) Prices specified on any of Our price lists are subject to change without notice to You. You will be charged in accordance with the price that is current at the time You place Your Order.
- (f) Unless the parties agree differently in writing, the price You must pay for Goods and Services is specified in Our invoice and may include Additional Expenses.
- (g) We have the right to change the prices of Goods and Services supplied under these Terms, without notice, before accepting any Order or request for a Quote. In any other circumstance, We will provide you with 14 days' notice of any price changes.

5. SUPPLY AND DELIVERY

- (a) Specifications for the Goods and Services being supplied under these Terms are contained in the Order/s You submit from time-to-time.
- (b) The Goods and Services are provided to You with all due skill and care in accordance with Our professional standards.
- (c) The method of delivery of the Goods is at Our sole discretion. At any time, We may appoint an agent to perform Our delivery obligations of these Terms.
- (d) Delivery may attract Additional Expenses and You agree to those Additional Expenses.
- (e) You authorise Us to:
 - i) deliver the Goods to or supply Services at the Site nominated by You;
 - ii) leave the Goods, or Our Equipment for the provision of the Services, at the Site whether or not any person is there to accept delivery.
- (f) We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods delivered.
- (g) You must provide a suitable and safe area for Us to deliver the Goods and Services, including a Site that is compliant with occupational health and safety legislation for Our (or Our agents, employees or contractors) safe use.
- (h) All delivery times indicated by Us are estimates only. Delivery times are subject to the Goods being available, Our reasonable ability to deliver on that date, and Us receiving the required co-operation from You and other organisations to supply the Services. We will endeavour to deliver Goods and Services at the time you need, but if We fail to deliver Goods and Services within a specified time or We fail to deliver any instalment, You are not allowed to cancel Your Order, refuse to accept delivery or refuse to pay for the Goods and Services.
- (i) If You do not provide, or delay in providing any co-operation that We reasonably require of You, We may charge Additional Expenses that are incurred as a result (in addition to any other rights We may have).
- (j) Delivery of the Goods and Services is deemed to occur when the Goods and Services are:
 - i) Handed to You or Your representative; or
 - ii) Delivered to the Site nominated by You or appearing on Your invoice for the Goods and Services.
- (k) When delivery occurs Our obligation to supply is discharged.
- (l) You agree to inspect and examine Goods immediately on delivery.
- (m) We are not liable for any Loss suffered by You whatsoever after delivery of the Goods and Services to You.
- (n) You must pay all costs and fees We incur due to:
 - i) Any delay in delivery of the Goods and Services which is caused by You, the conditions of the Site or the nature of the Goods and Services being delivered;
 - ii) Any unexpected labour, permit, licence or additional costs in connection with the delivery.

6. RISK AND OWNERSHIP

- (a) Unless the parties agree differently in writing, all risk in the Goods and Services passes to You when the Goods and Services are delivered to You (or Your agent, representative or nominated carrier).
- (b) Legal ownership of Goods and Services does not pass to You until We have received all amounts owing by You on any account whatsoever with Us including any Additional Expenses.
- (c) Until legal ownership of the Goods and Services passes to You, all Goods are held by You for Us as bailee. You must store the Goods separately from Your own or anyone else's Goods. Storage must be in a way that clearly identifies the Goods as Our property and prevents the Goods from being damaged or spoiled.
- (d) You may resell any Goods before legal ownership passes to You, provided that You:
 - i) Resell the Goods to a third party in the ordinary course of business;
 - ii) Act in any transaction as Our fiduciary agent;
 - iii) Hold the proceeds of sale of Goods on trust for Us and in a separate account with separate records;
 - iv) Account to Us for those proceeds or any other payment made by a third party for any sale of the Goods; and
 - v) Allow us to inspect any records of any payments received for Goods.
- (e) Legal ownership of any Equipment does not pass to You whatsoever. Even if You go into external administration during the Services, We retain title to the Equipment at all times. You must not use Our Equipment without Our prior written consent.
- (f) If You do not pay for Goods and Services by the Due Date or You suffer an Insolvency Event, then We may repossess the Goods and Our Equipment wherever they are located. You irrevocably grant Us (including Our agents or any other nominated representative) an unrestricted right and licence to enter any Site or premises occupied by You without notice for the purpose of identifying and repossessing any of the Goods and Our Equipment. We reserve these repossession rights without being liable to You or any other third party in any way.
- (g) You must insure the Goods at Your own cost and expense. Insurance must be to the full extent of the price paid or payable for those Goods and remain valid at all times. This includes, but is not limited to, between the time that risk in the Goods passes to You and the date that title in the Goods passes to You.

