

**Definitions**

- 1.1 “Supplier” means Kaplan Door Group 2 Pty Ltd T/A Bildspec, its successors and assigns or any person acting on behalf of and with the authority of Kaplan Door Group 2 Pty Ltd T/A Bildspec.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods or Services supplied by the Supplier to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between the Supplier and the Customer in accordance with clause 4 below.

**Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the Supplier’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Supplier.
- 2.3 None of the Supplier’s agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.
- 2.4 All literature, samples, specifications, dimensions and weights submitted with this quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with Goods and Services the Supplier supplies, and the Supplier reserves the right to supply Goods that have modifications in specifications as the Supplier sees fit.
- 2.5 These terms and conditions are meant to be read in conjunction with the Terms and Conditions (particularly the Warranty section) posted on the Supplier’s website (hardcopies are available on request). If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.

**Change in Control**

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

**Price and Payment**

At the Supplier’s sole discretion the Price shall be either:

- (a) as indicated on any invoice provided by the Supplier to the Customer; or
- (b) the Price as at the date of delivery of the Goods according to the Supplier’s current price list; or
- (c) the Supplier’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

The Supplier reserves the right to change the Price in the event of a variation to the Supplier’s quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to the Supplier in the cost of materials and labour) will be charged for on the basis of the Supplier’s quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

At the Supplier’s sole discretion a non-refundable deposit may be required.

Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:

- (a) on delivery of the Goods;
- (b) before delivery of the Goods;
- (c) the date specified on any invoice or other form as being the date for payment; or
- (d) for certain approved Customers only, the date which is thirty (30) days following the date of any invoice given to the Customer by the Supplier.

No allowance has been made in the Price for the deduction of retentions. In the event that retentions are made, the Supplier reserves the right to treat retentions as placing the Customer’s account into default.

Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a

surcharge of up to one percent (1%) of the Price (for VISA or MasterCard), or by any other method as agreed to between the Customer and the Supplier.

Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**Delivery of Goods**

Delivery (“**Delivery**”) of the Goods is taken to occur at the time that the Supplier (or the Supplier’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.

At the Supplier’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

**Risk**

Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier’s rights to receive the insurance

proceeds without the need for any person dealing with the Supplier to make further enquiries.

6.3 If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.

6.4 The Supplier provides a range of standard colours which have been brought to the Customer's attention. If the Customer orders a non-standard colour, the Supplier requires the Customer to furnish the Supplier with the correct colour reference. The Supplier undertakes to take all possible measures to match, as best as possible, the Customer's choice of colour, however, the Supplier makes no guarantee regarding the matching of colours or quality of the surface finish.

6.5 The Customer accepts that the Goods to be installed:

- (a) are for property protection purposes and are deemed to be deterrents only; and
- (b) do not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.

6.6 The Supplier is not an insurer of the premises and it is advisable for the Customer to effect and maintain all normal and prudent insurance policies in respect of all usual risks including fire, burglary, theft and consequential loss or damage.

6.7 The Customer acknowledges and agrees that whilst the Supplier shall take all reasonable care during the performance of the Services, the Customer agrees that the Supplier shall not be held liable for any loss, damages, or costs howsoever resulting from drilling or fixing the Goods into any masonry or rendered surfaces during the installation process. Due to the nature of the surfaces, cracking or collapsing may occur.

6.8 The Customer further acknowledges and agrees that, whilst the Supplier shall take all care when drilling in to any surface, either vertically or horizontally, the Supplier accepts no responsibility for any damage caused to the surface and/or surrounding area.

## 7. Access

7.1 The Customer shall ensure that the Supplier has clear and free access to the work site at all times to enable them to undertake the works. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.

## 8. Underground & Hidden Locations

Prior to the Supplier commencing any work the Customer must advise the Supplier of the precise location of all hidden, side, ceiling and underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site. Whilst the Supplier will take all care to avoid damage to any underground services the Customer agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

## 9. Customer's Disclaimer

The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Supplier and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

## 10. Title

The Supplier and the Customer agree that ownership of the Goods shall not pass until:

- (a) the Customer has paid the Supplier all amounts owing to the Supplier; and
- (b) the Customer has met all of its other obligations to the Supplier.

Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 10.1 that the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must

hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.

- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
- (e) the Customer irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.
- (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Supplier.
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.

