

CREDIT ACCOUNT APPLICATION

To Be Completed By Applicants - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

Customer's Details: <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:				
Full or Legal Name:				
Trading Name (if different from above):				
Physical Address:			State:	Postcode:
Billing Address:			State:	Postcode:
Email Address:				
Phone No:		Fax No:		Mobile No:
Personal Details: <i>(please complete if you are an Individual)</i>				
D.O.B.			Driver's Licence No:	
Business Details: <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>				
ABN:		ACN:		Date Established <i>(current owners)</i> :
Nature of Business:				
Paid Up Capital: \$		Estimated Monthly Purchases: \$		Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :				
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>				
(1) Full Name:			D.O.B.	
Private Address:			State:	Postcode:
Driver's Licence No:		Phone No:		Mobile No:
(2) Full Name:			D.O.B.	
Private Address:			State:	Postcode:
Driver's Licence No:		Phone No:		Mobile No:
Account Terms: <input type="checkbox"/> 30 Days <input type="checkbox"/> COD <input type="checkbox"/> Other:				
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO			Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:				
Accounts Contact:			Phone No:	
Bank and Branch:			Account No:	
Trade References: <i>(please provide companies that are willing to do trade references)</i>				
Name:		Address:		Phone / Fax / Email:
1.				
2.				
3.				

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of All Window Solutions Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.**

SIGNED (CUSTOMER): _____ **SIGNED (MANUFACTURER):** _____

Name: _____ Name: _____

Position: _____ Position: _____

WITNESS TO CUSTOMER'S SIGNATURE:

Signed: _____ Name: _____ Date: _____

OFFICE USE ONLY				
Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

All Window Solutions Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Manufacturer" means All Window Solutions Pty Ltd ATF AWS Unit Trust T/A All Window Solutions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of All Window Solutions Pty Ltd ATF AWS Unit Trust T/A All Window Solutions Pty Ltd.
- 1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Manufacturer to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods and/or Services supplied by the Manufacturer to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods and/or Services via the website.**
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Services as agreed between the Manufacturer and the Customer in accordance with clause 5 below.
- 1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods and/or Services.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods and/or Services on credit shall not take effect until the Customer has completed a credit application with the Manufacturer and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods and/or Services request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Manufacturer reserves the right to refuse Delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by the Manufacturer in relation to Goods and/or Services provided is given in good faith, is based on the Manufacturer's own knowledge and experience and shall be accepted without liability on the part of the Manufacturer and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods and/or Services.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Manufacturer shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Manufacturer in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Manufacturer in respect of the Goods and/or Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Manufacturer; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give the Manufacturer not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Manufacturer as a result of the Customer's failure to comply with this clause.

5. Price and Payment

- 5.1 At the Manufacturer's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Manufacturer to the Customer; or
 - (b) the Price as at the date of Delivery of the Goods and/or Services according to the Manufacturer's current price list; or
 - (c) the Manufacturer's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

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- 5.2 The Manufacturer reserves the right to change the Price:
- if a variation to the Manufacturer's quotation is requested; or
 - if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - where additional Services are required due to hidden or unidentifiable difficulties which are only discovered on commencement of the Services; or
 - in the event of increases to the Manufacturer in the cost of Goods and/or Services (including but not limited to variations in foreign currency rates of exchange, materials and labour costs, freight costs, insurance costs etc.) which are beyond the Manufacturer's control.
- 5.3 Variations will be charged for on the basis of the Manufacturer's quotation, and will be detailed in writing, and shown as variations on the Manufacturer's invoice. The Customer shall be required to respond to any variation submitted by the Manufacturer within ten (10) working days. Failure to do so will entitle the Manufacturer to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.4 At the Manufacturer's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods and/or Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Manufacturer, which may be:
- on Delivery of the Goods and/or Services;
 - by way of instalments/progress payments in accordance with the Manufacturer's payment schedule;
 - for approved Customers thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
 - the date specified on any invoice or other form as being the date for payment; or
 - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Manufacturer.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Manufacturer.
- 5.7 The Manufacturer may in its discretion allocate any payment received from the Customer towards any invoice that the Manufacturer determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Manufacturer may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Manufacturer, payment will be deemed to be allocated in such manner as preserves the maximum value of the Manufacturer's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Manufacturer nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer 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 and/or Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.
- 6. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- the Customer or the Customer's nominated carrier takes possession of the Goods at the Manufacturer's address; or
 - the Manufacturer (or the Manufacturer's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At the Manufacturer's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 6.3 The Manufacturer may deliver the Goods and/or Services in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.4 Any time specified by the Manufacturer for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Manufacturer will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer 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.
- 7. Freight Clauses**
- 7.1 Deliveries made to Metropolitan areas (including Newcastle and Gosford) will be Free Into Store (FIS) provided that the Minimum Order Quote of one hundred and fifty dollars (\$150) excluding GST has been reached.
- 7.2 Deliveries made to areas outside of the Metropolitan areas will be delivered FIS on all orders over three hundred dollars (\$300) excluding GST or Free On Board (FOB) your own transport if under three hundred dollars (\$300) excluding GST.
- 7.3 Deliveries made to Interstate areas will be delivered FOB your own transport.
- 7.4 The Customer acknowledges and understands that the Customer will need to contact the Manufacturer in order to obtain a quotation on freight for deliveries that have unusual shapes or bends.
- 8. Risk**
- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Manufacturer is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Manufacturer is sufficient evidence of the Manufacturer's rights to receive the insurance proceeds without the need for any person dealing with the Manufacturer to make further enquiries.

