

## GENERAL TERMS AND CONDITIONS OF TRADE

BY accepting a Quotation from the Supplier, the Customer agrees to be bound by these General Terms and Conditions of Trade.

### 1. DEFINITIONS AND INTERPRETATIONS

#### 1.1 Definitions

In these Terms and Conditions of Trade:

**Additional Charge** means:-

- (a) fees or charges for additional work performed at the Customer's request or reasonably required as a result of the Customer's conduct, calculated in accordance with the Supplier's then current prices or hourly rates;
- (b) expenses incurred by the Supplier, at the Customer's request or reasonably required as a result of the Customer's conduct.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in the place where the Services are principally being carried out or the Goods provided.

**Credit Account** means the allowance of credit agreed to between the Supplier and the Customer limited by the agreed credit limit and the Period of Credit.

**Credit Limit** means the maximum credit amount allowed by the Supplier to be held by the Customer as agreed in writing between the supplier and the customer.

**Customer** means the person that the Quotation is addressed to (non-commercial) or the Company that provides the Order (commercial) and includes the Customer's agents and permitted assigns.

**Delivery** means when the goods are transferred to the Customer either by physical delivery or to the customer's agent or assignee.

**Goods** means any goods supplied by the Supplier including those supplied in the course of providing Services.

**GST** means Goods and Services Tax as defined in A New Tax System (Goods and Services) Act 1999

**Intellectual Property Rights** means intellectual property rights at any time protected by statute or common law, including copyright, trademarks, patents and registered designs.

**ISO Containers** means intermodal containers manufactured according to specifications from the International Organization for Standardization.

**Loss** includes, but is not limited to, costs (including, but not limited to, party to party legal costs and the Supplier's legal costs), expenses, lost profits, award of damages, personal injury and property damage.

**NDT** Non-Destructive Testing as per Australian Standards

**Order** means a purchase order for Goods or Services placed by a Customer in response to a Quote and as varied in writing from time to time by the parties.

**Overseas Customer** means any customer that does not have a registered office in the country of Australia and/or is not considered an Australian entity for the purposes of taxation.

**Period of Credit** means thirty (30) days, from invoice date.

**PPS Law** means:-

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

**Quote** means a written description of the Goods or Services to be provided, an estimate of the Supplier's charges for the performance of the required work and an estimate of the time frame for the performance of the work.

**Services** means the services to be provided by the Supplier to the Customer in accordance with a Quote and these Terms and Conditions.

**Supplier** means the entity specified as the supplier of Goods or Services on the Quote and includes the Supplier's agent and permitted assigns.

**Terms and Conditions** means this document.

**Warranty Application Form** means the form in Schedule A

**Warranty Claim Form** means the form in Schedule B.

#### 1.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:-

- (a) a reference to writing includes email and other communication established through the Supplier's website (if any); and
- (b) the singular includes the plural and vice versa;
- (c) a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms and Conditions;
- (d) a reference to a party of these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns;
- (e) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (f) headings are for ease of reference only and do not affect the meaning or interpretation of these Terms and Conditions; and
- (g) if the date on which any act, matter or thing is to be done falls on a day which is not a Business Day, that act, matter or thing:-
  - (i) if it involves a payment other than a payment which is due on demand must be done on the preceding Business Day; and
  - (ii) in all other cases, must be done on the next Business Day.

### 2. AGREEMENT TO BUY AND SELL

In consideration of payment of the price specified in the Quotation, the Supplier agrees to sell and the Customer agrees to buy the Products on the terms and conditions of this Agreement.

### 3. ENGAGEMENT OF SUPPLIER

(a) These Terms and Conditions apply to all transactions between the Customer and the Supplier relating to the provision of Goods and Services, including all quotations, contract and variations. These Terms and Conditions take precedence over conditions contained in any document of the Customer or elsewhere.

(b) The variation or waiver of a provision of these terms or a party's consent to a departure from a provision by another party is ineffective unless in writing signed by the parties.

(c) The Supplier may amend any details in a Quote by notice in writing to the Customer. Such amended details supersede any relevant prior detail in dealings between the parties.

### 4. QUOTES

(a) The Supplier may provide the Customer with a Quote. Any Quote issued by the Supplier is valid for 60 days from the date of issue.

(b) Unless specifically included in the Quote, our Quote does not include delivery and/or installation of the Goods.

(c) Quotes are based upon the cost of materials available at the time of preparation of the Quote and assume the timely supply by the Customer of necessary material and instructions to the Supplier.

(d) Following provision of a Quote to the Customer, the Supplier is not obliged to commence work until the Quote has been accepted in writing or by e-mail by the Customer, with deposit paid or Order received.

(e) The Supplier reserves the right to amend any Quote before an Order has been made to take into account any rise or fall in the cost of completing the Order. The Supplier will notify the Customer of any amendment as soon as practicable, at which point the amended quote will be the Quote for the purposes of these Terms and Conditions.

(f) An indication in a Quote of the timeframe for the provision of the Goods or Services is an estimate only and is not a fixed timeframe. Subject to any obligations in respect of consumer guarantees under the Australian Consumer Law, this estimate is not binding upon the Supplier.