The Customer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a

<p>financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p>	<p>necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Customer's behalf.</p>	<p>(a) twelve (12) months on Bildspec products;</p>
<p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;</p>	<p><b>Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</b></p>	<p>(ii) any defect repair will be limited to supply only of the replacement or repaired faulty components or materials;</p>
<p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Supplier;</p>	<p>13.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the Goods.</p>	<p>(iii) in respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or remedying the workmanship or in properly assessing the Customer's claim.</p>
<p>(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p>	<p>13.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions</p>	<p>(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;</p>
<p>11.4 The Supplier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p>	<p><b>(Non-Excluded Guarantees).</b></p>	<p>(c) otherwise negated absolutely.</p>
<p>11.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p>	<p>13.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p>	<p>13.8 At no time will a warranty be transferrable. Any warranty offered is made only to the original Customer who must produce the original sales invoice at the point of submitting a warranty claim.</p>
<p>11.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p>	<p>13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.</p>	<p>13.9 Subject to this clause 13, returns will only be accepted provided that:</p>
<p>11.7 Unless otherwise agreed to in writing by the Supplier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p>	<p>13.5 If the Customer is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.</p>	<p>(a) the Customer has complied with the provisions of clause 13.1; and</p>
<p>11.8 The Customer must unconditionally ratify any actions taken by the Supplier under clauses 11.3 to 11.5.</p>	<p>13.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Customer has paid for the Goods.</p>	<p>(b) the Supplier has agreed that the Goods are defective; and</p>
<p>11.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p>	<p>13.7 Subject to the CCA in respect of any expressed warranties and guarantees, the Supplier's liability for any defect or damage in the Goods is:</p>	<p>(c) the Goods are returned within a reasonable time at the Customer's cost; and</p>
<p><b>12. Security and Charge</b></p>	<p>(a) limited to the value of any express warranty as specified in the "Warranty against Defects" documentation provided to the Customer by the Supplier, at the Supplier's sole discretion which may be;</p>	<p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p>
<p>12.1 In consideration of the Supplier agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p>	<p>(i) an expressed warranty that will cease in respect of the Goods supplied from the date of installation in accordance with clause 5 of the Supplier's Terms and Conditions of Trade subject to:</p>	<p>13.10 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p>
<p>12.2 The Customer indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.</p>	<p></p>	<p>(a) the Customer failing to properly maintain or store any Goods;</p>
<p>12.3 The Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer's true and lawful attorney/s to perform all</p>	<p></p>	<p>(b) the Customer using the Goods for any purpose other than that for which they were designed;</p>
<p></p>	<p></p>	<p>(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;</p>
<p></p>	<p></p>	<p>(d) the Customer failing to follow any instructions or guidelines provided by the Supplier for the Goods and which is also covered under the Product Maintenance section via the Supplier's website;</p>
<p></p>	<p></p>	<p>(e) installation, repair or alteration of the Goods is carried out by an unauthorised party without the Supplier's consent;</p>
<p></p>	<p></p>	<p>(f) some key systems are restrictive. The Customer acknowledges that the Supplier must be consulted prior to consulting independent locksmiths.</p>
<p></p>	<p></p>	<p>(g) fair wear and tear, any accident, or act of God, such as destruction by the elements;</p>
<p></p>	<p></p>	<p>(h) tampering or attempted break-in.</p>

13.11 No warranty is offered by the Supplier against corrosion/malfunction of the Goods where the Goods are installed within two (2) kilometres of the high water mark or in an environment with a high saline content, or where the Customer is unable to produce written proof of regular cleaning of the Goods with an acceptable non-corrosive liquid.

13.12 The Customer acknowledges and accepts that all warranty claims will be dealt with by the Supplier during the normal hours, Monday-Friday. In the event that the Supplier is required to provide the Services urgently, that may require the Supplier's staff to work outside normal business hours (including but not limited to working after hours, weekends and/or Public Holidays) then the Supplier reserves the right to charge the Customer additional labour costs (penalty rates will apply), unless otherwise agreed between the Supplier and the Customer.

13.13 The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.

13.14 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.

#### 14. Intellectual Property

14.1 Where the Supplier has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Supplier.

14.2 The Customer warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

14.3 The Customer agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Customer.

#### 15. Default and Consequences of Default

15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month

(and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

15.2 If the Customer owes the Supplier any money the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's collection agency costs, and bank dishonour fees).

15.3 Without prejudice to any other remedies the Supplier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

15.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

#### 16. Compliance with Laws

16.1 The Customer and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

16.2 It is the responsibility of the Customer to ensure that the necessary council, government, statutory or body corporate approvals, permissions or consent have been obtained prior to delivery of Goods. The Customer indemnifies the Supplier from any liability for failure to obtain such permission, consent or approval.

16.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to

building/construction sites and any other relevant safety standards or legislation.

#### 17. Cancellation

17.1 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

17.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

#### 18. Privacy Act 1988

18.1 The Customer agrees for the Supplier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Supplier.

18.2 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

18.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

18.4 The Customer agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Customer and Supplier or required by law from time to time):

- (a) the provision of Goods; and/or
- (b) the marketing of Goods by the Supplier, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

18.5 The Supplier may give information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

18.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
- (c) advice that the Supplier is a current credit provider to the Customer;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
- (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;

(h) that credit provided to the Customer by the Supplier has been paid or otherwise discharged.

### **Unpaid Seller's Rights**

Where the Customer has left any item with the Supplier for repair, modification, exchange or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any moneys owing to it by the Customer, the Supplier shall have, until all moneys owing to the Supplier are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Supplier having been obtained against the Customer.

### **Electrical Wiring**

In the event that wiring is required for electrically operated products, all quotations are based on the following criteria:

- (a) standard 240v general purpose outlet within 500mm of the switch position
- (b) switch to be face mounted to wall same side as door
- (c) all electrical wiring will be mounted in white mini ducting.

### **Dispute Resolution**

If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

### **Other Applicable Legislation**

At the Supplier's sole discretion, if there are any disputes or claims for

unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.

Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the any of the Acts listed in clause 22.1 each as applicable, except to the extent permitted by the Act where applicable.

### **General**

The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.

Subject to clause 13 the Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

The Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

- 23.6 The Customer agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Supplier to provide Goods to the Customer.
- 23.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.