

TERMS AND CONDITIONS OF SALE

These Terms and Conditions shall apply between Architectural Window Systems Pty Limited ACN 067 950 903 and its successors and assigns; (“the **Company**”) and the Applicant named in the Application for a Commercial Credit Account (“the **Customer**”) and applies to any contract or agreement between the Company and Customer for the supply of goods and/or services to the Customer to the exclusion of any terms the Customer issues.

1. INTERPRETATION

In these Terms:

- 1.1 “**Accession**” has the meaning given by s.10 of the Person Property Securities Act 2009
- 1.2 “**Agreement**” means the agreement between the Company and the Customer constituted by these Terms;
- 1.3 “**Confidential Information**” means all the Company’s trade secrets, confidential business and technical information, know-how, Customer and Company lists, pricing policies and costing system database (whether in electronic or hard copy form), not generally known to the public but for a breach of these Terms;
- 1.4 “**Consequential Loss or Damage**” means any loss or damage of any indirect nature including but not limited to loss of profits, loss of opportunity, loss of use, loss of revenue, loss of goodwill, loss of access to markets, loss of business reputation including future reputation, loss arising from adverse publicity, removal costs, re-installation costs and any remote, incidental, exemplary or punitive damages;
- 1.5 “**GST**” means the Goods and Services Tax imposed by *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and any related act and/or regulations;
- 1.6 “**Products**” means all products supplied by the Company from time to time including but not limited to aluminium extrusions, surfaces and finishes;
- 1.7 “**PMSI**” has the meaning of the term “Purchase Money Security Interest” on the PPSA.
- 1.8 “**PPSA**” means the *Personal Property Securities Act 2009* (Cth);
- 1.9 “**PPSR**” means the personal property security register created under the PPSA.
- 1.10 “**Proceeds**” has the meaning by s.31 of the PPSA.
- 1.11 “**Security Interest**” has the meaning by s.12 of the PPSA.
- 1.12 “**Company’s Security Interest**” has the meaning defined in clause 7.3 (a)-(c).
- 1.13 “**Supply**” means the supply of goods and/or services under these Terms and Conditions
- 1.14 “**Terms**” means these Terms and Conditions of Sale, as amended from time to time; and
- 1.15 “**Tooling**” means the machinery and equipment which the Company has specified for use in assembling the Products or certain of the Products.

2 CREDIT APPLICATION

- 2.1 These Terms apply to all Products sold or supplied by the Company.
- 2.2 No amendment, alteration, waiver or cancellation of any of these Terms is binding on the Company unless confirmed by the Company in writing.
- 2.3 The Customer acknowledges that no employee or agent of the Company has any right to make any representation, warranty or promise in relation of the Products or the sale of the Products other than as contained in these Terms

3 PRICES

- 3.1 Prices are determined by the Company’s price list current at the time of order and are subject to change without notice.
- 3.2 Prices do not include GST, the cost of packaging, delivery, freight or insurance to the Customer’s nominated point of collection or delivery, unless specifically stated otherwise in writing.
- 3.3
 - (a) If GST is or will be payable on a Supply, then the Company may increase the amount payable by the customer otherwise provided pursuant to these Terms and Conditions for that Supply by the amount of that GST.
 - (b) If there is an event in relation to a Supply which results in the amount of GST on the Supply being different from the amount of GST recovered under clause 3.3(a), the Company may recover from the Customer any amount by which the GST on the Supply exceeds the amount recovered and must refund to the Customer any amount recovered which exceeds the GST on the Supply, whichever is the case.
 - (c) If, as a result of the introduction of a GST or a subsequent change to the imposition or calculation of the GST or as a result of any change in or abolition of other taxes (excluding income tax) occurring immediately before, upon or subsequent to the introduction of a GST, such that the costs incurred by the Company in making a Supply (excluding GST on the Supply) are increased, then the price payable by the Customer can be increased by the Company by the same proportion as the increase in the Company’s costs.
 - (d) any rebates, discounts, allowances or other reductions in price calculated by reference to the sales value to which the Customer is entitled or which are granted by the Company are to be calculated on the base price, that is after excluding any amount in respect of the GST payable by the Company on the relevant sales.