(g) The Quote includes the provision of generic engineering and a Form 15 as standard. It is the Customer's responsibility to inform the Supplier of any additional engineering requirements, which will be quoted as an additional cost and charged accordingly.

### 5. ACCEPTANCE OF QUOTE

The Customer may accept a Quotation either in writing or verbally. Acceptance shall be deemed to be an agreement by the Customer to be legally bound by this Agreement.

### 6. COMMUNICATION

(a) It is the responsibility of the Customer to provide the Supplier with all contacts relevant to the approval of all parts of the project at the commencement of the Job. Any delays caused by not providing the Supplier with contacts including but not limited to contacts for design approval and site procedures may incur an Additional Charge.

### 7. PURCHASE ORDERS

(a) Commercial Customers applying for a credit account with the Supplier must supply an Order for the provision of Goods or Services in writing on the Customer's standard purchase order form (unless otherwise agreed).

(b) An Order will not be placed by the Customer unless the Order clearly identifies the Goods or Services ordered and the Supplier's Quote number. Any costs incurred by the Supplier in reliance on incorrect or inadequate information may result in the imposition of an Additional Charge.

(c) Orders must be signed by an authorised representative of the Customer and must specify the required date of delivery.

(d) Placement of an Order by the Customer signifies acceptable by the Customer of these Terms and Conditions and the Quote number specified on the Order.

(e) The Supplier may in its absolute discretion refuse to provide Goods or Services where:-

- (i) Goods are unavailable for any reason whatsoever;
- (ii) credit limits cannot be agreed upon or have been exceeded; or
- (iii) payment for Goods or Services previously provided to the Customer or any related corporation of the Customer or to any other party who is, in the reasonable opinion of the Supplier, associated with the Customer under the same or another supply contract, has not been received by the Supplier.

(f) An Order cannot be cancelled without the prior written consent of the Supplier. Where an Order is cancelled, the Customer indemnifies the Supplier against any Losses incurred by the Supplier as a result of the cancellation, including, but not limited to loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

(g) Following placement of an Order, any delays caused by the Customer exceeding three months which subsequently delays the Supplier's purchase of materials for the

Goods including but not limited to steel, fabric covers and shipping containers, may incur an Additional Charge.

#### 8. VARIATIONS

- (a) The Customer may request that its Order be varied by providing a request in writing to the Supplier. A request for a variation must be agreed to in writing by the Supplier in order to have effect.
- (b) If the Customer wishes to vary its requirements after a Quote has been prepared or after the placement of an Order, the Supplier reserves the right to vary the Quote to include any Additional Charge in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Supplier in respect of the required variation supersedes the original Quote. If the revised Quote only specifies additional work the Quote for that additional work will be in addition to the immediately preceding Quote for the Goods and/or Services.
- (c) The Supplier has an automatic extension of time for the provision of Goods or Services equal to the delay caused by the variation.

#### 9. DELIVERY & STORAGE

- (a) Delivery times are estimates only and the Supplier is not liable for any late delivery.
- (b) Any delays caused by the Customer that result in the Supplier being unable to dispatch the Goods within 30 days of completion of manufacture, including but not limited to late payment of final invoice or site delays, may incur an Additional Charge for storage of the Goods.
- (c) Storage of the Goods will be charged at a flat rate of \$5.20 plus GST per day invoiced weekly in advance. All shelters over 12m long will be charged in 12m increments at a rate of \$5.20 plus GST per increment, per day invoiced weekly in advance.

#### 10. INVOICING AND PAYMENT

- (a) Non-commercial Customers and commercial Customers who do not have an approved credit account with the Supplier must pay a deposit of 25% of the Price to confirm the Customer's order. The Customer must pay for the Product in full upon manufacture completion, prior to delivery or dispatch of the Product from the Supplier's premises.
- (b) For commercial Customers who have an approved credit account with the Supplier, the following payment terms apply:
  - i) The Supplier may issue an invoice to the Customer upon completion of the provision of the Goods or Services, for an amount equal to the Quote or the balance of the Quote outstanding, any Additional Charges and any amount not previously invoiced, or if no Quote was provided, for an amount representing the Supplier's charge for the work performed in completing the Order and for any Additional Charges.
  - ii) The Customer must pay an invoice issued by the Supplier to the Supplier within 30 days of a valid tax invoice being issued to the Customer.
  - iii) If any invoice is due but unpaid, the Supplier may withhold the provision of any further Goods or Services until overdue amounts are paid in full.
  - iv) The Supplier may in its complete discretion apply any payment received from the Customer to any amount owing by the Customer to the Supplier.
  - v) The Customer is not entitled to retain any money owing to the Supplier notwithstanding any default or alleged default by the Supplier of these Terms and Conditions, including (but not limited to) the supply of allegedly faulty or defective Goods, provision of Services to an inadequate standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
  - vi) The Customer is to pay the Supplier on demand interest at the rate of 10% per annum on all overdue amounts owed by the Customer to the Supplier, calculated daily.
  - vii) All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Supplier, are to be paid by the Customer as a debt due and payable under the Terms and Conditions.
  - viii) The Customer and Supplier agree to comply with their obligations in relation to Goods and Services Tax (GST) under the *A New Tax System (Goods and Services Tax) Act 1999* and any other applicable legislation governing GST.
  - ix) Approved credit account holders with account inactivity greater than 12 months will need to re-apply for a new credit account with the Supplier.
- (c) Notwithstanding the provisions in Clause 9a and 9b, no Credit Accounts will be entered into with Overseas Customers and all Overseas Customers must provide payment in full of the Supplier's invoice prior to the Supplier arranging Shipping of the Goods.

