



TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

In this Agreement the following words have the following meanings:

Acceptance Period means the period stated in the Quotation or seven (7) days commencing on the date of the Quotation.

Acceptance means acceptance of this Agreement in accordance with clause 3.2.

Agreement means the Quotation, these terms and conditions and any deed, contract, agreement, arrangement or understanding (as amended, varied or replaced from time to time) made between the parties.

ACL means the Australian Consumer Law detailed in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means a day on which banks are open for business on the Gold Coast in Queensland, other than a Saturday, Sunday or public holiday.

Completion means the date that DU notifies the Customer either in writing or by telephone that the Works are complete.

Corrective Works has the meaning given to it in clause 7.7 of this Agreement.

Claim means any claim, cause of action, Liability, demand, action, remedy, suit, injury, indemnity, damage, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise whether present, unascertained, immediate, future or contingent.

Consequential Loss means but is not limited to one or more of the following: loss of bargain; loss of revenues; loss of reputation, indirect loss; loss of profits; loss of actual or anticipated savings; lost opportunities, including opportunities to enter into arrangements with third parties; loss or damage in connection with claims against the Customer by third parties.

Customer means the customer identified in the Quotation.

Customer Works means works and other matters to be completed by the Customer or its contractors (other than DU) prior to the Commencement Date, including:

- (a) except as expressly included as part of the Works in the Quotation, removal of any existing goods, products, fixtures or fittings that are being replaced with the Goods as part of the Works;

- (b) removal or temporary relocation of any existing window coverings, furniture or fixtures to enable DU to undertake the Works;

- (c) any other works or matters identified as such in the Quotation or communicated by DU to the Customer during the Inspection or as described elsewhere in this Agreement.

Customer Supplied Information means any information supplied or made available to DU by or on behalf of the Customer at any time and whether or not contained in this Agreement and includes information regarding the location:

- (a) for installation of the Goods at the Premises (including all dimensions, measurements and other information supplied by the Customer);
- (b) electrical wiring, water pipes and any other obstructions on or near the vicinity of the area the Works carried out;
- (c) any other thing or item that the Customer knows or ought reasonably be aware of that may cause damage to the Works or create an unsafe environment while the Inspection and/or Works are being carried out.

Deposit means the amount depicted on the Quotation.

DU means Down Under Insect Screens & Security Pty Ltd ACN 124 762 456 trading as Down Under Insect Screens & Security.

Estimated Completion Date means the date we indicate to you as the estimated date of completion or the estimated time frame for completion of the Works.

Event of Default means:

- (a) if the Customer fails to pay any money payable under this Agreement as and when due;
- (b) the Customer breaches a term of this Agreement and fails to remedy that breach within seven (7) days after receiving a written notice to do so;
- (c) if the Customer has provided misleading, false or inaccurate statements to DU which, in DU's opinion, has caused a material effect on its ability to undertake the Works or the Customer's ability to pay the Price; or
- (d) the Customer suffers an Insolvency Event.

Exclusions means:

- (a) Customer Works;
- (b) Preparatory Works;
- (c) Corrective Works;

- (d) Washing or treating windows, seals or frames;
- (e) Any other such work that is not included as part of the Works .

Force Majeure Event means any occurrence or omission outside a party's reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this Agreement (other than a payment obligation), and includes:

- (a) an act of God or a disaster (whether natural or man-made) including fire, flood, lightning or earthquake;
- (b) riot, civil commotion, act of public enemies, national emergency (whether in fact or in Law) or government declaration or direction;
- (c) epidemic, pandemic or quarantine restriction;
- (d) supply shortage or strike, lock out, stoppage, labour dispute or shortage including industrial disputes involving DU' suppliers.

Goods means the goods to be supplied and installed by DU to the Customer in connection with the Works.

GST Act means *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

Inspection means a visual inspection of the Premises which may be carried out by DU (at DU's discretion) prior to the commencement of the Works.

Installation Period is the timeframe of 7:00am to 3:30pm Monday to Friday.