4 DELIVERY

- 4.1 Availability dates are estimates only, but the Company will use its best endeavours to maintain its estimated date for delivery. The Company shall deliver the Products at a place for delivery nominated by the Customer.
- 4.2 Delivery of Products to the Customer occurs when they are actually delivered by the Company, regardless of, whether the Customer accepts delivery.
- 4.3 Unless the Customer has inspected the Products and has given written notice to the Company within seven (7) days after collection or delivery that the Products do not comply with the relevant specifications or descriptions, the Products are deemed to have been accepted in good order and condition.
- 4.4 Any time which the Company quotes for delivery is an estimate only.
- 4.5 The Company may cancel the order if it determines that it will be unable to deliver the Products within a reasonable time

- 4.6 The Customer shall have no claim against the Company if the Company cancels the order or fails to deliver (for any reason) the Products, or if there is any delay in the delivery of the Products. The estimated date for delivery may be extended by the Company in its discretion:
- (a) if the Customer fails to supply information in good time required by the Company to fulfil the Customer order, or if the Customer changes specifications;
 - (b) in the case of events which are beyond the Company's control, no matter where or how they arise. Such events include but are not limited to epidemics, mobilizations, war, rebellions, major disruptions of production, accidents, labour disputes, government actions, natural disasters;
 - (c) if the Customer is in arrears with the Customer's work in connection with the delivery, or if the Customer has not fulfilled the Customer's contractual obligations under these Terms especially those relating to payment
- 4.7 The Company reserves the right to deliver the Products in whole or by instalments, as well as to deliver prior to the date for delivery, and in any such event, the Customer must not refuse to take delivery of the Products.
- 4.8 Where the Products are delivered by instalments, each instalment is regarded as a separate delivery.
- 4.9 Any failure on the part of the Company to deliver any instalment within the specific time does not entitle the Customer to repudiate the Agreement in respect of the balance of the Products that have not been delivered.
- 4.10 The Customer acknowledges and agrees that time is not of the essence in relation to delivery of the Products.
- 4.11 The Products to be supplied by the Company are specified in the written confirmation of order provided by the Company to the Customer.
- 4.12 Any extra or additional services to be provided by the Company at the Customer's request will be invoiced separately.

5. TERMS OF PAYMENT

- 5.1 The Customer must pay the Company stated in any relevant invoice or statement without deduction within thirty (30) days of the date of issue of the invoice or statement, unless otherwise indicated ("the due date").
- 5.2 In the absence of any specific written direction to the contrary, payments will be credited against the oldest outstanding account of the Customer with the Company to the most recent.
- 5.3 The Company may require the Customer to pay cash in full prior to delivery if in the Company's opinion the creditworthiness of the Customer becomes unsatisfactory.
- 5.4 Payments are to be made direct to the Company, strictly net, without any deduction or discount other than as stated in these Terms or in the relevant invoice or statement. Agreed discounts, rebates and allowances to which the Customer is entitled are credited to the Customer by the Company. In no circumstances is the Customer permitted to deduct any discount, rebate or allowance from monies owing by it to the Company.
- 5.5 The absence of minor parts that does not seriously affect the use of the Products does not entitle the Customer to a reduction or a delay of payment.
- 5.6 If the Customer has not paid in full by the due date, the Company may:
- (a) charge the Customer interest on the overdue accounts calculated on a daily basis at the rate of two percent (2%) per month as from the due date for payment until payment is received by the Company.
 - (b) pursue an action for the price of the Products for which payment has not been made (plus damages, interest and costs), even though property in the Products remains with the Company
- 5.7 The Customer must pay the Company for the Products in full even if:
- (a) there was a delay in the delivery of Products;
 - (b) the Customer disputes the quality, quantity or condition of the Products delivered.
- 5.8 All payments must be made in Australian Dollars.
- 5.9 The Customer must pay to and indemnify the Company against all costs and expenses incurred by the Company in connection with:
- (a) default by the Customer under these Terms and Conditions;
 - (b) the recovery of any monies due and payable but unpaid by the Customer (including legal costs on a solicitor /client basis, commercial or mercantile agent and dishonour fees); and
 - (c) the exercise or attempted exercise by the Company of any power conferred on it by these Terms and Conditions.
- 5.10 A statement in writing signed by an authorised officer of the Company setting out the monies due or owing to the Company at the date of the statement shall be sufficient evidence of the amount so due or owing unless manifest error can be shown.
- 5.11 If the Customer is a company, then satisfactory Guarantor/s (as approved by the Company) must execute the Deed of Guarantee and Indemnity set out on page 12 of this document before any credit can be approved. In the event that no Guarantee is executed, then the person/s signing this Agreement for or on behalf of the Customer shall be personally liable in the terms set out in the Deed of Guarantee and Indemnity.
- 5.12 If the Customer is a partnership no change to the constitution of the partnership shall affect, impair or discharge the liability of the Customer under this Agreement whether past, present or future notwithstanding the provisions of any legislation or any similar enactment in amendment, modification or substitution regulating partnerships
- 5.13 If the Customer enters into this Agreement as a Trustee of any Trust, then the following provisions shall apply:-
- (i) the Customer shall be personally liable for the performance of all obligations and undertaking under this Agreement.
 - (ii) the Customer warrants that the Customer has complete and valid authority pursuant to the Trust to enter into this Agreement
 - (iii) notwithstanding that there is no reference to a specific Trust the Company's rights of recourse shall extend both the Customers assets personally and the assets of the Trust.
 - (iv) the Customer undertakes to the Company that the Customers right of indemnity against the Trust assets have not been excluded by the provisions of the Trust or any breach of trust or otherwise and that the Customer will not release or otherwise prejudice such rights of indemnity.
- 5.14 The Company may refuse to supply Products and/or services to the Customer until all amounts due to the Company have been paid in full.

