

Our trading terms and conditions are hereby incorporated and form part of all agreements with you.

TERMS AND CONDITIONS

1. DEFINITIONS

"all monies" means all monies of whatsoever kind now or in the future due or owing to us by you and includes monies payable on any account, invoice, contract or agreement and includes interest, charges, fees and costs;
"Force Majeure" includes storm, flood, fire, earthquake, cyclone, industrial action and any other event or circumstance reasonably beyond our control;
"Goods" unless the context requires otherwise, it refers to and includes the goods, parts, hardware, software, accessories, equipment, materials, stock and/or supplies sold or supplied by us to you;
"Hire Goods" means the coldroom, plant, machinery, vehicles, equipment, items or other goods on hire to you from time to time;
"Hire Period" means the minimum period of hire specified in our Quotation, schedule or hire contract with you;
"Hire Rate" means the hourly, daily, weekly or monthly hire rate as specified by us in writing in the Quotation or our published rates for the Hire Goods but where it is absent or uncertain it means our standard rate of hire on a daily basis (or part thereof) as published by us from time to time;
"PPSA" means the *Personal Property Securities Act 2009* (Cth) and regulations;
"Quotation" means our letter, schedule or document formally setting out the material terms of the scope of Works and our fees, costs, rates and/or charges which when accepted by you constitutes a contract incorporating our Terms of Trade;
"Services" means any service we may provide to you from time to time including the hire of Hire Goods (where applicable);
"you" means the person who has ordered and/or received any Works from us as specified in any Quotation, agreement, invoice, document or order and includes your successors and assigns. It also includes any other entity that you control which may request a Quotation or place an order with us from time to time;
"We/us" means the person who has provided the Quotation or raised the tax invoice for the Works and includes our lawful successors and assigns;
"Works" means all Services, Goods and/or other works we expressly agree to sell, deliver, supply to and/or perform for you from time to time; and
"Our Terms of Trade" means these terms and conditions as published and varied by us from time to time.

2. INTERPRETATION

In the interpretation of Our Terms of Trade and any agreement entered into with you:

- (a) singular includes plural and vice versa;
- (b) references to statutes includes regulations made under those statutes and statutes amending, consolidating or replacing the statutes;
- (c) covenants imposed on you includes an obligation on you to procure compliance by all other persons (including licensees, permittees and employees) under your control;
- (d) covenants on a party are joint and several. The release of one of the persons from an obligation does not release any other person who may be jointly liable;
- (e) all annexures, schedules and other attachments (if any) form part of the agreement;
- (f) any unlawful, invalid or unenforceable term or condition of these terms and conditions will not invalidate or affect the interpretation of the balance of those terms, but will be read down where possible and failing that severed from those terms so that the rest remain enforceable;
- (g) nothing which appears after the word "include" or "including" is to be interpreted as limiting the type of thing which may be included within the ambit of that clause;
- (h) reference to "the parties" in Our Terms of Trade or in a contract or agreement with you means a reference to you and us and unless the document expressly states otherwise does not include the guarantor. The guarantor is not a party to the contract or agreement with us but has a separate contractual obligation to guarantee your obligations pursuant to the terms of the guarantee;

- (i) our contractors, sub-contractors, employees and directors are entitled to the benefit of all releases, indemnities and limits of liability contained in Our Terms of Trade; and
- (j) agreements, documents or terms and conditions will not be interpreted against us merely because they were drafted by us.

3. OFFER AND ACCEPTANCE

3.1 You acknowledge that:

- (a) Our Terms of Trade apply to, and are incorporated into all Quotations and agreements and form part of all current and future agreements and dealings between you and us; and
- (b) you are bound by, and are taken to have exclusively accepted, Our Terms of Trade, immediately upon placing any future order or accepting our Quotation.

3.2 Any terms and conditions contained in your documentation or other communication from you inconsistent with Our Terms of Trade (including a statement by you that your terms and conditions prevail) are hereby expressly excluded. Our Terms of Trade prevail and must be given utmost effect.

3.3 You are not entitled to vary our specified or agreed scope of Works without our prior written consent.

4. SUPPLY ON CREDIT

4.1 We may in our absolute discretion refuse to accept, or to proceed with, any order or to provide any Works on credit.

4.2 We may determine, vary and/or change any credit limit in our absolute discretion.

5. DEPOSIT

5.1 You acknowledge that we may impose conditions on any order or Works including imposing a deposit or advance payments.

6. PRICE

6.2 Where no price, rate, Hire Rate or charge has been quoted by us for a particular Good or Service, it will be charged at our prices, rates or charges prevailing at the date of our invoice.

6.3 The price, rate or charge of any and all Works shall be subject to the addition of GST and a sum equal to any other government duty, tax or levy applicable to the Goods and/or Services comprising the Works.

6.4 Unless expressly stated otherwise on a Quotation all prices, rates, Hire Rate and charges are exclusive of third party certifying, delivery/freight, design, planning charges, third party costs, taxes, duties, government approvals or permits and any other fees, costs or expenses (e.g. travel and accommodation).

