

Krost Business Furniture

Terms and Conditions of Sale

1 Interpretation

In these terms:

- (a) **Affiliate** means, in relation to a party, its directors, officers, employees, contractors, agents, representatives, **Related Party, Related Body Corporate** and **Associate** (as defined in the *Corporations Act 2001*) and anyone acting for or on behalf of that party in any capacity.
- (b) **Buyer** means any person or entity who buys Goods from the Seller, and that person or entity's Affiliates.
- (c) **Buyer Document** means any document issued by the Buyer requesting or requiring the Seller to proceed with the provision of Goods including but not limited to purchase orders, letters of intent, terms of sale, supply agreement or purchase agreement.
- (d) **Claim** means a claim, action, proceeding, notice, litigation, investigation, judgment, liability or demand made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or deferred whether based in contract, tort or statute and whether involving a third party or party to the Contract.
- (e) **Contract** means the contract between the Buyer and the Seller for the sale and purchase of Goods and includes the Terms and any valid quotation.
- (f) **Copyright Act** means the *Copyright Act 1968*.
- (g) **Goods** means any goods or services sold or negotiated to be sold by the Seller to the Buyer.
- (h) **GST** has the meaning given to that term in the GST Law.
- (i) **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- (j) **Insolvent** means one or more of the following events occurring to the Buyer:
 - (i) an application is made, or a resolution is passed, to wind up the Buyer;
 - (ii) a liquidator, receiver, controller or administrator is appointed in respect of the Buyer or any of its assets;
 - (iii) the Buyer is unable to pay its debts when they become due and payable;
 - (iv) the Buyer commits any act of bankruptcy within the meaning of the *Bankruptcy Act 1966 (Cth)*; or
 - (v) the Buyer dies, ceases to be of full legal capacity or becomes incapable of managing its own affairs for any reason.
- (k) **Loss** means a damage, loss, cost, expense or liability incurred by the person concerned however arising, including without limitation penalties, fines, and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.
- (l) **MTO** means any Goods that have been specifically ordered for a Buyer (whether locally or from overseas) or which is specifically manufactured for the Buyer or is not a stocked item.
- (m) **PPSA** means *Personal Property Securities Act 2009 (Cth)*.
- (n) **Seller** means either Krost Furniture Pty Ltd (ACN 125 605 290), Krost Business Furniture Centre Pty Ltd (ACN 003 783 882), or another affiliated entity trading under a variation of the trading

name 'Krost Business Furniture', as specified in the quotation and order confirmation.

- (o) **State** means New South Wales, Australia.
- (p) **Terms** means unless the context otherwise requires, the Seller's standard terms and conditions of sale (as may be changed from time to time by the Seller by notice) set out in this document and any terms and conditions set out in the quotation.
- (q) **Warranties** mean any warranties, conditions, terms, representations, statements and promises of whatever nature, whether express or implied.
- (r) **Website** means the Seller's website accessible at www.krost.com.au.

2 Acceptance

- (a) The Seller agrees to sell and the Buyer agrees to purchase the Goods in accordance with the terms and conditions of these Terms.
- (b) These Terms apply to any sale of Goods between the Seller and Buyer. Each time the Buyer places an order (including without limitation, by accepting a quote, making any payment, accepting delivery of the Goods, or performing any of these Terms) the Buyer is taken to have accepted these Terms and entered into a Contract with the Seller.
- (c) These Terms override any inconsistent terms in any Buyer Document and are taken to be incorporated into any Buyer Document.
- (d) These Terms may be varied from time to time by the Seller with variation effected by the Seller publishing amended Terms on the Website. The Terms as published on the Website, at the time of placing an order or part of an order will apply to such order. The Seller may choose, but will not be required, to notify the Buyer of the existence or content of any variations of this Contract by any means. Any such variations do not apply to existing Contracts.

3 Seller's quotations

- (a) The Seller may withdraw or alter any quotation at any time.
- (b) Unless the Seller withdraws it, a quotation is valid for the period stated in it, or if no period is stated, for 30 days after the date of the quotation. The Seller is not required to honour any expired quotation.
- (c) Price contained in any quotation is conditional upon supply of all quoted items and upon all the terms and conditions contained therein being included in the Contract. Any variance in the quantities or request to include additional item or any failure to comply with the terms and conditions contained in the quotation will require the Seller to alter the quotation to account for any changes.
- (d) Buyer's failure to comply with any preconditions contained in the quotation will result in revocation of the quotation.
- (e) Buyer must keep the quotation confidential. Buyer must not share any part of the quotation, including, without limitation, pricing or product information, specifications, drawings or other technical information relating to the Goods with any third-parties without the Seller's express prior written consent.
- (f) The Seller reserves the right to require the Buyer, and any directors, agents, representatives, employees, subcontractors or consultants to enter deed of confidentiality in respect to any quotation on terms satisfactory to the Seller.