Insolvency Event means the occurrence of any one or more of the following events in relation to any party:

- (a) if the party is an individual, the party is a bankrupt, or has signed an authority under section 188 of the *Bankruptcy Act 1966* (Cth);
- (b) an application (other than one that is dismissed within ten (10) Business Days) is made to a court for an order or an order is made, that the party be wound up;
- (c) an application (other than one that is dismissed within ten (10) Business Days) is made to a court for an order appointing a liquidator, provisional liquidator, receiver or other administrator in respect of the party or one of them is appointed whether or not under an order;
- (d) a resolution is passed to appoint an insolvency administrator in respect of the party;
- (e) the party enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any one of them;
- (f) the party resolves to appoint an administrator to itself, wind itself up, or otherwise dissolve itself, or gives Notice of an intention to do so, or is otherwise wound up or dissolved;

- (g) the party is or states that it is, unable to pay its debts as and when they fall due;
- (h) the party takes any steps to obtain protection or greater protection from its creditors under any applicable legislation; or
- (i) any secured creditor of the party enforces its security.

Latent Conditions means any physical condition of, underlying to or adjacent to the Premises that could not reasonably be identified during the Inspection or from information provided by the Customer to DU prior to the Quotation being prepared and may include (but is not limited to);

- (a) electrical wiring and other obstructions on or near the vicinity of the area the Goods are to be installed and the Works carried out;
- (b) any other thing or item that may cause damage to the Works or create an unsafe environment while the Inspection and/or Works are being carried out;
- (c) changes made to improvements on the Premises after the Inspection;
- (d) an uneven or out of square door or window frame (as the case may be).

Law includes any law, whether statute or common law (including the laws of negligence and nuisance and principles of equity), ordinance, regulation, by-law, order or other determination of any government authority or statutory authority and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them.

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred.

Loss means any loss, damage, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense) however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Material Affect means any circumstances which come to the attention of DU following its Inspection or check measure which, in the reasonable professional judgment of DU, requires an increase in the Price.

Payment Terms means:

- (a) the Deposit payable on the date of Acceptance; and
- (b) the remainder of the Price payable upon written notice from DU to the Customer that the Works are complete at the Premises; or
- (c) where the Works are carried out in stages, by instalments of the Price equal to the cost of Goods installed and Works undertaken per stage, payable on written notice from DU to the Customer that each stage is substantially complete at the Premises.

Personnel means DU's employees, agents, contractors and subcontractors..

Premises means the address identified on the Quotation as the 'Address'.

Preparatory Works has the meaning given to it in clause 5.1 of this Agreement.

Price has the meaning given to it by clause 6.1 of this Agreement.

Progress Instalment means each payment instalment of the Price as required under paragraph (c) of the Payment Terms.

PMSI means a purchase money security interest as defined under the PPSA.

PPSA means the *Personal Property and Securities Act 2019* (Cth).

Tax Invoice has the meaning given to the term 'tax invoice' in the GST Act.

Quotation means the quotation for the Works provided by DU to the Customer and annexed to these terms and conditions.

Website means the <https://www.downunderscreens.com.au/> website operated by DU.

Works means the scope of works outlined in the Quotation identified as 'Nature of the Works'.



TERMS AND CONDITIONS OF SALE

2. AGREEMENT

- 2.1 This Agreement is between DU and the Customer.
- 2.2 The Customer acknowledges that the Agreement will not be subject to a Cooling off Period.

3. ORDERS AND ACCEPTANCE

- 3.1 Despite anything to the contrary in this Agreement, DU may withdraw the Quotation at any time during the Acceptance Period.
- 3.2 To accept the Quotation, the Customer must execute and return this Agreement to DU.
- 3.3 If the Quotation is:
- (a) withdrawn by DU during the Acceptance Period; or
 - (b) otherwise not accepted by the Customer prior to 5.00pm on the expiration of the Acceptance Period in accordance with clause 3.2 above,
- the Quotation will lapse and will no longer be binding on DU.

