

TERMS OF TRADE

1. Interpretation and Construction

1.1 Definitions

In these Terms of Trade, the following words have their corresponding meanings:

“Company” means **COOLIBAH CONSTRUCTIONS PTY LTD TRADING AS COOLIBAH FAMILY TRUST ABN: 94 282 035 119**

“Customer” means any person entity who the Company supplies goods and/or services in accordance with any order, invoice or document;

“goods” or “services” means any goods available to be sold or services available to be rendered by the Company to the Customer, at the Customer’s request.

“Order” means an order from the Customer for the supply of goods and/or services from the Company.

“Quotation” means any quotation issued by the Company to the Customer for the supply of goods and/or services.

“Price” means the price payable for the supply of goods and/or services.

“Terms” means these terms of trade which apply to any supply of goods and/or services by the Company to the Customer.

1.2 Construction

- (a) a reference to these terms includes any variation or replacement;
- (b) a reference to any statute or law includes regulations and other instruments under it including consolidations, amendments, re-enactments or replacements;
- (c) a reference to a person includes the person’s executors, administrators, successors, substitutes and permitted assigns; and
- (d) an obligation, agreement, representation or warranty on the part of or in favour of two or more persons binds, and/or is for the benefit of them jointly and severally.

2. Supply of Goods and/or Services

- 2.1 The Company may issue a Quotation upon the Customer’s request or accept an Order for the supply of goods and/or services. A Quotation is open for acceptance for the time stated or otherwise 30 days and is an estimate only and subject to withdrawal or correction at any time prior to acceptance. All descriptions provided by the Company for goods/services are approximate and any error in such descriptions does not void the agreement and or give rise to any claim.
- 2.2 An Order must identify the goods or services, quantity and any Quotation. Any variation by the Customer must be agreed by the Company in writing in its sole discretion.
- 2.3 The Company may refuse to sell the goods (whether or not part of a contract has been performed) and cancel the Order for any reason whatsoever, in the Company’s sole discretion, including if the goods are unavailable for any reason or the Customer is in default. The Company shall repay any money paid to the Customer and the Company is not liable for any loss or damages for the cancellation.
- 2.4 The Company reserves the right, without notice, to withhold supply to the Customer and is not liable for loss or damage resulting directly or indirectly resulting from such cancellation or if the Company has determined that credit should not be extended.
- 2.5 If the Customer cancels an order, it remains liable and shall indemnify the Company for any loss is suffered (whether direct or indirect) a direct result of the cancellation (including but not limited to loss of profits). Cancellation of goods specially ordered for the Customer will not be accepted by the Company.

3. Acceptance

- 3.1 The Customer warrants that it has the power to enter into this agreement, is solvent, this agreement creates a binding and legal obligation and all information provided to the Company by the Customer is true and correct in all material respects. If the Customer is the trustee of a trust then in addition to that entity the trustee agrees to bind all trusts of which the entity is a trustee.
- 3.2 The Customer agrees that these Terms apply to any supply of goods and/or services, and accepts the Terms and agrees to be bound by them and such Terms apply over any other document or agreement to the extent of any inconsistency.

4. Payment, and Price

- 4.1 The Price is the price determined by the Company in its sole discretion and is the price specified on the Quotation, on any invoice or as per the current price list.
- 4.2 Unless stated otherwise, the Price is exclusive of goods and services tax (“GST”).
- 4.3 The Customer agrees that GST at the prevailing rate at invoice date along with any other taxes or duties are payable by the Customer in full at the same time as the Price and are in addition to the Price, unless expressly included in the Price.
- 4.4 If the Customer requests a variation which alters the cost/rates of quantities, insurance, freight, cartage or shipping expenses, duties, exchange rates, costs of materials or other amounts used to calculate the price or amounts stated on the Quotation then the Customer is liable for the increase in Price
- 4.5 Unless stated otherwise, time for payment is of the essence and payment terms are 30 days from the date of the statement provided at the end of each month.
- 4.6 Payment must be made by cheque, electronic payment, or by any other payment method nominated by the Company from time to time.
- 4.7 The Customer acknowledges that any credit extended by the Company is to be applied wholly or predominately for business purposes.
- 4.8 The grant of any credit facility or any credit limit is in the absolute discretion of the Company. The Company may vary and/or withdraw any credit facility at any time and without any liability to the Customer or any other party.