6.5 Any time or price, rate, Hire Rate or charge specified in our Quotation is an estimate only. We may pass on, and you agree to pay us for all variations or additional work arising, for increased time performing the Works, delay costs, any increase in price, labour cost, expense or cost incurred by or arising to us including from:

- (a) Force Majeure, taxes, duties, awards, rates of exchange and other supply fluctuations and changes in conditions taking place prior to delivery or completion of the Works;
- (b) any act, omission, error or delay by you or any other person connected with you including any change to designs or plans;
- (c) any variation to the Works arising at your request or approval, or by necessity or due to some other circumstance not reasonably known to us at the time of providing the Quotation;
- (d) the provision of any design, drafting, drawing or other analogous service by us or any other person engaged by us on your behalf which was not specifically allocated or allowed for in the initial Quotation and which is necessary or desirable for the performance of the Works by us;
- (e) any defect (including latent) in the site or conditions at the site; or
- (f) any other material fact, omission, condition, requirement or specification which was not disclosed by you in writing to us prior to the date of our Quotation.

7. PAYMENT OF ACCOUNT

7.1 You agree to pay us all monies by the due date including our invoices and accounts by the due date without deduction, counterclaim or setoff.

7.2	You agree that we may at any time specify the payment terms, vary or specify terms for different stages of any Works. We may impose progress payments, payments in advance or other payment conditions.	(a)	a charge over all of your personal property (including future property) and any proceeds arising from the sale of that personal property; and
7.3	In the absence of us notifying you to the contrary, our payment terms are within seven (7) days following the date of any invoice given to you by us.	(b)	the right to register a security interest in any accounts receivable to which you may be entitled from any other person from time to time,
7.4	You also agree that you are not permitted to retain any part of the monies due to us, including any contract sum or invoice value, as retention or security monies (or any analogous arrangement) without our prior written consent.		as security for your obligations to us including to pay all monies owing to us from time to time.
7.5	You agree you are not allowed to rely on the absence, or terms, of your purchase order as the sole ground for denying or refusing payment. We are always entitled to payment for Works performed by us and any variations thereto regardless of your administrative practices.	12.2	You agree: (a) we are entitled to register in respect of you on the Personal Property Securities Register any security interest we deem necessary; (b) you will provide us with all information reasonably required to register a financing statement or financing change statement on the Personal Property Securities Register; (c) where permitted by law, you waive your rights to receive a notice of verification statement; (d) you will advise us in writing of any change to your name or address at least 7 days prior to that change taking effect; (e) we have the authority to search the register from time to time to determine what security interests may exist in respect of you; (f) to pay the costs of and incidental to the registration of a financing statement or financing change statement along with any costs incurred by us in enforcing our rights against you under the PPSA; and (g) where we have rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and our rights to seize the property will not be limited by the PPSA.
8.	CANCELLATION		
8.1	We may cancel any contract or agreement to which these terms and conditions apply or cancel delivery/supply of Works at any time before we have commenced the Works applicable to the contract/agreement by written notice to you. We shall not be liable for any loss or damage whatsoever arising from such cancellation.		
8.2	In the event that you cancel the delivery or supply of the Works except due to our material default, you will be liable for, and indemnify us against, any and all loss and damage incurred (whether direct or indirect) by us as a direct result of the cancellation (including, but not limited to, any loss of profits).		
8.3	Cancellation by you of orders for products made to your specifications, or for non-stock list items will definitely not be accepted by you once production has commenced, or an order by us has been placed with our supplier.		
9.	INTEREST AND FEES ON OUTSTANDING ACCOUNTS		
9.1	We have a strict policy of requiring payment of our accounts by the due date shown on the invoice.	12.3	In the event that we exercise our rights under the PPSA to gain possession of personal property, you waive your rights with respect to the following: (a) the right to receive notice prior to us removing or seizing the personal property; and (b) to receive a statement of account, a disposal notice or a notice of retention either prior to or immediately following our retaking possession and selling personal property to a third party.
9.2	You agree to pay us:- (a) Interest: on overdue amounts at the rate of 18% per annum compounding monthly. (b) Additional costs: all costs, charges and expenses legal (on a solicitor and own client basis) and otherwise, which we may incur or suffer as a result of the exercise of any rights, powers or remedies that we may have against you (including arising from enforcing our rights against you).	12.4	The terms and expressions used within this clause have the meanings given to them in the PPSA.
9.3	You indemnify us in respect of the interest and additional costs, charges and expenses payable under clause 9.2.	13	SECURITY
10.	EXCHANGE OF REFERENCES	13.1	You hereby irrevocably and unconditionally grant to us an equitable mortgage over all your land wherever situated (including land acquired by you in the future and any interest in freehold or state leasehold land) and this applies to land owned by you personally and / or as trustee of any Trust (other than a superannuation trust). Further, you also grant an equitable mortgage over any land owned by any company of which you are the sole director/secretary or sole shareholder (including land acquired by that company in the future). Such equitable mortgages are granted by you to us as security for the payment of all monies payable by you to us from time to time and for the performance of all your obligations to us from time to time. In this clause "Trust" means each trust for which you hold land as trustee.
You agree that we may:	(a) seek from or give to other credit providers and credit reporting agencies personal information and details about you including details about your credit worthiness; (b) obtain a credit report containing personal and business information about you from a credit reporting agency; (c) conduct security checks and searches including a search of the Personal Property Securities Register; and (d) Store, use, disclose and/or exchange personal and business information with guarantors, credit reporting agencies, solicitors and other persons we deal with.	13.2	We may register a caveat to secure our interest in any such land and you irrevocably appoint us as your attorney to sign all consents to caveat on your behalf.
11.	RETENTION OF TITLE	13.3	We have, and can exercise, a lien over any of your Goods, documents, records, files, plans and other property left in our possession from time to time as security for the payment of all monies owing to us by you from time to time.
11.1	You agree that, until payment of all monies owing to us is received: (a) any Goods delivered or sold to you by us remains our property and are held by you as our fiduciary bailee. This includes any Goods provided or installed as part of the performance of the Works; (b) you must store the Goods separately so that they are readily identifiable as our property; (c) you must not sell or deal with the Goods except with our prior written consent; (d) any proceeds of such resale, in so far as they relate to the Goods, must be held upon trust for us in a separate account; (e) any proceeds of insurance in respect of the Goods are held on trust for our benefit and you must pay those proceeds of insurance to us in the event the Goods are damaged, lost or destroyed; and (f) if the Goods are intermingled with other Goods or things, to the extent lawfully possible we retain ownership in the Goods, an equitable interest in the resulting product and any proceeds of sale resulting from the resulting product.	13.4	You irrevocably appoint us and each director of us as your true and lawful attorney to perform all necessary acts to give effect to our rights under any contract or agreement with you including the rights under this heading "Security" and we may sign caveats and other land title forms on your behalf.
11.2	We may enter any premises owned or leased by you to inspect or remove the Goods without your prior permission. We are released from all liability for any damage caused to your, or another person's, property during the removal of the Goods. You release us from all claims including those based on trespass	14	ORDERS, TESTING ETC
11.3	The rights reserved to us will continue to apply even if you have caused an accession or co-mingling of the Goods to any other Goods owned by you or any other third party.	14.1	You are responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by you and for giving us any necessary information relating to the Works within a sufficient time to enable us to perform the contract in accordance with its terms.
12	PPSA	14.2	The quantity, quality and description of and any specification for the Works shall be those set out in our Quotation.
12.1	In addition to our rights under clause 11, you grant us:	14.3	If the Goods are to be manufactured or any process is to be applied to the Goods by us in accordance with a specification submitted by you, you indemnify us against all loss in connection with any claim for infringement of any patent, copyright, design or trademark, or other intellectual property rights which result from the use of your specification.
		14.4	Save where otherwise agreed in writing between the parties, any recommendation or suggestion relating to the use, storage or handling of the Goods made by us either in sales and technical literature or in response to a specific enquiry or otherwise, is given in good faith but it is for you to satisfy yourself of the suitability of the Goods for your own particular purposes. All drawings, descriptive matter, specifications and advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of any contract between you and us.
		15	ACCEPTANCE, DELIVERY AND ACCESS