- 5.15 Notwithstanding anything else stated in these Terms and Conditions or in any credit application or other agreement, to which they relate:
- (a) the Customer shall be liable to pay the amount of any invoice for Products or services supplied by the Company forthwith upon its issue by the Company,
 - (b) the Customer shall only be entitled to delay payment to the Company upon the issue of an invoice for Products or services supplied for a period allowed by these terms and conditions, the credit application or other agreement [‘the Credit Period’], upon the condition, that the Customer has not defaulted in making payment upon any other invoice for Products or services supplied by the Company to the Customer within the Credit Period applicable to them, and
 - (c) in the event of default by the Customer in payment for any Products or services under an invoice within an applicable Credit Period, the Company may immediately or at such time or times as it deems fit require and enforce payment forthwith for any other Products or services supplied by the Company to the Customer, whether or not subject of an issued invoice and irrespective of whether or not the Credit Period in relation to them has expired

6. RISK AND INSURANCE

- 6.1 The risk of loss or damage to the Products shall pass to the Customer from the moment of delivery to the Customer’s point of delivery or collection even though property in and title to the Products may not have passed to the Customer at that time.
- 6.2 The Customer must, at its own expense, maintain the Products in good order and condition and insure them for the benefit of the Company for their full replacement value against theft, destruction, fire, water damage and other risks, as from the moment of delivery to the Customer’s point of delivery or collection and until property in and title to the Products have passed to the customer. The Customer must further take all reasonable measures to ensure that the Company’s title to the Products is in no way prejudiced. If the Products are lost, destroyed or damaged, any insurance proceeds relating to the Products in respect of such event that are received by the customer, must be paid to the Company immediately on receipt.

7. TITLE

- 7.1 Until the Customer has paid for the Products in full and also paid all other monies due and payable to the Company by the Customer:
- (a) property in the Products shall remain with the Company (“the retention of title”);
 - (b) the Customer shall hold the Products as a fiduciary and bailee of the Company;
 - (c) the Customer shall hold the Products in a way that clearly indicates the Company’s title to the Products.
 - (d) if the Products are processed or commingled with or made an accession to other goods by the Customer, the Customer shall record and make available to the Company on request the record of the date of the processing, commingling or accession and hold the product, mass or whole in a way that clearly indicates the Company’s title to the product, mass or whole; and
 - (e) the Customer shall not deal with the Products, either in their original state or as part of a Product, mass or whole, for a consideration of less value than the amount necessary to discharge the Customer’s liability to the Company in full for or in relation to the Products and shall retain the consideration or other Proceeds of the Products separate from all other property of the Customer and in a manner, which clearly identifies it as such consideration or other Proceeds of the Product, mass or whole (unless otherwise agreed in writing by the Company).
- 7.2 the Customer must not sell, dispose, assign or encumber the Products (by mortgage, lien, charge or otherwise) without the consent of the Company.
- 7.3 the Customer agrees that:
- (a) a Security Interest is retained in favour of the Company in:
 - (i) the Products;
 - (ii) the Proceeds of the Products;
 - (iii) any other property, to which the Products become an accession;
 - (iv) any product or mass, of which the Products become a part by manufacture, process, assembly or commingling
 - (b) the retention of title constitutes the grant of a purchase money security interest by the Customer in favour of the Company in respect of all present and after acquired Products supplied to the Customer by the Company .
 - (c) the Security Interest secures:
 - (i) the Customer’s obligation to pay for the Products, and
 - (ii) any and all other obligations of the Customer to pay money or money’s worth (including costs, expenses, damages or losses) for the benefit of the Company now or in the future or from time to time under this agreement.
 - (d) to the extent the Company’s Security Interest secures the Customers obligation to pay for the Products, it constitutes a PMSI;
 - (e) with respect to the Company’s Security Interest, the Customer will when called upon by the Company sign any further documents or provide any further information which the Company may reasonably require to register a financing statement or financing change statement on the Personal Properties Security Register (“**PPS Register**”), or in connection with the issue of a verification statement;
 - (f) it will not register or apply to register a financing statement or financing change statement which is in any way connected with the Products (or any accession, mass or product, of which they form part) without the Company’s prior written consent, which may be given or withheld at the Company’s absolute discretion;
 - (g) it will pay any costs or expenses incurred by the Company and keep the Company indemnified against any loss, damage or liability to third parties incurred in relation to:
 - (i) registering or seeking the release of any document relating to the Company’s Security Interest on the PPS Register; or
 - (ii) enforcing the Company’s security Interest (including its legal costs, on a solicitor-Customer basis);