5. Unpaid Invoices, Interest and Costs

- 5.1 If invoices or monies outstanding are not paid in full by the due date, the Company may charge the Customer interest on the unpaid amount accrued daily from the date when payment becomes due until the date of payment at the rate of two and a half percent (2.5%) per calendar month and interest shall compound at that rate monthly both before and after any judgment obtained by the Company.
 - 5.2 The Customer is not entitled to set off, deduct or withhold payment of monies due and owing to the Company including where the Customer has disputed the invoice or alleged amounts are owed or will become owing by the Company to the Customer.
 - 5.3 The Customer is liable for all costs and disbursements incurred by the Company or its agents in recovering outstanding monies or in enforcing its rights under these Terms, including, but not limited to, legal costs determined on a solicitor/own client basis, internal administration fee, mercantile agents costs and bank dishonour fee for overdue payments.
 - 5.4 The Company is entitled to retain any goods held for the Customer pending payment.
- #### 6 Title
- 6.1 Until the Company receives full payment of all monies payable to it by the Customer and the Customer has complied with all obligations pursuant to the Terms: title and property in the goods vests in the Company and does not pass to the Customer; the Customer must not charge or grant an interest over the goods; the Customer holds the goods as fiduciary bailee and agent for the Company and must return the goods (including goods in transit) to the Company on the Company’s request; the Customer holds the benefit of insurance of the goods on trust for the Company and if the goods are lost, destroyed or damages, proceeds must be paid to the Company; the Customer must keep the goods separate from its goods; the Customer must not convert or otherwise commingle the goods but if the Customer does so, then it holds the commingled good on trust for the benefit of the Company; the Customer may only sell or dispose of the goods in the ordinary course of business as agent for the Company and holds the proceeds on trust for the Company and deliver up the proceeds to the Company on demand; and the Company may, without notice, enter into any premises where its suspects the goods are and take possession of the goods and for that purpose the Customer irrevocably licenses the Company to enter such premises and indemnifies the Company from and against all costs, claims, demands, or actions by any party arising from such action.
 - 6.2 In the event of non-payment, the Company may commence legal proceedings and/or dispose of Goods to recover its loss, regardless of ownership of the goods.

7 Risk and Insurance

- 7.1 The risk in the goods passes to the Customer upon collection of the goods or immediately upon dispatch from the Company’s to the Customer’s nominated address or otherwise on the date where the Company stores or arranges storage on behalf of the Customer.
- 7.2 On or before delivery, the Customer shall insure the goods against loss or damage. The Customer is liable for the insurance and must maintain at its own cost an insurance policy of insurance to cover all risks which may reasonably arise.
- 7.3 Notwithstanding the passing of risk, all goods delivered by the Company to the Customer remain the property of the Company until the Customer has paid for the goods in full.

8 Delivery

- 8.1 The Company has no obligation to deliver but may arrange delivery in its discretion and without liability at the Customer’s cost and risk the Customer shall pay all freight and other charges associated with the delivery and delivery may be in instalments in the Company’s discretion. The Customer must take delivery of the goods whenever the goods are tendered for delivery and shall be present at the agreed place and time for delivery and if not present, the Company may unload the goods at the sole risk of the Customer and the Company is not responsible for any claims, costs or losses arising or otherwise charge the Customer for frustrated delivery for an amount equal to the Company’s reasonable costs. The Customer acknowledges that any date given for delivery is an estimate only and if the Company cannot deliver the goods on that date, it shall not be liable for any loss (including consequential loss or loss to a third party) for any failure or a delay in delivery. The company has the right to charge and will charge a mobilization fee of \$500 over 1 hour of travelling. If The Company has been requested to a job site by The Customer, and is then turned away due to NO fault of The Company’s, The said Customer will be charged a mobilization fee of \$500 or more at the discretion of The Company.

9. Warranties

- 9.1 To the extent permitted by law, the Company does not give any warranty in the goods. The Company expressly excludes any warranties implied by law including but not limited to merchantable quality, suitability, fitness of purpose, quality, suitability, or otherwise. These Terms do not exclude any statutory warranties which may be implied pursuant to the *Competition and Consumer Act 2010* (Cth).
- 9.2 The Customer relies on its own knowledge as to the purpose of the goods and the Customer is not entitled to rely on any advice given by the Company.
- 9.3 The Company is not liable for the failure to comply with any of the Customer’s (or other person’s) requirements if those requirements are not advised to the Customer in writing at the time of making the Order.

10. Defects and Return of Goods

- 10.1 The Customer shall inspect the goods immediately upon delivery. The Customer is required to give the Company written notice of any alleged defect, damage, fault, or failure to comply with description/Quotation within 5 business days of delivery and the Company and return the goods to the Company within 14 days at the Customer’s cost. If the Customer does not provide written notice in accordance with this clause, the Customer is deemed to have accepted the goods and the Customer is not entitled to reject the goods or claim any remedy (including damages).