15.1	All Goods are at your risk from the time of leaving our premises, even if we have agreed to deliver the Goods to you at another location. You must insure the Goods from the time they leave our premises. You indemnify us against any claim, loss or liability or damage or injury arising to or caused by the Goods after despatch from our premises.		site. This includes but is not limited to drawings, schematics, functional layouts, plans, wiring diagrams, wiring schedules, commissioning information and compliance certificates. Failure to produce these items may affect our ability to complete the Works as per the scope. In the event that we are required to remedy a situation, or change our scope of Works, due to your failure to provide this documentation to us prior to the date of our Quotation, we have the right to invoice you for all additional fees, costs and expenses arising to the performance of our Works.
15.2	You must inspect the Works immediately upon delivery/performance and let us know within 24 hours of completing delivery if there is any defect, fault, short delivery or failure in description failing which you are deemed satisfied with the condition of the Works and the performance of the Works.		16.3 All electrical/data cabling/outlets that are established prior to the commencement of the Works by us, are your responsibility and any issues found by us relating to the electrical/data cabling/outlets will be reported to you and our scope of Works does not include rectifying those issues.
15.3	You must permit us access to the site at all reasonable times to inspect the Works to determine the validity of any complaint, claim or demand received by us from you.		16.4 It is expected that cabling, connections and electrical wiring for any network is labelled correctly and clearly prior to our attendance on site to start our Works. Any delays or disruptions caused by lack of identified labelling of cables/connections for us to undertake our agreed scope of Works will be charged to you accordingly as either delay costs incurred by us or additional Works falling outside of the agreed scope of Works.
15.4	If, due to Force Majeure or other reasons beyond our control, we are prevented from or delayed in making delivery or performance of the Works (or any part of them), we may either extend the time for delivery or performance for a reasonable period or terminate the contract. You agree that you do not have any claim for damages and must pay for all Works delivered and/or performed prior to the date of such termination.		16.5 We reserve the right to invoice you for additional contractor labour, time and/or materials required due to unforeseen circumstances arising from issues or delays such as difficult access to site, any building, any third party personnel causing disruptions or delays, or any other unexpected disruptions or defects that causes additional down time or additional labour time.
15.5	Any time stated in a Quotation or your documentation for delivery or performance of the Works does not make time of the essence and is only an approximation. We are not liable for any loss or damage whatsoever for failing to deliver the Works (or any part of them) promptly, by a specified date or due to Force Majeure.		
15.6	With respect to access: (a) if Goods are to be delivered to your premises or to such other place as may be agreed between you and us, you must provide and clearly indicate to us a route which in our reasonable opinion is safe and proper and reasonable for access of the delivery vehicle. If, in our or the carrier's reasonable opinion, such access is not available or is unsuitable, we reserve the right to refuse to deliver. You indemnify us (including as agent and trustee for any carrier) against all losses, costs, proceedings, claims, demands and expenses incurred by us or by any such carrier (other than in respect of death or personal injury caused by our gross negligence) as a result of the failure to provide such convenient and safe access. (b) in the performance of any Works, you must ensure that work sites are at all times clear, safe, free (no charge for access) and convenient to access. We are not liable for loss or damage to the work site unless due to our gross negligence in the performance of our Works.	17 17.1 17.2 18. 18.1	UNDERGROUND LOCATIONS Prior to us commencing the Works, you must advise us of all underground services on the site and clearly mark the same. The underground mains and services you 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 we will take all care to avoid damage to any underground services, you agree to indemnify us in respect of all and any liability, claims, demands, expense, damage, loss, costs and fines as a result of damage to services which you failed to precisely locate and notify us of in accordance with clause 17.1.
15.7	Where the Works are to be delivered in instalments a failure by us to deliver any one or more of the instalments in accordance with any contract or agreement or any claim by you in respect of any one or more instalments will not entitle you to treat the contract as a whole as repudiated.	18.2	Despite anything to the contrary, you agree to hire the Hire Goods for the greater of: (a) the Hire Period; and (b) two consecutive days.
15.8	Our liability in respect of short weight or measures of Goods supplied is limited to the delivery of an additional supply of the Goods in accordance with Our Terms of Trade to make up the short weight or measure. We have no liability in respect of the short weight or measure if notification is given later than 24 hours after delivery of the Goods.	18.3	Hiring shall commence from the time (as applicable): (a) in the case of collection by you – from the earlier of the agreed date of collection or the actual day of collection by you from our premises; or (b) in the event you require the Hire Goods to be delivered by us to your premises - from the earlier of the agreed date of delivery or actual date of delivery by us.
15.9	You must reimburse us (including as agent and trustee for any carrier) all costs and expenses incurred by us as a result of us or any carrier being prevented from or delayed in making any delivery resulting from the acts or omissions of you or any of your employees, agents or sub-contractors.	18.4	You agree that the Hire Period specified in any agreement or Quotation accepted by you, is the minimum hire period and in the event of a breach of the Hire Period by you, we are entitled to recover all loss and damage including loss of profits for the remainder of the unused Hire Period.
15.10	Without prejudice to any other rights or remedies available to us an additional charge may be made if: (a) you require delivery outside our normal working hours; or (b) you fail to take delivery or fail to give us adequate delivery instructions or we cannot effect delivery for any reason beyond our control; or (c) unloading of the delivery vehicle is delayed, more than 15 minutes after we are ready to unload; or (d) delivery cannot be effected because of unsuitable access or a unsuitable discharge point; or (e) you request that delivery be deferred.	18.5	If the Hire Goods becomes inoperable, malfunctions or becomes unsafe, you must: (a) immediately stop using the Hire Goods; and (b) take all necessary steps to prevent injuries to any persons or damage to any property as a result of the condition of the Hire Goods.
15.11	Save where otherwise agreed in writing by us, you may not re-direct delivery, performance or any instalment of the Works.	18.6	If any Hire Goods are damaged, lost or destroyed due to your negligence or misuse, in addition to any other rights we have, we will charge and you agree to pay to us, the Hire Rate until the Hire Goods has been repaired or replaced. You also agree to pay the full cost of repair or replacement. You agree that if replacement is necessary it will be the new price for new Hire Goods of the same brand and type if still manufactured failing which then new Hire Goods materially the same, fit for purpose of and similar quality plus all costs to have the replacement Hire Goods delivered to the location that we specify e.g. freight costs.
15.12	You are responsible for compliance with all statutes and regulations relating to delivery locations including, without limitation, obtaining all necessary licenses and/or orders, and for all steps which need to be taken for the protection at all times of persons or property.	18.7	You are not permitted to make any modification to the Hire Goods without our prior written consent.
16	PERFORMANCE AND INSTALLATION	18.8	You must: (a) prior to the commencement of the Hire, pay a Deposit and also the Hire Rate for the entire Hire period unless we expressly agree to the contrary in writing; (b) be on hand at the delivery address to take delivery of the Hire Goods and to sign our Consignment Note/Hire Docket acknowledging receipt of the Hire Goods in good order and condition; (c) keep, service, clean and maintain the Hire Goods in good repair and working order throughout the Hire Period; (d) use the Hire Goods in a skilful and proper manner and only for the purpose and within the capacity for which it was designed;
16.1	You warrant that any structures to which Works are to be carried out to or within (including Goods are to be affixed) are able to withstand and support the Works and that any electrical connections (including but not limited to, meter boxes, main switches, circuit breakers and electrical cable) are of suitable capacity to handle the Works. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) we, any of our employees or contractors reasonably form the opinion that the site is not safe for the Works to proceed, then we are entitled to delay performance until we are satisfied that it is safe to proceed and you agree to pay us reasonable delay costs arising from the delay.		
16.2	We require copies of all necessary documentation relating to any buildings, equipment or Goods we may come in contact with or affect during Works on		