- (h) it will give the Company at least 14 days written notice of any proposed change in its name, contact details, place of incorporation, address, location, nature of business, ownership, or business practice; and
 - (i) it irrevocably appoints the Company to be the Customer's attorney to do anything which the Customer agrees to do under these Terms and Conditions and anything which the attorney thinks desirable to protect the Company's Security Interest and the Customer will take all steps required to ratify anything done by the attorney under this clause.
- 7.4 To the extent permitted by law, the Customer waives its right to notice as a grantor under section 157 of the PPSA; acknowledging, that the collateral, subject of the Company's Security Interest is properly described as commercial property. To the extent that they impose any obligation on the Company or grant any right to the Customer and section 115(1) of the PPSA allows them to be excluded: sections 95, 118, 121(4), 125, 130, 132 (3), 132 (4), 135, 142, and 143 of the PPSA do not apply to this agreement or the Company's Security Interest in the Products. To the extent, that Part 4.3 of the PPSA imposes any obligation on the Company or grants any right to the Customer and s.115(7) permits, its application pursuant to s.116(2) is excluded.
- 7.5 Notwithstanding the payment by the Customer of part or all of the price relating to the Products, the Company's Security Interest will continue in the Products, any Proceeds of the Products or other property, to which the Company's Security Interest may apply (by operation of these Terms and Conditions or statute) until the Company's Security Interest is discharged in writing by the Company.
- 7.6 The Customer will not do, or omit to do, nor allow to be done or omitted to be done, anything which might adversely affect the Company's Security Interest.
- 7.7 If the Customer sells the Products, either in their original state or as part of a product, mass or whole to its customers, the Customer assigns to the Company and authorises the Company to sue in its name to recover the benefit of any claim against its customers for the price of the Products, the product, mass or whole, and in addition to its obligations under the PPSA, it shall hold on trust for the Company and account to the Company for the consideration and all Proceeds received in relation to the Products, product, mass or whole.
- 7.8 This clause shall apply even though the Company may give credit to the Customer.

8. RIGHT OF ENTRY AND RESALE

- 8.1 Without limiting the rights or remedies available to the Company under these Terms and Conditions, statute (including under the PPSA) or other law, if the Customer;
- (a) (being a natural person) commits an act of bankruptcy;
 - (b) (being a corporation) does anything which entitles anyone to apply to wind up the Customer or is subject to the appointment of an administrator or receiver and manager; or
 - (c) breaches any of these "Terms and Conditions",
(each of which is hereafter referred to as 'an act of default'),
- the Company may terminate any contract relating to the Products and take possession of and retain, resell or otherwise dispose of the Products or any product, mass or whole, of which they form part.
- 8.2 To the extent permitted by law, in the event of any such act of default, the Customer authorises the Company to enter premises where the Products may be located to take possession of the Products or any product, mass or whole, of which they form part without notice to the Customer. The Customer shall indemnify the Company against all claims arising out of the entry by the Company into premises to take possession of the Products or any product, mass or whole, of which they form part.

