

TERMS AND CONDITIONS OF SUPPLY OF SERVICES

ArmorGalv (Aust) Pty Ltd (ACN 135 866 732)

Issue Date: 16 August 2022

The following Terms and Conditions govern all Orders placed by the Customer and will be incorporated into each Contract between the Customer and the Company.

1. Definitions

1.1 In these Terms and Conditions:

- (a) **Amount Payable** means, at any time, all amounts payable by the Customer to the Company at that time (whether or not those amounts have become due for payment) in connection with the Contract including any invoiced amount, interest, fees, costs or expenses;
- (b) **Australian Consumer Law** means the *Australian Consumer Law* which is set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (c) **Batch** means a batch of the Customer's Goods which undergo Processing;
- (d) **Business Day** means a day that is not a Saturday, Sunday, or bank or public holiday in New South Wales;
- (e) **Completion Date** has the meaning given in clause 8.2;
- (f) **Company Premises** means the premises occupied by the Company at 8A Kestrel Ave, Thornton NSW 2322;
- (g) **Company** means ArmorGalv (Aust) Pty Ltd (ACN 135 866 732);
- (h) **Confidential Information** means any information provided by or on behalf of the Disclosing Party to the Receiving Party:
 - (i) which the Disclosing Party has identified as confidential; or
 - (ii) the Receiving Party ought reasonably to know is confidential, and includes all prices, rebates and allowances offered by the Company to the Customer in relation to an Order or Quotation, but excludes any information of the Disclosing Party that:
 - (iii) is in or becomes part of the public domain other than through a breach of the Contract by the Receiving Party; or
 - (iv) was already in the Receiving Party's possession at the time of receipt from the Disclosing Party without any obligation of confidentiality to the Disclosing Party;
- (i) **Consumer** means a Customer that is a consumer as that term is defined in the Australian Consumer Law in respect of the particular Supply;
- (j) **Contract** means:
 - (i) any contract of which these Terms and Conditions are expressed to form part; or
 - (ii) for the supply of Services pursuant to an Order, the contract (which includes these Terms and Conditions) formed for the supply of Services to the Customer under clause 4.5;
- (k) **Credit Account Application** means the document by which a Customer applies to the Company for a credit account;
- (l) **Customer** means the person to whom a Quotation is addressed. If no Quotation is issued, Customer means the person to whom Services are supplied or are to be supplied by the Company;
- (m) **Customer Supplied information** means information provided by the Customer to the Company in respect of the Customer's Goods including weight, description or steel composition;
- (n) **Customer's Goods** means any goods or materials provided by the Customer to the Company for the purpose of the performance of Services by the Company;
- (o) **Delay Event** means:
 - (i) a Force Majeure Event;
 - (ii) a breach of this agreement by the Customer; or
 - (iii) a delay attributable to any act or omission of the Customer or any other contractor or sub-contractor of the Customer;
- (p) **Delivery Claim** has the meaning given in clause 15.3;
- (q) **Developed IP** means all Intellectual Property Rights created, discovered or otherwise brought into existence in the course of the performance of the Contract;
- (r) **Force Majeure Event** means any event or cause beyond the reasonable control and without default or negligence of the party claiming force majeure (provided such party has taken reasonable precautions);
- (s) **Goods List** has the meaning given in clause 7.7;
- (t) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (u) **Heavy Vehicle National Law** means the road safety regime contained in the *Heavy Vehicle (Adoption of National Law) Act 2013* (NSW) and related State or Territory legislation.
