

Weldone Solutions Pty Ltd – Terms and Conditions of Trade

1. AGREEMENT

- 1.1 When Weldone agrees to provide Goods and Services, it does so on the basis that the terms and conditions set out in this document (**Contract**) apply.
- 1.2 By awarding work to Weldone, placing an order or otherwise engaging or instructing Weldone to proceed with work described in a Quote, the Client acknowledges that it has read, understood, accepted, and agreed to be immediately bound by this Contract.
- 1.3 This Contract contains all of the applicable terms of the agreement between the Parties and supersedes all prior understandings, agreements and representations. No other terms and conditions shall apply to Weldone unless signed by a director of Weldone.
- 1.4 If any term of this Contract conflicts with the Quote or any other document, Weldone will provide directions to resolve the inconsistency.
- 1.5 This Contract may only be varied in writing by a director of Weldone.
- 1.6 This Contract may be updated from time to time and those updated terms will apply to all dealings between Weldone and the Client entered into after the date that Weldone provides the updated Contract.

2. SPECIFICATIONS

- 2.1 It is the Client's responsibility to ensure the Quote comprehensively describes the Goods and Services.
- 2.2 A Quote is valid and can be accepted by the Client up to 30 days after it is provided unless Weldone withdraws it sooner.
- 2.3 Any Quote is prepared in good faith and is only binding on Weldone to the extent that Weldone was given all relevant information at the time of preparing it.
- 2.4 The Client must give Weldone all relevant details including quantities, location for delivery and specifications. The Client is responsible for making all enquiries necessary to assure itself that the Goods and Services are fit for the purpose(s) required by the Client.
- 2.5 Where the Client supplies Weldone with any design specifications and/or drawings, the Client is responsible for accuracy. Weldone will not be liable for any errors in the Goods or Services that are caused by incorrect or inaccurate data being supplied by the Client.
- 2.6 The Client is responsible for checking and satisfying itself as to all specifications, shop drawings and particulars contained in any documents prepared or accepted by Weldone. Weldone accepts no liability in respect of any alleged or actual errors or omissions arising inadvertently unless by the misconduct of Weldone.
- 2.7 All customary industry tolerances shall apply to dimensions and measurements, unless Weldone agrees otherwise in writing.
- 2.8 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in Weldone's or the manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by Weldone.

3. SUPPLY OF GOODS AND SERVICES

- 3.1 Weldone will supply the Goods and Services to the Client as described in the Quote and in accordance with this Contract.
- 3.2 Weldone will comply with all applicable Laws at all times when performing its obligations under this Contract.
- 3.3 Any recommendations, documents or advice given by or on behalf of Weldone is given in good faith for the Client's guidance only, on a no liability basis and is not a representation by Weldone or to be considered binding on it. The Client is responsible for verifying all such matters.
- 3.4 Weldone will use reasonable endeavours to meet any milestone dates or agreed completion dates (if any) but any such dates shall be estimates only and time for performance by Weldone shall not be of the essence of this Contract.
- 3.5 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed. If Weldone, reasonably forms the opinion that it is not safe for the installation of Goods to proceed then Weldone shall be entitled to delay installation of the Goods until Weldone is satisfied that it is safe for the installation to proceed.
- 3.6 The Client acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium alloys available and manufacturing standards and tolerances shall not be deemed to be a defect in the Goods.
- 3.7 The Client acknowledges that Goods supplied may:
 - (a) exhibit variations in shade tone, colour, texture, surface and finish, and may fade or change colour over time. Weldone will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
 - (b) fade or change colour over time; and
 - (c) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (d) mark or stain if exposed to certain substances; and/or
 - (e) be damaged or disfigured by impact or scratching.
- 3.8 To the maximum extent permitted by law, Weldone excludes all implied warranties including those related to merchantability, fitness for purpose, satisfactory quality and/or compliance with description.
- 3.9 Any variations to the Goods and Services must be agreed between the Client and Weldone and will be priced in accordance with (at Weldone's election): (a) Weldone standard price lists; or (b) the reasonable cost to Weldone of providing the Goods and Services, and shall include an amount for any design, management, overheads and profit; or (c) otherwise in Weldone's discretion. No failure to agree on price shall disentitle Weldone from being paid for any variation which the Client takes the benefit of.