- (e) ensure that the Hire Goods remains at all times at the delivery address and is kept safe during the Hire Period;
- (f) not use the Hire Goods for any purpose or in any manner which would or does result in our insurer (if any) refusing to meet any claim by us for any loss or damage caused to or by the Hire Goods while in your possession;
- (g) ensure that the Hire Goods is operated, and serviced, only in accordance with manufacturer's specifications;
- (h) ensure that the Hire Goods are operated only in accordance with applicable Work Health and Safety Laws and Regulations, and generally in accordance with all statutes, regulations and laws applicable to the use of the Hire Goods;
- (i) notify us immediately of any loss or damage to the Hire Goods, and not to attempt to or effect any repairs to the Hire Goods without our consent;
- (j) allow us or our nominated representative access to the delivery address at all times to inspect the state of repair and operation of the Hire Goods, and if misuse, loss or damage has occurred or is apprehended by us, to return possession of the Hire Goods immediately to us or our nominated representative;
- (k) if we agree in writing to collect and decommission the Hire Goods, contact us by telephone when the Hire Goods is available to be collected prior to or at the end of the Hire Period (noting your obligation to pay additional charges for collection); and
- (l) return the Hire Goods at the end of the Hire Period to us and in as good a state of repair, condition and cleanliness as at the commencement of the Hire Period. You agree to pay additional fees where we are required to clean the Goods are not returned to us in a clean state and condition;
- (m) provide a suitable power supply. You are responsible for any electrical damage caused to the Goods for whatsoever reason while in your possession;
- (n) transport the Goods on sealed roads only and if towing, at speeds not exceeding the speed limits. Heavy goods, including Coldrooms must never be towed at more than 80km per hour;
- (o) not never overload the Hire Goods. Coldrooms must never store more than 250kg of goods per shelf in the rack or more than or more than 900kg per shelving rack;
- (p) ensure any vehicle transporting or towing the Hire Goods, is suitable and fit for purpose. It is your responsibility to ensure that any such vehicle complies with all laws including weight capacity and towing guidelines;
- (q) ensure that any Hire Good that is connected or towed, is correctly connected (and disconnected) including the safety chain, secured and does not exceed any maximum load rating. You are responsible for any loss or damage to the Hire Goods including to any jockey wheel, coupling, loss of safety chain etc;
- (r) not take the Hire Goods outside of the City of Townsville without our prior written consent;
- (s) ensure that any vehicle that transports or tows the Hire Goods, is operated by licensed Driver who is experienced with transporting or towing the Hire Goods of the kind in question;
- (t) not take the Hire Goods into any environment that is corrosive or likely to cause rust e.g. Coldrooms must not be towed through salt water.
- 18.9 You agree that all replacement parts paid for by you become our property and must be installed free of all liens, third party rights or security interests. Replacement parts must be new, have a value and utility at least equal to the parts replaced.
- 18.10 Where you are obliged to notify us of any matter or thing set out in these terms, you will first attempt telephone contact with us. Notification by any other slower means will not be acceptable.
- 18.11 We may serve on you notice of any defect or deficiency in the Hire Goods requiring repair or replacement and you agree to carry out the requirements of the notice within a reasonable time at your sole cost.
- 18.12 You must not permit or create any third party dealing, lien, security interest, encumbrance, hire, pledge, lease etc to arise in respect of the Hire Goods.
- 18.13 You agree that you must act in good faith and that you must always fairly and reasonably compensate us for the provision of Hire Goods and that where there is uncertainty about a rate, fee or charge, the rate, fee or charge will be a reasonable commercial rate, fee or charge (inclusive of a profit margin) for the nature of the Hire Goods/Services by reference to our then published rates, fees or charges. .
- 18.14 If the Hire Goods are lost, stolen or damaged (including due to accelerated wear and tear) for any reason whatsoever you must:
- (a) if stolen or maliciously damaged, inform the police and us immediately;
- (b) if damaged, inform us immediately;
- (c) provide a written statement with full details of the event within 30 days of the event;
- (d) provide all information and assistance as may be required by us, police and/or any insurer; and
- (e) not make any waiver, release, admission of liability or promise of payment without the written consent of us or our insurer; and
- (f) make good all damage or loss suffered by us, including replacing any Hire Goods lost, stolen or beyond repair with new Hire Goods. Replacement is on a new basis regardless of the age of the Hire Good at the time of hire.