- (v) **Insolvency Event** means any of the following events in respect of any party:
 - (i) the party disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
 - (ii) the party ceases to carry on business or is deregistered;
 - (iii) the party ceases to be able to pay its debts as they become due;
 - (iv) any step is taken by a mortgagee to take possession or dispose of the whole or part of the party's assets, operations or business;
 - (v) any step is taken to enter into any arrangement between the party and its creditors;
 - (vi) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, an administrator or other like person to the whole or part of the party's assets, operations or business;
 - (vii) where the party is a partnership, any step is taken to dissolve that partnership or a partner dies; or
 - (viii) where the party is an individual, the party dies;
- (w) **Intellectual Property Rights** means any and all intellectual property rights granted by law or equity from time to time, including trade marks, trade names, domain names, logos, get-up, patents, inventions, design rights, copyrights, circuit layout rights, and all similar rights in any part of the world (including know-how) including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registrations;
- (x) **Interest Rate** means 7.5% per annum;
- (y) **Law** means any present and future applicable law including legislation, ordinances, regulations, codes, by-laws, orders, judgments, ordinances and other subordinate legislation, in force from time to time in any applicable jurisdiction;
- (z) **Loss** means damage, loss, cost, expense, suit, charge, action, right or action, or liability (whether actual or contingent);
- (aa) **Non-Compliant Goods** means Customer's Goods which do not comply with:
 - (i) the Customer Supplied Information; or
 - (ii) the Pre-Processing Requirements,
 - (iii) except for any such goods which the Company has agreed in writing not to treat as Non-Compliant Goods
- (bb) **Order** means an order placed by the Customer with the Company for the Services, whether made in writing, electronically (including by email) or verbally;
- (cc) **Order Confirmation** means a written confirmation of an Order issued by the Company to the Customer;
- (dd) **Personnel of a party** means officers, employees, agents, contractors, subcontractors and secondees of that party and its related bodies corporate, except that:
 - (i) the Company and its officers, employees, agents, contractors, subcontractors and secondees are not Personnel of the Customer; and
 - (ii) the Customer and its officers, employees, agents, contractors, subcontractors and secondees are not Personnel of the Company;
- (ee) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (ff) **Pre-Processing Requirements** means the requirements for the Customer's Goods set out in clause 7.2;
- (gg) **Processed Goods** means Customer's Goods in respect of which the Company has provided the Services;
- (hh) **Processing** means the application of the Services to Customer's Goods;
- (ii) **Quotation** means a written quotation by the Company setting out the proposed terms of a Supply;
- (jj) **Recipient's Address** means:
 - (i) for the Company:

Address: 8A Kestrel Ave, Thornton NSW 2322
Email: sales@armorgalv.com.au
Attention: The Sales Manager
 - (ii) for the Customer, the Customer's address and email address as set out in the Order, or if the Order is not in writing, as set out in the Order Confirmation or any other address the Company reasonably uses to communicate with the Customer in relation to the Contract from time to time, as varied by Notice given by the recipient to the sender from time to time.
- (kk) **Service Fees** means the fees payable for the Supply in accordance with the Contract;

- (ll) **Services** means the thermal diffusion galvanising services supplied or to be supplied by the Company to the Customer pursuant to the Contract;
- (mm) **Specification** means ASTM A1509 – 2008 and ISO 17668:2016 and any other specification or standard for the Services expressly incorporated in the Contract;
- (nn) **Supply** means the supply of Services pursuant to the Contract; and
- (oo) **Terms and Conditions** means these terms and conditions of supply.
- 2. Interpretation**
- 2.1 In the Contract, headings and bold text are for ease of reference only and do not affect the interpretation of this agreement and, unless the context otherwise requires:
- the singular includes the plural and vice versa;
 - another grammatical form of a defined word or expression has a corresponding meaning;
 - a reference to a document or instrument, includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
 - a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Contract or any part of it.
- 2.2 If the Customer consists of more than one person, the obligations of each person are joint and several.
- 3. Application of these Terms and Conditions**
- 3.1 The Terms and Conditions apply to every Order, unless otherwise agreed in writing by the Company. Placement of an Order by the Customer is conclusive evidence of the Customer's acceptance that the Terms and Conditions apply and are binding on the Customer.
- 3.2 The Contract constitutes the entire agreement between the Customer and the Company with respect to an Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of the Contract.
- 3.3 Any purported incorporation of other standard terms and conditions by the Customer is void and of no effect, unless specifically identified in the Contract.
- 3.4 Where there is any discrepancy between the Terms and Conditions and those that may be included in or implied by any document forming part of any enquiry, order or contract, the Terms and Conditions will prevail, except in so far as they are expressly varied by the Company in writing or otherwise by law.
- 4. Quotations, Orders and Contract Formation**
- 4.1 A Quotation issued by the Company to the Customer is an offer to perform the Supply and will not create any contract except in accordance with clause 4.5.
- 4.2 Unless the Quotation states otherwise, the Quotation is provided on the basis that the Supply will be subject to these Terms and Conditions and in particular that the Processing will be performed in accordance with the Specifications.