#### 11. ADDITIONAL CHARGES

- (a) The Supplier may require the Customer to pay an Additional Charge in respect of costs incurred by the Supplier as a result of installation conditions or delays caused by the Customer or reliance on inadequate or incorrect information or material provided by the Customer or information or material supplied later than required by the Supplier in order for it to provide the Goods or Services within the specified timeframe (if any).

#### 12. WELD INSPECTIONS

- (a) The Supplier's standard weld inspection program complies with AS/NZS 1554.1.2014. All welds will be inspected as follows:
  - (i) 100% visual scanning
  - (ii) 10% visual examination
  - (iii) 0% NDT
 If the Customer's requirements for an inspection exceed the amount specified, an Additional Charge may apply.

#### 13. STANDARD OF MANUFACTURING

- (a) The Supplier manufactures to Australian Standards and produces documentation in the Supplier's standard formatting at the sole and unfettered discretion of the Supplier. Any requirements in addition to the standards may incur an Additional Charge.

#### 14. INSTALLATION

- (a) The Supplier shall be responsible for installation of the Goods only if installation is specified in writing on the Quotation and invoice (non-commercial customers) or Order (commercial customers). If installation is not specified on the Quotation and invoice or Order, the Customer is responsible for its own installation at the Customer's cost.
- (b) The Supplier is under no obligation to provide additional drawings, a site visit, or provide further assistance in relation to installation free of charge.

#### 15. CONDITIONS RELATING TO INSTALLATION

##### 15.1 General

- (a) If any of the terms of this Agreement are breached, the Customer may face additional costs, charged at an hourly rate of \$110 plus GST per employee on site, as determined by the Supplier.
- (b) Any delays caused by the Customer exceeding three months which subsequently delays the Supplier's arrival on site to install the Goods may incur an Additional Charge.
- (c) Site requirements or conditions that have not been disclosed by the Customer prior to installation, which affect the install schedule, may incur an Additional Charge as determined by the Supplier.
- (d) Site requirements that are different to current OHS regulations and legislation and that vary from the installation methods in the Supplier's Safe Work Method Statements (SWMS) may incur an Additional Charge as determined by the Supplier.
- (e) Any site delays that are not caused by the Supplier may incur an Additional Charge as determined by the Supplier.
- (f) The Customer must ensure that the area underneath the Goods and immediate surrounds is level and clear prior to the arranged installation date.
- (g) If the Supplier is installing footings, the Customer must provide details on underground service locations and soil conditions, unless otherwise agreed between the parties in writing.
- (h) If the Supplier is installing footings and strikes rock, sand, or other underground obstacles during installation, an Additional Charge may be incurred as determined by the Supplier.
- (i) Any on-site obstacles that have not been disclosed by the Customer prior to installation may incur an Additional Charge.
- (j) If any vehicles are required by the Customer which are over and above the standard vehicles that the Supplier normally provides, or if the Supplier has to hire a compliant vehicle due to the Customer not being satisfied with the Supplier's vehicles or crane truck, or if the Customer requires vehicle inspections that are over and above the Supplier's standard servicing and inspections, Additional Charges may be incurred.
- (k) Prior to acceptance of an Order, the Supplier reserves the right to amend the Quotation to allow for any induction and training costs, including but not limited to online, onsite, company-specific and VOCs, based on information supplied by the Customer. For any inductions and training required by the Customer after an Order has been accepted that have not been disclosed by the Customer to the Supplier or where the time allocated for training and inductions has been exceeded, costs will be calculated following completion of the induction and training and charged as an Additional Charge.
- (l) The Supplier's standard barricading is safety tape. Any additional temporary fencing or barricading required on site may incur an Additional Charge.
- (m) An Additional Charge may include but is not limited to, hourly rates per employee (in the amount of \$110.00 plus GST), accommodation, equipment hire, subcontractor hire, and engineering drawings. Additional Charges for materials or services will be payable by the Customer at the cost incurred by the Supplier plus 15%.

##### 15.2 Shipping Containers

- (a) All shipping containers must be in place as per container layout provided by the Supplier prior to the Supplier's employees arriving on site, unless otherwise arranged.
- (b) Containers must be in reasonable condition as determined by the Supplier in its sole discretion for mounting shelter/s.
- (c) Containers must be 20 foot or 40 foot high cube (HC) or general purpose (GP) ISO containers with no modifications or alterations, unless otherwise agreed by the Supplier and Customer in writing.
- (d) It is the Customer's responsibility to secure the containers if required, unless otherwise arranged.

