

TERMS AND CONDITIONS

These Terms constitute the whole agreement between the Client and GFI.

By placing an Order for Goods and/or Services with GFI, the Client agrees to be bound by these Terms.

1 Definitions

In the following Terms & Conditions of Sale (**Terms**):

Agreement means the agreement created from the Client submitting the Order to GFI and being bound by these Terms.

Client means the individual, company, trustee, partnership, agent, authorised personnel that has submitted an Order to GFI for the supply of Goods and/or Services.

Corporations Act means the *Corporations Act 2001 (Cth)*

Costs means the price specified on each invoice issued to the Client, including additional fees incurred as provided in the Agreement.

Confidential Information means the terms of these Terms and any confidential information of GFI that becomes known to the Client.

GFI means GoFrameIT Pty Ltd ACN 652 396 097, or any company, entity or business to be established in the future which the business GoFrameIT Pty Ltd is owned or controlled by.

Goods means detailed fabrication and assembly drawings for all steel components, including dimensions, connections and other details necessary for fabrication and installation. If applicable, Goods may also mean a bill of materials, cutting lists and other production related documents as required by the Client.

Guarantor(s) means if applicable, any other person or entity that guarantees the payment of the Costs for the Client buying the Goods and/or receiving the Services.

Materials means the materials, fabrications and anything else created or manufactured from the supply of the Goods to the Client which are in alignment with the Order Requirements.

Order means an order form submitted by the Client for the supply of Goods and/or Services which must include the Order Requirements.

Order Requirements means the requirements specified in clause 3.1 and 3.2.

Parties means GFI and the Client.

Privacy Laws means the *Privacy Act 1988 (Cth)* and any rules, regulations or principals created, enacted or enforced pursuant to that act.

Services means GFI providing all, any or some of the following:

- (a) A Pre-installation engineering compliance certification (Form 15 or similar),
- (b) On-site inspection reports and verification of the installation of steel components,
- (c) Pre-Installation Engineering Certification, and/or

- (d) Post-Installation Engineering Certification.

Terms means the terms of these Terms and Conditions, including any variations.

2 SUPPLY OF GOODS AND SERVICES

2.1 These Terms replace any existing terms between the Parties and apply to all agreements (including any existing arrangements at the date of this agreement) for the supply of Goods and/or engagement of Services by GFI and are varied or excluded only where such variation or exclusion is in writing and signed by an authorised employee of GFI.

2.2 These Terms are binding on the Client with respect to all Goods purchased by it, Goods and/or Services supplied or agreed to be supplied by GFI and each contract whether written or verbal between GFI and the Client.

2.3 Where the Client has agreed to purchase Goods and/or engage in the Services from GFI, these Terms will be incorporated into every subsequent agreement for purchase by the Client from GFI unless specifically varied or excluded by GFI.

2.4 Any Order placed by the Client with GFI constitutes an offer to purchase the Goods and/or engage in the Services. Notwithstanding any prior communication between GFI and the Client, there will be no obligation by GFI to accept an offer to purchase Goods and/or engage in the Services made by the Client.

2.5 GFI may make its acceptance of an Order conditional upon receiving payment in full/a deposit payment from the Client.

2.6 The Order may be accepted either by verbal agreement by GFI to the Client, by issue to the Client of a confirmation of Order or if none of the previous apply, by delivery of the Goods or the scheduling of an appointment and time to commence the Services.

2.7 If there is any inconsistency between an Order or other request and these Terms, these Terms prevail unless the variation is accepted in writing by GFI.

2.8 GFI will, upon supplying the Goods to the Client (or prior subject to GFI's discretion), provide the Client with an invoice in respect of the Goods.

2.9 GFI will provide a quote for the Services, which will be deemed to be accepted upon the Client accepting the Services. If the Client engages in GFI to provide Goods and Services, then GFI may provide a combined invoice (or multiple invoices) for the works related.

2.10 If there is any variation to any of the information supplied by the Client to GFI (including as to the structure or nature of the Client's business) the Client must notify GFI in writing as soon as practicable.

2.11 Any terms and conditions specified by the Client are expressly rejected. The Client acknowledges that these Terms will govern all Contracts or Agreement(s) between the parties whether individually or collectively.

2.12 GFI may vary these Terms from time to time.

2.13 GFI reserves the right to refuse or cancel any order, for any reason especially in circumstances whereby orders cannot be fulfilled and are beyond its control.

3 CLIENT OBLIGATIONS

3.1 The Client is required to provide GFI with all necessary information and specifications relating to the requirements of the Client's project.