- 4.3 The Company may withdraw, revoke or vary a Quotation at any time prior to its acceptance and unless otherwise stated in writing by the Company, all Quotations will automatically lapse thirty (30) days after the date of the Quotation.
- 4.4 The Services Fees specified in a Quotation will be based on Customer Supplied Information.
- 4.5 A Contract is formed and binding on the parties:
- if the Customer issues an Order in writing validly accepting a Quotation, without any qualification, when the Company receives the Order; or
 - if there is no Quotation or the Customer issues an Order verbally or if the Customer purports to qualify its acceptance of a Quotation or vary the terms of a Quotation, when the Company issues an Order Confirmation to the Customer.
- 5. General Obligations**
- 5.1 The Company will subject to the terms of the Contract, perform the Supply to the standard of reasonable care and skill to be expected of contractors who regularly act in the capacity in which the Company is engaged and who possess the knowledge, skill and experience of a contractor to act in that capacity.
- 5.2 The Customer must:
- pay the Service Fees to the Company in consideration for the Supply in accordance with clause 10;
 - provide the Company with any technical information, approval or drawings or other information reasonably required by the Company in carrying out its obligations regarding the Supply; and
- provide all reasonable support and co-operation reasonably requested by the Company in connection with the Supply.
- 6. Transportation**
- 6.1 Unless the Contract provides otherwise, the Customer:
- is responsible for the delivery of the Customer's Goods to the Company Premises; and
 - collecting the Processed Goods from the Company Premises as soon as reasonably practicable after Processing.
- 6.2 If the Customer fails to collect the Processed Goods from the Company Premises within 2 Business Days after the Company provides notice that the Processing is complete, the Company may charge the Customer for the reasonable costs of storing the Processed Goods until the Customer collects them.
- 6.3 If the Company agrees, in its absolute discretion, to arrange collection of the Customer's Goods from, or delivery of the Customer's Goods to, any location other than the Company Premises, the Customer must bear all freight, handling and insurance charges.
- 7. Customer's Goods**
- 7.1 Except as otherwise expressly agreed in the Contract, the Customer must ensure that at the time of delivery to the Company, all Customer's Goods:
- comply with the Pre-Processing Requirements; and
 - match the Customer Supplied Information.
- 7.2 Except as otherwise expressly agreed in the Contract, the Pre-Processing Requirements for the Customer's Goods are as follows:
- Maximum dimensions* – individual items of the Customer's Goods must not exceed the following dimensions:
 - Maximum container length* - 2.m, 3.6m or 6.0m, as specified in Quotation or Order Confirmation;
 - Marking paint and steel surface conditions* – all excess oil, weld slag and oil-based marking paints and crayons or other surface contaminants or materials of any kind must have been removed;
 - Fabrication assemblies and materials* – all fabrication assemblies and materials must be of sufficient design and steel quality to withstand temperatures up to 450 degrees Celsius without distortion;
 - Castings* – all castings must have been blast cleaned to remove all foundry sand and surface carbon; and
 - Threaded components* – all threaded components must include sufficient allowance for increased thickness due to the thermal diffusion galvanized coating to be applied.
- 7.3 If the Company determines, prior to Processing, that any of the Customer's Goods delivered to the Company are Non-Compliant Goods, the Company may in its absolute discretion, and without prejudice to any other rights of the Company give notice to the Customer:
- refusing to accept the Non-Compliant Goods and requiring the Customer to collect the Non-Compliant Goods, at the Customer's cost, as soon as practicable;
 - proposing to adjust the Service Fees or the estimated time for Processing for the Non-Compliant Goods, which adjustment may include an allowance for the Company's additional costs of handling, storing, testing and Processing of the Non-Compliant Goods; or
 - offering, at the Customer's cost, to attempt to rectify the Non-Compliant Goods to render them suitable for Processing, subject to the Customer agreeing to pay the agreed costs of the rectification.
- 7.4 The Company is not liable for failing to identify Non-Compliant Goods before Processing.
- 7.5 The Customer must indemnify the Company from and against any loss, liability, costs, claims, damages or expenses incurred by the Company arising out of or in connection with the receipt or Processing of Non-Compliant Goods, except to the extent the Company agrees in writing in its absolute discretion to assume the risk of any such loss, liability, costs, damages or expenses, whether or not the Company has notified the Customer that the Customer's Goods are, or may be, Non-Compliant Goods before Processing.
