

Allshelter Pty Ltd**1 Definitions and interpretation**

Australian Consumer Law means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as varied from time to time.

Company means Allshelter Pty Ltd (ACN 163 288 355).

Consequential Loss means:

- (a) loss of revenue;
- (b) loss of profit or anticipated profit;
- (c) loss of business;
- (d) loss of business reputation;
- (e) loss of opportunity;
- (f) loss of anticipated savings;
- (g) loss of goodwill; and
- (h) any other loss suffered by a party as a result of a breach of the Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

Customer means a person placing an Order with or purchasing Products from the Company, and includes any person acting on behalf of that person.

Insolvency Event, for a party, means the occurrence of any one or more of the following events:

- (a) a meeting has been convened, resolution proposed, petition presented or order made for the winding up of the party;
- (b) an administrator is appointed to a party or action is taken to make that appointment;
- (c) a receiver, receiver and manager, provisional liquidator, liquidator, or other officer of the Court, or other person of similar function has been appointed regarding all or any material asset of the party;
- (d) a party ceases to carry on business;
- (e) a party enters into a compromise or arrangement with its creditors or a class of them;
- (f) a security holder, mortgagee or chargee has taken, attempted or indicated an intention to exercise its rights under any security of which the party is the security provider, mortgagor or chargor;
- (g) a party is or states that it is unable to pay its debts when they fall due; or
- (h) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

Intellectual Property Rights means all intellectual property rights, including but not limited to:

- (a) patents, copyright, registered designs, trade marks and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any rights referred to paragraph (a),

created by the Company (whether before or after the Agreement is entered into), relating to the Products whether alone or with a third party in the course of or in connection with selling the Products to the Customer, including any drawings prepared by the Company.

Order means an offer by a Customer to purchase Products from the Company.

PPSA means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations, as varied from time to time.

PPSR means the Personal Property Securities Register established under the PPSA.

Products includes any shelters, structures, goods, services or materials ordered by the Customer from the Company or supplied by the Company on the Order of the Customer.

MTO Product refers to made to order products, which include any Product that has been specially ordered for the Customer (whether locally or from overseas) or which is specially manufactured for the Customer or is not a stocked item.

Sale T&Cs means these Terms and Conditions of Sale.

Warranty means the warranty terms and conditions applicable to the Products as notified in writing by the Company.

In these Sale T&Cs:

- (a) a reference to a thing includes a part of that thing;
- (b) "including" and similar expressions, and the giving of examples, do not limit what else may be included;
- (c) headings are for ease of reference only and do not affect interpretation;
- (d) the singular includes the plural and vice versa; and
- (e) another grammatical form of a defined word or expression has a corresponding meaning.

2 Sale Terms

- 2.1 These Sale T&Cs apply to all transactions and associated dealings between the Company and the Customer including all Orders and sales, and will prevail over all other terms and conditions (including any that may be presented by the Customer, and any previously agreed between the parties).
- 2.2 The Sale T&Cs as published on the website of the Company at the time of placing an Order will apply to such Order.
- 2.3 Any supply of Products by the Company to the Customer is a supply pursuant to a separate contract formed between the Company and Customer constituting these Sale T&Cs and the relevant Order accepted by the Company (**Agreement**) to the exclusion of all other terms and conditions other than any expressly agreed in writing by the parties.

3 Order and Acceptance

- 3.1 Any Order placed or made by the Customer constitutes an irrevocable offer and unqualified acceptance by the Customer of the Sale T&Cs.
- 3.2 The Company reserves the right to accept or reject an Order for any reason, including without limitation the unavailability of any Product, an error in the Product description in a Company publication, or an error in the Order. The Company may require additional verification or information before accepting any Order.

- 3.3 The Company may accept any Order in whole or in part by providing confirmation of the Order to the Customer. Acceptance may be oral or in writing at the Company's discretion.
- 3.4 No terms or conditions sought to be imposed by the Customer (including any that are incorporated into a tender, offer, counteroffer, proposal, confirmation, invoice or other document issued by or on behalf of the Customer) will apply, unless expressly accepted in writing by the Company.
- 3.5 Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to these Sale T&Cs) there is no right of return. The Company may grant its consent subject to an Order cancellation charge of 20% of the value of the Products Ordered.
- 3.6 A cancellation of an Order for any MTO Product will not in any case entitle the Customer to any return or refund.
- 3.7 The Company reserves the right to substitute Products that are not available for comparable Products of equal or higher specification, unless the Order specifies that the Products are "not to be substituted".