3.2 The Client must provide GFI with the following Order Requirements:

- (a) Accurate and complete information and data regarding each project,
- (b) Drawings in an approved form (currently dwg, A, B, C),
- (c) Drawings in compliance with GFI's minimum standards as outlined in Annexure A,
- (d) Completed Builders Checklist as outlined in Annexure B, and
- (e) Completed Fabricators Checklist as outlined in Annexure C.

3.3 The nature and extent of the services provided to the Client will be determined on the basis of the Order Requirements provided to GFI.

3.4 The Client will not have deemed to submit an Order with GFI unless all Order Requirements have been provided to GFI. The Client acknowledges that GFI will not commence an Order unless all Order Requirements have been provided to the reasonable satisfaction of GFI.

3.5 Upon GFI receiving all Order Requirements from a Client, the Order will be automatically classified as submitted with GFI and accepted by GFI (unless GFI specify otherwise to the Client) for their completion and the Client acknowledges that at the time the Client submits the Order Requirements to GFI, the Client confirms and acknowledges that the information in the Order Requirements are correct and binding.

3.6 The Client must immediately notify GFI of any changes or modifications to the project, scope or design criteria (including any errors that were included in the Order Requirement) and shall work with GFI to develop appropriate solutions or modifications as required. The Client must provide any changes or modifications to its agents, contractors, subcontractors and anyone else relevant with respect of the Order. If the changes or modifications are not received from the Client then those alterations shall not be deemed accepted by GFI unless GFI indicate acceptance in writing.

3.7 The Client acknowledges that GFI is entitled to review any changes or modifications to the project, scope or design and the Client agrees to pay any additional costs associated with such amendments.

3.8 The client agrees to cooperate fully with GFI in the performance of its services and shall provide necessary assistance, support, information and data as required and requested by GFI.

3.9 The client shall comply with all laws, regulations and standards related to the project including but not limited to building codes, zoning laws and environmental regulations.

4 PRICING AND PAYMENT

4.1 The price for the Goods and/or Services is the price specified in the invoice provided to the Client by GFI and unless specified otherwise excludes GST.

4.2 The Client acknowledges that any quote provided to the Client by GFI is not binding and may be subject to increase in accordance with clause 4.8.

4.3 Unless an invoice by GFI says otherwise, the Client must pay any invoices specifying the price of the Goods and if applicable, the price of any Services within fourteen (14) days of the date specified on the invoice.

4.4 Despite what clause 4.3 says, the Client acknowledges that delivery of the Goods (and/or Services, if applicable) will only be completed upon GFI receiving full payment of all and any invoices outstanding. The Client has no right to the Goods and/or Services until payment has been received in full by GFI.