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- 8.3 If the Customer 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 Customer's sole risk.
- 8.4 The Manufacturer shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Manufacturer accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.5 Where the Customer has supplied any materials for the Manufacturer to complete the Goods and/or Services under this Contract, the Customer acknowledges that they accept responsibility for the suitability of purpose, quality and any faults inherent in those materials. The Manufacturer shall not be responsible for any defects in the Goods and/or Services, any loss or damage howsoever arising from the use of materials supplied by the Customer.
- 8.6 Detailed drawings of any services that will be embedded in the Goods are to be provided to the Manufacturer prior to commencement of any Services. Whilst all due care will be taken no liability will be accepted by the Manufacturer for damage to the services or any other element embedded in the Goods.
- 8.7 The Customer acknowledges that Goods supplied may exhibit variations in shade, 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.

9. Access

- 9.1 The Customer shall ensure that the Manufacturer has clear and free access to the site at all times to enable them to effect Delivery of the Goods. The Manufacturer shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Manufacturer.

10. Title

- 10.1 The Manufacturer and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Manufacturer all amounts owing to the Manufacturer; and
 - (b) the Customer has met all of its other obligations to the Manufacturer.
- 10.2 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.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 10.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to the Manufacturer on request;
 - (b) the Customer holds the benefit of the Customer'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;
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer 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;
 - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Manufacturer and must sell, dispose of or return the resulting product to the Manufacturer as it so directs;
 - (e) the Customer irrevocably authorises the Manufacturer to enter any premises where the Manufacturer believes the Goods are kept and recover possession of the Goods;
 - (f) the Manufacturer may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Customer 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;
 - (h) the Manufacturer may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

11. Personal Property Securities Act 2009 ("PPSA")

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Customer 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 Customer to the Manufacturer for Services – that have previously been supplied and that will be supplied in the future by the Manufacturer to the Customer.
- 11.3 The Customer undertakes to:
- (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:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
 - (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;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Manufacturer;
 - (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;

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- (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.
- 11.4 The Manufacturer and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Customer waives their rights as a guarantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Manufacturer, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Customer must unconditionally ratify any actions taken by the Manufacturer under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

- 12.1 In consideration of the Manufacturer agreeing to supply the Goods, the Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Customer 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.
- 12.3 The Customer irrevocably appoints the Manufacturer and each director of the Manufacturer as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.

13. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 13.1 The Customer must inspect the Goods and/or Services on Delivery and must within seven (7) 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 Customer must notify any other alleged defect in the Goods and/or Services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Manufacturer to inspect the Goods and/or Services.
- 13.2 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 (**Non-Excluded Guarantees**).
- 13.3 The Manufacturer acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 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 and/or Services. The Manufacturer's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Customer 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.
- 13.6 If the Manufacturer is required to replace the Goods and/or Services under this clause or the CCA, but is unable to do so, the Manufacturer may refund any money the Customer has paid for the Goods and/or Services.
- 13.7 If the Customer is not a consumer within the meaning of the CCA, the Manufacturer's liability for any defect or damage in the Goods and/or Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by the Manufacturer at the Manufacturer's sole discretion;
 - (b) limited to any warranty to which the Manufacturer is entitled, if the Manufacturer did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 13.1; and
 - (b) the Manufacturer has agreed that the Goods and/or Services are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 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:
- (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by the Manufacturer;
 - (e) fair wear and tear, any accident, or act of God.
- 13.10 The Manufacturer may in its absolute discretion accept non-defective Goods for return in which case the Manufacturer may require the Customer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 13.11 Notwithstanding anything contained in this clause if the Manufacturer is required by a law to accept a return then the Manufacturer will only accept a return on the conditions imposed by that law.
- 13.12 Subject to clause 13.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