4 Price

- 4.1 The price of the Products will be as agreed in writing between the parties or where there is no agreed price, the price will be the amount indicated on the then-current price list published by the Company describing the Products, or as indicated on the quotation provided by the Company to the Customer regarding Products ordered (where the latter will override the price list in the event of any inconsistency).
- 4.2 If the Company's cost of supplying the Product increases by more than 10% due to any change in the amount of any GST and other taxes, currency fluctuations, duties, freight and transport charges which may be applicable, the Company may upon written notice at any time before delivery increase the price of the Products by the corresponding amount.
- 4.3 The Company may charge, in addition to the price of the Products, the costs incurred by the Company for delivery of the Products in accordance with the Agreement. While the Company will use reasonable endeavours to notify these costs to the Customer in advance, these rates are subject to change without notice.
- 4.4 The date for payment of the price of the Products will be set out in the invoice, or if not set out in the invoice, seven (7) days from the date of the invoice.

5 Credit granting and payment

- 5.1 The Company may require a deposit to be paid upon placement of an Order, with the balance to be paid prior to delivery, or may agree to extend credit to the Customer for part or all of an Order. Whether credit is extended to the Customer, and the applicable terms (including any credit limit), are in the Company's discretion. Credit approval once granted may be withdrawn or varied by the Company at any time in its sole discretion. Where credit approval has not been granted, or is withdrawn, or is outside of credit terms, payment for all Products is required before delivery (in cash or cleared funds).
- 5.2 Where credit has been granted to the Customer, all tax invoices issued by the Company are due and payable by the date for payment agreed in writing by the Customer and the Company but if no agreement in writing is made then no later than seven (7) days from the date of the tax invoice.
- 5.3 The Company may charge in addition to the price of the Products a fee for the administration and financing cost of providing credit to the Customer at a rate dependent on the amount and value of credit granted. The rate of such account fee is specified in the account opening letter issued by the Company to the Customer and is subject to change by the Company on provision of written notice to the Customer. The Customer must pay such account fee in accordance with tax invoices issued by the Company.

6 Credit Policy and Default

- 6.1 The Company may charge interest on all amounts not paid by the Customer within the stated terms for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly until the date of payment.
- 6.2 The Customer must reimburse and indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing any overdue debt owed by the Customer including all reasonably incurred legal costs on a solicitor and own client basis and the fees charged to the Company by any mercantile agency.
- 6.3 If the Customer fails to pay any amount owed by the due date or otherwise breaches the Agreement, the Company may at its sole discretion and without prejudice to its other rights under the Agreement:
- (a) withdraw any provision of credit to the Customer;
 - (b) reverse any rebates and discounts allowed;
 - (c) change credit payment terms including require cash pre-payment for any further Products ordered;
 - (d) provide to a credit reporting agency details of the payment default;
 - (e) commence legal proceedings against the Customer for all outstanding amounts, interest and costs;
 - (f) decline to supply Products to the Customer; and/or
 - (g) exercise any other rights at law including pursuant to the PPSA.

7 GST

- 7.1 Unless expressly included stated otherwise, all amounts expressed or described in the Agreement or in invoices are GST-exclusive.
- 7.2 The Customer must pay to the Company (at the same time and in the same manner as the amount payable for, or in connection with, any supply under the Agreement) an additional amount on account of GST equal to that amount multiplied by the prevailing GST rate.