Clauses 7 - 9 outline how we get paid for Goods and Services, including making payment, credit accounts and our security for payment

7. PAYMENT AND CREDIT

General Payment

- (a) Unless the parties agree differently in writing, You must pay for Goods and Services on or before the Due Date.
- (b) All amounts payable by You for Goods and Services are inclusive of GST (unless expressly stated otherwise). You must pay Us GST imposed on any supply of Goods and Services made under these Terms. Payment of any GST must be made at the same time as payment for the Goods and Services.
- (c) At Our discretion, We may require payment (including part payment) for the Goods and Services before any Order or Quote is processed and fulfilled.
- (d) Payment must be made in a method approved by us. There may be Additional Expenses associated with Your chosen payment method (for example, a surcharge of up to 1.5% of the price of the Goods).
- (e) If You believe You have a set-off or claim against Us (including any query, dispute or claim), You cannot withhold any payment on that basis without Our prior written consent.

- (f) If You do not pay for Goods and Services by the Due Date, We may:
 - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;
 - ii) Require You to pay cash on delivery of any further Goods and Services, or suspend or cease supplying Goods and Services to You;
 - iii) Demand Your immediate payment of all outstanding monies;
 - iv) Charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
 - v) Credit any payments received from You first against any interest charges and costs and all such charges will be payable on demand; and
 - vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.

Credit Accounts

- (g) You may apply for a Credit Account with Us to purchase Goods and Services. We have no obligation to provide or continue to provide credit facilities to You. You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (h) A Credit Account must only be used by You, which means it cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent. Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (i) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment on Your Credit Account to return Your Credit Account to the credit limit before placing any further Orders.
- (j) You also authorise Us to debit Your Credit Account with the price of Services supplied to You and all other amounts owed by You to Us (including fees and interest payable under the Contract).
- (k) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt owed to Us by You.
- (l) Time is of the essence in relation to this section. This section survives expiry or termination of these Terms.

8. SECURITY OVER REAL ESTATE

- (a) To secure payment of all monies You owe Us for the supply of Goods and Services, You:
 - i) Charge all of Your interest in real and personal property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("**Charge**"). This Charge constitutes a General Security Agreement for the purposes of the PPSA;
 - ii) Authorise and consent to Us taking all actions necessary to give effect to the Charge, including the lodgement of a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, or any other security document; and
 - iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form. You agree that any amount payable to Us payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Registry Services New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
 - iv) Irrevocably appoint Us and any person nominated by Us severally

as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security document to effect the Charge granted under this part.

9. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

Security for Goods Supplied

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods supplied by Us from time to time and any proceeds of the sale of the Goods to secure payment for the Goods supplied ("**Security Interest**").
- (b) Each sale or supply of Goods by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
- (c) We may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and the proceeds of the sale of the Goods, including as a purchase money security interest (as that term is defined in the PPSA ("**PMSI**")), pursuant to these Terms.