3.10 By instructing Weldone to undertake a variation or otherwise accepting a variation to the Goods and Services, the Client acknowledges that is to be construed as agreement and the Client is liable to pay the price described in clause 3.9.

4. SITE

- 4.1 The Client must give Weldone access to the Site at all times necessary or desirable for the supply of Goods and Services.
- 4.2 The Client shall provide Weldone with a suitable free power source.
- 4.3 The Client warrants that the environment on and around the Site is safe and secure and complies with all applicable health and safety Laws.
- 4.4 Before the date that Goods and Services start being provided by Weldone, the Client must at its own cost obtain and maintain all necessary licences and consents and comply with all relevant Laws as required for Weldone to provide the Goods and Services, including any licences and consents needed for the installation of any Goods, the use of Client materials and the use of Client equipment.
- 4.5 Before any work starts at the Site, the Client must advise Weldone of:
- (a) all Site conditions of which Weldone should be aware;
 - (b) any Site condition assumptions documented by Weldone which are inaccurate or incomplete;
 - (c) any concealed Site conditions such as service locations, pipes, wires and cables; and
 - (d) any hazardous, toxic, radioactive, noxious or poisonous materials whether in solid liquid or gaseous form (**Hazardous Substances**) present on the Site.
- 4.6 If there are latent conditions at the Site which Weldone could not have reasonably been aware through observation or investigations (to the extent permitted) or information provided by the Client at the time of preparing the Quote, Weldone may revise the Price.
- 4.7 The Client is responsible for all costs for removal and/or treatment of Hazardous Substances found within the Site.
- 4.8 The Client must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Client fails to comply with this clause, then Weldone accepts no responsibility for installation decisions that need to be made by Weldone in the Client's absence.
- 4.9 The Client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow Weldone clear access along the proposed fence line prior to commencement of work by Weldone unless otherwise agreed in writing between Weldone and the Client. Under no circumstances will Weldone handle removal of asbestos product.
- 4.10 Where fencing is installed on a retaining wall Weldone shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 4.11 Weldone shall not be responsible for digging land out under fence lines nor removal of soil from the work site.
- 4.12 Whilst Weldone will take all due care during performance of its obligations, it will not accept any responsibility for any damage during installation except in the case of wilful misconduct.
- 4.13 Weldone reserves the right to touch-up all products supplied and installed on the work site to rectify minor blemishes or damage to paintwork.
- 4.14 If Weldone considers that the health or safety of any person or property may be adversely affected by the performance of the Contract, Weldone may immediately suspend work without liability to the Client. The Client agrees to indemnify Weldone for any liability suffered by Weldone in suspending work under this clause.

5. CLIENT WARRANTIES

- 5.1 The Client warrants that:
- (a) it has the power and capacity to enter into and perform its obligations set out in this Contract;
 - (b) it has the financial capacity to pay the Price by the due date(s) and is not and has no reason to suspect it might experience an Insolvency Event;
 - (c) its obligations set out in this Contract are valid and binding and enforceable against it;
 - (d) if it is a trustee, it has the right to be fully indemnified out of the assets of the trust in respect of obligations incurred by it under this Contract;
 - (e) it will cooperate in good faith with Weldone and its personnel;
 - (f) all information it provides is accurate, up-to-date, complete and not misleading including information provided in tender documentation;
 - (g) it has taken reasonable care in preparing the specifications it has provided to Weldone; and
 - (h) it will respond in a timely manner to requests for information from Weldone.
- 5.2 In consideration of Weldone agreeing to supply the Goods and Services at the request of the Client, the representative who signs the Do and Charge Form or Credit Card Application Form (as the case may be) agrees that:
- (a) it personally guarantees the due and punctual payment of all amounts due from the Client, together with the due and punctual observance of the Client's obligations under this Contract as follows:
 - (b) it will immediately on demand pay all relevant amounts to Weldone if for any reason the Client does not pay any amount owing to Weldone or any amounts are recovered from Weldone by a liquidator, administrator or otherwise;
 - (c) if it receives any amounts in the winding up, liquidation, administration or other arrangement with creditors of the Client, it must hold those amounts on trust on behalf of Weldone;
 - (d) it charges in favour of Weldone all of its right, title and interest (joint or several) in any real property and personal property owned by it now or in the future, to secure the performance by the guarantor of its obligations under this clause;
 - (e) this personal guarantee and indemnity constitutes a security agreement for the purposes of the PPSR;