8 Delivery

- 8.1 Delivery of the Products will be deemed to have taken place when:
- (a) the Customer takes possession of the Products at the Company's address if the Products are collected by the Customer;
 - (b) the Products are delivered at the Customer's address (in the event that the Products are delivered by the Company or the Company's nominated carrier); or
 - (c) the Customer's nominated carrier takes possession of the Products in which event the carrier will be deemed to be the Customer's agent.
- 8.2 The Customer's address for delivery will be the address specified in the Commercial Account Application Form or agreed in writing by the Company.
- 8.3 Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company.
- 8.4 Delivery of Products to a third party or place nominated in any way by the Customer is deemed to be delivery to the Customer pursuant to the Sale T&Cs.
- 8.5 The Customer must make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery. In the event that the Customer is unable or unwilling to accept delivery of the Products as arranged, the Company will be entitled to charge all reasonable costs for the

demurrage, return, storage and redelivery of the Products. The current storage charge is \$30 per pallet space per week (or part thereof) from the date the Products are tendered for delivery until the date of delivery.

- 8.6 If the Customer does not either collect or accept delivery of the goods within 30 days of first refusal or failure to accept delivery of the Products by the Company, the Company may at its discretion either dispose of or re-sell the Products. In this event the Customer will remain liable for:
- (a) the Price of the Products, if the Company is not reasonably able to resell the Products;
 - (b) any interest that has accrued on the unpaid Price in accordance with the Sale T&Cs;
 - (c) the account fee for the administration and finance cost of credit in accordance with the Sale T&Cs;
 - (d) costs incurred by the Company for demurrage, return, storage and redelivery of the Products;
 - (e) disposal costs;
 - (f) if the Products are resold, any difference in price achieved by the Company re-selling the Products; and
 - (g) all reasonably incurred legal costs on a solicitor and own client basis and the fees charged to the Company by any mercantile agency.

- 8.7 The Company will not be liable for any loss, damage or expense arising from failure by the Company to deliver the Products at a specified time or at all, and the failure of the Company to deliver at a specific time or at all will not entitle either party to treat the Agreement as repudiated.

9 Product Information, Prices, Photos and Images

- 9.1 The Product range on the Company's website may vary from printed catalogues. Product information, photographs and images may differ from the actual Products. Photographs and images on the website, electronic mail and in printed material are for illustrative purposes only.

10 Passing of Risk

- 10.1 The risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the Customer, the Customer's agent or courier (as the case may be).

11 Retention of Title

- 11.1 Ownership, title and property in and to the Products remains with Company until payment in full for the Products and all sums due and owing by the Customer to Company on any account has been made.
- 11.2 Until ownership of the Products has passed to the Customer in accordance with these Sale T&Cs:
- (a) the Customer has the right to sell the Products in the ordinary course of business, however any proceeds from any sale or other dealings with the Products will be held on trust for the Company;
 - (b) the Customer is a bailee of the Products and must store them separately and in such a manner as they are clearly identified as the Company's property;
 - (c) the Customer must not allow any person to have or acquire any security interest in the Products;
 - (d) the Company will be entitled at any time to require the return of the Products and will be entitled without notice or liability to enter (or have its personnel or agents enter) any premises in order to search for and remove the Products (and the Customer indemnifies the Company in respect of any damage to property or personal injury which occurs as a result of entering those premises);

- (e) if the Products cannot be distinguished from similar products which the Customer has or claims to have paid for in full, the Company may in its absolute discretion seize all products matching the description of the Products and hold them for a reasonable period so that the respective claims of the Company and the Customer may be ascertained. The Company must promptly return to the Customer any products the property of the Customer and the Company is in no way liable or responsible for any loss or damage to those products or for any loss, damage or destruction to the Customer's business arising from their seizure; and
- (f) the Company may in its absolute discretion and without any limitation sell or otherwise deal with any Products to recover any amount outstanding and obtain recovery of collection costs and interest.

11.3 The Customer is deemed to be in breach of the Agreement immediately if the Customer ceases to carry on business or stops or suspends payment or states its intention of so doing or is unable to pay its debts as they fall due or if any cheque or bill of exchange drawn by the Customer payable to the Company is dishonoured.