- 18.15 You irrevocably indemnify us from all claims, demands, liabilities, costs, expense and damages whatsoever arising from the possession, use and/or operation of the Hire Goods while in your care or possession or during the Hire Term, or otherwise caused by you or others, except to the extent it is caused by our gross negligence.
- 18.16 If the Hire Goods is not returned to us when required, you agree we may retake possession at your cost and expense and we are under no obligation to make good any damage we may cause. You release us from all claims and liabilities whatsoever and you agree we may enter the site without prior permission and you will keep us indemnified from all claims that may arise against us from the owner of that site.
- 18.17 Unless otherwise expressly stated in the Quotation, you are responsible for all costs and expenses associated with the dismantling and decommissioning of the Hire Goods from the Site and return of the Hire Goods in good and clean condition to our nominated location.
- 18.18 Unless we expressly state in writing to the contrary, you are responsible taking out and maintaining an insurance policy for the entire Hire Period for the full replacement value of the Hire Goods for loss or damage to the Hire Goods and you must note our interest on the policy. You acknowledge that if we have agreed in writing prior to the commencement of the Hire Period to insure the Hire Goods that our insurance is solely for our use and benefit and that you agree to pay any excess and also any other fees, costs and expenses we incur in connection with that policy.
- 18.19 Unless otherwise expressly stated to the contrary, you must at your sole cost insure, and keep insured, the Hire Goods against loss, replacement and damage for their full replacement value in joint names (we must be a joint insured) and we are entitled to the full benefit of that insurance policy and you will hold all proceeds received on trust for our sole benefit and take all necessary steps to recover against that policy and deal with the proceeds as we may direct in writing. You must provide us with proof of coverage from time to time. You irrevocably appoint us as your attorney to deal with the insurer, to claim on the policy and to do any other act or thing that you could do in respect of the policy and any claim on the policy.
- 18.20 You agree that in addition to any other rights we may have, we are entitled to forfeit or deduct from any deposit all and any monies that required to make good any loss, damage, cost or expense we have incurred or suffered, or to recover all monies you owe to use from time to time for whatsoever reason.
- 18.21 If the Hire Goods are lost or damaged while on hire to you and we elect to claim on our insurance policy, then:
- (a) you will provide all necessary information and assistance to us and/or our insurer to enable our claim to be properly determined;
- (b) you acknowledge that the insurer may sue you to recover its loss pursuant to its rights of subrogation under the policy of insurance; and
- (c) we may recover from you any loss or costs incurred by us in respect of the claim on our insurance policy, including any policy excess payable. The payment of any excess shall not have the effect of determining or compromising any claim that the insurer may have against you for the recovery of its loss on any such claim by us.
- 19. MAINTENANCE**
- 19.1 Where we expressly agree to carry out maintenance or preventative maintenance services for the Goods (Maintenance Services), you agree:
- (a) the scope of our Maintenance Services is limited to the express scope of Works stated in the quotation or other correspondence issued by us;
- (b) the Maintenance Services are for a preventative maintenance programme unless expressly stated in writing to the contrary by us. You must pay for all repairs, replacement costs, parts, labour, call outs and other services and costs falling outside of the preventative maintenance programme as and when they arise;
- (c) unless expressly stated to the contrary in writing by us, the preventative maintenance program includes only routine scheduled visits of not more than once monthly and such visits will be on business days between 9am and 5pm.
- (d) we are entitled to charge you, and you agree to pay, our standard call out rates as published by us from time to time where we are required to attend to the Goods or your request outside of the scheduled preventative maintenance programme;
- (e) the Maintenance Services contract is for the period stated by us in the quotation or other correspondence issued by us and in the absence of a period being stated it is the greater of 12 months and the Hire Period (where we have hired the Hire Goods to you in conjunction with you also entering into a Maintenance Services contract with us);
- (f) where we have provided a quotation for the hire of Hire Goods in conjunction with the ongoing preventative maintenance of those Hire Goods, you agree that if you terminate our Maintenance Services contract before the expiry of the Hire Period, that in addition to any other rights we may have, we will be entitled to