4. CUSTOMER OBLIGATIONS

4.1 General obligations

The Customer must (at the Customer's cost):

- (a) pay the Price in accordance with this Agreement;
- (b) undertake any Customer Works prior to the Commencement Date;
- (c) provide DU with free and unencumbered access to the Premises (and land or other areas adjacent to the Premises) sufficient (in the reasonable opinion of DU) during the Installation Period to enable DU to carry out an Inspection and Works. The Customer accepts that where DU is required to collect keys from (and/or return keys to) a location other than the Premises, DU may charge the Customer for its reasonable costs of and incidental to such collection and return (including but not limited to reasonable travelling or call out costs), which may be up to \$100 plus GST per collection or return, and the Customer must pay those costs to DU on demand.
- (d) provide DU with any information and assistance reasonably necessary to enable DU to carry out the Works; and

- (e) provide the Customer Supplied Information;
- (f) do all acts and reasonably necessary to enable the DU to undertake the Works in accordance with this Agreement.

4.2 If the Customer or its employees, agent or invitees (as applicable) do not comply with one or more of the conditions in clause 4.1 above the Customer acknowledges and agrees that, without limiting DU's other rights under this Agreement or at Law:

- (a) DU may suspend performance of the Works until the default is remedied; and
- (b) all reasonable additional expenses suffered or incurred by DU (including those incurred in connection with the suspension of the Works) are payable by the Customer on demand, in addition to the Price.

5. CUSTOMER WORKS

5.1 If DU or its Personnel are required to remove or move any existing products, goods, window coverings, furniture or fixtures ('Items') to gain access to the area of installation ('Preparatory Works') or undertake the Works:

- (a) such Preparatory Works are undertaken at the Customer's risk;
- (b) DU is not responsible for any damage caused to the Property or Items, except where caused by the negligent or wilful act or omission of DU or its Personnel; and
- (c) all costs associated Preparatory Works are payable by the Customer, on demand, in addition to the Price.

5.2 DU makes no warranty in respect of the condition or suitability of, and is not liable in respect of or in connection with, the Customer Works or, to the extent permitted by Law, the Preparatory Works.

5.3 The Customer indemnifies DU from all Claims and Liability suffered or incurred arising from or in connection with the Customer Works or, to the extent permitted by Law, the Preparatory Works (including but not limited to their suitability, condition, effectiveness and safety).

6. PRICE

6.1 Price

The Price shall be indicated on the Quotation may only be varied where permitted by, and in accordance with, the this Agreement.

6.2 Payment

- (a) The Customer must pay the Price to DU, without setoff, in accordance with the Payment Terms, in exchange for a valid Tax Invoice(s) from DU.
- (b) If there is a dispute about the Price or any other amount payable under this Agreement, the Customer must not withhold the amount in dispute.

6.3 Payment Method

- (a) Any amount payable by the Customer under this Agreement must be paid by EFT, cash or cheque. If paid by cheque, the payment shall only be deemed received when cleared funds are received by DU.
- (b) An additional fee of 1.5% will be applied to any amount other than the Deposit where the Customer makes payment by credit card.

6.4 Overdue amounts

If the Customer fails to pay DU pursuant to the Payment Terms, DU may charge interest on the overdue amounts at the rate of 10 per cent per annum, calculated daily calculated from the date payment was due and owing until the date payment is received by DU.

6.5 Deferral of performance

If the Customer does not pay a Progress Instalment as and when it is due in accordance with the Payment Terms, DU may suspend performance of the Works until the outstanding Progress Instalment is paid.

7. WARRANTIES

7.1 Works

DU warrants in favour of the Customer that the Works will be performed in accordance with the scope of works contained in the Quotation, in a good and workmanlike manner and otherwise pursuant to this Agreement.

- (a) .

7.2 Warranty

- (a) Subject to clause 7.2(b) and 7.6 below, DU provides a warranty against manufacturing, mechanical or installation defects in normal domestic use, details of which can be found at on the Website. Exclusions apply as detailed in clause 7.6 below.
- (b) Where any Goods (or component of Goods) are not manufactured by DU but are covered by a warranty from the manufacturer for a period greater than twelve (12) months, DU agrees to assign that warranty to the Customer. Once assigned, to the extent permitted by Law, DU will not be bound by nor be responsible for any term, condition, representation or warranty given by the manufacturer.