- 7.6 The Customer must, if requested by the Company, provide design drawings of the Customer's Goods for review by the Company prior to processing. While the Company may make suggestions regarding the design of the Customer's Goods and may, in its absolute discretion refuse to accept Customer's Goods for Processing, if it considers that the design of the Customer's Goods renders them unsuitable for processing, the Company accepts no responsibility for any defects in the design of the Customer's Goods arising out of, or in connection with, any comments, recommendations, suggestions, directions or requests made by the Company.
- 7.7 The Customer must provide to the Company a complete list of the Customer's Goods delivered to the Company at the time of their

- delivery (Goods List). The Company must promptly notify the Customer of any alleged discrepancy in the Goods List and, in such circumstances, the parties must use reasonable endeavours to promptly investigate and resolve the discrepancy.
- 7.8 The Company will not be liable for any Customer's Goods which are alleged to have been lost by the Company if:
- the Customer has failed to provide a Goods List; or
 - the Company delivers all of the Customer's Goods identified in the relevant Goods List.
- 8. Services**
- 8.1 The Company agrees to provide the Services in accordance with the Contract.
- 8.2 The Company must use all reasonable endeavours to perform the Services by the date specified in the Contract (Completion Date) or as otherwise agreed in writing by the parties and subject to any extension of time under the Contract and otherwise in a timely manner.
- 8.3 If the Company is likely to be delayed in completing the Services by the Completion Date by a Delay Event, the Company will be entitled to an extension of the Completion Date by a period of not less than the duration of the Delay Event.
- 8.4 Within a reasonable time after the Company becomes aware of a Delay Event, the Company must notify the Customer of the Delay Event and the new estimated date for completion of the Services.
- 8.5 If a Delay Event occurs and the Company incurs additional costs in relation to such event, the Company is entitled to claim, and the Customer must reimburse the Company for, the actual costs reasonably incurred by the Company in relation to the delay.
- 8.6 The Company will undertake testing and quality control of the Services and the Processed Goods in accordance with the Company's quality assurance manual, as amended from time to time, the Specification and any other testing procedures set out in the Contract. Unless otherwise agreed in the Contract, all testing of the Processed Goods must be carried out before they leave the Company Premises.
- 9. Chain of Responsibility**
- 9.1 The Customer acknowledges that under the Heavy Vehicle National Law, all parties in the road transport supply chain could be held responsible for their actions (or inactions) relating to breaches of the road transport, fatigue, speed, mass, dimension and load restraint laws.
- 9.2 The Customer must ensure that it, at all times, takes all reasonable steps to comply with the Heavy Vehicle National Law and the Chain of Responsibility provisions it contains.
- 9.3 Without limiting any of its other compliance, reporting or record keeping requirements, the Customer must create and maintain, and must ensure that its Personnel create and maintain, records covering compliance with obligations under the Heavy Vehicle National Law, which must be provided to the Company upon request, including after any identification of non-compliance by the Company and after any incident.
- 9.4 The Customer must notify the Company in writing immediately in the event that it or any of its Personnel is issued with any warning, request for information, notice or fine in respect of any breach of the Chain of Responsibility provisions in respect of any Supply and must provide the Company with a copy of any such warning, request, notice or fine and any response or submission made.
- 9.5 The Company will not comply with any direction or instruction by the Customer that might have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing the Company from taking all steps that it considers to be reasonably necessary to prevent any breach of the Heavy Vehicle National Law.
- 10. Pricing**
- 10.1 The Service Fees charged will be the amounts set out in the Contract or as otherwise agreed in writing by the Company and the Customer, subject to any rise and fall or other adjustment in accordance with the Contract.
- 10.2 Unless expressly stated otherwise, the Service Fees are for the application of the Services quoted only, and exclude:
- fees, duties, taxes, surcharges and all other imposts of any government authority;
 - freight, duty, handling charges, insurance, third party storage costs, customs clearance, including for the return of Non-Compliant Goods, which will all be charged at cost plus 5% handling charge if applicable; and
 - any costs and expenses incurred by the Company in relation to the Reprocessing, handling or return of Non-Compliant Goods.
- 11. Invoicing and Payment**
- 11.1 The Company will issue an invoice for the Supply following completion of the Processing of each Batch or as otherwise set out in the Quotation (Invoice).