- 4.5 If the Client elects to terminate the Order once the Order has been submitted, the Client acknowledges and agrees that GFI has full discretion to charge the full amount of the quote to the Client, or may elect to charge for the works completed up to the date of termination or change of mind, of which the Client agrees accordingly.
- 4.6 The price of the Goods and Services will fluctuate and are not set and will vary on a daily basis. The Client can never be guaranteed a same or similar pricing for purchasing the Goods and/or Services more than once and has no right to dispute any increase of pricing for any Goods.
- 4.7 GFI will be entitled to set off against any money owing to the Client by amounts owed to GFI.
- 4.8 If the Client wishes to add on or engage GFI for any Services which have not been captured in any quote, GFI reserve the right to charge for the Services of which the Client agrees to pay. If for any reason GFI attempt to complete the Services but due to an error, omission or otherwise by the Client which results in GFI being unable to carry out the Services, then GFI may charge additional fees.
- 4.9 Any deposits paid by Clients are non-refundable.
- 5 OTHER ACCOUNT TERMS**
- 5.1 The Client will pay GFI all Costs within the time frame set out in the invoice, unless otherwise agreed in writing, without reduction or deferment on account of any claim, counterclaim or setoff.
- 5.2 The Client acknowledges that time for payment to GFI is of the essence.
- 5.3 The Client agrees to pay for all Goods and Services provided in accordance with the terms agreed and stated on the invoice.
- 5.4 The Client will reimburse GFI for expenses reasonably incurred if requested by GFI, such as travel, freight, title, searching fees, data licence fees etc.
- 5.5 In the event of GFI instructing its solicitors to collect an overdue amount, all legal fees, collection charges and tracing agents fees as between solicitor and GFI will be borne by the Client and all payments made will first be allocated towards such fees and charges thereafter to interest charged pursuant to clause 6.1(a) and finally to the outstanding amount owed to GFI.
- 6 DEFAULT**
- 6.1 If the Client defaults in payment by the due date of any amount payable to GFI, then such moneys become immediately due and payable without the requirement of any notice to the Client, and GFI may elect to, without prejudice to any of its other accrued or contingent rights:
- (a) charge the Client interest at the annual rate of 8% above the Reserve Bank of Australia's Cash Rate, calculated daily and compounded
- weekly from the due date until the date of payment in full;
- (b) charge the Client for, and the Client must indemnify GFI from, all costs and expenses (including without limitation all legal costs and expenses, collection costs, dishonour fees and stamp duty if applicable) incurred by GFI resulting from the default, or in taking action to enforce compliance with the Contract;
- (c) withhold for such period as GFI thinks fit, any further Goods or Services to the Client; and
- (d) by written notice to the Client, terminate any uncompleted contract with the Client.
- 6.2 This clause 6 may also be relied upon, at GFI's option, where the Client becomes bankrupt or insolvent or enters into any scheme of arrangement or has a liquidator, administrator or similar functionary appointed in respect of its assets.
- 7 DEFECTIVE GOODS**
- 7.1 The Client acknowledges and agrees that they are responsible for inspecting and checking the Goods and / or Services provided by GFI.
- 7.2 The Client must immediately notify GFI of any defects, errors or omissions in GFI's Goods. If GFI has been notified of a defect, error or omission, then the Client must identify such defect, error or omission and GFI will review accordingly. If GFI identify that the defect, error or omission:
- (a) is not an error of GFI's (being that the Order was made in accordance with the Order Requirements, or amendments or modifications requested by the Client) then GFI will notify the Client accordingly. GFI may elect to recreate, redevelop or assist in the amendment and rectification of the error however such will incur an additional fee.
- (b) If an error of GFI's (being that the Order was not made in accordance with the Order Requirements or amendments or modifications by the Client), then the Client will allow GFI reasonable time to correct such issues and GFI agrees to complete such rectifications without an additional fee.
- 7.3** Despite what clause 7.2 says, the Goods and/or Services will be deemed free from defect after three business days from supplying the Goods, and three business days after supplying the Services, unless the Client notifies a defect pursuant to clause 7.2 prior to this time frame.
- 7.4 The Client acknowledges that they are responsible for ensuring they have ordered sufficient and correct Order Requirements to carry out the necessary works and GFI will not be responsible for any errors or issues in the Goods or Materials if they comply and align with the Order Requirements.
- 7.5 If GFI is providing the Services, the Client must inspect the Goods prior to creation of the Materials and also

again prior to installation. GFI will not be liable for replacement for a Client's change of mind in the Goods or if the Goods have been provided in accordance with the Order Requirements.

7.6 GFI recommends that after the creation from the Goods (and installation) that the Client ensures the installed works be protected with the appropriate measure against unwanted damages.

7.7 Without prejudice to the Clients statutory rights, following receipt of a notice under clause 7.2, provided that the relevant Goods (if used to create the materials):

- (a) have at all times been properly stored by the Client in a manner appropriate;
- (b) have not been altered in any way; and
- (c) have not been sold to a third-party.

GFI may in its absolute discretion determine that the relevant Goods are defective and should be returned to GFI. The Client shall be solely responsible for arranging for the return of the defective Goods (if applicable), unless GFI determines otherwise.

7.8 GFI is not responsible for the Goods being used to create materials that do not align with the Order Requirements, nor the installation of such materials created from the Goods. GFI is only responsible for the creation of the Goods to be in accordance with the Order Requirements and has no liability for otherwise.

7.9 GFI will not be liable for any defect in the materials created by the Goods or unsatisfactory installation if the materials created by the Goods have already been installed (or partially installed) by a third-party.

8 GOODS WARRANTY & LIMITATION OF LIABILITY

8.1 GFI is not liable to the Client in any way arising under or in connection with the Goods.

8.2 Unless otherwise stated in the Terms, GFI is not liable to the Client in any way arising under or in connection with the sale, use of, storage or any other dealings with the Materials created by the Goods by the Client or any third party.

8.3 GFI is not liable to the Client or any third party in respect of any indirect or consequential loss or damage suffered or incurred by the Client or any third party except.

8.4 No responsibility will be accepted by GFI for damage that occurs from the incorrect use or creation of the Materials from the Goods.

7.5 GFI cannot guarantee and takes no responsibility for dimensions, estimates, quantities, quotes or measurements provided by the Client, the Client's representative or any employee of GFI staff for supply or fixing of goods.

8.5 GFI is only responsible for providing the Goods based on the Order Requirements.

8.6 GFI is not responsible to ensure the Materials have been created or installed to a satisfactory standard and take no liability with respect of such.

8.7 GFI is not responsible and liable in any circumstance for any result in death, injury or anything else that is caused by or contributed by the Materials produced by the Goods.

8.8 So far as permitted by law GFI's liability either in negligence, contract or otherwise arising directly or indirectly to the Client in respect of providing the Goods is limited to the value of the Goods itself.