##### 15.3 Conditions for Installation

- (a) The Supplier can only be required to install the covers of the Goods in low winds.



- (b) The Supplier is entitled to determine in its sole discretion if the wind or other weather conditions are not safe or suitable for installing the Goods.
- (c) The Supplier's employees may require very early morning access to site if daytime winds are determined by the Supplier to be too strong for safe installation.
- (d) If weather conditions do not allow for safe installation, the Supplier shall be entitled to an extension of time without penalty.

#### 16. DISMANTLING AND REINSTALLATION

- (a) If the Customer engages the Supplier to dismantle and re-install the Goods, or dismantle and / or install other goods supplied by a third party, the dismantling and reinstallation or installation will be undertaken at the Customer's cost and the Customer must ensure that all parts of the Goods are in good condition and able to be re-used/reinstalled as determined in the sole and unfettered discretion of the Supplier.
- (b) If the Supplier is required to supply additional parts for the safe reinstallation or installation of the goods as determined by the Supplier, then an Additional Charge will be incurred.

#### 17. ACCEPTANCE OF GOODS

- (a) If the Customer fails to advise the Supplier in writing of any fault in Goods or failure of Goods to accord with the Customer's Order within 48 hours of delivery, the Customer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Customer's order. Nothing in this paragraph affects the Customer's rights for any alleged failure of a guarantee under the Australian Consumer Law.
- (b) Any claims or disputes by the Customer in relation to an invoice must be notified in writing to the Supplier within 7 days from the date of the invoice.

#### 18. TITLE AND RISK

- (a) Risk in the Goods passes to the Customer immediately upon delivery.
- (b) Property in Goods supplied to the Customer pursuant to these Terms and Conditions does not pass to the Customer until all money (including money owing in respect of other transactions between the Supplier and the Customer) due and payable to the Supplier by the Customer has been fully paid.
- (c) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of Goods and any Services provided by the Supplier in respect of those Goods, the Customer:
  - (i) is a bailee of the Goods until property in them passes to the Customer;
  - (ii) irrevocably appoints the Supplier its attorney to do all acts and things necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Supplier with respect to the Goods under applicable law;
  - (iii) must be able upon demand by the Supplier to separate and identify as belonging to the Supplier Goods supplied by the Supplier from other goods which are held by the Customer;
  - (iv) must not allow any person to have or acquire any security interest in the Goods;
  - (v) agrees that the Supplier may repossess the Goods if payment is not made within 30 days (or such longer time as the Supplier may, in its complete discretion, approve in writing) of the supply of the Goods; and
  - (vi) the Customer grants an irrevocable license to the Supplier or its agent to enter the Customer's premises in order to recover possession of Goods pursuant to this paragraph. The Customer indemnifies the Supplier in respect of any damage to property or personal injury which occurs as a result of the Supplier entering the Customer's premises.
- (d) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in respect of those Goods, and the Customer makes a new object from the Goods, whether finished or not, or the Customer mixes the Goods with other goods or the Goods become part of other goods (**New Goods**), the Customer agrees with the Supplier that the ownership of the New Goods immediately passes to the Supplier. The Customer will hold the New goods on trust for the Supplier until payment of all sums owing to the Supplier where under these Terms and Conditions or any other contract have been made and the Supplier may require the Customer to store the New Goods in a manner that clearly shows the ownership of the Supplier.
- (e) For the avoidance of doubt, under paragraph (d), the ownership of the New Goods passes to the Supplier at the beginning of the operation or event by which the Goods are converted into, are mixed with or become part of other goods.
- (f) Notwithstanding paragraph (c), the Customer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business provided that:-
  - (i) where the Customer is paid by a third party in respect of Goods including New Goods, the Customer holds the whole of the proceeds of sale less any GST on trust for the Supplier – in a separate account – until all amounts owed by the Customer to the Supplier have been paid; or
  - (ii) where the Customer is not paid by a third party, the Customer agrees to assign all of its rights against the third party to the Supplier upon the Supplier giving the Customer notice in writing to that effect and for the purpose of giving effect to that assignment the Customer irrevocably appoints the Supplier as its attorney.
- (g) Where Goods are supplied by the Supplier to the Customer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Supplier in