14. Intellectual Property

- 14.1 Where the Manufacturer has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Manufacturer. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Manufacturer.
- 14.2 The Customer warrants that all designs, specifications or instructions given to the Manufacturer will not cause the Manufacturer to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Manufacturer against any action taken by a third party against the Manufacturer in respect of any such infringement.
- 14.3 The Customer agrees that the Manufacturer may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Manufacturer has created for the Customer.

15. Default and Consequences of Default

- 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.
- 15.2 If the Customer owes the Manufacturer any money the Customer 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 default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies the Manufacturer may have under this Contract, if a Customer has made payment to the Manufacturer, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Manufacturer under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 15.4 Without prejudice to the Manufacturer's other remedies at law the Manufacturer shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Manufacturer shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Manufacturer becomes overdue, or in the Manufacturer's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by the Manufacturer;
 - (c) the Customer 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Cancellation

- 16.1 Without prejudice to any other remedies the Manufacturer may have, if at any time the Customer 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 and/or Services to the Customer. The Manufacturer will not be liable to the Customer for any loss or damage the Customer suffers because the Manufacturer has exercised its rights under this clause.
- 16.2 The Manufacturer may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice the Manufacturer shall repay to the Customer any money paid by the Customer for the Goods and/or Services. The Manufacturer shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Customer cancels Delivery of Goods and/or Services the Customer 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).
- 16.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

17. Privacy Policy

- 17.1 All emails, documents, images or other recorded information held or used by the Manufacturer is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. The Manufacturer acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Manufacturer acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Manufacturer that may result in serious harm to the Customer, the Manufacturer will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to the Manufacturer in respect of Cookies where transactions for purchases/orders transpire directly from the Manufacturer's website. The Manufacturer agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Manufacturer when the Manufacturer sends an email to the Customer, so the Manufacturer may collect and review that information ("collectively Personal Information")

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- In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Manufacturer's website.
- 17.3 The Customer 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, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Manufacturer.
- 17.4 The Customer agrees that the Manufacturer may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 17.5 The Customer consents to the Manufacturer being given a consumer credit report to collect overdue payment on commercial credit.
- 17.6 The Customer 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):
- (a) the provision of Goods and/or Services; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods and/or Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods and/or Services.
- 17.7 The Manufacturer may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 17.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 17.3 above;
 - (b) name of the credit provider and that the Manufacturer is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (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 Customer no longer has any overdue accounts and the Manufacturer has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Manufacturer, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.9 The Customer shall have the right to request (by e-mail) from the Manufacturer:
- (a) a copy of the Personal Information about the Customer retained by the Manufacturer and the right to request that the Manufacturer correct any incorrect Personal Information; and
 - (b) that the Manufacturer does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 17.10 The Manufacturer will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 17.11 The Customer 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 18. Other Applicable Legislation**
- 18.1 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 Security of Payments Act 1999 (New South Wales) and the Building Industry Fairness (Security of Payment) Act 2017 (Queensland) may apply.
- 18.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 18.1 (each as applicable), except to the extent permitted by the Act where applicable.
- 19. Service of Notices**
- 19.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.

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- 19.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 20. Trusts**
- 20.1 If the Customer at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Manufacturer may have notice of the Trust, the Customer covenants with the Manufacturer as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of the Manufacturer (the Manufacturer will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 21. General**
- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party'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.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Manufacturer has its principal place of business, and are subject to the jurisdiction of the Penrith Courts in New South Wales.
- 21.3 Subject to clause 13, the Manufacturer shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer 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 and/or Services).
- 21.4 The Manufacturer may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of the Manufacturer.
- 21.6 The Manufacturer may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Manufacturer's sub-contractors without the authority of the Manufacturer.
- 21.7 The Customer agrees that the Manufacturer may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Manufacturer to provide Goods and/or Services to the Customer.
- 21.8 Neither party 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.
- 21.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.