8.9 The Client agrees to indemnify and hold harmless GFI, its officers, directors, employees and agents from and against any and all claims, damages, losses, liabilities, costs and expenses (including legal fees) arising out of or related to the Client's use of GFI's Services and providing the Goods.

9 TERMINATION

9.1 GFI may terminate the Agreement upon the occurrence of any of the following events:

- (a) failure by the Client to perform any obligation of this Agreement where such failure is not rectified within fourteen (14) days of notice from GFI requesting rectification;
- (b) failure by the Client to provide the Order Requirements;
- (c) a receiver or receiver and manager of the Client's assets, income or business or any part thereof is appointed or a mortgagee goes into possession;
- (d) where GFI appoints a receiver of the Client's assets, income or business or any part thereof is appointed by GFI in relation to the monies or debts owed by the Client;
- (e) the Client fails to pay its debts as they fall due, ceases or threatens to cease to carry on business;
- (f) the Client purports to assign its rights under this Agreement; or
- (g) any event that occurs outside the reasonable control of GFI which in GFI's estimate makes it impracticable or impossible for GFI to fulfil its obligations under this Agreement.

- 9.2 Either party may terminate this Agreement at any time by mutual agreement in writing by giving the other party seven (7) days notice. Upon mutual termination, GFI is entitled to receive payment for all service rendered and expenses incurred up to and including the date of termination and the Client shall be entitled to receive any Goods completed by GFI up to the date of termination. Noting this, GFI is released from full liability and will not be responsible for anything with respect of the Goods and/or Services noting they may not be completed.
- 9.3 On termination for any reason of this Agreement, including once the Goods have been provided and if applicable, the Services performed, the terms of this Agreement continue to apply, specifically confidentiality and intellectual property rights.
- 10 PROPERTY AND RISK**
- 10.1 Subject to clause 4, the Goods will be at the sole risk of the Client as soon as it is provided to the Client (whether by email transmission, post or other means).
- 10.2 The Client assumes all risk and liability for loss, damage or injury to persons, or to property of the Client, or third parties, arising out of the use or possession of the Goods (including the creation of the Materials from the Goods).
- 10.3 The Client indemnifies the GFI against any claim, liability, damage or injury relating to the Goods.
- 10.4 Until GFI receives full payment for all obligations owing in relation to any Goods supplied to the Client:
- (a) property in and title to the Goods remain vested in GFI and will not pass to the Client;
 - (b) the Client holds the Goods as bailee for GFI;
 - (c) GFI has a continuing security interest in any Goods supplied to the Client which are then on sold to a third party or any proceeds derived from those sales;
 - (d) the Client must hold the proceeds of sale of the Goods on trust for GFI; and
 - (e) GFI may, without notice, enter any premises where it suspects the Goods may be located, and remove the Goods.
- The Client irrevocably licenses GFI to enter such premises and indemnifies GFI from and against all costs, claims, demands or actions by any party arising from such action for this purpose.
- 11 PERSONAL PROPERTY SECURITIES ACT**
- 11.1 Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the *Personal Property Security Act 2009* (PPSA).
- 11.2 The Client acknowledges and agrees that these Terms create an accepted and ongoing Security Agreement for the purposes of the PPSA in relation to each and every Order or delivery between GFI and the Client.
- 11.3 The Client grants GFI a security interest in the following collateral:
- (a) all present and after acquired property of the Client;
 - (b) all Goods previously supplied by GFI to the Client and any proceeds derived from those Goods; and
 - (c) all Goods to be supplied in the future by GFI to the Client and any proceeds derived from those Goods;
- 11.4 This security interest secures all moneys owing by the Client to GFI, whether under these Terms or otherwise.
- 11.5 The Client acknowledges and agrees that the security interests granted are continuing and subsisting interests over collateral, with priority over any registered or unregistered general (or other) security interest and any unsecured creditor.
- 11.6 The Client acknowledges that the security interests granted over Goods and their respective proceeds constitute a purchase money security interest (PMSI) for the purposes of the PPSA.
- 11.7 The Client agrees that GFI may register multiple registrations including ALLPAPs or PMSIs or any third parties to whom the Client may on sell the Goods.
- 11.8 The Client will do everything reasonably required of it by GFI to enable GFI to register its security interests with the priority GFI requires and to maintain those registrations including:
- (a) signing any documents and/or providing any information which GFI may reasonably require to register a financing statement or a financing change statement on the PPSR in relation to a security interest; and
 - (b) correcting a defect in a financing statement or registration.
- 11.9 The security interests arising under this Agreement will be perfected prior to, on delivery or within a time contemporaneous with the delivery of the Goods.
- 11.10 GFI does not need to give the Client any notice under the PPSA (including notice of the financing statement or verification statement) unless required by the PPSA.
- 11.11 Any time the Client makes a payment to GFI, irrespective of whether the payment is made under or in connection with this Agreement, GFI may apply that payment:
- (a) first to satisfy an obligation that is not secured;
 - (b) second, to satisfy an obligation that is secured, but not by a PMSI;
 - (c) third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the collateral subject to that PMSI;
 - (d) fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source; or