- respect of those Goods, the Customer acknowledges that the Supplier has a right to register and perfect a personal property security interest.
- (h) The Supplier may sell or otherwise dispose of the Goods in its absolute discretion and on its own account without limiting any other rights the Supplier has.
- (i) The Customer indemnifies the Supplier against any loss damage liability or expense incurred or sustained as a result of the exercise of the Supplier's rights under this clause.
- (j) This clause is for the benefit of the Supplier and the Supplier may waive it by giving written notice to the Customer at any time.
- (k) Notwithstanding any other provision in this agreement, the Supplier may take any action it deems necessary including legal proceedings to recover as a liquidated debt any amount payable by the Customer under this agreement.
- (l) The Customer grants to the Supplier a purchase money security interest (as defined in the PPS Law) in the Goods and any proceeds of sale of the Goods ("PMSI") to secure the payment by the Customer to the Supplier of all monies owing by the Customer to the Supplier, on any account.
- (m) The costs of registering a financing statement under the PPS Law will be paid by the Customer to the Supplier.
- (n) The Customer must not do anything or permit anything to be done that may result in the PMSI granted to the Supplier ranking in priority behind any other security interest.
- (o) The Customer must take all further steps and sign all further documents as may be required by the Supplier to further or better secure the Supplier's rights under this agreement and the security under the PPS Law in respect of the Goods or to maintain the effectiveness of or priority of the security interest under the PPSA.
- (p) The Customer agrees that nothing in sections 125, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Law shall apply to this agreement or the security under this agreement.

#### 19. INTELLECTUAL PROPERTY RIGHTS

- (a) The Customer indemnifies and agrees to keep indemnified the Supplier against all Losses incurred by the Supplier in relation to or in any way directly or indirectly connected with any breach of any other Intellectual Property Rights in relation to any material supplied by the Customer to the Supplier.
- (b) Unless specifically agreed in writing between the Supplier and the Customer, all Intellectual Property rights in any works created by the Supplier on behalf of the Customer vest in and remain the property of the Supplier.
- (c) Subject to payment of all invoices due in respect of the Goods or Services, the Supplier grants to the Customer a perpetual, non-exclusive license to use the works created or produced by the Supplier in connection with the provision of Goods or Services under these Terms and Conditions for the purposes contemplated by the Order.
- (d) All photos provided by the Customer to the Supplier become the property of the Supplier and may be used by the Supplier for marketing and promotional purposes.

#### 20. AGENCY AND ASSIGNMENT

- (a) The Supplier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms and Conditions provided that the assignee agrees to assume any duties and obligations of the Supplier owed to the Customer under these Terms of Trade.
- (b) The Customer is not to assign, or purport to assign, any of its obligations or rights under these Terms and Conditions without the prior written consent of the Supplier.

#### 21. DEFAULT BY CUSTOMER

- (a) Each of the following occurrences constitutes an event of default:
  - (i) the Customer breaches or is alleged to have breached these Terms and Conditions for any reason (including, but not limited to, defaulting on any payment due under these Terms of Trade) and fails to remedy that breach within 7 days of being given notice by the Supplier to do so;
  - (ii) the Customer, being a natural person, commits an act of bankruptcy;
  - (iii) the Customer, being a corporation, is subject to:-
    - (a) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
    - (b) a receiver, receiver and manager or an administrator under Part 5.3A of the *Corporations Act 2001* being appointed to all or any part of the Customer's property and undertaking;
    - (c) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
    - (d) any assignment for the benefit of creditors;
  - (iv) the Customer purports to assign its rights under these Terms and Conditions without the Supplier's prior written consent;
  - (v) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Supplier, the Supplier may:-
  - (i) terminate these Terms and Conditions;
  - (ii) terminate any or all Orders and credit arrangements (if any) with the Customer;
  - (iii) refuse to deliver Goods or provide further Services;
  - (iv) pursuant to clause 10(c), repossess and re-sell any Goods delivered to the Customer, the payment for which has not been received; or
  - (v) retain (where applicable) all money paid on account of Goods or Services or otherwise.



(c) In addition to any action permitted to be taken by the Supplier under paragraph (b), on the occurrence of an event of default all invoices will become immediately due and payable.

## 22. TERMINATION

In addition to the express rights of termination provided in these Terms and Conditions, a party may terminate these Terms and Conditions by giving 30 days written notice to the other party.

## 23. EXCLUSIONS AND LIMITATION OF LIABILITY

(a) The Customer expressly agrees that use of the Goods and Services is at the Customer's risk. To the full extent allowed by law, the Supplier's liability for breach of any term implied into these Terms and Conditions by any law is excluded.

(b) All information, specifications and samples provided by the Supplier in relation to the Goods or Services are approximations only and, subject to any guarantees under the Australian Consumer Law, small deviations or slight variations from them which do not substantially affect the Customer's use of the Goods or Services will not entitle the Customer to reject the Goods upon delivery, or to make any claim in respect of them.

(c) Except as set out in clause 27, the Supplier gives no warranty in relation to the Goods or Services provided or supplied. Under no circumstances is the Supplier or any of its suppliers liable or responsible in any way to the Customer or any other person for any loss, damages, costs, expenses or other claims (including consequential damages and loss of profits or loss of revenues), as a result, direct or indirect of any defect, deficiency or discrepancy in the Goods or Services including in their form, content and timeliness of deliveries, failure of performance, error, omission, defect, including, without limitation, for and in relation to any of the following:-

- (i) any Goods or Services supplied to the Customer;
- (ii) any delay in supply of the Goods or Services; or
- (iii) any failure to supply the Goods or Services.