- (f) it will indemnify Weldone for any cost, loss or liability incurred in connection with the supply of goods and/or services to the Client; or the recovery of monies owing to Weldone by the Client including the enforcement of this guarantee and indemnity;
- (g) this is an unconditional and continuing guarantee and indemnity which is irrevocable and remains in full force and effect until the whole of the Client's obligations to Weldone have been fully paid satisfied and performed; and
- (h) it has obtained legal advice or decided not to having been given adequate opportunity and encouraged to do so.

6. PAYMENT AND PRICE

- 6.1 In consideration of the Services to be performed and Goods to be Delivered by Weldone, the Client must pay the Price.
- 6.2 The Client must pay Weldone the Price specified in the relevant tax invoice within 7 days of the invoice, without any deduction or setoff and time being of the essence.
- 6.3 If the Client disputes any part of a tax invoice, the Client must notify Weldone within 7 days of receipt of the tax invoice and provide the reasons for disputing the relevant part of the tax invoice to be resolved in accordance with clause 15. The Client must pay the undisputed part of the invoice.
- 6.4 Interest will accrue on all overdue amounts at the Interest Rate from the due date until the amount is paid in full. The Client must also indemnify Weldone for any amounts incurred in recovering the debt including legal and debt collector fees.
- 6.5 Weldone may withhold the delivery of Goods or pause the performance of Services if the Client has any overdue amounts without liability to the Client. The Client agrees to indemnify Weldone for any liability suffered by Weldone in suspending work under this clause.
- 6.6 Unless expressly set out in the Quote or this Contract, the Price has been determined on the basis that:
 - (a) all work will be carried out during Weldone's normal working hours, in the manner and order determined at Weldone's discretion;
 - (b) Weldone will have continuous, uninterrupted, and unhindered access to the Site and the people, equipment and facilities it requires at the place(s) where the work is to be carried out;
 - (c) Weldone will not be required to perform any extraneous work, patching/painting, carpet lifting or refitting, building work or decoration, working with Hazardous Substances (including asbestos, synthetic mineral fibres etc) or excavation works; and
 - (d) the Client will provide adequate facilities at the Site including parking, power, lifting equipment, scaffolding, scissor lifts and rubbish disposal.
- 6.7 The Client agrees to pay all additional costs and charges arising from (a) any deviation from the assumptions set out in clause 6.6 and elsewhere in this Contract; (b) any alteration to the specifications required by the Client; (c) any interruption or delays by the Client, its employees, agents, or other trades during the course of work performed, including the reasonable costs of delay; (d) any increase to the cost of materials; (e) change of Law; or (f) additional site allowances (other than those set out in a State or Federal award).
- 6.8 Without limiting any other provision of this Contract, in the event that any Quoted work is delayed due to an act, omission, breach of this Contract or instruction of the Client, the Client acknowledges and agrees that Weldone may be required to defer the work due to its resources being otherwise committed to other projects. Weldone shall not be liable to pay any compensation for any such delays.
- 6.9 Weldone shall not be liable for any claim for losses, damages or costs arising from defective work or materials provided by other tradespersons. It shall be the Client's responsibility to ensure the work of other tradespersons installing the Goods provided by Weldone or other interactive and/or supportive components as per the manufacturer's instructions or recommendations.
- 6.10 Call-outs for Services for emergencies or outside of normal working hours will be subject to additional charges.
- 6.11 Weldone shall be compensated on a dollar for dollar basis:
 - (a) for any material and/or equipment price increases from the effective date of this Contract; and/or
 - (b) for any cost relating from inflation which exceeds at any point in time during the term of this Contract the inflation rate at the effective date of the Contract.Weldone shall provide written notice to the Client of any such compensation payable under this clause 6.11.
- 6.12 Weldone may change its standard rates and prices at any time and the updated rates will apply to any Goods and Services supplied from the date of that change.