- 10.2 Nothing requires the Company to accept the return of non-defective goods or provide a remedy, unless in the Company's sole discretion. If the Company refuses to accept a return, the Customer is not entitled to cancel the whole or part of any Order and the Customer shall indemnify the Company against any loss or damage suffered. If the return is accepted by the Company, in the Company's absolute discretion, the Company may impose a handling charge of an amount equivalent to 10% of the credit claimed in addition to any freight costs.
- 10.3 The Company is not liable for defective goods if it was caused by the Customer failing to properly store the goods, use the goods, using the goods after the defect became apparent or should have been apparent to a reasonably prudent user of the goods, failure to follow any directions or any event of force majeure. If the Company is required by law to accept a return, the Company will do so on terms imposed by law.
- 11. Release and Indemnity**
- 11.1 The Customer releases and indemnifies the Company from any and all damages, liabilities, expenses or losses including indirect, consequential losses (including but not limited to loss of profit) the Company may incur in relation to the Customer or any third party, where it is caused by or contributed to by the goods supplied or services performed, any defect or fault in workmanship or design or their use, a breach of these Terms or for any other reason whatsoever.
- 12. Limitation of Liability**
- 12.1 The Customer agrees, to the fullest extent possible by law, in relation to any damage, liability, expense or loss (including if contributed by the Company's negligence or breach) to limit any claim made to the Company, in the Company's sole discretion to the value of any express or other warranty provided by the Company to the Customer; replacement of the goods or services and/or the supply of equivalent goods; repair of the goods; repay the purchase price if payment has been received from the Customer; or payment of the cost of replacing, repairing or acquiring equivalent goods. Notwithstanding this clause, if the Company is required to replace the goods but cannot do so, the Company may refund the Price.
- 12.2 The Company shall not be liable for any damages for personal injury or death, any damage to property and/or any contingent, consequential, direct, indirect, special or punitive damages whether due to negligent act or omission of the Company or its employees or agents or otherwise and the Customer acknowledges this limitation of liability and agrees to limit any claim accordingly.
- 12.3 No other term, agreement, warranty, representation and/or understanding whether express or implied, is otherwise relating to or binding upon the Company other than these Terms is made or given by or on behalf of the Company.
- 12.4 The Customer is not entitled to make any claim upon the Company if any amounts are outstanding from the Customer to the Company.
- 13. Security**
- 13.1 In order to secure the performance by the Customer of its obligations, the Customer, and each proprietor of the Customer, hereby charges with payment of the moneys and compliance with all obligations owed by the Customer to the Company all beneficial interests (freehold and leasehold) in real and personal property held now or in the future by the Customer or proprietor. The Customer indemnifies the Company in relation to all of its costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights in relation to this security.
- 13.2 The Customer agrees that if demand is made by the Company, the Customer or, if applicable, that proprietor will immediately execute a consent to caveat, or a caveat or mortgage, as required by the Company. The Customer or, if applicable, that proprietor irrevocably and by way of security appoints the Company and any director, credit manager or solicitor engaged by the Company to be its, his or her true and lawful attorney to give effect to this clause 13 including but not limited to execute and register all documents.
- 14. PPSA**
- 14.1 Defined terms in this have the same meaning as in the *Personal Property Securities Act 2009* (Cth) ("PPSR").
- 14.2 This agreement constitutes a Security Agreement and a Purchase Money Security Interest (PMSI) in favour of the Company over the goods supplied or to be supplied to the Customer. The Company, as secured party, is entitled to register its interest in the goods supplied or to be supplied to Customer, under this agreement on the Personal Properties Securities Register as collateral by registering a financing statement or financing change statement.
- 14.3 The Customer waives its right to receive notification of or a copy of any verification statement with respect to the registration of a financing statement or a financing change statement.
- 14.4 The Customer indemnifies the Company on demand for all costs and expenses, including legal costs and expenses on a solicitor and client basis, associated with the registration, amendment or discharge of any financing statement registered by or on behalf of the Company or the enforcement or attempted enforcement of any security interest granted to the Company by the Customer.
- 14.5 The Customer undertakes to immediately notify the Company of any change to its name, address or personal details and authorises the Company to register a financing change statement without prior consent of the Customer.
- 14.6 The Customer agrees and undertakes not to permit another person or entity to register a financing statement without the prior written consent of the Company and the Customer shall provide written notice to the Company if they become aware another entity is seeking to register a security interest with respect to the Customer.