4 Descriptions and specifications

- (a) The range of Goods displayed on the Website may vary from printed catalogues. Photos and images on the Website and in

printed material are for general illustration purposes only. The Buyer acknowledges that any information about Goods, their photos and images may differ from the actual Goods.

- (b) All specifications, drawings, and particulars of weight and dimensions are approximate only (unless they expressly and unequivocally state otherwise). The Buyer cannot claim against the Seller for any deviation.
- (c) The Buyer should not rely on any illustrations, specifications, drawings, and particulars of weight and dimensions for the purposes of assembling or installing the Goods unless such material expressly states it can be used for such purposes.

5 Variations

- (a) No variations to any quotation or the Contract will be affected, processed or actioned until the full scope and value is agreed and documented in writing by the Buyer and the Seller.

6 Delivery

- (a) Any delivery time the Seller gives the Buyer is only an estimate. The Seller is not liable to the Buyer for any loss or damage (including any consequential loss or damage) arising from late delivery. The Buyer must still accept and pay for the Goods even if the Seller delivers late.
- (b) Delivery times will be subject to an extension of time where the Buyer seeks alterations or additions in the works or the Goods to be supplied, or if circumstances beyond the reasonable control of the Seller (including those specified in clause 29) occur.
- (c) In such an event the Seller will be entitled to seek an extension of the time for completion of the works or supply of Goods. The parties will mutually agree to the period of extension, and any associated changes to the price.
- (d) Delivery of the Goods will be deemed to have taken place when:
 - (i) the Buyer takes possession of the Goods at the Seller's address if the Goods are collected; or
 - (ii) the Goods are delivered at the Buyer's nominated address (if the Goods are delivered by the Seller or the Seller's nominated carrier). Delivery to any person reasonably appearing to be an employee or agent of the Buyer will be deemed effective; or
 - (iii) the Buyer's nominated carrier takes possession of the Goods in which event the carrier will be deemed to be the Buyer's agent.
- (e) The Buyer's nominated address will be the address specified in the commercial account application form pertaining to the Buyer or agreed in writing by the Seller.
- (f) The Buyer must make all arrangements necessary to accept delivery of the Goods whenever they are tendered for delivery.
- (g) Where the Goods are delivered by the Seller or the Seller's nominated representative the delivery area must be clean and cleared prior to delivery in accordance with the instructions provided in this regard. The Buyer must ensure adequate access is available via stairways, doors and lifts.
- (h) The Seller may deliver the Goods in instalments. Each instalment must be treated as a sale under a separate contract. If the Seller fails to deliver any instalment, the Buyer must still accept and pay for the remaining instalments. If the Buyer fails to pay for any instalment, the Seller may treat the default as a breach of contract relating to each other instalment.
- (i) If following delivery of the Goods, there is a delay in assembling the Goods or the Goods have not been completely assembled, the Buyer must still accept and pay for the Goods. If the Buyer

fails to pay for the Goods, the Seller may treat the default as a breach of the Contract.

- (j) The Seller will not be liable for any loss or damage or expense arising from failure by the Seller to deliver or assemble the Goods at a specified time, promptly or at all.
- (k) The Seller may suspend delivery if the Buyer has exceeded its credit limit.