- 11.2 If the Customer holds a current and valid credit account with the Company in accordance with clause 12 and is not in default under the credit account terms or any other Contract, the Customer must make payment according to the agreed account terms.
- 11.3 Unless clause 11.2 applies or the Company otherwise agrees in writing, the Customer must pay the Service Fees in full before commencement of Processing of the Customer's Goods.
- 11.4 The Company may charge a surcharge on payments made by credit card to reimburse the cost of any bank or processing charges incurred by the Company in respect of the payment.
- 11.5 To the maximum extent permitted by law, the Customer will be liable for all costs incurred with the recovery of any unpaid invoiced amounts, including legal and collection agents' fees, court costs and interest.
- 11.6 The Customer is not entitled to set off against, or deduct from the Service Fees, any sums owed or claimed to be owed to the Customer by the Company, nor is the Customer entitled to withhold payment of any invoice because part of that invoice is in dispute.
- 11.7 If the Customer does not pay any amount owing to the Company by the due date for payment, the Company may charge default interest on the unpaid amount at the Interest Rate, calculated on a daily basis from the due date until payment is received in full (after as well as before judgment).
- 12. Credit**
- 12.1 Any agreement by the Company to grant the Customer credit has been or will be made on the basis of a Credit Account Application and any additional information (including references) required by the Company.
- 12.2 If the Company approves the Customer's Credit Account Application and grants the Customer credit, the Customer must pay the Service Fees within the period of credit and in accordance with any agreed credit terms.
- 12.3 Until the Company grants the Customer credit by notice in writing, or if the Company withdraws, suspends or limits credit (which it may do at any time and for any reason, in its absolute discretion), the Company will only Supply the Services to the Customer on the basis of payment by cash in advance.
- 12.4 By completing a Credit Account Application and applying for credit with the Company, the Customer agrees to be bound by the Terms and Conditions for each Supply made by the Company to the Customer unless and until the Company and the Customer agree in writing to the contrary.
- 12.5 If the Customer holds a credit account with the Company, the Customer must immediately notify the Company in writing of any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position or any other information provided by the Customer in the Credit Account Application.
- 12.6 Without limiting any other right or remedy available to the Company, including any rights of termination under clause 23.1, the Company may suspend the provision of credit to the Customer at any time while any Amount Payable is overdue.
- 13. GST**
- 13.1 In this clause 13, a word or expression defined in the GST Law has the meaning given to it in that law.
- 13.2 All amounts payable under a Contract are expressed exclusive of GST.
- 13.3 If a party makes a supply under or in connection with a Contract in respect of which GST is payable, the consideration for the supply but for the application of this clause 13.3 (GST exclusive consideration) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made unless that consideration is stated to already include GST.
- 13.4 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 13.3.
- 13.5 Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with a Contract.
- 13.6 A party need not make a payment for a taxable supply made under or in connection with a Contract until it receives a tax invoice for the supply to which the payment relates.
- 14. Risk and Title**
- 14.1 The Customer retains title and risk in the Customer's Goods at all times.
- 14.2 The Company must use reasonable endeavours to protect the Customer's Goods against loss or damage at all times while the Customer's Goods are at the Company Premises.
- 15. Delivery Claims**
- 15.1 The Customer must inspect all Processed Goods received as soon as practicable following delivery.

- 15.2 No defect or claim in respect of Processed Goods delivered will entitle the Customer to reject delivery of other Processed Goods, which are not subject to any defect or claim, delivered as part of the Order.
- 15.3 The Customer must:
- 15.4 within five (5) Business Days of delivery of the Processed Goods, notify the Company of any error, omission, shortage in quantity or damage to the Processed Goods delivered (Delivery Claim);
- 15.5 provide such substantiation of any Delivery Claim as reasonably requested by the Company and must assist the Company to investigate the Delivery Claim; and
- 15.6 allow the Company or its nominee to inspect the alleged error, omission, shortage in quantity or damage within a reasonable time of receiving the Delivery Claim.
- 15.7 The Company will endeavour to rectify any error, omission, shortage in quantity or damage, properly notified and verified in accordance with this clause 14 as soon as reasonably practicable after receiving the Delivery Claim but will not be liable for any delay in respect of such rectification.
- 15.8 If the Customer fails to give notice in accordance with clause 15.3, the Company will be deemed to have fulfilled the contract and no Delivery Claim by the Customer need be recognised by the Company.