- 14.7 The Customer agrees that to the maximum extent permitted by law, sections 130, 142 and 143 of the PPSA do not apply and to waive rights under sections 157, 130(4), 132, 140, 129, 123, 130, 134, 137, 142, 143, 95 and any other right in favour of the Customer that can be lawfully contracted out of pursuant to section 115 of the PPSA.
- 15. Statement of Debt**
- 15.1 A certificate signed by a director, officer, credit manager or any other authorized person of the Company is prima facie evidence of the Customer's indebtedness to the Company.
- 16. Privacy and Credit Information**
- 16.1 The Customer irrevocably authorises the Company to make enquiries, exchange, collect and use a Customer's personal information (which may include information about credit history or credit worthiness) including credit information and information relating to property, business or other solvency matter from time to time as the Company may deem necessary which may include enquiries with persons nominated as trade references, financiers, any other credit provider, credit reporting bodies, any government department and/or any similar or other organization ("Information Provider") in order to obtain information on the credit position of the Customer; investigate the credit worthiness of the Customer in relation to the credit to be provided by the Company; for marketing purposes (unless the Customer has notified the Company it wishes to opt out of direct marketing); to allow the Company to provide a credit facility for the supply of goods and/or services to the Customer; to notify the credit provider of a default of the Customer; and to obtain a credit report or to permit a credit reporting body to maintain or update the Customer's credit file.
- 16.2 The Customer consents and irrevocably authorizes the Information Provider to disclose any information about the Customer in their possession to the Company and the Company to use or disclose (including to overseas third parties) any information which it holds for any purpose listed in clause 16.1 and agrees to waive all rights under the *Privacy Act 1988* (Cth).
- 17. Default**
- 17.1 Without prejudice to any other remedies available to the Company, if the Customer becomes insolvent or appoints an administrator, receiver, receiver and manager, liquidator or trustee in bankruptcy or is in breach of any these Terms (including any term for payment), all monies become immediately due and owing to the Company and the Company may immediately: terminate or suspend the supply of goods/services; retain all monies paid and/or take immediate possession of goods which have not been paid for; cease all future deliveries; cancel all or any part of any order unfilled; and/or recover from the Customer any loss of profits arising as a result of the Customer's default.
- 17.2 If the Company exercises its rights pursuant to clause 17.2, it is not liable to the Customer for any consequential loss or damages suffered by the Customer.
- 18. Force Majeure**
- 18.1 The Company is not in default or breach of any agreement as a result of force majeure. Force Majeure includes national emergency, war, prohibitive government regulations or other any cause beyond the reasonable control of the Company which means that the goods and/or services cannot or are otherwise delayed.
- 19. Customer Restructure**
- 19.1 The Customer must provide immediate written notice to the Company of any change to its structure or management. The Customer indemnifies the Company for any loss suffered by the Company resulting from the failure to advise.
- 20. Miscellaneous**
- 20.1 **Notices.** A notice, demand, wavier, approval or other document given must be in writing and may be given to the recipient by way of personal service, prepaid post, facsimile transmission or email transmission at the address of the party as provided from time to time.
- 20.2 **Severance.** If any term or provision or part of a term or provision of these Terms is held to be invalid then the term or provision or part which cannot be given effect shall be severed and the remaining terms and provisions shall remain in force.
- 20.3 **Waiver.** No rights under these Terms will be waived unless agreed in writing and signed by the Company. The Company does not waive a right if an extension or other forbearance is given to the Customer.
- 20.4 **Variation.** The Company may amend these Terms from time to time and the Customer agrees that it has notice of any amendment as any such amendment appears on the Company's website from time to time, whether or not notice is provided to the Customer.
- 20.5 **Assignment.** The Customer is not entitled to assign it rights under these Terms without the Company's prior written consent, which may be given in the Company's absolute discretion. The Company may assign its rights without the Customer's consent.
- 20.6 **Jurisdiction.** The Terms shall be governed by the laws of the state of Queensland each party irrevocably submits to the non-exclusive jurisdiction of the courts of the said state.
- 20.7 **Entire Agreement.** These terms supersede all previous agreements, discussions and representations between the Company and the Customer and constitute the entire agreement between the Company and the Customer.
- 20.8 **Counterparts.** This agreement may be signed in any number of counterparts and each counterpart shall together constitute one agreement. This agreement may be executed by facsimile, electronically or by way of electronic signature and the receiving party may rely upon same as if it was an original document or signature.