7. TITLE, RISK AND DEFECTS

- 7.1 Title in the Goods passes to the Client on the date Weldone receives all amounts owing in respect of the Goods and any associated Services.
- 7.2 Risk in the Goods will pass to the Client upon Delivery and until title in such Goods passes in accordance with clause 7.1, the Client will hold such Goods as bailee for Weldone.
- 7.3 Until the Goods are fully paid for, the Client must: (a) store them separately from all other goods of the Client and any third parties in such a way that they remain readily identifiable as Weldone's property; and (b) maintain the Goods in satisfactory condition insured for their full replacement value against all risks to the reasonable satisfaction of Weldone.
- 7.4 In the event that Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Client's expense.
- 7.5 The Client must give written notice to Weldone of any error (in quantity or description), or any faults or defects within 14 days of the date of, as applicable, the Delivery of the Goods or date of completion of all of the Services. If no such notice is given by the Client, the Client is deemed to have accepted the Goods or Services and to the maximum extent permissible by law, releases Weldone from any claim or liability in respect of the Goods and Services.
- 7.6 Weldone will, at its cost, repair, replace or otherwise make good any established error, fault or defect notified to it under clause 7.5. The decision as to repair, replacement, performance or other rectifying works will be made by Weldone in its absolute discretion.

8. SECURITY INTERESTS

- 8.1 As security for payment of the Price and the performance of this Contract, the Client grants a security interest in favour of Weldone over all its assets and undertaking (including any Goods supplied by Weldone), in which it now or in the future has any legal or beneficial interest.
- 8.2 Without limiting any other provision of this clause 8, if Weldone determines that this Contract contains a security interest for the purposes of the PPSA (**Security Interest**), the Client must promptly do anything (including obtaining consents, producing documents, executing documents and supplying information) that Weldone requests and considers necessary to:
- (a) ensure the Security Interest is enforceable, perfected and otherwise effective;
 - (b) obtain a first ranking purchase money security interest in Goods and other personal property supplied by Weldone;
 - (c) enable Weldone to apply for any registration, or give any notification, in connection with the Security Interest; and
 - (d) enable Weldone to exercise rights in connection with the Security Interest.
- 8.3 The Client will pay Weldone's expenses (including legal costs, registration fees and stamp duty) incurred in connection with the collection and enforcement of, or preservation of any rights under this Contract. Such expenses may be recovered from the Client as a liquidated debt.
- 8.4 Where payment is overdue in whole or in part for any of the Goods, Weldone or its nominee may (without prejudice to any of its other rights) recover and/or resell the Goods and may enter the Client's premises or any other place where the Goods are stored by the Client for that purpose without being liable for any loss or damage caused.
- 8.5 The Client grants to Weldone and its receivers and agents an irrevocable licence and authority to enter the Client's premises to recover the Goods, provided that Weldone may only recover and resell for its own account sufficient of the Goods to satisfy all the Client's unpaid liabilities in respect of the Goods and cost of resale and account to the Client for the balance of funds received.
- 8.6 Weldone is not required to give any notice under the PPSA (including a notice of a verification statement) under or arising out of anything relating to a Security Interest unless the notice is required by the PPSA and the giving of it cannot be excluded.
- 8.7 For the purposes of section 115(1) of the PPSA, the Client waives the rights and benefits of sections 95, 121(4), 125, 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143. Unless otherwise agreed and to the extent permitted by the PPSA, the Supplier and Client agree not to disclose information of the kind referred to in section 275(1) of the PPSA. The Client waives any rights it may have under section 275(7)(c) of the PPSA.
- 8.8 Weldone may apply amounts received to satisfy obligations secured by a security interest in any way it determines in its absolute discretion.
- 8.9 Where either party provides any security for payment such as a bank guarantee, it will be promptly returned following the completion of all of the parties duties and obligations of and incidental to this Contract.