- 16. Representations and Fitness for Purpose**
- 16.1 The Customer warrants that it has made its own enquiries in relation to the suitability of the Processed Goods and does not rely on representations by the Company in relation to their suitability for a particular purpose.
- 16.2 To the maximum extent permitted by Law, and except as otherwise expressly set out in the Contract, and without limiting clause 16.1, the Customer is responsible for ensuring the suitability and safety of the Processed Goods for incorporation by the Customer or any third party into any application or other product or work.
- 17. Warranties**
- 17.1 The Company warrants that subject to clause 17.2 and except as otherwise stated in the Contract:
- (a) it will perform the Services in accordance with all relevant Laws; and
- (b) the Services comply with the Specifications and relevant Standards.
- 17.2 The Company is not responsible for any defect in the Supply resulting from:
- (a) any defect existing in the Customer's Goods prior to Processing;
- (b) the Processing of Non-Compliant Goods; or
- (c) any damage to the Customer's Goods incurred during transportation and handling, whether before or after Processing.
- 17.3 The Company makes no other warranty to any person (including the Customer) in relation to the Services except those expressly set out in the Contract and those warranties which cannot be specifically excluded under law and the Company expressly excludes all other terms, conditions, warranties, undertakings, inducements or representations, whether expressly or implied or implied by statute.
- 17.4 All drawings, descriptions, specifications, performance claims and capability claims given by the Company in the Quotation or contained in any website or publication are approximations only, do not form part of the Contract and the Company does not warrant the accuracy or completeness of any such information, unless expressly guaranteed in the Contract.
- 18. Liability and Indemnities**
- 18.1 Nothing in the Contract excludes, restricts or modifies any terms, conditions or warranties or the Company's liability for them which are imposed or implied by any statute, including but not limited to the Competition and Consumer Act 2010 (Cth), and which by statute cannot be excluded, restricted or modified. Limitations and exclusions are made only to the extent that the Company may legally do so.
- 18.2 Subject to clause 18.1, the Company's liability for any kind of loss or damage suffered by the Customer in connection with the Contract, whether in contract, negligence or other tort, misrepresentation, breach of any statutory or equitable duty, or otherwise, and whether the Company's act or omission is wilful or otherwise, is excluded and/or limited (as the case may be) as set out in this clause 18.
- 18.3 The Company accepts liability for personal injury or death to the extent that it directly results from the Company's negligence, but subject to the contributory liability of any other person.
- 18.4 Subject to clauses 18.1 and 18.3, to the maximum extent permitted by law, the Customer acknowledges and agrees that the Company's liability to the Customer (and any party claiming through the Customer against the Company) for any claim for loss or damages (including legal expenses) made in connection with the Contract whether in contract, tort (including negligence), under statute, in equity or otherwise will be limited for any liability for Services forming part of the Supply or otherwise provided by, or on behalf of, the Company, not meeting the specification or otherwise claimed to be defective or deficient is limited to the provision of the Services again or the payment of the price of having the Services provided again, at the Company's election.
- 18.5 To the maximum extent permitted by law, the Customer acknowledges and agrees that the Company will not be liable for, and the Customer waives any right it has to claim, any loss not arising naturally according to the usual course of things, any loss of income, loss of actual or anticipated profit, loss of production, loss of contract, loss of customers, goodwill, opportunity or business, or loss of data arising under or in connection with the Contract, whether in contract, tort (including negligence), under statute, in equity or otherwise.
- 18.6 The exclusions and limitations of liability in clauses 18.4 and 18.5 do not apply to exclude or limit any of the following obligations or liabilities of the Company:
- (a) to the extent the Company is indemnified for the liability under any insurance policy, or would have been indemnified but for this clause 18 or for a failure on the Company's part to comply with its insurance obligations under the Contract or the relevant insurance policy, up to the maximum amount of insurance coverage required under the Contract; or
- (b) liability which by law the Company cannot contract out of or limit.
- 18.7 The Customer acknowledges and agrees, subject to clause 18.1 and to the maximum extent permitted by law, that any other liability falling outside the application of clauses 18.3, 18.4 or 18.5 above, for any loss or damage arising from or caused in any way by the Company, the Services or this Contract, is excluded.