- (c) Except as provided under the ACL or as otherwise specifically provided in this Agreement, DU do not give any warranty in relation to Goods or Works. If apart from this clause any warranty is provided under any Law or would be implied at Law, that warranty is excluded to the fullest extent permitted by Law.

- (d) In the case of second hand Goods or Goods supplied by the Customer, the Customer acknowledges that it has had full opportunity to inspect the Goods and that they accept the Goods with all faults and that no warranty is given by DU as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. DU will not be responsible for any Loss to the Goods or Claim caused or arising in connection with the Goods.

7.3 Customer Warranties

The Customer warrants in favour of DU that:

- (a) All Customer Supplied Information and other material provided by, or on behalf of, the Customer to DU and Personnel is true, correct and accurate and is not misleading or deceptive in any way or likely to mislead or deceive (by omission or otherwise).
- (b) The use of the Customer Supplied Information by DU will not infringe any intellectual property rights of any third party.
- (c) The Customer has not relied on any representation, statement or inducement to enter into this Agreement; and
- (d) The Customer is the registered owner of the Premises and has full power and authority to commission the Works.

7.4 Acknowledgment

The Customer acknowledges that DU is relying on the representations and warranties given under clause 7.3 in entering into this Agreement.

7.5 Defects

- (a) Our Goods and Services come with guarantees that cannot be excluded under the ACL. For major failures with the Service, you are entitled:
 - (i) to cancel your Service contract with us; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (b) You are also entitled to choose a refund or replacement for major failures with Goods.
- (c) If a failure with the Goods or a Service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the Goods and to cancel the

contract for the Service and obtain a refund of any unused portion.

- (d) You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the Goods or Service.

7.6 No liability or warranty in certain circumstances

- (a) To the extent permitted by Law, DU is not liable for any Claim, damage or failure in respect of the Works and/or Goods to the extent such Claim, damage or failure is due to:
 - (i) fair wear and tear;
 - (ii) the reckless or negligent act or omission of the Customer;
 - (iii) accidents caused, or misuse of the Goods, by anyone other than DU or its Personnel;
 - (iv) Latent Conditions;
 - (v) any difference in colour due to Powdercoat dye batches and Anodising between Goods displayed on the Website or samples provided to the Customer and the Goods;
 - (vi) improper or unauthorised installation, maintenance and service compliance, use, repairs or adjustments to the Premises by any person other than DU or the Personnel;
 - (vii) failure of the Customer to maintain regular service and maintenance of the Goods as specified in the manufacturer's manual (which can be found on the Website) or, where service or maintenance requirements are not so specified, such servicing and maintenance as is reasonably required;
 - (viii) a breach by the Customer of any of the warranties in clause 7.3.
- (b) Orders for the manufacture and supply of Goods only:
 - (i) will be ordered and manufactured according to the Customer's own measurements and specifications as notified by the Customer to DU; and
 - (ii) are ordered and manufactured at the Customer's risk.
- (c) provided DU has complied with its obligations under clause 7.6(b) above, DU is not liable for any defect or failure in the Goods, or any damage or Loss caused by the Goods, arising from, as a result of or in connection with the Customer's providing incorrect or inaccurate measurements or specifications.
- (d) The Customer acknowledges and accepts that all Goods are manufactured square and no responsibility can be accepted for openings that are uneven or out of square.

- (e) The Customer must pay DU on demand as a liquidated debt a reasonable call out fee and any additional reasonable expenses, charges or fees incurred by DU in connection with any request for a service call not covered by warranty.