	increase the Hire Rate by the loss of profit on the Maintenance Services contract or recover the loss of profit from you as a debt, at our option, and you agree to pay such amount on demand;		
(g)	you are only entitled to terminate the Maintenance Services where you have first given us notice of the alleged breach of our obligations, the particulars of the breach, what can be done to remedy the breach and allow us not less than 14 days from the date of the notice to remedy those alleged breaches;		
(h)	we may terminate our Maintenance Services contract:		
	(i) without notice effective immediately where you are insolvent or bankrupt, have an administrator or receiver appointed, materially breach the Services contract, have accounts outstanding with us in excess of 30 days or where you have failed to remedy any other breach within 7 days of a receiving a written notice to do so;	22.6	To the extent permitted by law all implied warranties, conditions, terms and guarantees in relation to the sale or delivery of Works, and the carrying out of Works, statutory or otherwise, are hereby excluded.
	(ii) without cause by giving you 30 days' written notice of our intention to do so and where we have reasonably determined the Maintenance Services contract is unviable or uneconomical for us,	22.7	To the extent permitted by law, where we are not the manufacturer of the Goods, you agree that your rights are limited to those rights arising under the express warranty (if any) the manufacturer has given in respect of the Goods and where any such warranty is denied, voided, is inapplicable or unable to be enforced, you waive all rights to recover from us in respect of the Goods.
	and such termination may at our option be without prejudice to the Hire contract and in which case you agree the Hire Period will continue and you must continue to pay the Hire for the Hire Period; and	22.8	Where our liability cannot be excluded by law or limited by Our Terms of Trade, our liability will be limited to, in the case of Goods, the replacement of the Goods, the supply of equivalent Goods or the payment of the cost of replacing the Goods, or in the case of Services, the supply of the Services again, or the payment of the cost of having the Services supplied again. The choice of remedy will be at our discretion and you acknowledge that the limitation of liability in this clause is fair and reasonable.
19.2	If the Goods are damaged or destroyed or lost for reasons outside our control, due to misfeasance, your act or omission, or due to the act or omission of persons not within our control, or due to Force Majeure, then the cost of repairing or replacing the Goods is to be borne by you.		
20.	SOFTWARE AND DATA.	23.	RISK
20.1	We are not responsible for providing support for any third party software programs which you or another service provider has installed.	23.1	Where we supply Goods only, all risk for the Goods shall immediately pass to you:
20.2	It is your responsibility to regularly and consistently back up all your data and you release us from all liability for loss of data on your computers, server or network for whatsoever cause.	(a)	Where you collect the Goods – when you or your nominated carrier takes possession of the Goods at our address; or
20.3	We will not be held responsible or liable, or be expected to provide support for any third party software programs that you have installed on any or all computers and servers.	(b)	where we have agreed to deliver the Goods – from the time of departure from our premises.
21.	RETURNS	23.2	Where the Works includes both the supply of Goods and the performance of installation Services, we will maintain a contract works insurance policy until the installation Works are completed. Upon completion of the installation Works, all risk for the Goods shall immediately pass to you.
21.1	On rare occasions, Goods sold by us may be returned for credit or exchanged but only at our discretion, and only with our prior written approval. To the extent permitted by law, we disclaim all liability for any returns in transit to or from our premises. If Goods are returned to us without our prior written approval, the Goods will be returned to you at your expense.	23.3	Notwithstanding the provisions of clause 23.1, if you specifically request that we leave Goods outside our premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at your sole risk and it shall be your responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at your expense.
21.2	All Goods are subject to a return to base warranty in accordance with manufacturer's warranties, or as otherwise stated. Any Goods delivered that are deemed D.O.A. (dead on arrival), it is your responsibility to inform us within 48 hours, and make suitable arrangements for return and exchange of these Goods. Freight or other carriage costs are to be borne by you in returning the Goods. Goods must be returned in their original condition and are subject to the warranty provided by the manufacturer.	23.4	Where you have supplied the Goods to complete or carry out the Works, you agree to accept all responsibility for the suitability of purpose, quality and any faults inherent in the Goods. We shall not be responsible for any defects in the Works, any loss or damage to the Goods or Works (or any part thereof), or to any other person or property howsoever arising from the use of Goods supplied by you.
22.	LIMITATION OF LIABILITY	24.	ACL
22.1	Subject to clause 22.2, you must advise us of any incorrect delivery within 7 days from the date of delivery and failing which you are deemed to have accepted the Goods.	24.1	This clause applies only to the extent that the Australian Consumer Laws apply to a transaction or contract with you.
22.2	You acknowledge that no claim for incorrect delivery can be made against us if you have used the Goods.	24.2	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 or 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.
22.3	To the extent permitted by law, we will not be liable for any loss or damage whatsoever (including to a person, property or thing) arising from our failure for whatever reason to deliver any Works on any specified date or at all.	25.	COMPLIANCE WITH LAWS
22.4	To the full extent permitted by law, we are discharged from and you release us from all claims, demands, loss and/or damage arising from:	25.1	You and we agree that we will at times ensure that we will comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works, including occupational health and safety laws relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous materials and the safe removal and disposal of same. Our scope of Works does not include attending to dealing with nor removal of construction material, Asbestos or other hazardous material and such obligations rest solely with you at your cost, risk and expense.
	(a) defect or failure arising from your improper use, maintenance or operation of the Works;	25.2	All our Works will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the <i>Electrical Safety Regulations 2002</i> . All of the cabling work will comply with the Australian and New Zealand Wiring Standards.
	(b) any damage, complaint, failure or other breakdown, error or problem caused by you or beyond our reasonable control;	25.3	Despite anything to the contrary in any agreement or contract or Our Terms of Trade, you specifically agree that we are not required to provide you with a Form 16 QBCC Licensee Aspect Certificate as we are not covered by those regulations.
	(c) your own negligence, abuse or misuse;	26.	INTELLECTUAL PROPERTY
	(d) the carrying out of any maintenance to the Goods by you or your other service providers;	26.1	Where we have provided designed, drawn, written plans or a schedule of Works, or created any products for your use, then the copyright in all such designs, drawings, documents, plans schedules and products shall remain vested in us, and shall only be used by you at our discretion.
	(e) loss of data, files or records for whatsoever reason;	26.2	You warrant that all designs, specifications, plans, documents, records, Goods or instructions given to us by you will not cause us to infringe any patent, registered design or trademark in the execution of the your order and you agree to indemnify us against any action taken by a third party against us in respect of any such infringement.
	(f) alteration or modification of the Works by you or your other authorised service providers including any addition of software, reconfiguration of settings and installation of new hardware;	26.3	You agree that we may (at no cost) and without restriction use for the purposes of marketing, Works for other clients of ours or entry into any competition, any documents, designs, drawings, plans or products which we have created for you.
21.5	You release us from any claim whatsoever unless an action is commenced in a court of competent jurisdiction within six (6) months of delivery/performance		