General Security Agreement for Services Supplied

- (d) For the purpose of any general security agreement ("**General Security Agreement**"), "**Collateral**" means all Your present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which You have at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in Your own right or as trustee of a trust.
- (e) You acknowledge and agree that:
 - i) In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in Your Collateral to secure payment for the Services supplied ("**Security Interest**");
 - ii) Each supply of Services by Us under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
 - iii) We may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

Assurances

- (f) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods and/or Services, including for the purposes of:
 - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
 - a. Attaches to the Goods that is intended to be covered by that Security Interest; and
 - b. Is enforceable, perfected and otherwise effective; and
 - c. Has the priority required by Us.
 - ii) Enabling Us to prepare and register a financing statement or financing change statement;
 - iii) Enabling Us to register a PMSI pursuant to the PPSA;
 - iv) Enabling Us to register an ALLPAAP pursuant to the PPSA; and
 - v) Enabling Us to exercise and maintain any of the Our rights or powers in connection with any such Security Interest.
- (g) If You dispose of the Goods or the Collateral, You must:
 - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
 - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.

- (h) If a higher-priority security interest does arise in the Goods and/or Collateral despite Your obligations under this section, You must:
 - i) Ensure that You receive cash proceeds for the Goods and/or Collateral of at least equal to the market value of the Goods and/or Collateral; and
 - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.
- (i) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

Exclusion of Notices and Other Obligations

- (j) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
 - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - ii) Sections 142 and 143 are excluded;
 - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (k) To the extent permitted by law, You agree to waive:
 - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (l) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

- (m) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (n) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
 - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
 - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (o) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (p) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

Other

- (q) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (r) Nothing in this part limits or is limited by any other provision of these Terms and Conditions or any other agreement between the parties.

Clauses 10 and 11 outlines how to deal with issues that may arise, including returns and any Site issues

10. RETURNS

- (a) Unless We agree otherwise in writing, We are not required to accept returned Goods from You or issue You with a credit for Goods and Services due to the nature of the Goods and Services that We provide.
- (a) If You think any Goods or Services are defective, damaged, missing or misdelivered, You must notify Us of any complaint in writing and **within 7 days** of delivery of the Goods or Services. You must take all steps necessary to mitigate any Loss arising from any defect in the Goods or Services supplied. You will be deemed to accept the Goods and Services (including any defects) if You do not make a complaint in accordance with these Terms.
- (b) Any complaint under this section must be accompanied by:-
- Proof of purchase;
 - Written details of the alleged defect including photographs;
 - Appropriate documentation (such as installation and maintenance records).
- (c) You must allow Us or Our authorised representatives access to the Goods or Site for inspection.
- (d) Goods which are not manufactured by Us are subject solely to the warranties (if any) specified by the third-party manufacturers or suppliers to Us. To the extent permitted by law, We give no warranties beyond the third-party manufacturer or supplier warranties.
- (e) If We agree to accept Goods by return or provide You with a credit, You must provide Your proof of purchase for the Goods being returned.
- (f) We may charge You reasonable restocking, disposal or repacking charges which We incur from the Goods being returned.
- (g) Goods which are already used, or not in original or resaleable condition cannot be returned, including Goods which are not in their original condition (such as the quantities in which we supplied the Goods to You).
- (h) You are responsible for any Additional Expenses associated with any return of Goods.
- (i) Credits may only be redeemed against future orders and subject to Our minimum order policy. No cash refunds will be issued for credits.

Clauses 11 – 13 outline the exclusions, limitations of liability and indemnities applicable to each party under these Terms

11. WARRANTIES AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the Competition and Consumer Act 2010 (Cth) as amended from time to time ("the Act")), where to do so would contravene that statute or cause any provision of these Terms and Conditions to be void. Nothing in these Terms and Conditions modifies or excludes the conditions, warranties, and undertakings and other legal rights under the Act and other laws.
- (b) If You are a consumer as that term is defined under the Australian Consumer Law, Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods and Services repaired or replaced if the Goods and Services fail to be of acceptable quality and the failure does not amount to a major failure. The benefits provided to You under this part are in addition to other rights and remedies available to You under the law
- (c) However, We only deal with commercial customers purchasing goods for business purposes and we do not deal with Consumers (as that term is defined in the Australian Consumer Law). The Australian Consumer Law will not apply to goods sold by Us. When purchasing Goods and

Services You acknowledge that You are not a Consumer (as that term is defined in the Australian Consumer Law).