7.7 Corrective Work

- (a) Without limiting any other provision of this Agreement, the Customer acknowledges that failure in respect of the Works and/or Goods due to reasons as contemplated by clauses 7.6 above may result in DU having to undertake additional corrective work ('Corrective Work').
- (b) Any Corrective Work including any ancillary goods required to carry out the Corrective Work is outside the scope of the Quotation or not covered under any warranty and any costs associated with the Corrective Work is payable by Customer, in addition to the Price.
- (c) If DU becomes aware of any required Corrective Work, DU agrees to follow the procedure in clause 13.2 of this Agreement.
- (d) For clarity, DU is not:
 - (i) required to undertake any Corrective Work unless and until the Customer approves the quote for the Corrective Work; and
 - (ii) liable for any costs or expenses incurred due to carrying out Corrective Work and the Customer must pay these costs and charges to DU on demand.

8. COMPLETION

8.1 Estimated Completion Date

- (a) The Estimated Completion Date is a genuine estimate but is given as an approximate indication only.
- (b) DU will use its reasonable endeavours to undertake the Works and achieve Completion by the Estimated Completion Date but is not liable to the Customer for any Claim arising either directly or indirectly from any delay or failure to do so.

8.2 Consequences of delays

- (a) Without limiting clause 16.1 of this Agreement, DU will not be liable if provision of the Works is prevented or delayed due to any act, omission or default of the Customer or any party under or through the Customer (including but not limited to a failure to provide access to the Premises or to pay the Price pursuant to this Agreement).
- (b) The Customer is responsible for and must pay on demand all expenses, costs, charges and other money incurred by DU associated with any delay in provision of the Works due to one

or more of the matters described in clause 8.2(a) above.

8.3 Insurance

Until completion, the Customer must keep and maintain adequate insurance to cover any Loss or damage to the Premises from any cause.

9. TITLE AND RISK

9.1 The Premises and any property on or in the Premises remain entirely at the Customer's risk.

9.2 The Customer bears the risk associated with the Goods from the time the Goods are delivered to the Premises.

9.3 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery (with time being of the essence) notify DU if the Goods do not comply with the description in the Quotation. The Customer shall afford DU an opportunity to inspect the Goods within fourteen (14) days following delivery if the Customer believes the Goods do not comply with the description in the Quotation.

9.4 If the Customer does not give notice to DU within the time frame stipulated in clause 9.3 above, the Customer is deemed to have accepted that the Goods comply with the description in the Quotation.

9.5 Despite anything to the contrary, the Goods remain the property of DU, and ownership in the Goods only passes to the Customer once the Price is paid in full.

9.6 Until ownership of the Goods passes to the Customer in accordance with clause 9.2 above, the Customer must:

- (a) maintain the Goods in the Customer's possession;
- (b) keep and maintain the Goods in good working condition and take all reasonable steps to protect the Goods; and
- (c) not assign, sell, transfer, change, pledge, encumber or deal with the Goods.

9.7 Without limiting any other right DU may have, if the Customer does not pay the Price in accordance with this Agreement, DU or any agent of DU may (as the Customer's invitee) enter onto the Premises (or any land or premises where the Goods are situated) and retake possession of the Goods (at the Customer's cost).

9.8 The Customer releases and indemnifies DU in relation to all Claims or Liability suffered or incurred arising from or in connection with DU exercising its rights under this clause 9.

10. LIMITATION OF LIABILITY

10.1 Exclusions

The Customer acknowledges and accepts that the Exclusions do not form part of the Works or this Agreement and DU is not liable for the Exclusions and the Customer indemnifies, and will keep indemnified, DU from any Claims suffered or

incurred arising from or in connection with the Exclusions

10.2 No Liability for Latent Conditions

The Customer is responsible for, and accepts all Liability in connection with, any Latent Condition and releases and indemnifies DU in respect of any Claim or Loss arising from or in any way connected to any Latent Condition.

10.3 Liability limited to Price or re-performance

(a) To the extent permitted by Law, any Liability of DU for any Claim however caused (including but not limited to by the negligent or reckless act or omission of DU's Personnel), suffered by the Customer in connection with this Agreement or the Works is limited to (at DU's discretion):

- (i) re-performance or correction of the Works; or
- (ii) that part of the Price already paid by the Customer to DU.

(b) The limitations set out in the above clause 10.2(a) is an aggregate limit for all Claims, whenever made.