12 Personal Property Securities Act

- 12.1 The Customer acknowledges that the Company has a security interest for the purposes of the PPSA in the Products and any proceeds of their sale until title to the Products passes to the Customer.
- 12.2 Each security interest under the Agreement is a "purchase money security interest" under the PPSA to the extent it secures payment of the amounts owing to the Company, and the security interests attach to the Products when the Customer obtains possession of them.
- 12.3 The Customer agrees to do (and irrevocably appoints the Company as its attorney to do), at its cost in all things, anything (such as obtaining consents, signing and producing documents, having documents completed and signed and supplying information) which the Company asks for and considers is required for the purposes of ensuring that the security interest is enforceable, perfected and otherwise effective, including if applicable, as a purchase money security interest
- 12.4 The Customer agrees to pay or reimburse the Company's reasonable costs in connection with anything required to be done under this clause.
- 12.5 The Company need not give any notice under the PPSA (including a notice of verification statement) unless the notice is required by the PPSA and the requirement to give it cannot be excluded.
- 12.6 The Customer agrees that neither the Customer nor the Company are required to disclose any information of the kind referred to in Section 275(1) of the PPSA.
- 12.7 If there is any inconsistency between the Company's rights under this clause 12 and under Chapter 4 of the PPSA, this clause prevails.

13 Termination

- 13.1 Either party may terminate the Agreement by written notice to the other party with immediate effect:
 - (a) if the other party breaches any provision of the Agreement and does not remedy that breach within 14 days of receipt of a written notice from the first party requiring it to do so; or
 - (b) if the other party becomes subject to an Insolvency Event.
- 13.2 On termination of the Agreement:
 - (a) the Company will be under no obligation to supply any Products that have not yet been delivered to the Customer;

- (b) all money owed to the Company under or in connection with the Agreement, including for any Products delivered prior to termination, will be immediately due and payable by the Customer;
- (c) on demand by the Company, the Customer must pay the Company all costs incurred by the Company in connection with the relevant Order, including any raw materials, parts or other goods purchased or produced by the Company in connection with the supply of the Products;
- (d) if the Agreement is terminated by the Company, the Company may elect to complete delivery of the Products, and if the Company so elects then the Customer must comply with the Agreement in respect of the Products, including paying for the Products in full; and
- (e) the Company may by written notice to the Customer elect to terminate any other agreement with the Customer.

13.3 If the Company is entitled to terminate the Agreement, or if the Customer fails to pay any amount owed by the due date, the Company may, by written notice to the Customer, elect to instead suspend the performance of the Agreement by the Company until the grounds for termination have been remedied to the Company's reasonable satisfaction.

14 Returned Cheques

14.1 An administration fee of \$55.00 including GST plus all associated bank charges may be applied to any cheque payment returned unpaid by the bank for whatever reason. This fee may increase without notice to cover the expenses and cost actually incurred by the Company.

15 Currency

15.1 Payments must be made in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving end.

16 Defects, Claims and Returns

16.1 The Customer accepts that minor defects in the Products do not constitute grounds for a claim for return of the Products or any other remedy under these Sale T&Cs.

16.2 Subject to clause 16.6, the Customer accepts that MTO Products may not be returned.

16.3 Refunds or returns will only be given to the extent there is a non-excludable right to return or refund imposed under law (such as the Australian Consumer Law or applicable State or Territory legislation such as the *Sale of Goods Act 1923* (NSW)).

16.4 The Customer must inspect and check all Products received within seven (7) days of receipt and notify the Company in writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products comply with those ordered prior to use. After use or expiry of the seven (7)-day period, the Product will be deemed to be free from any defect or damage at delivery and accepted by the Customer.

16.5 The Customer agrees that it will not return any defective Products without first informing the Company so that a Returns Authorisation (**RA**) number may be issued by the Company for valid returns. The RA is valid for seven (7) days. Returned Products must be unmarked, in a saleable condition and must include the original packaging, delivery document and Tax Invoice.

16.6 No credit or replacement will be given unless and until Products have been verified as being defective and are returned with a valid RA number. The Company reserves the right to recover its costs where the returned Products prove not to be defective. Returned Products must be returned to the Company at the address nominated by the Company. All freight, handling and other charges in relation to

returning Products (other than Products that are defective or do not comply with the Order) are the responsibility of the Customer.