7 Acceptance of Goods and Returns of defective Goods

- (a) The Buyer will inspect and check all Goods received and within 7 days of receipt notify the Seller in writing of any shortage in quantity, defect, incorrect specification, damage or Goods not in accordance with Buyer's order. The Buyer is responsible for checking that Goods comply with those ordered prior to use. After use or expiry of the time stated herein, to the maximum extent permitted by law, the Buyer will be deemed to have:
 - (i) agreed each of the Goods are in good and marketable condition and free from defects or damage at delivery; and
 - (ii) accepted each of the Goods received in a delivery from the Seller, and must pay for them in full despite the shortfall.
- (b) If the quantity of goods delivered is more than the amount the Buyer ordered, the Buyer must immediately inform the Seller in writing and the Seller is entitled to recover the excess from the Buyer at the cost of the Seller.
- (c) If the Buyer wishes to reject and/or return the Goods, he must notify the Seller within 7 days by providing a valid returns authority form. The Seller will inspect the Goods and agree a return or replacement of the Goods provided that:
 - (i) the Seller is reasonably satisfied that the Goods are materially defective or not compliant with the Quotation;
 - (ii) the Goods are unused, unmarked, in a saleable condition and must include the original packaging, delivery document and invoice.
- (d) The Buyer acknowledges and agrees that minor or cosmetic defects in the Goods do not constitute grounds for a claim or return.
- (e) Except where any MTO are not materially in accordance with the Buyer's specifications, the Buyer acknowledges and agrees that any MTO may not be returned.
- (f) The Seller reserves the right to recover its costs where the returned Goods prove not to be valid for return or are not defective. Returned Goods must be returned to the Seller at an address agreed by the Seller.
- (g) All freight, handling and other charges in relation to returning Goods (other than defective or not ordered Goods) are the responsibility of the Buyer.
- (h) Subject to clause 23, the Buyer will be liable for a restocking fee on all Goods accepted for return. The restocking fee will not apply to Goods returned for being defective, damaged or for failing to comply with the order. The current restocking fee is 30% of the price of the Goods returned.

8 Assembly of Goods

- (a) Depending on the Contract, Goods may be delivered to the Buyer in an assembled or unassembled form.
- (b) Where the Contract requires the Seller to assemble the Goods on site, any date(s) that the Seller gives the Buyer for assembly of Goods is only an estimate. The Seller is not liable to the Buyer for any loss or damage (including any consequential loss or damage) arising from a delay in, or failure to assemble the Goods.

- (c) Any assembly of Goods will be undertaken at the Buyer's risk.
- (d) The Seller is not liable for any loss or damage (including any consequential loss or damage) to Goods that have been assembled by the Buyer, or re-configured by the Buyer following their assembly by the Seller.

9 Storage

If the Buyer is unable (whether through its own fault or not) or unwilling to either:

- (a) take delivery of the Goods (including providing to the Seller adequate delivery instructions); or
- (b) collect the Goods,
- (c) within 7 days of request by the Seller, the Seller may charge for storage. The Buyer must pay charges monthly at commercial rates. The Goods are to be stored at the Buyer's risk.

10 Price and costs

- (a) Unless the Seller otherwise agrees in writing, the price of the Goods will be:
 - (i) the price stated in any applicable and valid quote; or
 - (ii) in the absence of an applicable and valid quote, the price the Seller usually charges for the Goods. Any price concession or discount the Seller provides to the Buyer is conditional on the Buyer's full compliance with this Contract.
- (b) Prices quoted are those ruling at the date of issue of quotation and are subject to adjustment (including a proportional adjustment for fixed costs and profit) for any variation in:
 - (i) the cost of labour, material or transport;
 - (ii) exchange rates, customs duty, freight or insurance;
 - (iii) suppliers' prices;
 - (iv) the amount of work required to produce the Goods due to a variation in specification approved by the parties; and
 - (v) any other charges affecting the cost of production.
- (c) Any prices quoted apply only if all of the Goods included in the quotation are bought. If the Buyer orders part only, the Seller may submit a revised quotation.
- (d) Unless otherwise specified, the prices quoted in any quotation do not include any allowances to make good existing defects to the site. The Seller can undertake work of such kind at an additional charge to the Buyer.
- (e) If the Seller suspends work on any order due to the Buyer's instructions or lack of instructions, the Seller may increase the contract price to cover any extra expense or cost incurred (including a proportional adjustment for fixed costs and profit).
- (f) The price must be paid in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on payment and receiving end.
- (g) The Buyer will not be entitled to set off against or deduct from the price of Goods any sums owed or claimed to be owed to the Buyer by the Seller.
- (h) Where the Buyer disputes a portion of any invoice, the Buyer must provide the Seller within 30 days of the invoice date, a written notice of the disputed amounts, together with a statement of particulars of the dispute, including calculations with respect to any errors or inaccuracies claimed. Invoiced amounts not objected to in writing within 30 days of the invoice date will be deemed to be correctly charged and accepted by the Buyer and the Buyer will be deemed to have waived all claims against the invoice.

- (i) Notwithstanding that the Buyer objects to any invoiced item or amount within the stipulated time, the Buyer will be required to pay the invoice in full.