(d) Any advice, recommendation, information, assistance or service given by the Supplier in relation to Goods and/or Services is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given, but is provided without any warranty or accuracy, appropriateness or reliability. The Supplier does not accept any liability or responsibility for any Loss suffered as a result of the Customer's reliance on such advice, recommendation, information, assistance or service.

(e) To the fullest extent permissible at law, the Supplier is not liable for any direct, indirect, punitive, incidental, specific, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of or failure to provide Goods or Services, or otherwise arising out of the provision of Goods or the Services, whether based on Terms and Conditions, negligence, strict liability or otherwise, even if the Supplier has been advised of the possibility of damages.

(f) The Customer acknowledges that the Goods or Services are not for personal, domestic or household purposes.

(g) The Australian Consumer Law may give the Customer certain guarantees. Where liability for breach of any such guarantee can be limited, the Supplier's liability (if any) arising from any breach of those guarantees is limited:

- (i) with respect to the supply of Goods, to the replacement or repair of the Goods or the costs of resupply or replacement of the Goods; or
- (ii) with respect to Services to the supply of Services again or cost of resupplying the Services again.

## 24. INSURANCE

(a) If the Supplier determines at their discretion that a particular installation of the Goods requires additional insurance for the Supplier and their employees or agents then the further insurance costs will be at the Customer's cost and an additional charge will be incurred

(b) If required by the Supplier, the Customer must provide proof of insurance for the site on which the goods are to be installed.

## 25. INDEMNITY

(a) The Customer indemnifies and keeps indemnified the Supplier, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to, the Customer) against the Supplier or, for which the Supplier is liable, in connection with any Loss arising from or incidental to the provision of Goods or Services, any Order or the subject matter of these Terms and Conditions including, but not limited to any legal costs incurred by the Supplier in relation to meeting any claim or demand or any party/party legal costs for which the Supplier is liable in connection with any such claim or demand. This provision remains in force after the termination of these Terms and Conditions.

## 26. FORCE MAJEURE

(a) If circumstances beyond the Supplier's control prevent or hinder its provision of the Goods or Services, the Supplier is free from any obligation to provide the Goods or Services while those circumstances continue. The Supplier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.

(b) Circumstances beyond the Supplier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire,

war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

## 27. WARRANTIES

### 27.1 General Conditions

(a) To activate and validate this warranty, the Customer must complete and return to the Supplier the **Warranty Application Form** and provide **10 good quality photos** of the installed Goods within 60 days of receipt of the Goods. The Customer is not required to provide photos if the Supplier installs the Goods.

(b) A maintenance schedule must be completed by the Customer on an annual basis as per Form **Maintenance Schedule** attached to these terms and conditions. The Supplier may request evidence of the completed maintenance schedule in the event of a Warranty Claim, or at any time.

(c) All warranties in clause 27.1 and 27.2 are effective only from date of receipt of the **Warranty Application Form** and photos by the Supplier.

(d) All requirements in relation to cutting, welding, joining, drilling, fixing and finishing of the framework meet relevant Australian Standards.

(e) The Supplier reserves the right to repair or replace any item covered by this warranty.

(f) The Supplier warrants that the framework for the Goods will be free of defects for 10 years, subject to the terms of this clause 27. If the Supplier determines it will replace the item rather than repair the item, the Supplier will cover the replacement cost of those framework products for a period of 10 years from date of dispatch from the Supplier's premises, not including any freight, taxes, levies, installation or third party charges or other costs.

(g) All ratchet straps have a 10 year warranty, in accordance with clause 27.1(f)

(h) The warranty in clause 27.1(f) lasts for 10 years, but shall diminish over the last five years. For the first five years from date of dispatch, the warranty will remain at 100% of the replacement costs. For the following five years, the warranty will diminish by 20% at the end of each year.

(i) After the expiration of the warranties in 27.1 (f), the Supplier is not liable under this warranty to cover any costs relating in any way whatsoever to damage, repair or replacement of the Goods.

(j) The Supplier warrants that the **cover** for the Goods (Dome Shelter) will be free of defects for 10 years, subject to the terms of this clause 27. If the Supplier determines it will replace the item rather than repair the item, the Supplier will cover the replacement cost of those Dome Shelter cover products for a period of 10 years from date of dispatch from the Supplier's premises, not including any freight, taxes, levies, installation or third party charges or other costs. The cover has a warranty of 10 years, but shall diminish by 10% at the end of each year.

(k) Any parts repaired or replaced under this warranty are subsequently warranted only for the remaining unexpired warranty period applicable to the original Goods.

(l) This warranty will be void if the original units are not paid for in full.

(m) The warranty is void if any changes, repairs, modifications, additions, or attachments are made to the Goods without the written consent of the Supplier.

(n) This warranty does not cover rib mounted container mounts, as the condition of the container top cannot be guaranteed.

(o) If the Customer is using ground anchors as a hold down, it is the Customer's responsibility to ensure the soil is suitable.

(p) If the Goods are container mounted, this warranty is void if any defect is caused by a failure of the container itself, including but not limited to:

- mounting points;
- hold down points;
- rust on container; and
- failure of steel on container.