27. DEFAULT TERMINATION AND SUSPENSION

27.1 Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation to us (including those relating to payment) we may in addition to any other right suspend or terminate any, some or all contracts or agreements with you. You acknowledge a breach by you under one contract is a breach of all contracts or agreements with us. We will not be liable to you for any loss or damage you suffer because we have exercised any lawful rights we have.

27.2 Without prejudice to our other rights and remedies we shall be entitled to terminate with immediate effect any contract or agreement which remains unfulfilled if:

- (a) any money payable to us becomes overdue, or in our opinion you will be unable to make a payment when it falls due;
- (b) you become insolvent or bankrupt, convene a meeting with your creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of your creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of you or any asset of yours.

27.3 Termination of any contract or agreement with you does not:

- (a) affect any claim or action that a party may have against the other or affect any other right or remedy that the party may have;
- (b) release you or any guarantors; or
- (c) release any other party of any obligation which is expressed to continue after termination.

26.4 Where we suspend Works or performance of a contract or terminate due to your breach or default, we are entitled to recover from you all monies owing to us plus loss, damages, interest and costs.

28. VARIATION

28.1 We may at any time by not less than seven (7) days' notice in writing vary or replace Our Terms of Trade (or any of them). You agree that the variation or replacement will apply to all contracts, dealings or orders arising after the effective date of any variation or replacement.

29. JURISDICTION

29.1 You agree that the jurisdiction in respect of any relief, remedy and/or enforcement of these terms and conditions will be determined by the jurisdiction of the Courts in Queensland. Each party waives any right it has to object to an action being brought in those Courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those Courts do not have jurisdiction.