11 GST on price

- (a) Unless otherwise stated, the price is GST exclusive. Any pending or future changes to GST, Government imposts or any other taxes have not been included in the price, and consequently will be added or subtracted as the case may be.
- (b) In addition to the price for the Goods, the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this Contract or under any agreement for sale of Goods.
- (c) The Buyer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Buyer pays the price (or the corresponding first part of it if the Seller agrees to the Buyer paying the price by instalments).

12 Payment and credit granting

- (a) The Buyer must pay for the Goods:
 - (i) in accordance with the payment terms set out in an applicable and valid quote;
 - (ii) in the absence of an applicable and valid quote, in advance.
- (b) Where the Seller grants credit approval to the Buyer, the Seller may require a deposit or pre-payment as a condition of delivery. Credit approval once granted may be withdrawn at any time.
- (c) The Seller may require immediate payment of all amounts outstanding (whether or not then due and payable):
 - (i) if the Buyer does not comply with any one or more of its obligations under this Contract;
 - (ii) if the Seller considers that the creditworthiness of the Buyer has become unsatisfactory and withdraws the credit approval; or
 - (iii) if one or more Insolvency Events occur.
- (d) Time is of the essence in respect of payment of invoices.

13 Default

- (a) If the Buyer or its Affiliates default in the payment of money:
 - (i) the Buyer or its Affiliates must pay the Seller:
 - (A) interest at the rate equivalent to 1.5% per month (calculated daily) on any amounts owing to it under the Contract; and
 - (B) all expenses including, without limitation, legal expenses on a full indemnity basis, and all debt collection agency costs incurred by the Seller in enforcing the Seller's rights under this Contract; and/or
 - (ii) the Seller may in the notice state that, unless the default is remedied, all money owing under the Contract which is not yet due for payment is now due. If the notice is not complied with then that money becomes due; and/or
 - (iii) the Seller may suspend any further deliveries of the Goods to the Buyer and terminate any other agreement with the Buyer; and/or
 - (iv) the Seller may reverse any rebates and discounts allowed to the Buyer; and/or
 - (v) provide to a credit reporting agency details of the payment default; and/or
 - (vi) exercise any other rights at law including pursuant to the PPSA; and/or

(vii) the Seller may terminate the Contract.

- (b) A certificate of debt signed by the representative of the Seller will be prima facie evidence and proof of money owing by the Buyer to the Seller at the time of the certificate.
- (c) If the Seller terminates the Contract in accordance with this clause 13, the Seller may, without prejudice to any other right or remedy available to the Seller suspend any further deliveries of the Goods to the Buyer and sell or otherwise dispose of the Goods and apply the proceeds of the sale to the overdue amount.
- (d) An administration fee of \$55 including GST plus associated bank charges may be applied to cheque payments returned unpaid by bank for any reason. This fee may increase without notice to cover Seller's expenses and costs.

14 Cancellation

14.1 No cancellation by Buyer:

- (a) The Buyer is not permitted to cancel or terminate this Contract except with the Seller's written consent (on a case by case basis) and subject to any conditions that the Seller may specify in this regard.
- (b) If the Buyer purports to cancel or terminate this Contract, the Buyer must fully indemnify the Seller for any loss, damage, cost or expense (including loss of profits) expected by the Seller.

14.2 Cancellation by Seller

- (a) The Seller may cancel or terminate the Contract in either of the following events:
- (b) The Buyer breaches any term of the Contract and fails to remedy such breach within 7 days;
- (c) if the Seller reasonably considers that it may be unable to satisfy the order within a reasonable time; or
- (d) if Goods remain uncollected or the Buyer is unable or unwilling to take delivery of the Goods after a period of 14 days from notification to the Buyer that they are ready for collection/delivery;
- (e) the Buyer is, or reasonably suspected by the Seller to be, Insolvent.

14.3 No claim

The Buyer has no claim against the Seller for any damage, loss, cost or expense arising from cancellation under this clause 14.

15 PPSR

- (a) The Buyer agrees that this Contract constitutes a security agreement for the purposes of the PPSA and creates a security interest (as defined in the PPSA) in all Goods previously supplied by the Seller to the Buyer and all future Goods supplied to the Buyer.
- (b) The Buyer agrees to do all such things, including providing any necessary consents, signing all necessary documents, and providing any further information, as reasonably required by the Seller from time to time, to enable the Seller to register a perfected security interest in respect of all Goods supplied by the Seller to the Buyer, or exercise any rights in connection with any security interest.
- (c) The Buyer acknowledges that it will be liable for the costs and expenses incurred by the Seller in relation to the registration, maintenance, enforcement or discharge of any security interest, and must make payment to the Seller for any such reasonable costs incurred by the Seller on demand by the Seller.