(q) This warranty does not apply to defects or damage resulting from:

- (i) Improper use or installation and/or use or installation not in strict accordance with the Supplier's instructions and specifications;
- (ii) Improper or inadequate maintenance;
- (iii) Unauthorised modification, repair or alteration of the Goods;
- (iv) Neglect, misuse or abuse of the Goods;
- (v) Exposure to corrosive elements or incompatible Goods;
- (vi) Wear and tear caused by multiple installations and dismantling;
- (vii) Incorrect storage or handling;
- (viii) Normal wear and tear;
- (ix) Exposure to wind speeds exceeding the design rating;
- (x) Damage arising from the failure of support components supplied by others;
- (xi) Damage arising from the failure of support components such as posts, walls, existing buildings and shipping containers;
- (xii) Damage arising from foundation or anchorage failure, unless the foundations or anchors are installed by the Supplier;
- (xiii) Freak acts of nature;
- (xiv) Damage caused by items or goods inside or near the Goods;
- (xv) Explosions, sabotage, accident, embargoes, riots, civil commotions, terrorist activities, acts of war (whether declared or undeclared), and war (whether declared or undeclared);
- (xvi) Vandalism or intentional damage, whether by the Customer, its associate or a third party;



- (xvii) Rust if structure is installed on oceanfront (within 5km of ocean), or is constantly in water (e.g poolside).
- (r) The Customer shall notify the Supplier in writing detailing any defects for which a warranty claim is being made. The Customer must:
- (i) Submit a detailed **Warranty Claim Form** which must include:
    - (a) A detailed description of the alleged defect or damage
    - (b) The cause of the alleged defect or damage
    - (c) Ten good quality detailed photos taken in accordance with this warranty
    - (d) Additional photos and close-up photos of the alleged defect or damage
  - (ii) Provide the Supplier with: Maintenance Schedule.
  - (a) Any information or detail relating to the warranty event requested by the Supplier
  - (b) Access to any property on which the Goods is situated
  - (c) Access to the Goods and any damaged or defective parts
    - (iii) Allow the Supplier to take and remove any damaged or defective Goods or part of Goods, to allow for further investigation and testing.
  - (iv) Cooperate with all reasonable requests from the Supplier.
  - (s) All claims made will require a full site inspection by the Supplier at the Customer's expense.
  - (t) This warranty is given by the Supplier, whose details are:
    - (i) Name: Transportable Shade Sheds ABN 38 639 092 836
    - (ii) Business Address: 29 Junction Drive, Coolum Beach Qld 4573
    - (iii) Phone Number: 1300 667 433
  - (s) Despite clause 23(g), if for any reason the Australian Consumer Law applies to the supply of the Goods, the Supplier gives the following statement to the Customer: "Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."
  - (t) The benefits to the Customer given by this warranty are in addition to other rights and remedies of the consumer under a law in relation to the goods or services to which the warranty relates.

#### 27.2 Engineering

- (a) The structure has been designed to withstand a specific wind speed.
- (b) The drawing supplied with the Goods specifies the region as complying with AS/NZS 1170.1:2011, AS/NZS 1170.2:2011.
- (c) The drawing supplied with the Goods covers steel size, connection details, footing sizes, reinforcement and cover attachment details. Other details could be specified in accordance with the design.
- (d) Any claim in relation to engineering will require a full independent enquiry at the Customer's expense.

#### 27.3 Fabric Joins

- (a) There are two types of fabric joins used on the cover of the Goods:
  - 1.20.1 Stitching – bonded polyester thread (Polytetrafluoroethylene); or
  - 1.20.2 Welding
- (b) The expanded PTFE thread used in the stitching has a 15 year warranty against defects, exposure to sunlight, weather or water.
- (c) All claims made in relation to fabric joins will require the cover to be returned to the Supplier at the Customer's expense.

#### 27.4 Manufacturer's Warranty - Colorbond® Steel

- (a) BlueScope Steel provide various warranties for Colorbond® steel products depending on location and environmental factors.
- (b) For details and registration, visit <http://colorbond.com/learn/articles/what-a-bluescope-steel-warranty-means-to-you>.
- (c) The Supplier does not warrant that any particular colour will be available for any period of time and reserves the right to discontinue any colour for any reason it may determine, without the recourse by the owner of the discontinued colour.
- (d) The Supplier reserves the right, in cases where certain colours have been discontinued, to offer the Customer a choice of available colours to replace the discontinued colour of the original Goods

#### 27.5 Manufacturer's Warranty - Canvacon 7000E Fabric (Synthesis Advanced Polymer Fabrics)

- (a) Canvacon 7000E Fabric has a 3 year UV warranty and a 3 year delamination warranty on the fabric.
- (b) This is provided by the fabric manufacturer. Any claim made in respect of the Canvacon 7000E cover would require the fabric to be returned to the Supplier at the Customer's expense.
- (c) More information can be found at <http://www.synthesisfabrics.com/>.
- (d) The Supplier does not warrant that any particular colour will be available for any period of time and reserves the right to discontinue any colour for any reason it may determine, without the recourse by the Customer.
- (e) The Supplier reserves the right, in cases where certain colours have been discontinued, to offer the Customer a choice of available colours to replace the discontinued colour of the original Goods.