10.4 Consequential loss

To the extent permitted by Law, DU is not liable for any Consequential Loss however caused (including by the reckless or negligent act or omission of DU or the Personnel), suffered or incurred by the Customer in connection with or under this Agreement.

11. SECURITY

11.1 Definitions

Words and phrases used in this clause 11 that have defined meanings in the PPSA have the corresponding meaning given to them in the PPSA.

11.2 Security for performance

(a) The Customer charges all of their property (including your real property) with their obligations, and all warranties and indemnities given by the Customer, under this Agreement.

(b) The Customer consents to DU registering:

- (i) a PMSI over the Goods; and/or
- (ii) a Security Interest over all of the Customer's present and after acquired property,

to secure the performance of the Customer's obligations (including payment of the Price and compliance with the warranties and indemnities given by the Customer) under this Agreement.

11.3 Discharge

(a) DU agrees to discharge and release any caveat, Security Interest and/or PMSI and cause for it to be removed from the PPSR or title to the land (as the case may be) upon the

Customer discharging all of the Customer's obligations under this Agreement.

- (b) The Customer agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which DU asks and considers necessary for the purposes of:
- (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective; and
 - (ii) enabling DU to apply for any registration, complete any financing statement or give any notification, in connection with the Security Interest; and
 - (iii) enabling DU to exercise rights in connection with the Security Interest.

11.4 Statements under the PPSA

DU is not required to give any notice, and the Customer waives their right to receive any notice, under the PPSA (including notice of a verification statement or financing change statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).

12. FORCE MAJEURE

- 12.1 Neither party will be in breach of this Agreement or liable for any failure or delay in the performance of its obligations under this Agreement (other than a payment obligation) to the extent that the failure or delay is wholly or partially caused, directly or indirectly, by a Force Majeure Event or any act or omission of the other party.
- 12.2 If this Agreement is no longer capable of being performed within a reasonable time due to a Force Majeure event or otherwise:
- (a) DU may terminate this Agreement by written notice to the Customer and this Agreement will be at an end;
 - (b) both parties must immediately discharge all of their financial and other obligations under this Agreement up to the date of expiration or termination of this Agreement;
 - (c) DU is entitled to remove all its property from the Premises; and
 - (d) subject to clause 12.2(b) above neither party will have any further Claim against the other except in relation to prior breaches of this Agreement.

13. VARIATIONS AND ADDITIONAL COSTS

13.1 No obligation to vary

In no circumstances shall DU be obliged to depart from the Works except as provided for under the terms of this Agreement.

13.2 Variation procedure

If the Customer requests and DU agrees (or DU requires and the Customer agrees) a departure from the Work, the following procedure will apply:

- (a) DU will price the cost of the variation ('**Variation Price**');
- (b) DU will provide the Variation Price to the Customer prior to commencing any work with respect to the variation requested;
- (c) the Customer must, within two (2) Business Days of receipt of the Variation Price, notify DU in writing as to whether the Customer will proceed with the variation for the Variation Price ('**Acceptance of the Variation Price**'); and
- (d) If the Customer does not provide Acceptance of the Variation Price as required by the above clause 13.2(c), DU is under no obligation to undertake the variation and the Customer releases DU from all Claims or Liability in this regard.

13.3 Fee adjustments for variations

If the Customer notifies DU of its Acceptance of the Variation Price, the scope and specification of Works will be varied accordingly and the Price will be adjusted as follows:

- (a) an increase to the Price as a result of an Acceptance of Variation Price where the work has commenced and for which payment has not previously been made; and
- (b) a decrease in the relevant progress payment in respect of a variation which reduces the Price.

13.4 Latent Conditions or Material Affect treated as variations

- (a) If DU encounters unforeseen events, circumstances or Latent Conditions:
 - (i) during an Inspection or check measure; or
 - (ii) in the course of undertaking the Works, which may have a Material Affect on the work required, DU will provide the Customer:
 - (iii) with full particulars of the unforeseen event and/or Latent Conditions along with details of the additional work required ('**Additional Works**'); and
 - (iv) written details of the additional costs and expenses associated with the Additional Works ('**Deemed Price Variation**');
- (b) The Customer must, within two (2) Business Days of receipt of the notices contemplated in clause 13.4 above notify DU in writing as to whether the Customer will proceed with the Additional Works and pay the Deemed Price Variation.