- 18.8 The Customer indemnifies the Company and the Company's Personnel from and against any loss, liability, costs, damages or expenses arising out of or in connection with the use of the Processed Goods by any person, provided that the Customer's liability under this indemnity will be reduced proportionately to the extent that the negligent act or omission of the Company or any of the Company Personnel, or a breach of the Contract by the Company, caused the loss, liability, costs, damages or expenses.
- 19. Insurance**
- 19.1 The Company agrees to maintain with a reputable insurance company throughout the term of the Contract:
- (a) public liability insurance written on an occurrence basis providing cover for an amount not less than \$20,000,000; and
- (b) workers' compensation insurance appropriate to its activities in the form and amount required by law.
- 19.2 The Company must provide evidence that it holds the insurance required under clause 19.1 whenever reasonably requested by the Customer.
- 20. Personal Property Securities Act**
- 20.1 In this clause 20, terms defined in the PPSA have the meaning given in the PPSA, unless the context requires otherwise.
- 20.2 The Customer grants to the Company a security interest in the Customer's Goods to secure payment of the Amount Payable. The security interest:
- (a) extends to and continues in all proceeds; and
- (b) is a purchase money security interest to the extent to which it secures payment of the unpaid Service Fees.
- 20.3 The Customer acknowledges and agrees that, with respect to the Customer's Goods, the Contract constitutes a security agreement and that the Company may register a financing statement in respect of the security interest provided by the Contract.
- 20.4 The Customer must:
- (a) promptly do anything required by the Company to ensure the Company's security interest is a perfected security interest and has priority over all other security interests in the Customer's Goods;
- (b) not do or permit anything to be done that may result in the purchase money security interest granted to the Company ranking in priority behind any other security interest;
- (c) not cause or knowingly permit any person to take a security interest over, or to register a financing statement in relation to, the Customer's Goods without the prior written consent of the Company; and
- (d) immediately notify the Company if it becomes aware of any person taking steps to register a financing statement in relation to the Customer's Goods.
- 20.5 The Customer:
- (a) waives the right under the PPSA to receive a copy of the verification statement verifying registration of a financing statement or a financing charge statement relating to a security interest created under the Contract;

- (b) waives any right it may have under section 115 of PPSA upon enforcement;
 - (c) to the fullest extent permitted by the PPSA, contracts out of its rights to receive any other notice or statement under any other provision of the PPSA;
 - (d) agrees to pay all costs incurred by the Company in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR or enforcing or attempting to enforce the security interest created by the Contract including executing subordination agreements; and
 - (e) is responsible for the full costs incurred by the Company (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA.
- 20.6 If the Customer defaults in the performance of any obligation to the Company under the Contract or any other agreement for the Company to provide Service to the Customer, the Company may enforce its security interest in any Customer's Goods by exercising all or any of its rights under the Contract or the PPSA.
- 21. Intellectual Property Rights**
- 21.1 The Customer warrants that all drawings, designs, production requirements or other documents provided by or on behalf of the Customer (if any) in relation to the Supply are accurate and that the Company is entitled to use such materials for the purposes of the Supply (Customer's Materials) and that such use does not infringe the Intellectual Property Rights of any third party.
- 21.2 The Customer indemnifies the Company from and against all loss, liability, costs, claims damages or expenses incurred by the Company in relation to any actual or alleged breach of a third party's Intellectual Property Rights as a result of the Company using or relying on any Customer's Materials.
- 21.3 All Intellectual Property Rights in any materials created or provided by the Company to the Customer in relation to the Supply (Company Materials), remain the property of the Company and the Customer warrants that it will not infringe those rights.
- 21.4 Subject to the Customer's payment of the Service Fees in accordance with the Contract, the Company grants the Customer a non-exclusive, royalty-free, revocable, non-transferable licence to use Company Materials for any purpose related to the use of the Customer's Goods or Services in accordance with the Contract and otherwise to receive the benefit of the Supply. The Customer must not use the Company Materials for any other purpose.
- 21.5 Without limiting clause 21.3, unless the Contract provides otherwise, all drawings and information issued by the Company remain the property of the Company and may not be distributed or copied without the Company's permission.
- 22. Confidential Information**
- 22.1 Each Party must:
- (a) take all reasonable steps to safeguard the confidentiality of the Confidential Information; and
 - (b) not disclose, make public or use for purposes other than for the purposes of the Contract any Confidential Information of the other Party without the prior written consent of the other Party.