- (d) The Buyer acknowledges that it will assist the Seller, to the extent required, in relation to the registration, maintenance, enforcement or discharge of any security interest.
- (e) The Buyer agrees not to register, or permit to be registered, a security agreement in relation to the Goods in favour of a third party without the prior written consent of the Seller.
- (f) The Buyer acknowledges that it will not, without prior written notice to the Seller, change its corporate or trading name or amend any registration documentation, or act in any manner, which would adversely impact on the Seller's registered security interest.
- (g) To the extent permissible, the Buyer agrees to waive its rights to receive notices under the PPSA.

16 Title and risk

- (a) Until the Buyer has paid all amounts owing by the Buyer to the Seller (and all cheques or negotiable instruments have been paid) the title and property in the Goods does not pass to the Buyer.
- (b) Until all amounts owed to the Seller are paid, the Buyer:
 - (i) must keep the Goods separate from the goods of the Buyer and third parties and identified as the Seller's goods;
 - (ii) may sell the Goods in the ordinary course of its business, but only as agent and fiduciary for the Seller and must keep separate records in relation to the proceeds of the sale of such Goods, and account to the Seller for the proceeds of such sale which are to be kept in a separate bank account;
 - (iii) in respect of any Goods that are used as part of a manufacturing process or mixed with other materials, the Buyer will record the value of goods so consumed in relation to each unit of finished product and upon sale of the finished product remit the proceeds of the sale to the Seller.
- (c) The Buyer irrevocably authorises the Seller to enter any premises where the Goods are kept, and to use the name of the Buyer and to act on its behalf, if necessary, to recover possession of the Goods.
- (d) If the Buyer does not specify what Goods each payment is made for, the payments will be treated in the following order:
 - (i) first, to the Goods that are no longer in the Buyer's possession;
 - (ii) then, to whatever Goods that are still in the Buyer's possession, at the Seller's absolute election.
- (e) Subject to clause 7, risk in the Goods passes to the Buyer when delivery occurs pursuant to clause 6 or when the Goods are in the Buyer's custody, whichever is first.
- (f) The Buyer must take out and pay for insurance in both the names of the Buyer and Seller sufficient to cover both their interests in the Goods. The Buyer must produce a certificate of insurance to show that the Buyer has taken out this insurance if so, requested by the Seller.

17 No Security or Liquidated Damages

- (a) Notwithstanding any provision of any Buyer Document, the Buyer acknowledges that the Seller is not required to provide any security for the Goods, including, without limitation, any bank guarantee or cash retention.
- (b) Notwithstanding any provision of any Buyer Document or any actual knowledge of the Seller that the Buyer may be liable for liquidated damages under a different agreement, the Buyer acknowledges that the Seller will not be required to pay (or

reimburse) the Seller any liquidated damages. Any liquidated damages are expressly excluded from the Contract.

18 Novation

- (a) In the event the Buyer proposes to the Seller that its Contract be novated, assigned or legally transferred to another party, then the Seller reserves the right to undertake a credit search or such other credit enquiries in respect of that party as the Seller in its absolute discretion deems necessary.
- (b) The Seller may withdraw its offer or refuse or decline to novate the Contract to the party proposed by the Buyer in the following instances:
 - (i) where such party refuses or declines to complete any document or comply with any conditions specified by the Seller to Seller's reasonable satisfaction; or
 - (ii) the Seller, in its sole discretion, is not satisfied with the results of the credit enquiries conducted in respect of the said person.
- (c) The Seller may, at its absolute discretion, agree to novate or legally transfer the Contract to another party proposed by the Buyer in the event the Buyer or such other party agrees to and does complete any document and provides additional security for the benefit of the Seller as the Seller determines in its absolute discretion.