9. CREDIT AND GUARANTEES

- 9.1 If the Client has made an application to Weldone for the supply of Goods and Services under this Contract to be on credit, Weldone revoke its agreement or decline to extend any additional credit to the Client at any time in its discretion.
- 9.2 Weldone may at any time require that a guarantee and indemnity be provided by a related entity of the Client (including a director of the Client where the Client is a body corporate) in the form directed by Weldone.
- 9.3 The Client must notify Weldone of any proposed change in its ownership or control (as that term is defined in the Corporations Act) which shall be deemed to be a request for assignment. The Client must immediately notify Weldone in writing of any change to the address of the Client.

10. PERSONAL INFORMATION

- 10.1 The Client consents to Weldone's collection and use of personal information in accordance with the privacy policy available on Weldone's website.

11. INSURANCE

- 11.1 Weldone will take out and maintain public liability insurance in the amount of at least \$20 million and Worker's Compensation insurance as required by Law.
- 11.2 The Client will take out and maintain all insurances as would be expected to be taken out by a prudent operator in the Client's industry including:
- (a) third party liability insurance;
 - (b) public liability insurance in the amount of at least \$20 million;
 - (c) insurance to cover the replacement value of the Goods as set out in clause 7.3.

12. LIABILITY

- 12.1 The Client indemnifies Weldone and its personnel from and against any Liability which any of Weldone or its personnel pays, suffers or incurs or is liable for arising out of or in connection with:
- (a) a breach by the Client of this Agreement;
 - (b) a warranty given being inaccurate, incomplete or misleading;
 - (c) any negligent act or omission, unlawful conduct or other misconduct by the Client, its personnel or any third party relating to the Contract or the Goods or Services, except to the extent caused or contributed to by Weldone.
- 12.2 Weldone indemnifies the Client from and against any Liability the Client pays, suffers or incurs or is liable for arising out of or in connection with injury or death of persons, or damage to property, as a result of any negligent act or omission, unlawful conduct or

other misconduct by Weldone or any person it is responsible for in the performance of this Contract, except to the extent caused or contributed to by the Client.

12.3 To the extent permitted by Law:

- (a) Weldone's maximum aggregate liability under this Contract whether by way of breach of contract, tort (including negligence), breach of statutory duty, restitution or otherwise, will be limited to the Price paid by the Client under the Quote.
- (b) The remedy available to the Client is any one or more of the following at the option of Weldone in its absolute discretion:
 - (i) the replacement of Goods or reperformance of Services;
 - (ii) the supply of equivalent Goods or Services;
 - (iii) repair of Goods; or
 - (iv) payment of the cost of (i), (ii) or (iii).

12.4 Neither Party will be liable to the other to make any payment (whether by way of indemnity, damages or otherwise) in respect of any indirect or consequential loss arising under this Contract. Losses specifically excluded for the purposes of this clause include loss of opportunity; loss of profit; loss of revenue; damage to goodwill or reputation; business interruption; and damage to credit rating.

12.5 Without limiting any other provision of this Contract, Weldone does not accept any liability from any third party to this Contract, including the Client's downstream customers, suppliers and Related Bodies Corporate. The Client indemnifies Weldone in respect of any Liability claimed against Weldone by a third party in respect of the supply of Goods and Services under this Contract.

13. TAXES AND DUTIES

13.1 All amounts referred to in this Contract are exclusive of GST unless otherwise specified. Where any taxable supply occurs in connection with this Contract, Weldone may increase the amount payable for the Services and/or Goods by the amount of the applicable GST.

13.2 The Client is responsible for payment of all other applicable taxes and duties in relation to the supply of the Goods and Services.

14. TERMINATION

14.1 Either Party may terminate this Contract:

- (a) if the other Party commits a Material Breach of its obligations under this Contract and either:
 - (i) the breach is not capable of remedy; or
 - (ii) it has not been remedied within 10 business days of receipt a Breach Notice; or
- (b) if an Insolvency Event occurs in respect of the other Party.

14.2 Termination of this Contract is without prejudice to and does not affect the accrued rights or remedies of either Party.

14.3 Weldone may elect (in its absolute discretion) to do one or more of the following as an alternative to terminating this Contract:

- (a) revoke any credit provided to the Client and require any further transactions to be paid in advance;
- (b) require all amounts owing to Weldone to be immediately paid without deduction notwithstanding whether or not payment has fallen due; and
- (c) cancel any discounted prices given to the Client and recalculate all outstanding invoices (including invoices issued but not paid by the Client) on Weldone's standard prices.