- 22.2 Any obligation of a Party under this clause 22 will not be taken to have been breached if the Confidential Information was required to be disclosed by law or court order, provided that the Party, to the extent reasonably practicable, gives the other Party prompt notice of the existence of such an obligation and makes a reasonable effort to otherwise protect the confidentiality of such information.
- 23. Termination**
- 23.1 The Company may terminate the Contract by written notice to the Customer if:
- (a) the Customer has not complied with the terms of payment pursuant to clause 10;
 - (b) the Customer is subject to an Insolvency Event; or
 - (c) the Customer is otherwise in breach of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from the Company requesting the breach be remedied.
- 23.2 The Customer may terminate the Contract by written notice to the Company if:
- (a) the Company is subject to an Insolvency Event; or
 - (b) the Company is otherwise in breach of its obligations under the Contract and fails to remedy the breach within 10 Business Days after receipt of written notice from the Customer requesting the breach be remedied.
- 23.3 Without limiting any other remedy available to the Company, to the maximum extent permitted by law:
- (a) the Customer must pay for all parts of the Supply performed prior to the termination of the Contract; and
 - (b) if the Contract is terminated by the Company under clause 23.1, the Customer must indemnify the Company from and against all liability, loss or Claims, incurred by the Company arising out of or in connection with the termination.
- 24. Disputes**
- 24.1 Nothing in this clause 24 prevents the Company or the Customer seeking urgent injunctive or other interim relief from a court, or from continuing existing court proceedings.
- 24.2 It is a condition precedent to the commencement of any proceedings in any court in any jurisdiction (other than for urgent interlocutory relief) that the parties first follow the procedure in this clause 24.
- 24.3 A party claiming that a dispute has arisen out of or in connection with the Contract (Dispute) must provide the other party with written notice of the nature of the Dispute and the relevant facts.
- 24.4 In the first instance, the Dispute will be referred to the representatives of each party. A meeting of the representatives must be convened and held by the Company and the Customer as soon as reasonably practicable to attempt to resolve the Dispute.
- 24.5 If a Dispute is not resolved within twenty (20) Business Days after the issue of a notice under clause 24.3, either party may commence court proceedings for the resolution of the Dispute.
- 24.6 Each party must bear its own costs of complying with this clause 24.
- 25. Force Majeure**
- Neither party will be liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed by a Force Majeure Event provided that it gives notice to the other party of the delay and uses reasonable efforts to remedy the cause of the delay as soon as reasonably practicable.
- 26. Notices**
- 26.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
- (a) in writing, in English and signed by a person duly authorised by the sender; and
 - (b) marked for the attention of the person, and hand delivered or sent by prepaid post or email to the Recipient's Address.
- 26.2 Communications by email need not be marked for the attention in the way required by clause 26.1(b). However, the email must state the first and last name of the sender. Communications sent by email are taken to be sent by the named sender.
- 26.3 A Notice given in accordance with clause 26.1 takes effect when taken to be received, and is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, six (6) Business Days after the date of posting; or
 - (c) if sent by email, at the time the email was sent unless the sender receives an automated message that the email has not been delivered,
- but if receipt is not on a Business Day or is after 5.00pm on a Business Day (in the time zone of the addressee), the Notice is taken to be received at 9.00am on the next Business Day.
- 27. Variation of Terms and Conditions**
- 27.1 The Company may at any time vary the Terms and Conditions applicable to future Orders and may notify the Customer of these changes or provide any other notice of a variation of the Terms and Conditions, by publishing the revised Terms and Conditions or notice on its website.
- 27.2 If the Company publishes the revised Terms and Conditions on its website:
- (a) the revised Terms and Conditions are effective from the effective date noted in the Terms and Conditions or the date of publication on the website, whichever is later; and
 - (b) it may (but is not obliged to) notify the Customer that it has done so on any invoice or Order Confirmation.
- 28. Severance**
- If any provision or part of any provision of these Terms and Conditions is invalid, illegal or unenforceable, such provision or part thereof will be severed from the Terms and Conditions and the remainder will continue in full force and effect.
- 29. Waiver**
- Waiver of any power or right under this agreement must be in writing signed by the party entitled to the benefit of that power or right and is effective only to the extent set out in that written waiver.
- 30. Governing Law and Jurisdiction**
- 30.1 The Contract will be governed by and construed in accordance with the laws in force in New South Wales.
- 30.2 Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.