9. CANCELLATION OF ORDER AND RETURN OF PRODUCTS

- 9.1 No order may be cancelled, modified or deferred without the prior written consent of the Company (which will be at the Company's sole discretion) and if such consent is given, it will be at the Company's election and subject to the Company being reimbursed all losses, including loss of profits, and payment of a cancellation and restocking fee (being not less than 10% of the invoice value of the Products).
- 9.2 The Company will not accept the return of any Products to it by the customer, unless:
- (ii) the Company has previously agreed to the return of the Products in writing; and
 - (ii) the Products have been returned to the Company's premises within 30 days from the date of delivery to the Customer.
- 9.3 If the Company agrees to the return of Products:
- (i) the Products must be unsoiled, undamaged and in a resaleable condition (if otherwise, the Customer must pay for all costs of replacement or repair);
 - (ii) the Customer must pay for the delivery, freight, customs duties, levies and/or insurance in respect of the return of the Products to the Company; and
 - (iii) the Customer must bear the risk of loss or damage of the Product in transit until arrival of the Products at the address of the Company as advised by the Company from time to time.
- 9.4 The Company may allow the customer credit for returned Products at the Company's sole discretion, if:
- (i) the original invoice number and date have been quoted by the Customer;
 - (ii) the Products have been returned to the Company's premises within 30 days from the date of delivery to the Customer;
 - (iii) where Products were supplied by the Company in special manufacturers' cartons, the Products have been returned in those cartons in their original and unmarked condition, complete with all instructions and other documents originally supplied with the Products; and
 - (iv) all charges for outward and inward freight, packing and delivery have been paid by the customer.
- 9.5 The Company will not allow a credit or return of the Products if the:
- (i) Products are imported especially for the customer or are non-standard equipment made to special order; and/or
 - (ii) Products are marked on the Company's invoices as "NOT RETURNABLE".

10. LIABILITY

- 10.1 All conditions and warranties express or implied by law, statute, or otherwise, are excluded to the extent permitted by law. Where so permitted by law, the liability of the Company for the breach of a condition or warranty that cannot be excluded is limited, at the Company's option, to the replacement of the Products or the supply of equivalent Products, or the cost of replacing the Products or acquiring equivalent Products.
- 10.2 The Customer must indemnify the Company, and the Company's officers, agents and employees, against claims in respect of personal injury or death, or loss of damage to any property, whether as a result of negligence, breach of statutory duty or otherwise, which arise out of, or are a consequence of any act or omission of the Customer.
- 10.3 So far as the law permits, the Company shall not be liable for any loss or damage, which may be suffered by the Customer for any reason including, but not limited to, delay, negligence or any act, matter or thing done or permitted or omitted to be done by the Company.

11. WARRANTIES AND WARRANTY CLAIMS

- 11.1 The Company warrants that the Products will be of acceptable quality as defined under the *Competition and Consumer Act 2010* (Cth).
- 11.2 The Company also warrants that the Products will be supplied in an undamaged condition.
- 11.3 These warranties extend only to the Customer and to no other person.
- 11.4 Except for any guarantees imposed by the *Competition and Consumer Act 2010* (Cth) and the warranties stated in clauses 11.1 and 11.2, the provision of any other act or law implying terms, conditions, guarantees and/or warranties which might otherwise apply to or arise out of the Contract are hereby expressly negated and excluded to the full extent permitted by law.
- 11.5 On discovery of any defect in the Products, the Customer must notify the Company in writing of such defect. All warranty claims must be received by the Company within seven (7) days of the date of delivery.
- 11.6 The Customer's failure to provide written notice to the Company of any alleged breach of warranty within the required time will release and discharge the Company from any obligation or liability for that breach of warranty.
- 11.7 The Customer must not carry out any remedial work to allegedly defective Products without first obtaining the written consent of the Company to do so, otherwise all of the Company's warranties will be voided to the full extent permitted by law.

12. CUSTOMS DUTIES, TARIFFS AND LEVIES

All applicable customs duties, tariffs and levies are payable by the Customer unless the order, order confirmation, invoice or other writing indicates otherwise.

13. CATALOGUES AND TECHNICAL DOCUMENTS

- 13.1 Particulars in leaflets, catalogues, drawings, brochures and other printed material supplied by the Company in relation to Products are for illustrative purposes only, and are not binding on the Company.
- 13.2 All technical documents such as drawings, illustrations and descriptions, are the exclusive property of the Company. They must not be made available to third parties or copied, duplicated or used for reproducing the Products or any part of the Products.

14. SAMPLES

Any sample inspected by the Customer is solely for the Customer's convenience and does not constitute a sale by sample. All samples remain the property of the Company.