14.4 If this Contract is terminated prior to the completion of work described in a Quote for any reason other than persistent or Material Breach by Weldone, the Client will be required to pay Weldone the remaining fixed charges (if any) for Services up to the end of the term, costs for materials purchased but not yet used, costs of redundancy, an allowance for lost profit and any out of pocket costs incurred by Weldone as a result of the early termination.

14.5 The Client will be liable for payment of Goods Delivered and Services performed up to the termination date plus a reasonable decommissioning fee.

15. DISPUTE RESOLUTION

15.1 If there is a dispute between the Parties arising out of or in connection with this Contract, then within 10 Business Days of a Party notifying the other Party of that dispute, senior representatives from each Party must meet and use reasonable endeavours to resolve the dispute by negotiation.

15.2 If the dispute is not resolved 20 Business Days of notification under clause 15.1, it must be referred for external mediation with an agreed independent mediator. If a mediator cannot be agreed within 5 Business Days, a mediator appointed by the Australian Disputes Centre. The costs of the mediator shall be borne by the parties equally.

15.3 Where a mediator is appointed by the Australian Disputes Centre, the mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC (**the Guidelines**). The terms of the Guidelines are hereby incorporated into this Contract.

15.4 If the dispute cannot be resolved after completing the processes in clauses 15.1 and 15.2, either Party may commence legal proceedings in relation to the dispute.

15.5 Nothing in this clause 15 prevents a Party seeking urgent injunctive relief from a court; or the Parties engaging in alternative dispute resolution processes such as mediation at any time before or after the commencement of legal proceedings in relation to the dispute.

15.6 Despite the existence of a dispute, the Parties must continue to perform their respective obligations under this Contract.

16. FORCE MAJEURE

16.1 "Force Majeure" is an event or circumstance, or combination of events or circumstances, which (a) is beyond the reasonable control of Weldone; (b) causes or results in default or delay in the performance by Weldone of any of its obligations under this Contract; (c) is without the fault or negligence of Weldone and could not reasonably have been prevented, avoided or overcome by Weldone.

16.2 Force Majeure includes the following events (provided that the requirements of clause 16.1 are satisfied in each case):

- (a) act of terrorism, riot, war, invasion, act of foreign enemies, hostilities (whether war is declared or not);
 - (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive assembly or nuclear component;
 - (c) strikes or industrial disputes but excluding any industrial dispute which is specific to the performance of the Services of this Contract;
 - (d) catastrophic failure of, the breakdown of or accident to plant, machinery, equipment, lines or pipes;
 - (e) an act of God, earthquake, lightning, cyclone, tsunami, fire, flood, landslide, drought or meteor;
 - (f) change in any Law or its interpretation; and
 - (g) embargo.
- 16.3 If an event of Force Majeure delays or prevents the performance of this Contract by Weldone, Weldone must notify the Client as soon it becomes aware of the event of Force Majeure and use reasonable endeavours to minimise the effects and duration of the event of Force Majeure.
- 16.4 If Weldone's performance under this Contract is prevented whether in whole or in part or delayed by any event of Force Majeure, Weldone is not considered to be in default of this Contract; and is entitled to suspend performance of its obligations under this Contract without liability.
- 16.5 Weldone shall have the right to claim from the Client an extension of time for delays; and/or compensation for any additional costs Weldone has incurred and would or is expected to incur, including resulting from inflation (measured as a quarter on quarter increase from the rate of inflation at the date of this Contract), if and to the extent that such delays and/or costs are the direct or indirect consequence of any declared or non-declared war, terrorism or conflict, the scarcity of raw materials, electrical components or any other related items, energy price increase, an economic crisis or cyberattacks.
- 16.6 The occurrence of Force Majeure does not excuse the Client from payment of any amount due to Weldone in accordance with this Contract.