17 Warranties, Disclaimer and Limitation of Liability

- 17.1 Except as expressly provided in the Sale T&Cs, the Warranty and/or or as expressly set out in writing by the Company, to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, merchantability or fitness for purpose of any Products provided under the Agreement is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are, subject to clauses 16.6 and 16.7, hereby excluded.
- 17.2 All Products and MTO Products are built to withstand design wind speeds as detailed in the relevant Company drawings and information. These wind speeds have been determined from the Australian Standard AS1170.2:2011 and include an allowance for building height, but not for all local topographic effects. If the structure is to be located in an area of high winds such as a hilltop or similar exposed topography and the Customer wants to ensure that the appropriate Product is supplied, the Customer must include in the Order the relevant wind rating and special conditions. The Company does not make any representations or warranties in relation to ultimate wind speeds differing to what is detailed in the relevant Company drawings and information unless confirmed in writing.
- 17.3 Products supplied may be supported by various components such as posts, walls, existing buildings, and shipping containers. The structural performance of each of these components is critical to the performance of the Products. The Company takes no responsibility for any damage arising from the failure of support components that are not supplied by the Company.
- 17.4 Due to the inherent variability in ground conditions the Company takes no responsibility for any damage arising from foundation or anchorage failure. It is the responsibility of the Customer to check the suitability of foundations or anchorages for Products with a qualified engineer acquainted with local conditions.
- 17.5 The Products must be installed and used in accordance with the instructions provided by the Company, failing which the Warranty and all other warranties are voided. It is the Customer's responsibility to obtain any development or other approvals or licenses for the erection of Products, if required.
- 17.6 The Company acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in the Agreement or the Warranty excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied or imposed by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) which cannot lawfully be excluded, restricted or modified.
- 17.7 Notwithstanding clause 16.1 the Company's liability is limited to, to the extent permissible by law and at Company's option;
- (a) in relation to goods:
 - (i) the replacement of the Products or the supply of equivalent Products;
 - (ii) the repair of the Products;
 - (iii) the payment of the cost of replacing the Products or of acquiring equivalent Products; or

- (iv) the payment of the cost of having the Products repaired; or
- (b) in relation to services:
 - (i) the supply of the services again; or
 - (ii) the payment of the cost of having the services supplied again.
- 17.8 To the extent permitted by law, all other guarantees and warranties whether implied or otherwise, not set out in these Terms, are excluded.
- 17.9 The Company is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate Customer for:
 - (a) any increased costs or expenses;
 - (b) any loss of profit, revenue, business, contracts or anticipated savings;
 - (c) any loss or expense resulting from a claim by a third party,caused by the Company's failure to complete, or delay in completing, the Order, or to deliver the Products.
- 17.10 Notwithstanding any other provision of the Sale T&Cs, neither party nor its agents and subcontractors shall be liable to the other party, its agents and subcontractors, for any Consequential Loss.
- 17.11 The Customer acknowledges and agrees that in placing an Order and entering into the Agreement it has not relied in any way on the Company's representations and that it has satisfied itself as to the suitability of the Product for the Customer's purposes.
- 17.12 To the full extent permitted by law the Company will not be liable to the Customer for any aesthetic change, loss or damage (including loss of profits or any other indirect or consequential loss or damage including loss or damage to goods belonging to the Customer or a third party) arising directly or indirectly from:
 - (a) the supply to, or use by, the Customer of any Product; or
 - (b) delayed or non-delivery of the Products for any reason including but not limited to loss, damage, theft of the Products whilst in transit; or
 - (c) any breach by the Company of its obligations under the Agreement.
- 17.13 The Customer must comply with the terms and conditions for the Warranty.
- 17.14 Subject to the Sale T&Cs, the terms of the Warranty and the Customer's compliance with the Warranty, the Company warrants the Products on the terms and conditions specified in the Warranty.

18 Set-off

- 18.1 The Customer will not be entitled to retain, set off or deduct from the price of Products any sums owed or claimed to be owed to the Customer by the Company.
- 18.2 The Company may deduct and set off from any amounts payable by the Company to the Customer any amounts payable by the Customer to the Company.

19 Indemnity

- 19.1 To the full extent permitted by law, the Customer will indemnify the Company and keep the Company indemnified from and against any liability and any loss or damage the Company may sustain as a result of any breach, act or omission, arising directly or indirectly from or in connection with:
 - (a) any breach of any of these Sale T&Cs or any law by the Customer or its representatives;

- (b) any negligent, wilful, fraudulent, dishonest or otherwise wrongful act or omission by the Customer or its representatives;
- (c) any use by the Customer of the Products that is not in accordance with Product instructions or directions;
- (d) the death of, or personal injury to, any person, or any damage to or destruction of any property, to the extent caused by any act or omission of the Customer or its representatives;
- (e) installation or delivery of any Products for the Customer.