29.2 Further, you agree that we may commence any claim or seek any relief in the Supreme Court and/or in the District Court and/or the Magistrates Court sitting at Townsville in the State of Queensland and any such Court will not be required to make any determination as to whether it has local jurisdiction in respect of the matter.

30. BUILDING AND CONSTRUCTION INDUSTRY PAYMENTS ACT 2004

30.1 We may at our sole discretion, if there are any disputes or claims for unpaid Works and/or Goods then the provisions of the *Building and Construction Industry Payments Act 2004* may apply.

30.2 Nothing in an agreement or contract is intended to have the effect of contracting out of any applicable provision of the *Building and Construction Industry Payments Act 2004* of Queensland, except to the extent permitted by the Act where applicable.

31. GENERAL TERMS

31.1 You cannot assign any agreement with us without our written consent.

31.2 We may assign our rights and obligations with you without your consent. We may also sub contract or license the performance of any part of the Works without your prior written consent.

31.3 Our Terms of Trade are enforceable against you and the Guarantor by any successor or assign of ours.

31.4 You warrant and declare that:

- (a) you agree to, and are authorised to accept, Our Terms of Trade;
- (b) you understand and agree to Our Terms of Trade;
- (c) the information provided by you is true and correct; and
- (d) any credit provided to you by us is to be used wholly, or predominantly for business or investment purposes (or for both purposes).

SCHEDULE 1 – DEED OF GUARANTEE AND INDEMNITY

This applies where we insist on the provision of a personal guarantee. We encourage the Guarantor to obtain independent legal advice.

1. In consideration of us agreeing to supply you with Goods and/or Services on credit at the request of the Guarantor, the Guarantor:
 - (a) unconditionally and irrevocably guarantees you will:
 - i. pay all monies now or in the future payable by you to us;
 - ii. observe and perform all your obligations to us;
 - (b) will be jointly and severally liable for the payment of all monies payable by you to us and indemnifies us for any loss or damage suffered by us as a result of your failure to observe and perform your obligations under Our Terms of Trade or any contract or agreement with us.
2. If the terms of any contract or agreement are not enforceable against you, or are invalid or void, for any reason the Guarantor indemnifies us against any loss or damage we may suffer as a result. That loss will include all monies that would have been payable by you had the contract or agreement been fully enforceable by us against you.
3. This is a continuing, unconditional and unlimited guarantee and indemnity. The Guarantor waives all rights to be released or discharged from the guarantee and indemnity including due to us:
 - (a) terminating any contract or agreement with you;
 - (b) granting any time concession or indulgence to you;
 - (c) entering into any composition or scheme of arrangement with you;
 - (d) waiving any breach or default by you;
 - (e) failing to enforce the terms of any contract or agreement against you;
 - (f) releasing any other guarantor; or
 - (g) changing, varying or amending Our Terms of Trade, any contract, agreement or the supply of Goods and/or Services to you.
4. The Guarantor acknowledges and agrees that this guarantee applies to and continues to all successors and assigns of you and is not released if you cease to exist, change shareholders, sell your business or otherwise enter into any other reorganisation or change in structure or ownership.
5. The Guarantor irrevocably grants to us an equitable mortgage over any real property wherever situated (including land acquired in the future) owned by the Guarantor personally and / or as Trustee of any Trust and/or by any company of which the Guarantor is the sole director/secretary or sole shareholder as security for the payment of all monies now or in the future owed to us by you or the Guarantor. In this clause "Trust" means each trust for which the Guarantor holds land as trustee.
6. We may register a caveat and/or mortgage to secure our interest in any such land and the Guarantor irrevocably appoints us as the Guarantor's attorney to sign all consents to caveat and mortgages on the Guarantor's behalf.
7. Each guarantor is liable under this guarantee and indemnity:
 - (a) even if any other guarantor does not execute the guarantee. This guarantee is not conditional upon all guarantors signing;
 - (b) when he or she executes this guarantee;
 - (c) jointly and severally with the other guarantors.
8. Reference to:
 - (a) "all monies" means all monies of whatsoever kind now or in the future due and/or owing to us or potentially recoverable by us. It includes monies payable on any account, interest, charges, fees, costs, enforcement costs and other amounts owing, due and/or recoverable howsoever and whenever arising including on any account, invoice, court order, pursuant to an indemnity given to us, breach of contract or other rights or remedies enforceable by us;
 - (b) "Guarantor" means any person who has agreed to guarantee your obligations to us;
 - (c) "you" means the person who has entered into any agreement, contract or transaction with us and who the Guarantor has some association with either by directorship or otherwise or who the Guarantor has agreed in writing to be the guarantor for;
 - (d) "we/us" means Aircool Industries Pty Ltd and includes our successors and assigns; (e) any other term in this guarantee and indemnity which has a defined meaning in Our Terms of Trade will also have the same meaning in this guarantee as if such definition was hereby incorporated by reference.
9. In the interpretation of this guarantee and indemnity:
 - (a) singular includes plural and vice versa;
 - (b) any unlawful, invalid or unenforceable term or condition will not invalidate or affect the interpretation of the balance of the conditions, but will be severed;
 - (c) nothing which appears after the word "include" or "including" is to be interpreted as limiting the type of thing which may be included within the ambit of that clause;
 - (d) terms and conditions will not be interpreted against us merely because they were drafted by us.