- (c) If the Customer agrees to proceed with the Additional Works and pay the Deemed Price Variation or does not give notice to DU within the time stipulated by clause 13.4(b) above:
 - (i) the Works are deemed to be varied in accordance with the Additional Works notice and the Price varied pursuant to the Deemed Price Variation; and
 - (ii) the Customer must pay the Deemed Price Variation to DU in addition to the Price, on demand or otherwise in accordance with this Agreement.

13.5 Additional costs borne by the Customer

The Customer must pay (without limitation) to DU in addition to the Price, on demand or otherwise in accordance with this Agreement:

- (a) the amount of any GST payable by the Customer in exchange for a valid Tax Invoice;
- (b) taxes (other than income tax and GST), stamp duty or other statutory charges or levies whether State or Federal payable in relation to the supply of the Works;
- (c) legal cost and disbursements on an indemnity basis incurred by DU in relation to a breach of the Agreement by the Customer;
- (d) all costs, charges, expenses or any other outgoings incurred by DU with respect to any variation by the Customer or the Additional Works;
- (e) any other costs, fees, charges or expenses described in this Agreement as being payable by the Customer in addition to the Price certain circumstances.

14. DISPUTE RESOLUTION

14.1 Informal dispute resolution

- (a) If the parties to this Agreement are unable to agree on a matter of fundamental importance ('Dispute') the parties must meet and use their reasonable endeavours to resolve the Dispute in good faith ten (10) Business Days of the Dispute initially arising.
- (b) If the Dispute is not resolved pursuant to clause 14.1(a) above, either party may give notice to the other of their intention to refer the Dispute to mediation.

14.2 Referring Dispute to mediation

- (a) Where a party gives notice of its intention to refer a Dispute to mediation, the other party must within ten (10) Business Days of the referral, prepare and provide to the other party a notice setting out its position in relation to the Dispute and its reasons for adopting such a position.
- (b) If the parties do not agree within five (5) Business Days of receipt of that notice as to:

- (i) the dispute resolution technique and procedures to be adopted;
- (ii) the timetable for all steps in those procedures; and
- (iii) the selection and compensation of the independent person required for such technique,

then the parties must mediate the Dispute in accordance with the mediation rules of the Australian Commercial Disputes Centre in Sydney, with the mediator to be selected and the mediation organised by the Australian Commercial Disputes Centre or a similar organisation agreed to by all parties, with the costs of any expert or mediator to be borne equally by the parties .

15. GST

15.1 Interpretation

Any words capitalised in this clause 15 and not already defined in this Agreement have the meaning given to those words in the GST Act.

15.2 Taxable supply

- (a) If the provision of the Works made under or in connection with this Agreement is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:
 - (i) DU may recover from the Customer an amount equal to the GST payable on the supply ('**GST Amount**'); and
 - (ii) the Customer must pay the GST Amount to DU on the date the relevant portion of Fee is due or in exchange for a valid Tax Invoice.
- (b) For clarity, the GST payable under this clause 15.2 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST owed in respect of the Supply.

15.3 Progressive or Periodic Supply

Where a Supply made under or in connection with this Agreement is a Progressive or Periodic Supply, clause 15.2 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

16. TERMINATION

16.1 DU termination

- (a) Upon the occurrence of an Event of Default, DU' may give written notice to the Customer requesting that the relevant Event of Default be remedied by the Customer within seven (7) days after receipt of the notice.
- (b) DU may:
 - (i) if the Event of Default has not been remedied within the timeframe stipulated in the notice contemplated by clause 16.1(a);

- (ii) where the Event of Default is not capable of remedy; or
- (iii) as otherwise provided for under this Agreement,
terminate this Agreement by written notice to the Customer.