19 Works and Site Conditions

- (a) This clause 19 applies where the Seller is required to provide works on site, including without limitation to any installation or assembly of the Goods on site.
- (b) The Seller will not commence work pursuant to any Contract, unless the site conditions specified by the Seller have been met to the Seller's satisfaction.
- (c) Unless otherwise agreed, the Buyer acknowledges the following:
 - (i) the Seller has allowed in the price for a 5-day week / 36-hour week, working normal business hours;
 - (ii) the Seller has quoted on the assumption that the site will be safe, secure, and in compliance with all applicable industry and health and safety standards. The Seller has not provisioned for any costs relating to industrial or safety issues that are not of Seller's making;
 - (iii) the quotation does not include any provision for any cost or expense that the Seller may be required to incur to remove, handle, or treat any toxic, hazardous or carcinogenic materials that may be found upon or within the site. Additional charge will apply for any remediation required in this regard; and
 - (iv) Buyer will ensure strict and uninterrupted continuity of works, and single delivery of Goods and materials.
- (d) Where the Seller is required to work to the derogation of the conditions specified in this clause 19, then additional costs will apply and will be recoverable from the Buyer.
- (e) The Buyer will be responsible for obtaining all permits and approvals that may be required by the Seller to produce, deliver, unload, store, erect, install, undertake and inspect the work at the site and for payment of all fees in relation thereto.
- (f) The Buyer acknowledges and agrees that the nature of the work undertaken by the Seller will create dust. The Buyer will be responsible to protect any dust free equipment stored or situated within the area where the work is being carried out, or where dust may infiltrate.
- (g) Unless otherwise specified, the prices quoted in a quotation require the Seller to only remove rubbish or materials

generated from its works and to clean any chalk or similar marks on glass put or caused in course of trade.

- (h) The Buyer will make available adequate supply of potable water, electric power and lighting, toilet and hoisting facilities free of charge at the site.
- (i) Once the Seller achieves completion of works in accordance with the Contract, the Buyer will be responsible for adequate protection of all works performed and executed and Goods supplied at no expense to the Seller.
- (j) The Seller will not be required to rectify or remedy any damage done to or inflicted by others upon any works undertaken or Goods supplied by the Seller. Additional charge will apply for any remediation required in this regard.

20 Transport of Goods by the Buyer

- (a) Where the Contract requires the Buyer to arrange for the transportation, collection, and delivery of Goods, the Buyer will ensure that Buyer's nominated transport and logistics provider (or employees, agents, or servants as the case may be) fully comply with any policies and all other reasonable directions issued by the Seller in this regard.
- (b) The Buyer will also be responsible for carrier vehicles compliance with applicable legal regulations.
- (c) The Seller may refuse without liability to allow the loading of Goods in the event the Buyer's representatives do not comply with the Seller's policies, or any reasonable directions issued by the Seller.

21 Prolongation Costs

- (a) The Seller is entitled to receive prolongation costs in the event of any delays which are beyond the reasonable control of the Seller including, without limitation, industrial relations issues, latent conditions, adverse weather conditions, delays by others including delays in shipping, delays by customs in releasing goods, delays in delivery by any of the Seller's suppliers and other instances specified in clause 29.
- (b) The prolongation costs will include delay costs (in terms of daily site costs, labour rates etc) and storage costs (both pre and post access).
- (c) The value of any prolongation costs will be identified in advance by the Buyer and the Seller and will be included in the Contract.

22 Acceleration Costs

- (a) The Seller is entitled to receive acceleration costs where, notwithstanding, the delay in performance of the works, the date for completion agreed by the parties and specified in the Contract is not extended accordingly. The Seller will be entitled to recover in full any additional costs and expenses incurred by the Seller including towards deploying extra resources to achieve the original completion date.

23 Warranty, liability and indemnity

- (a) To the maximum extent permitted by law, the Seller excludes all Warranties with the exception of any Warranty given in a valid warranty card to the Buyer.
- (b) To the extent that any law including Competition and Consumer Act 2010 (Cth) ("CCA") restricts the Seller's right to exclude Warranties under this Contract, the Contract must be read subject to those provisions and nothing in this Contract is intended to alter or restrict the operation of such provisions. If those statutory provisions apply, the Seller limits the Seller's liability pursuant to such provisions in the following manner:
 - (i) in the case of Goods:

- (A) the replacement of the Goods or the supply of equivalent Goods;
- (B) the repair of the Goods;
- (C) the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or
- (D) the payment of the cost of having the Goods repaired; and
- (ii) in the case of services:
 - (A) the supplying of the services again; or
 - (B) the payment of the cost of having the services supplied again.
- (c) The Seller's liability in connection with any particular order or the Website is limited as follows:
 - (i) Seller excludes all liability for consequential, special, indirect, non-economic or remote loss, including loss of opportunity or business;
 - (ii) Seller's maximum total liability is limited to the price of Goods for that order;
 - (iii) Seller's liability is excluded to the extent that the Buyer contributed to the liability or the Buyer was aware of anything for longer than six months but did not commence a claim; and
 - (iv) Seller's liability is subject to the Buyer's duty to mitigate loss.
- (d) The Seller excludes responsibility for any liability, loss, damage, cost or expense directly or indirectly incurred or suffered by the Seller caused by or contributed to by any of the following:
 - (i) the Seller complying with any instruction of the Buyer about the Goods;
 - (ii) the Buyer's failure to:
 - (A) adequately provide or display safety markings or safety information on or with the Goods;
 - (B) comply with any law about the Goods or their use (for example, their sale, marketing, labelling or marking);
 - (C) take any reasonable precaution to bring to the attention of any potential users of the Goods any dangers associated with Goods;
 - (D) take any reasonable precaution to detect any matters in relation to which the Seller may become liable in any way;
 - (iii) the Buyer making any statement about the Goods (for example, about their performance or characteristics) without the Seller's approval;
 - (iv) the use or operation of the Goods by the Buyer; and
 - (v) any negligence or breach of duty by the Buyer or any breach by the Buyer of these terms.
- (e) The Seller provides the Website on an "as is" and on an "as available" basis without any Warranties as to continuous, uninterrupted or secure access to the Website, that its servers are free of computer viruses, bugs or other harmful components, that defects will be cured, or that the Buyer will not have difficulties or disruption in using the Website.
- (f) To the maximum extent permitted by law, the Buyer agrees to release the Released Parties from all Loss or Claims arising out of or in any way connected with any Relevant Matter. The Buyer further waives any and all such rights and benefits otherwise conferred by any statutory or non-statutory law of any jurisdiction that will purport to limit the scope or any release or waiver.

- (g) To the maximum extent permitted by law, the Buyer agrees to indemnify, defend and hold harmless the Released Parties from any Loss or Claim arising out of or in any way connected with any Relevant Matter.
- (h) In this clause:
 - (i) **Released Parties** means the Seller and the Seller's officers, directors, shareholders, agents, employees, consultants, associates, affiliates, subsidiaries, sponsors, and other third-party partners.
 - (ii) **Relevant Matter** means anything in connection with:
 - (A) any damage to a person, property, personal injury or death, arising in connection with the Goods;
 - (B) cancellation or termination of any part of the Contract, howsoever caused;
 - (C) Buyer's breach of the Contract or any applicable law;
 - (D) any matter for which the Seller has purported to disclaim liability for under this Contract; and
 - (E) Buyer's use, misuse, or abuse of the Website.

24 Intellectual Property Rights

- (a) If any Goods or packaging for the Goods are supplied and marked with any trade mark or the Seller's name, logo or other information is placed on the Goods or packaging by the Seller ("**Branding Marks**"), the Buyer must not:
 - (i) remove the Branding Marks;
 - (ii) tamper with, alter or obscure the Branding Marks in any way; or
 - (iii) place any other trademarks on the Goods or packaging.
- (b) Unless otherwise indicated or implied by context, the Seller is the sole owner and licensee of all intellectual property comprised in the Website and Website content. Nothing in this Contract constitutes a transfer of any intellectual property rights in or related to the Website or Website content by the Seller to the Buyer.
- (c) The Buyer acknowledges and agrees that the Website and the content contained therein are protected by copyright, trademarks, service marks, patents, design registrations, and other proprietary rights and laws, and the Buyer agrees to comply with and maintain all copyright notices and other restrictions on content accessed on or via the Website.
- (d) The Buyer must not do anything which breaches or otherwise interferes with the Seller's intellectual property rights or those of any third-party licensors. The Buyer may not distribute, reproduce, publish, alter, modify or create derivative works from the Website content without the Seller's prior written permission or that of the relevant third-party licensor or exploit such content for commercial benefit.
- (e) The Buyer acknowledges and agrees that damages may not be an adequate remedy for a breach of this clause 24 and that equitable or injunctive relief may be necessary.
- (f) The Buyer grants to the Seller the non-exclusive right and licence to use the Buyer's product specifications, illustrations, drawings and designs (**Buyer's IP**) in executing the Buyer's order for MTO.
- (g) To the extent that the Seller makes any improvement to the manufacturing and other technical processes for the manufacture of the MTO, such improvements will be the sole and exclusive property of the Seller.

25 Engagement of Subcontractors

- (a) The Seller will be entitled to engage subcontractors and suppliers to perform any work under the Contract on such terms as the Seller deems fit.