- (e) despite the foregoing, any manner GFI as the secured party sees fit.
- 11.12 For the avoidance of doubt and without prejudice to GFI's rights under the PPSA, the Client:
- (a) may process the Goods supplied by GFI to the Client and accession or commingle them with other property in which case GFI will have a security interest in any processed, accession or commingled Goods;
- (b) may sell the Goods to its clients and the Client is obligated to notify the third party that GFI has a priority security interest in the Goods and the proceeds of sale which is not extinguished until all payments or obligations owing to GFI are met in full; and
- (c) will, where and when applicable and instructed by GFI, implement, maintain and comply in all material respects with, procedures for the perfection of security interests, including taking all steps under the PPSA to perfect continuously any such security interest.
- 11.13 If Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interests created under these Terms, the Client agrees that sections 95, 120, 121(4), 125, 128, 129, 130, 132, 134, 135, 142, 143 and 157 of the PPSA will not apply to the enforcement of those security interests.
- 11.14 The Client agrees not to disclose to an 'Interested person' (as defined in section 275(9) of the PPSA) or any other person, any Information of the kind described in section 275(1) of the PPSA including these Terms as the Security Agreement between the Client and GFI.
- 11.15 The Client agrees to keep and maintain all Goods free of any mortgage, charge, lien, or security interest except as created under these Terms and not otherwise to deal with Goods in a way that will, or may, prejudice the rights of GFI under these Terms or the PPSA.
- 11.16 The Client irrevocably grants to GFI the right to enter any premises or property of the Client without notice, and without being in any way liable to the Client or any other person, if GFI has cause to exercise any of its rights under the PPSA, and in particular under section 123, and the Client agrees to indemnify GFI against any such liability whatsoever.
- 11.17 The Client's right to possession of Goods still owned by GFI under these Terms will cease if:
- (a) the Client, being an individual, commits an act of bankruptcy;
- (b) the Client, being a corporate entity, commits an act of insolvency;
- (c) the Client fails to comply with any demand for payment issued by GFI;
- (d) circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Client's assets, any proceedings are instituted for winding up, or the Client enters into a Deed of Company Arrangement; or
- (e) the Client ceases or threatens to cease conducting business in the normal manner or applied for deregistration or receives a deregistration notice; or
- (f) the Client is in breach of any of these Terms or is in default of any other agreement with GFI.
- 11.18 The Client agrees that GFI is entitled to enter any premises where the Goods supplied by GFI are still unpaid for, repossess and sell such Goods. The Client agrees to indemnify and keep GFI indemnified in respect of any claims, actions and costs that may arise against GFI in relation to the removal, repossession and sale of the Goods pursuant to these Terms including any claims brought by third parties.
- 11.19 The Client agrees that repossession of the Goods pursuant to the PPSA will only satisfy so much of the monies which may still be payable to GFI by the Client, and is equivalent to GFI's estimation of the market value of the Goods as it is at the date of repossession. On repossession of the Goods by GFI, any rights the Client may have to the Goods will immediately extinguish.
- 11.20 Until any obligations owed to GFI by the Client are discharged in full, the Client must not give GFI a written demand or allow any other person to give GFI a written demand requiring GFI to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR, a financing change statement.
- 11.21 In addition to any other rights provided by law or under any other transaction document, at any time after an event of default has occurred:
- (a) each security interest arising under this Agreement or any collateral becomes immediately enforceable;
- (b) GFI may at any time, by notice to the Client, declare all or part of the secured money to be due and payable immediately, on demand or at a later date as GFI may specify in the notice, and GFI:
- (i) may, in the name of the Client or otherwise, at any time, do anything that the Client, or if the Client is a corporation or trust, its directors or trustee (as the case may be), could do in relation to the collateral;
- (ii) has all other rights conferred by law in relation to the collateral; and
- (iii) may appoint one or more Receivers, and may do anything that a Receiver may do under clause 12.
- 12 APPOINTMENT OF RECEIVER**
- 12.1 GFI may appoint any one or more persons as receiver (Receiver) to any part of the collateral (the Goods) in