15. SPECIFICATIONS

- 15.1 Unless otherwise agreed in writing, the Products are supplied subject to any specification as to weight, quantity, size, dimensions, finishes, chemical composition and physical properties as may be published generally by the Company or as may be set out in any specification issued by the Company in relation to the Products or, if no such specification has been published or set out, subject to such specification as the Company considers is normally regarded as being commercially acceptable.
- 15.2 Where any specifications for the Products are to be supplied by the customer, they must be supplied in reasonable time to enable the Company to complete delivery by the date for delivery.

16. THIRD PARTY'S INTELLECTUAL PROPERTY

- 16.1 The Customer warrants that the drawing of any extruded shape for which a quotation has been issued and which has been endorsed by the Customer and supplied by the Customer to the Company does not infringe the rights of any third party (whether copyright, registered design, pattern, trademark, confidential information or otherwise) or breach any applicable law
- 16.2 In the event of any claim, action, suit, demand, order for costs or damages (including legal expenses on a solicitor and client basis) referable to the rights and/or laws referred to in clause 16.1 being made or brought against the Company, the Customer must fully indemnify the Company and keep the Company indemnified from and against same.

17. CHARGE

- 17.1 The Customer hereby charges separately:
- (a) all the Customer's freehold and leasehold interest in land, including land which the Customer, after the date of this Agreement, obtains an interest in; and
 - (b) all of the Customer's personal property;
as security for the performance by the Customer of its obligations to the Company under this Agreement and otherwise, including due payment to the Company of all monies that may become payable to the Company arising out of the subject matter of the Agreement.
- 17.2 The charges created by clause 17.1 are separate charges over the Customer's property and in the event that either charge is void or enforceable then such charge will be severable from this Agreement and does not affect validity of the other charge

- 17.3 If requested by the Company, the Customer must promptly deliver an executed mortgage, or such other instrument of security as the Company may require, in registerable form as additional security
- 17.4 Further, the Customer agrees to:
- (a) the Company lodging a caveat over the Customer's title to any freehold and leasehold interest in land; and to secure the Company's interest in the real property.
 - (b) Pay all stamp duty, registration fees and other costs (including legal costs) which the Company incurs in lodging, releasing or withdrawing a caveat.

18. NOTICE

- 18.1 Any notice to be given by the Company to the Customer may be given by facsimile, post or hand delivered to the Customer's business address on the Account Application or last known to the Company
- 18.2 Any notice to be given by the Customer to the Company must be in writing by facsimile, post or hand delivered to the Company's business address on the Account Application or last notified in writing by the Company.
- 18.3 A notice:
- (a) given by facsimile shall be deemed to be given on the business day following it is sent
 - (b) sent by pre-paid post shall be deemed to be given on the business day following the day on which it was posted; or
 - (c) delivered by hand shall be deemed given when delivered.

19. FORCE MAJEURE

The Company will not be liable for any breach of contract due to any matter or thing beyond the Company's control (including but not limited to transport stoppages, transport breakdown, fire, flood, earthquake, acts of God, strikes, lock-outs, work stoppages, wars, riots or civil commotion, intervention of public authority, explosion or accident).

20. WAIVER OF BREACH

No failure by the Company to insist on strict performances of any of the provisions in these Terms is a waiver of any right or remedy which the Company may have, and is not a waiver of any subsequent breach or default by the customer.

21. NO ASSIGNMENT

Neither this Agreement nor any rights arising under this Agreement may be assigned by the Customer without the prior written consent of the Company which is at the Company's absolute discretion.

22. SEVERABILITY

If any provision contained in these Terms is held by a court to be unlawful, invalid or unenforceable, the validity and enforceability of the remaining provisions are not affected.

23. GOVERNING LAW

- 23.1 These Terms and Conditions shall be governed by and construed in accordance with the laws of the state or territory nominated by the Company in which either the Goods were produced or the Customer took delivery and in default of nomination in accordance with the laws of the state of New South Wales and the parties submit to the jurisdiction of the courts of the state or territory so nominated or in default of nomination, the courts of New South Wales.
- 23.2 The Customer and the Company agree to submit to the non-exclusive jurisdiction of the courts of New South Wales and courts that hear appeals from those courts.
- 23.3 The provisions of the United Nations Convention on contracts for the International Sale of Products adopted at Vienna, Austria on 10 April 1980 do not apply to any Products supplied by the Company to the Customer.