26 Principal Contractor

- (a) In making any quotation, the Seller assumes that the Seller will not be required to act as the principal employer under any workplace health and safety laws.
- (b) The Seller will be entitled to seek additional charges for any works undertaken in this regard by the Seller.

27 Privacy Consent

- (a) The Seller will handle personal information of the Buyer in accordance with the Seller's privacy policy available on the Website. The privacy policy constitutes part of this Contract and the Buyer is deemed to accept the privacy policy.
- (b) The Buyer acknowledges and agrees that Seller may give information to third parties about the Buyer, its guarantors, directors or proprietors including, without limitation, for the following purposes:
 - (i) to obtain a consumer credit report about the Buyer, and any guarantor, director or proprietor of the Buyer;
 - (ii) to allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer, and any guarantor, director or proprietor of the Buyer;
 - (iii) for registration on the register maintained under PPSA or other public records or registers;
 - (iv) to obtain commercial credit information about the Buyer, and any guarantor, director or proprietor of the Buyer from a credit reporting agency; and
 - (v) to share it with a debt collection agency or any other person for the purposes of enforcing the Seller's rights under this Contract.
- (c) The Buyer acknowledges that the Seller may send the Buyer direct marketing communications and information about its goods and services. This may take the form of emails, SMS, mail or other forms of communication, in accordance with applicable laws. The Buyer may opt out of receiving marketing materials from the Seller by contacting the Seller by using the opt-out facilities provided (e.g. an unsubscribe link).

28 Online Store

- (a) Any Buyer accessing and using the Website must:
 - (i) strictly comply with this Contract and any policy displayed on the Website;
 - (ii) not breach any law (including international law) which may apply in respect of the Buyer's use of the Website;
 - (iii) not conduct vulnerability tests or scans on the Website or attempt to make unauthorised modifications to the Website;
 - (iv) not interfere with the proper working of the Website or any activities conducted via the Website including by using any automated or manual software or process to "crawl", "spider" or engage in similar conduct in relation to the Website;
 - (v) except to the extent the Copyright Act allows the Buyer to do so, not reverse engineer or otherwise seek to obtain any source code forming part of the Website.

29 Force majeure

- (a) The Seller is not liable for failure to comply with this Contract, any Contract or an agreement for sale of Goods if the failure (directly or indirectly) arises out of any circumstances which are not within the Seller's reasonable control. If such circumstances occur, the Seller may delay or cancel delivery of the Goods or reduce the quantity to be delivered.
- (b) The circumstances are taken to be beyond the Seller's reasonable control includes, without limitation, strikes, lock-outs, pandemic, epidemic, any government ordered shut-downs, accidents, war, fire, flood, explosion, shortage of power, breakdown of plant or machinery, shortage of raw materials from normal source of supply, stoppage of means of transportation following an order of government, act of God or any order or direction of any local, state or federal government, government authority or instrumentality.
- (c) The Seller is not obliged to remedy such circumstances. The Seller is especially not obliged to settle any strike, lock-out or any other kind of labour dispute.

30 General

- (a) A notice, consent or other communication under this Contract is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, email or fax. If it is sent by mail, it is taken to have been received 3 working days after it is posted. Notices sent by email or fax are taken to be read on the day they are received, unless they are received after 5 PM or not on a business day in the State, in which case they are deemed to be received on the next business day in the State. A person's address, email and fax number are those set out in the quotation. The Seller may send a notice to the Buyer's last known address.
- (b) A right of the Seller may only be waived in writing, signed by the Seller. No other conduct of the Seller (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right. A waiver of a right by the Seller on one or more occasions does not operate as a waiver of that right if it arises again. The exercise of a right by the Seller does not prevent any further exercise of that right or of any other right.
- (c) This Contract constitutes the entire agreement between the parties.
- (d) This Contract are governed by the law in force in the State. Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in State o, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Contract, and waives any right it might have to claim that those courts are an inconvenient forum.
- (e) The Buyer agrees that the Seller is entitled to recover any monies owed to it by the Buyer or its Affiliates by setting off such amounts (together with interest and costs of collection) against any sum owed to the Buyer or its Affiliates by the Seller.
- (f) Any right that the Seller may have under this Contract is in addition to, and does not replace or limit, any other right that the Seller may have.
- (g) Any provision of this Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make these terms enforceable, unless this would materially change the intended effect of this Contract.
- (h) The Buyer must not assign its rights and/or its obligations under the Contract without the Seller's prior written consent, which will not be unreasonably withheld.