- addition to and without prejudice to any of its other rights:
- (a) if the Client requests GFI do so;
 - (b) at any time after an event of default occurs; or
 - (c) if GFI, in its sole discretion, believes that any collateral is at risk of being seized, becoming subject to a security interest or otherwise being dealt with in a manner inconsistent with the terms of this Agreement.
- 12.2 In exercising the power to appoint a Receiver, GFI may:
- (a) appoint a Receiver under clause 12.1(a) either before or after it has taken possession of the collateral and either before or after any Order has been made or a resolution passed for the winding up of the Client;
 - (b) appoint a different Receiver for different parts of the collateral;
 - (c) if more than one person is appointed as Receiver of any part of the collateral, empower them to act jointly or jointly and separately; or
 - (d) remove the Receiver, appoint another in substitution if the Receiver is removed, retires or dies.
- 12.3 GFI may appoint any person or any 2 or more persons jointly or jointly and separately as its agent to exercise any of its rights under this Agreement, in which case the provisions of clauses 12.1 and 12.2 apply as if the agent was a Receiver.
- 12.4 If GFI appoints a Receiver as the agent of GFI, GFI may delegate to the Receiver any of GFI's rights under this Agreement.
- 12.5 A Receiver appointed by GFI has the right in relation to any property in respect of which the Receiver is appointed to do everything that the GFI may authorise an agent to do on behalf of the Client in relation to the Goods(the property) and, without limitation, a Receiver may in relation to that property exercise:
- (a) the rights capable of being conferred on receivers and receivers and managers by the PPSA and the laws of any relevant jurisdiction;
 - (b) the rights of the Client and the directors of the Client;
 - (c) if the Client is not a corporation to which the Corporations Act applies, the rights that the law would allow a Receiver to do if the Client was a corporation incorporated under the Corporations Act; and
 - (d) any other rights GFI may by notice to a Receiver give to a Receiver.
GFI may by notice to a Receiver at the time of a Receiver's appointment or any subsequent times give any rights to a Receiver that GFI determines.
- 12.6 The interpretation of any right or power set out in this clause 12 is not restricted by reference to or interference from any other right or power.
- 13 FORCE MAJEURE**
- 13.1 GFI will not be liable for any loss or damage suffered by the Client due to any delay or any breach or default under this Agreement in circumstances where such delay, breach or default results from causes beyond GFI's reasonable control including but not limited to acts of God, fires, flood, adverse weather, strikes, lockouts, factory shutdowns or alterations, embargoes, wars, riots, delay or shortage in transportation.
- 13.2 Any delay resulting from such cause will immediately extend the date for the performance by GFI of any obligation under this Agreement by the period of delay in which event the Client will take, if necessary, steps to secure payment for the Goods.
- 13.3 Any indulgence, latitude or extension of time which GFI may show towards the Client in relation to any of the provisions of the Agreement or any other matter or thing relating thereto or arising therefrom will not in any way prejudice or interfere with GFI's rights under the Agreement and will not be claimed to constitute a waiver thereof.
- 14 DISPUTE RESOLUTION**
- 14.1 Prior to the institution of any legal proceedings, or any referral to arbitration, any dispute, controversy or claim arising out of or relating to this agreement or the breach, termination or invalidity of it will first be the subject of mediation, who is appointed by GFI.
- 14.2 In the event that the dispute, controversy or claim has not been resolved within twenty-eight (28) days after the appointment of a mediator (or such other period as agreed to in writing between parties), the dispute, controversy or claim, at the election of either party, may be submitted to arbitration.
- 14.3 All costs associated with appointing a mediator will be paid equally between GFI and the Client.
- 14.4 Any mediation or arbitration meetings and proceedings will be held in Brisbane, Queensland.
- 15 PURCHASE GUARANTEES AND TRUSTS**
- 15.1 Where the Client and Guarantor(s) have requested that GFI supply Goods to the Client and GFI has agreed to do so in consideration of the guarantee and indemnity provided by the Guarantor(s):
- (a) the Guarantors jointly and severally, unconditionally and irrevocably guarantee to GFI the due and punctual payment by the Client of the secured money and the performance of all other obligations of the Client to GFI under these Terms;
 - (b) the Guarantors jointly and severally, unconditionally and irrevocably indemnify GFI against, and must pay GFI on demand the