17. INTELLECTUAL PROPERTY

- 17.1 The Client warrants that all designs, specifications or instructions given to Weldone will not cause Weldone to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Weldone against any action taken by a third party against Weldone in respect of any such infringement.
- 17.2 Where Weldone designs, draws or develops anything for the Client, it reserves full right title and interest in the intellectual property including the copyright in any designs and drawings and documents which shall remain the property of Weldone.
- 17.3 Weldone grants to the Client a non-exclusive, non-transferable, revocable and royalty-free licence to use any intellectual property of Weldone (including all materials supplied in connection with the Goods and Services) to the extent necessary for the Client to use the Goods and Services in accordance with their express purpose contemplated by this Contract.
- 17.4 The Client:
- (a) warrants that it and its Related Bodies Corporate will not use, reproduce, modify, copy, record or disclose the intellectual property provided to it by Weldone to the competitive disadvantage of Weldone; and
 - (b) warrants it will use the Intellectual Property provided to it by Weldone only as necessary for the Client to obtain the express benefit of this Contract.
- 17.5 The Client must assign all of its right title and interest in the Intellectual Property for the sole benefit of and exploitation by Weldone including waiving any moral rights it may have in any customisations, developments, modifications, alterations and updates to the Intellectual Property unless prior written agreement is obtained from Weldone.
- 17.6 The Client agrees that Weldone may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Weldone has created for the Client.

18. CONFIDENTIAL INFORMATION

- 18.1 Subject to clause 18.2, each Party must ensure that it and its Related Bodies Corporate do not disclose or use Confidential Information of the other Party for a purpose other than those contemplated by this Contract, or disclose any information or documents supplied in connection with this Contract that are specifically indicated to be confidential and that are not in the public domain.
- 18.2 A Party may disclose any Confidential Information (including the existence and terms of this Contract):
- (a) that ceases to be confidential other than due to a breach of clause 18.1;
 - (b) received from a third party provided that it was not acquired directly or indirectly by that third party as a result of a breach of clause 18.1;
 - (c) to a bona fide prospective purchaser, investor, joint venture participant or financier (or any of their respective advisors) in relation to that Party or its Related Body Corporate, provided that such recipient is subject to confidentiality undertakings equivalent to this clause and the Party disclosing such Confidential Information remains responsible for ensuring that the confidentiality of the Confidential Information is preserved; or
 - (d) that is required to be disclosed by law (except any information of the kind referred to in section 275(1) of the PPSA) or any government or governmental body, authority, stock exchange rule or agency having authority over a Party or its Related Body Corporate.

19. INDEPENDENT CONTRACTOR

The relationship between the Client and Weldone is that of a principal and an independent contractor. Nothing in this Contract will be construed as creating a relationship of employment, agency, partnership, fiduciary, joint venture or any other relationship between the Parties.

20. ASSIGNMENT AND SUBCONTRACTING

- 20.1 The Client may not assign or novate any of its rights and obligations under this Contract without the prior written consent of the Weldone, such consent must not be unreasonably withheld or delayed.
- 20.2 Weldone may assign or novate any of its rights and obligations under this Contract and will provide the Client with written notice if it does so.
- 20.3 Weldone may subcontract all or part of its obligations under this Contract, provided that Weldone remains responsible for the performance of this Contract.

21. GOVERNING LAW

- 21.1 This Contract is governed by the laws of Victoria.
- 21.2 A term or part of a term of this Contract that is illegal or unenforceable for any jurisdiction is to be severed from this Contract for that jurisdiction and the remaining terms or parts of the terms under this Contract continue in force.
- 21.3 The sale of Goods and Services may be subject to certain guarantees and warranties that cannot be excluded under the Australian Consumer Law. This Contract is to be read subject to that law and nothing in this Contract shall operate to modify or exclude the conditions, warranties and undertakings, and other legal rights which cannot be modified or excluded under the Australian Consumer Law.
- 21.4 At Weldone's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the *Building and Construction Industry Security of Payment Act 2002* (Vic) ("BCISPA") may apply. Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the BCISPA, except to the extent permitted by the Act.

22. GENERAL

- 22.1 (**Further Assurance**) The Client must at the request of Weldone do all things necessary to enable the parties to carry out or obtain the benefit of the provisions of this Contract or to make it easier to enforce.
- 22.2 (**Waiver**) The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.3 (**Notices**) Any written notice given under this Contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in this Contract;
 - by sending it by registered post to the address of the other party as stated in this Contract;
 - if sent by email to the other party's last known email address.
- Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. DEFINITIONS

In this Contract:

Breach Notice means a written notice to a Party identifying a breach of this Contract and specifying what is required to remedy the breach.