20 Assignment and subcontracting

- 20.1 The Customer may not assign or subcontract any of its rights or obligations under the Agreement.
- 20.2 The Company may assign any of its rights or obligations under the Agreement by written notice to the Customer (in which case the Customer must promptly execute any documentation the Company reasonably requires to give effect to that transfer, including a novation).
- 20.3 The Company may subcontract to any third party any part of the Agreement without notice to the Customer.

21 Force Majeure

- 21.1 The Company will have no liability to the Customer as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war, the inability of the Company's suppliers to supply necessary materials, or any other matter beyond the Company's reasonable control. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

22 Privacy consent

- 22.1 The Customer acknowledges and agrees that the Company may collect, retain, use and disclose to third parties information about the Customer, its guarantors, directors or proprietors for the following purposes:
 - (a) to assess the Customer's credit worthiness (including to obtain a consumer credit report or commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency;
 - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its directors or proprietors;
 - (c) for registration on the PPSR or other public records or registers; and
 - (d) marketing any products or services of the Company.
- 22.2 The Company may disclose personal information about the Customer to a credit reporting body, which may include Equifax and its related entities. The Company may also disclose personal information to its trade credit insurer, QBE.
- 22.3 The Company's credit policy contains information about how an individual may:
 - (a) access the credit eligibility information about the individual that is held by the Company;
 - (b) seek the correction of credit information or credit eligibility information about the individual that is held by the Company; and
 - (c) complain about a failure of the Company to comply with the Privacy Act or any applicable registered CR code, and how the Company will deal with such a complaint.
- 22.4 The Company is not likely to disclose credit information or credit eligibility information to entities that do not have an Australian link.

23 Waiver

- 23.1 The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under these Sale T&Cs will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company will be entitled to require strict compliance at all times.

24 Proper Law

- 24.1 The Agreement is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.
- 24.2 The parties agree to submit to the exclusive jurisdiction of the Courts of the State of New South Wales, and the parties consent to the exclusive jurisdiction of the courts of New South Wales and the courts of appeal from them.

25 General provisions

- 25.1 The Agreement represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of the Agreement will be legally binding upon either party unless in writing and signed by both parties or allowed by these Sale T&Cs.
- 25.2 The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices will be deemed to be given:
- (a) where delivered by hand, on the day of delivery;
 - (b) where sent by post, two (2) business days after the day of posting; and
 - (c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained in the case of facsimile or no error message is received in the case of email.
- 25.3 If any term of the Sale T&Cs are invalid, void, illegal or unenforceable, it will be severed from the Agreement and the remaining provisions will not be affected, prejudiced or impaired by such severance.
- 25.4 In the event that the Customer sells or otherwise disposes of its business (or any part thereof), the Customer will be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer will be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.

26 On-Sale

- 26.1 The Customer agrees that upon the on-sale of any Products by the Customer to third parties, it will:
- (a) inform any third party involved of these Sale T&Cs;
 - (b) inform any third party of Company's product warranties (if any); and
 - (c) not make any misrepresentations to third parties about the Products.

27 Trustee Capacity

- 27.1 If the Customer is the trustee of a trust (whether disclosed to the Company or not), the Customer:
- (a) enters into the Agreement in both its capacity as trustee and in its personal capacity;

- (b) warrants to the Company that the Customer has the right to be indemnified out of trust assets;
- (c) warrants to the Company that the Customer has the power under the trust deed to enter into the Agreement; and
- (d) must not retire as trustee of the trust or appoint any new or additional trustee without the Company's written approval (which will not be unreasonably withheld).

28 Intellectual Property Rights

- 28.1 Nothing in these Sale T&Cs or the Agreement constitutes a transfer, assignment or grant of any ownership rights in any Intellectual Property Rights (which will be retained by the Company) unless otherwise expressly stated.
- 28.2 The Customer obtains no rights in relation to the IPR other than a limited licence to use drawings provided by the Company for the purposes of having the Products installed.