- amount of, all liability, loss or damage arising directly or indirectly from, and any costs, charges or expenses incurred in connection with, a failure by the Client to pay the secured money when due, or any other breach of an obligation owed by the Client to GFI under these Terms; and
- (c) any guarantee and indemnity is continuing and is not discharged by any one payment.
- 15.2 Where applicable, to secure payment of the secured money and performance of the Client's obligations to GFI, the Client and Guarantors where applicable and agreed with GFI, charge all of their legal and equitable interest (including as beneficial owner, both present and future) of whatsoever nature held in any and all real property in favour of GFI.
- 15.3 If the Client is acting as trustee (whether or not GFI are aware of the capacity):
- (a) this Agreement also applies if the Client is acting as trustee and whether or not GFI has notice of the Trust.
- (b) the Client agrees that even though it enters into these Terms as trustee, the Client will also be liable personally for the performance and observance of every term or covenant to be observed and performed by the Client, whether express or implied in these Terms.
- (c) the Client warrants that it has complete, valid and unfettered power to enter into these Terms pursuant to the provisions of a Trust where applicable and warrants that the Client's entry into these Terms is in the due administration of the Trust.
- (d) the Client covenants it has an unrestricted and unlimited right of indemnity against the property of the Trust.
- (e) the Client will hold the proceeds of sale of the Goods on trust for GFI.
- 15.4 The Client will not, without GFI's prior written consent:
- (a) resign or be removed as trustee of the Trust or appoint or allow the appointment of a new or additional trustee of the Trust;
- (b) amend or revoke any of the terms of the Trust;
- (c) vest or distribute the property of the Trust or advance or distribute any capital of the Trust to a beneficiary or resettle any of the property of the Trust;
- (d) permit a beneficiary to have the use, occupation, employment or possession of the property of the Trust;
- (e) do or permit or omit to do an act or thing in breach of the Trust or which would permit the Trustee to be removed as Trustee of the Trust;
- (f) exercise or permit or allow to be exercised a power to change the vesting date of the Trust
- or provide for an early determination of the Trust;
- (g) lend any money, give any guarantee or incur any debt other than in the ordinary course of business of the Trust; or
- (h) pay any of the income of the Trust to any beneficiary of the Trust if such payment will prejudice or affect the Client's ability to pay all moneys due to GFI.
- 15.5 Where a director, partner, trustee, proprietor or owner (Owner) uses or authorises the use of their signature in whatever form (such as electronically), including approving an authorised person to apply the Owner's signature to a document, or leaving an authorised person with the Owner's email address to provide authorisation to GFI, the Owner acknowledges and agrees that they:
- (a) have full knowledge of the Terms and all material circumstances related to or as stated in this application and any other agreement between the Client and GFI;
- (b) have provided the requisite authority and consent for the use of their signature or email address;
- (c) acknowledge that GFI will rely on any signature or email received from the Client as having been used or applied full and complete authority (express, implied or ostensible); and
- (d) understand the nature and effect of the Terms, and any other agreement between the Client and GFI.
- 15.6 The Client agrees that GFI may treat any document on which an electronic signature of the Client appears as having been duly signed and executed by the Client.
- 15.7 The Client warrants that all information provided to GFI is true and correct and acknowledges that GFI has relied upon and has been induced on this basis to grant credit and/or deal with the Client and the Guarantors under these Terms. If any information provided is incorrect or false, GFI reserves all its rights.
- 15.8 The rights and obligations of GFI and the Client under these Terms will be binding on, and will be of benefit to, each of the parties' successors, permitted assigns, heirs, executors and administrators.
- 16 CONFIDENTIAL INFORMATION**
- 16.1 The Client acknowledges and agrees that:
- (a) all supplier data and GFI Confidential Information (collectively, "Confidential Information") must only be used for the exclusive purpose of providing and purchasing the Goods and / or Services.
- (b) The Client will not misuse, resell, or otherwise disclose any Confidential Information to any third party, in whole or in part, for any purpose (other than to the Clients employees, parent companies, shareholders, lawyers and accountants on a strict need-to-know basis

provided, or as required by applicable public records or other law, or pursuant to this Agreement, provided the Client has taken the necessary precautions of the kind generally taken with confidential information to ensure the confidentiality of the information made available to such parties); and

- (c) the Client will comply with Privacy Laws and that any Confidential Information must be dealt with in accordance with Privacy Laws.

16.2 The Client shall procure that any and all of the Client's officers, employees and associates comply with each of the obligations in this clause 16.

16.3 The Client shall immediately notify GFI if the Client becomes aware of or suspect any unauthorised access to, or use of, any Confidential Information, and shall cooperate with GFI in the investigation of such breach and the mitigation of any damage caused by the breach. The Client will bear all associated expenses incurred by GFI in complying with applicable laws (including, but not limited to, any data breach laws or Privacy Laws) or arising from any unauthorised access or acquisition of Confidential Information while such data is in the Client possession or control. Upon termination or expiration of this Agreement, the Client shall, as directed by GFI, destroy or return to GFI all the Confidential Information in the Clients possession, or in the possession of any of the Clients agents or Associates.