Business Day means Monday to Friday inclusive, but excludes public holidays in the State where the Site is located.

Client means the party listed in the Quote. If there is more than one Client listed, it shall bind each party jointly and severally.

Confidential Information means any information relating to this Contract, or to the affairs of a Party or any Related Body Corporate of that Party that is disclosed in connection with this Contract including all confidential, non-public or proprietary information relating to Weldone's business, technology or other affairs and includes the Contract and any pricing arrangements or discounts discussed or agreed by the parties.

Contract means this document including any annexures.

Corporations Act means the *Corporations Act 2001* (Cth).

Deliver, Delivery and Delivered mean, subject to clause 7, receipt of the Goods into the control of possession of the Client or delivery to the Site whether or not the Client is present.

Goods means the Goods that Weldone has agreed to supply and any other goods supplied at the request of the Client from time to time.

GST means the tax payable on taxable supplies under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) including any related legislation that is enacted to impose, validate, recapture or recoup such tax.

Insolvency Event means, with respect to a Party, that (a) it is insolvent within the meaning of section 95A of the Corporations Act; (b) it is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration, wound up or has had a receiver, receiver and manager, controller (as defined in the Corporations Act) or similar officer appointed to any part of its property; (c) it has entered into an arrangement, compromise, moratorium or composition with, or assignment for the benefit of, its creditors or any class of them; (d) it is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand; (e) it is unable to pay its debts when they fall due; (f) it stops, suspends or threatens to stop or suspend payment of all or a class of its debts; or (g) it is subject to any event which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in (a) to (f).

Interest Rate means the Bank Bill Swap Rate in effect at the time of calculation as published by the Australian Stock Exchange, plus 3%.

Intellectual Property means Weldone's rights and interest in copyrights, patents, trade marks, service marks, trade names, business names, company names, domain names, designs, improvements, trade secrets, know-how (including patentable inventions), program code, system design and similar industrial commercial and intellectual property.

Law means any statute, ordinance, code, law, order, decree, circular, rule, regulation or stock exchange rule whether in effect now or in the future.

Liability means any claim, action, demand, loss, fine or payment.

Material Breach means a breach of warranty, the non-payment of any amounts due to Weldone under this Contract or a breach of any of the following clauses 2, 4, 6.1, 6.2, 6.4, 6.7, 7.3, 8.2, 8.3, 8.4, 9.3, 11.2, 12.1, 13.2, 15, 17.5, 18, **Error! Reference source not found.** or REF_Ref98683960 \w\h * MERGEFORMAT 20.1 or persistent breaches of any other clauses.

Party means the Client or Weldone, as relevant in the context and **Parties** means both of them.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price has the meaning give in clause 6.

Quote means a proposal, quote, tender, order, invoice or other documents which set out the Goods and/or Services.

Related Body Corporate has the meaning defined in the Corporations Act.

Services means the Services that Weldone has agreed to supply and any other services supplied at the request of the Client from time to time.

Site means the site at which the Goods and Services are to be delivered.

Taxes means any tax, levy, impost, charge or duty and any related interest, penalty, charge, fee or other amount.

Weldone means Weldone Solutions Pty Ltd ABN 54 605 431 641 unless another supplier of Goods and/or Services is specified in the Quote.

24. INTERPRETATION

In this Contract, headings are for convenience only and the following rules apply unless the context requires otherwise:

- (a) the Quote forms part of this Contract and is read subject to this Contract;
- (b) a reference to \$ or dollar is to Australian currency;
- (c) mentioning anything after 'includes', 'including' or similar expressions does not limit what else might be included;
- (d) a reference to a Party includes the Party's successors, administrators, trustees, permitted substitutes and permitted assigns;
- (e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for and any subordinated legislation issued under, that legislation or legislative provision;
- (f) a provision of this Contract must not be construed to the disadvantage of a Party merely because the provision is an exception or exemption for the benefit of that Party; and
- (g) a reference to a right or obligation of any two or more persons comprising a single Party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that Party is a reference to any of those persons separately.