- (d) Except as expressly set out in the Act, these Terms and Conditions or a separate warranty document, We make no warranties or other representations under or in connection with these Terms and Conditions, and Our liability in respect thereof, is limited to the fullest extent permitted by law.
- (e) You acknowledge that We make no representations or warranties as to the fitness or suitability for any purpose of any of the Goods (whether express or implied and even if that purpose is made known to Us) and You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the goods. You are responsible for ensuring that the Goods are suitable for Your intended use.
- (f) No sale under these Terms constitutes a sale by sample. You acknowledge that any sample may vary from the goods that are produced.
- (g) No sale under these Terms constitutes a sale by description. Any description of goods is by way of identification only.
- (h) To the extent permitted by law, all other implied conditions and warranties are excluded.

12. LIMITATION OF LIABILITY

- (a) If We are lawfully allowed to limit our liability to You in respect of the Goods and Services, then Our liability to You is limited to Our choice of:
- re-supply of the Goods and/or Services; or
 - the cost to replace the Goods and/or Services with equivalent Goods and/or Services; or
 - reimbursement of some or all of the price paid by You for the Goods and/or Services.
- (b) In any other situation, including but not limited to Our breach of these terms, tort law or negligence, then Our liability to You will not exceed the price of the Goods and/or Services supplied by Us (to the extent that is permitted by law).
- (c) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages or indirect or consequential loss of any kind.
- (d) We will not be liable to You if:-
- Goods and Services have not been paid for;
 - Goods have been abused, misused or neglected by You;
 - We cannot establish any defect in the Goods after inspection;
 - You have used the Goods other than for the purposes for which they were designed, including for an illegal purpose;
 - Goods have been altered or modified by someone other than Us;
 - Goods have been subject to abnormal conditions, including environment, temperature, water, fire, humidity, pressure or other stress; and
 - A defect has arisen due to Your failure to assemble, use, handle and maintain the Goods in accordance with Our care and maintenance recommendations or industry-accepted standards;
- (e) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for Goods and Services and any Additional Expenses.

13. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any Loss that We may suffer or incur as a result of any act or omission by You (or any entity or person that You are responsible for) in relation to the Goods and Services and/or these Terms, including but not limited to any breach of these Terms by You, Your negligence, Your failure to perform the obligations in these Terms and any claim made by You against Us.
- (b) Specifically, You must indemnify Us and hold Us harmless (or Our agents, employees or contractors) from:

- i) All reasonable legal costs which We incur as a result of any breach, act or omission by You under these Terms, however that breach, act or omission arises. This includes, but is not limited to, legal or mercantile agent fees on an indemnity basis in the recovery or attempted recovery of any overdue amount for Goods and Services and any action taken to secure any charge;
 - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with the Credit Account and supply of Goods and Services;
 - iii) Any loss and damage incurred by Us as a result of You cancelling your Order after 24 hours, including but not limited to any Additional Expenses;
 - iv) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
 - v) Any and all Loss arising out of damage to Our Equipment on Site (including any loss of or damage to property) except to the extent that such Loss is caused by Our negligence or breach;
 - vi) Any and all Loss arising out of Your (or Your agent, employee, contractor or other representative's) attendance at Our premises or the Site;
 - vii) Any and all Loss arising out of Your failure to provide a safe, suitable and compliant Site for Services (including any personal injury or death) except to the extent that We have committed an act of negligence, breach of the law or breach of the Terms;
 - viii) Any liability that We incur in connection with Our reliance on information provided by You or on Your behalf which is inaccurate, incomplete or misleading, or Your failure to provide Us with relevant information.
- (c) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms. For clarity, this indemnity does not apply to Loss which is caused by Our breach of these Terms.