#### 28 OTHER MATTERS

- (a) These Terms and Conditions are governed by the laws of Queensland and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
- (b) These Terms and Conditions and any Quotes and written variations agreed to in writing by the Supplier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) These Terms and Conditions supersede all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into these Terms and Conditions, the Customer has not relied on any warranty, representation, or statement, whether oral or written, made by the Supplier or any of its employees or agents relating to or in connection with the subject matter of these Terms and Conditions.
- (e) If any provision of these Terms and Conditions at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Quote (or as varied pursuant to these paragraphs) and delivered personally, sent by pre-paid mail to the address of the address specified in the relevant Quote; sent by facsimile transmission to the facsimile number of the addressee specified in the relevant Quote, with acknowledgement of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Quote with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by facsimile or email before 4pm one Business Day at the place of receipt, on the date it is sent and otherwise on the next Business Day at the place of receipt.
  - (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.

#### 29 GUARANTEE

##### 29.1 Guarantee

The Guarantors guarantee to the Supplier the due and punctual payment of all monies on all accounts which are now or in the future payable by the Customer to the Supplier.

##### 29.2 Indemnity

The Guarantors shall indemnify and keep indemnified the Supplier against all loss, damage, expense, costs, including legal costs and claims which the Supplier may incur due to any default by the Customer in connection with the account of the Customer or resulting from any default by the Guarantor under this document.

##### 29.3 Continuing Guarantee

This document is a continuing Guarantee and Indemnity relating to the Customer's total indebtedness or liability to the Supplier from time to time in respect of all goods, services or credit supplied or to be supplied to the Customer. The Guarantor's liability is not affected by any act or omission on the part of the Supplier including, without limitation:

- (a) The Supplier varying the contract between the Customer and the Supplier.
- (b) The Supplier releasing the Customer from any obligations.
- (c) The Customer being released from the contract by operation of law.
- (d) The death of any Guarantor.
- (e) The Supplier releasing any co-guarantor.
- (f) The Supplier materially altering the term of the Supplier's contract with the Customer.
- (g) Any liquidation, voluntary administration or other insolvency event occurring in relation to the Customer.
- (h) The fact that the contract between the Supplier and the Customer is void, voidable or unenforceable for any reason.

##### 29.4 Principal Debtor

The Supplier may take action against the Guarantor without taking action against the Customer and can treat the Guarantor as principal debtor. The Guarantor waives any rights it has as surety.

##### 29.5 Number of Signatories

This Guarantee is binding on each of the signatories to this document even if one or more of the people named as Guarantor never sign the document.

### Maintenance Schedule

Schedule to be carried out three months after installation and annually thereafter. Please refer below for maintenance points. Complete Container Dome column if you have purchased a Container Dome. Complete Container Shed column if you have purchased a Container Shed. Complete Shade Shed column if you have purchased a Shade Shed.

Maintenance Points	Container Dome	Container Shed	Shade Shed	Completed By	Date Completed
Check cover tension. If cover seems like it is not tight, adjust the tensioning ratchets accordingly until the cover is tight.					
Check the cover for any areas of wear. If a location is receiving excessive wear for whatever reason, Transportable Shade Sheds Australiacan supply a wear patch to be fitted. Instructions would be provided for the customer to fit the wear patch.					
Check if the cover has been torn or has holes. If so, please contact Transportable Shade Sheds to purchase a repair kit. Purchasing a repair kit will prevent further damage to and/or seal the holes as required. Instructions would be provided for the customer to fit the repair kit.					
Check all the nuts/screws to ensure they are still tight and that none are missing. Tighten any bolts/screws that have come loose and replace any bolts/screws that are missing. Customers can purchase replacement parts from Transportable Shade Sheds.					
Check if the steel frame has been damaged in any way. Check for dents or signs of damage to the frame. If you are concerned about an area that has been damaged, please take photographs, and contact Transportable Shade Sheds for advice.					
Check if any modifications/additions have been completed after the shelters' installation. Have any modifications/additions adversely affected the shelter? Please contact Transportable Shade Sheds should you have any concerns or require advice.					
Check to see if any areas are prone to moisture and causing surface rust. If so, maintenance might be required. This includes; give the affected area a light sand to remove the surface rust and then respray with two coats of silver zinc spray.					
Check welds to make sure no welds are cracked or have been damaged in any way.					
Check all sail track is in the correct position and that no screws have broken loose.					
Complete maintenance for Colorbond sheeting and flashings as per <a href="http://www.bluescopesteel.com.au/howto/maintain-colorbond-steel-and-zincalume-steel">http://www.bluescopesteel.com.au/howto/maintain-colorbond-steel-and-zincalume-steel</a> .					

Authorised By: \_\_\_\_\_

Authorised Signature: \_\_\_\_\_ Date Signed: \_\_\_\_\_