- (c) Should DU terminate this Agreement, termination is taken to occur on the date specified in the written notice of termination or if no date is specified immediately on giving the notice to the Customer.

16.2 Customer termination

The Customer may terminate this Agreement by one month's written notice to DU if DU:

- (a) commits a material breach of a fundamental term of this Agreement that has a material and adverse effect on the Customer; and
- (b) fails to remedy that breach within thirty (30) days of receiving written notice from the Customer requiring DU to do so, in which case this Agreement terminates immediately on giving the notice of termination.

16.3 Payments upon termination

- (a) Except where this Agreement is lawfully terminated by the Customer due to the unremedied default of DU and subject to clauses 16.3(b) and 16.4 below, if this Agreement is terminated prior to Completion:
 - (i) the Customer must pay to DU on demand as a liquidated debt for the full costs of any Goods (or part of the Goods) manufactured as at the date of termination; and
 - (ii) a pro rata amount of the Price reflective of the Work completed by DU up to and including the time of termination.
- (b) The rights afforded to DU pursuant to clause 16.3(a) above are without prejudice and do not limit any other rights or remedies available to DU at Law or under this Agreement.

16.4 Effect of termination

On termination of this Agreement accrued rights or remedies of a party are not affected.

16.5 Survival

Any indemnity or any obligation of confidence under this Agreement is independent and survives termination of this Agreement. Any other term by its nature intended to survive termination of this Agreement survives termination of this Agreement.

17. PERSONAL GUARANTEE

Where the Customer is a company, it must cause for the director(s) to sign a personal guarantee in the form submitted by DU at the same time the Customer signs this Agreement.

18. ASSIGNMENT

Neither party may assign, in whole or in part, or novate their rights or obligations under this Agreement without the prior written consent of the other party.

19. MISCELLANEOUS

19.1 Time of the Essence

Time is of the essence of the Customer's obligations to pay the Price pursuant to the Payment Terms and to undertake the Customer's Works.

19.2 Contra Proferentem

The contra proferentem rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

19.3 Waivers

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

19.4 Governing Law

- (a) This Agreement is governed by the laws of Queensland and the parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction in that place.

19.5 Counterparts

- (a) This Agreement may be executed in any number of counterparts, which taken together shall constitute one agreement.
- (b) The parties agree that a facsimile or email copy of a counterpart received from a party shall be deemed to be, an original copy of that counterpart received from that party.

19.6 No merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction contemplated by this Agreement.

19.7 Relationship

Except where this Agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

19.8 Entire Agreement

This Agreement contains all the contractual arrangements of the parties with respect to the items to which it relates, and supersedes all earlier conduct

(including any agreements in relation thereto) by the parties with respect to those items.

19.9 Electronic Communication

The parties agree and acknowledge that their representatives may communicate utilising electronic communication and the laws governing electronic communication in the relevant state of the party receiving the electronic communication will apply.

19.10 Notices

- (a) A notice, consent, approval or other communication (each a 'notice') under this Agreement must be signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (i) delivered to that person's address;
 - (ii) sent by pre-paid mail to that person's address; or
 - (iii) transmitted by facsimile or email to that person's address.
- (b) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (i) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (ii) if sent by pre-paid mail, on the third Business Day after posting; or
 - (iii) if transmitted by facsimile or email to a person's address and a correct and complete transmission report is received, on the day of transmission if a

Business Day, otherwise on the next Business Day.

- (c) For the purposes of this clause 19.10 the address of a party, is the address referred to either above in the title of the Agreement or if not referred to in the title of the Agreement then in the Schedule of the Agreement.

19.11 Interpretation

In this Agreement:

- (a) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as' or 'for example' (or similar phrases) do not limit what else might be included;
- (b) a reference to this Agreement includes the agreement recorded by this Agreement;
- (c) this Agreement is not to be interpreted against the interests of a party merely because that party proposed this Agreement or some provision in it or because that party relies on a provision of this Agreement to protect itself; and
- (d) a reference to a party is a reference to DU or the Customer, and a reference to the parties is a reference to both DU and the Customer.

19.12 Severance

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. That will not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.