16.4 The Client acknowledges, confirms and agrees that:

- (a) all the prohibitions and restrictions contained in clause 16 above are reasonable in the circumstances and are necessary to protect the goodwill and business of GFI;
- (b) damages are not an adequate remedy if the Client or the Client's associates breach this clause above; and
- (c) GFI may apply for injunctive relief and a degree for specific performance and any other relief allowed under applicable law (including monetary damages if appropriate) if:
 - (i) the Client or the Client associates breach of threaten to breach this clause 16; or
 - (ii) it believes the Client or any of the Client associates are likely to breach this clause 16 of this Agreement.

17 INTELLECTUAL PROPERTY

17.1 In this Agreement, intellectual property means any form of intellectual property capable of being granted protection at law including, but not limited to registered and unregistered trade marks, patents, designs, trade secrets, drawings, reports, calculations and other deliverables.

17.2 Any intellectual owned by GFI prior to commencement of this Agreement will remain the property of GFI and

the Client acknowledges that nothing in this document will be construed as transferring title in or ownership of any intellectual property to the Client.

17.3 GFI grants to the Client a perpetual, irrevocable, non-exclusive, royalty free licence throughout the world to use, maintain, modify and enhance the intellectual property, to the extent necessary to enable the Client to use, operate, maintain, modify and enhance the Goods.

17.4 The Client acknowledges that:

- (a) any Goods provided to the Client will not be shared with any third party;
- (b) all Goods are owned by GFI and GFI own all intellectual property relating to the Goods, and
- (c) Nothing in clause 17.3 authorises the Client to assign, sublicense or otherwise grant any rights in the intellectual property to any third party without the express prior written consent of GFI.

18 MISCELLANEOUS

18.1 GFI's failure to enforce any of these Terms will not be construed as a waiver of any of GFI's rights.

18.2 If any of these Terms are unenforceable, it will be read down to be enforceable or, if it cannot be read down, the term will be severed from these Terms without affecting the enforceability of the remaining Terms.

18.3 A notice must be in writing and handed personally or sent by fax, email or prepaid mail to the addressee. Notices sent by mail are deemed to be received 5 days after posting.

18.4 Notices sent by fax or email are deemed received on confirmation of transmission.

18.5 Where a Director/Partner or proprietor of the Client uses or authorises the use of his or her signature in whatever form, including approving an authorised person (including any employee) to apply his or her signature to the Credit Application or any other agreement, or leaving an authorised person with his or her email address and password in order to provide authorisation to GFI, the Director/Partner or proprietor acknowledges and agrees that he/she:

- (a) has full knowledge of the Terms and all material circumstances related to or as stated in the Credit Application or any other agreement between the parties;
- (b) has provided the requisite authority in whatever form for the use of his or her signature for the express purposes of agreement between the parties;
- (c) acknowledges that GFI has relied upon that signature as having been duly signed with full and complete authority (express, implied or ostensible) by the director/partner or proprietor..

- 18.6 The Client acknowledges that no oral terms or representations form part of this Agreement unless acknowledged by GFI.
- 18.7 Any notice to be given to a party will be in writing and will be sent by post, email or fax to the address of that party as shown in the quotation, Order or confirmation of Order or as subsequently notified by that party to the party giving the notice and will be deemed to have been given at the time it would have been received in the normal course of post and if otherwise given at the time it was actually received.
- 18.8 The Client agrees that GFI may treat any document on which an electronic signature of the Client appears as having been duly signed and executed by the Client, and that the Client has full knowledge of the obligations contained within this Agreement.
- 18.9 The rights and obligations of GFI and the Client under these Terms will be binding on, and will be of benefit to, each of the party's successors, permitted assigns, heirs, executors and administrators.
- 18.10 The law of Queensland from time to time governs these Terms.
- 18.11 To the extent of any discrepancy between these Terms and any third party (including the Client's own) Terms, these Terms prevail.
- 18.12 These Terms constitute the entire agreement (including Agreement) between the parties and no amendment or variation will be of any force and effect unless in writing and signed by both GFI and the Client.
- 18.13 GFI shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by GFI of these terms and conditions.
- 18.14 In the event of any breach of this contract by GFI the remedies of the Client shall be limited to damages which under no circumstances shall exceed the price of the Goods and / or Services.
- 18.15 The Client shall not be entitled to set off against, or deduct from the price, any sums owed or claimed to be owed to the Client by GFI nor to withhold payment of any invoice because part of that invoice is in dispute.
- 18.16 GFI may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 18.17 The Client agrees that GFI may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which GFI notifies the Client of such change.
- 18.18 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.
- 18.19 The Client may not assign their or transfer any right or liability under this document without prior written consent of GFI, except where this Agreement provides otherwise.
- 18.20 The failure by GFI to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect GFI's right to subsequently enforce that provision.