Clauses 14 and 15 deal with the end of these Terms, including resolving disputes or termination if applicable

14. DISPUTE RESOLUTION

- (a) If a dispute arises between the parties, the following procedure applies:
- i) Either party may give the other a notice of the dispute. This means that the dispute must be dealt with in accordance with this section;
 - ii) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless the dispute has been referred for resolution under this paragraph;
 - iii) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this paragraph;
 - iv) If a dispute is notified, each party must immediately refer the dispute to its senior management. Those representatives must endeavour to resolve the dispute as soon as possible, but at least within 30 days (or other period as agreed between the parties);
 - v) At Our sole discretion, We may elect to resolve any dispute by mediation via the Australian Commercial Disputes Centre (ACDC) before commencing arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The ACDC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
 - vi) The parties must continue to perform their respective obligations

under these Terms, even if a dispute exists (including the referral of the dispute to mediation);

- vii) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

15. TERMINATION

- (a) Our termination rights are:

What We can do
<p>We can by written notice:</p> <ul style="list-style-type: none"> • Suspend or cancel supply of Goods and Services or any current Order(s) for Services; and/or • Suspend or terminate Your Credit Account; and/or • Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired; and/or • Register a default with any credit reporting agency, where applicable; and/or • Enforce Our rights under any Security Interest; and/or • Suspend or terminate the contract created by these Terms <p>("Our Termination Rights")</p>

- (b) We can exercise Our Termination Rights immediately when:

When We can exercise Our Termination Rights
<ul style="list-style-type: none"> • You have not paid for Goods and Services by the Due Date; and/or • You exceed the limit of Your Credit Account; and/or • You breach a material term of these Terms; and/or • Either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of these Terms; and/or • You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA; • You engage in illegal activity related to the Goods and Services; • You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation; and/or • An Insolvency Event occurs.

- (c) Otherwise, either party may terminate these Terms:
- i) Immediately by written notice if the other party is in breach of a material term of these Terms and the breach is not rectified within 14 days of the termination notice; or
 - ii) In all other circumstances, by giving the other party 30 days' written notice.
- (d) If a termination notice is given to a party for breach of these Terms, the terminating party may also:
- i) recover any of its equipment, property, goods, materials and all related data, documentation and records in the possession, custody or control of the party at fault;
 - ii) recover any sums paid to the party at fault on any account or for services which have not been fulfilled or performed;
 - iii) subject to any limitation on liability applicable to the party at fault, recover from the party at fault the amount of any loss or damage sustained as a consequence of the termination, including loss of the benefits which the performance of these Terms would have conferred on the terminating party;
 - iv) be regarded as discharged from any further obligations under these Terms; and
 - v) pursue any additional or alternative remedies provided by law.

Clauses 16 – 18 provide general information applicable to the Terms, including how we handle Your personal information

16. GENERAL

- (a) Any clauses which are expressed to or are, by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms for any reason.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any provision (whole or part) of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If modification is not possible, the relevant provision (whole or part) will be deleted. Any modified or deleted provision will not affect the validity and enforceability of the rest of these Terms.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.
- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.

17. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Policy pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012*, and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Policy by contacting Us in writing.

18. ELECTRONIC COMMUNICATIONS

- (a) In addition to any other delivery method, You agree to receive Invoices via email.
- (b) You agree to accept service of notices under the Building Industry Fairness (Security of Payment) Act 2017 (Qld) as amended from time to time, or any like or similar legislation that may be applicable in the State or Territory where the goods were delivered to You, via e-mail (in addition to any and all other forms of service authorised under the legislation, or regulations made by the Act).
- (c) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the Electronic Transactions (Queensland) Act 2001 ("the Act").
- (d) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the Act.
- (e) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the Act. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

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