

APC Storage Solutions Terms and Conditions of Trade

1. DEFINITIONS

1.1 In these terms of trade:

- (1) **"Contract"** means a Contract for the provision of Goods and Services by Supplier to the Customer as evidenced by these terms of trade and the Goods and Services Order;
- (2) **"Contract Price"** means the price of purchasing the Goods or the price of acquiring the Goods and Services as specified in Supplier's Invoice;
- (3) **"Customer"** means the person or entity acquiring the Goods and Services under a Contract;
- (4) **"Goods"** means the products identified in the Quotation and the Goods and Services Order plus any additional materials required to be supplied by Supplier in order for it to fulfil its obligations under the Contract;
- (5) **"Goods and Services Order"** means the order submitted by the Customer to Supplier for the supply of Goods and Services;
- (6) **"Personnel"** means the Supplier's employees and agents and subcontractors;
- (7) **"Quotation"** means Supplier's written quotation to the Customer;
- (8) **"Services"** means the services rendered for design, manufacture, transport and installation of the Goods and any ancillary services to be provided by the Supplier and includes services specified in the Goods and Services Order;
- (9) **"Site"** means the Site which the Supplier may be required to supply the Goods to and perform the Services;
- (10) **"Supplier"** means APC Storage Solutions Pty Ltd ACN 131 332 735 of 4 Hanwell Way, Bassendean WA 6054 and any related body corporate of that company within the meaning of section 50 of the Corporations Act 2001.

2. CONTRACT

2.1 Terms of Contact

The Contract shall consist of the Goods and Services Order, these terms and conditions and any other document which is attached to or incorporated by reference in the Goods and Services Order or these terms of trade.

2.2 Conflict

Where there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.1.

2.3 Entire Agreement

The Contract contains the entire agreement between the Supplier and the Customer and supersedes all prior communications and negotiations between the Supplier and the Customer in connection with its subject matter.

2.4 Binding Agreement

No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the Goods and Services Order, including without limitation, Customer's printed terms and conditions, or any terms and conditions contained in any order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in writing signed and duly authorised by representatives of both parties.

2.5 Variation

No amendment or variation of the Contract is valid or binding on a party unless made in writing and signed by the Supplier and the Customer.

2.6 Acceptance of Orders

- (1) The Quotation is not an offer to sell but is an invitation to treat only and the Supplier reserves the right to accept or reject in its absolute discretion any orders which may be received by it.
- (2) The Customer acknowledges that the price stated in or during the time of quotation is an estimate based on rates of freight, insurance, customs duty, exchange rates, cost of materials purchased overseas, shipping expenses, wage and material costs and other factors at the time the Quotation was prepared. If the Supplier considers that it needs to adjust the quoted price in light of circumstances which it considers have affected the cost of the Goods, then at any time prior to acceptance of an order the Supplier may adjust the quoted price and such adjustments will be binding on the Customer.

2.7 Separate Contract for Each Shipment

The Supplier will be entitled to deliver partial shipments unless expressly prohibited by the terms of an order, and each shipment of Goods in respect of which an invoice is raised by the Supplier will be deemed to constitute a separate contract between the parties.

3. SPECIAL CONDITIONS

- 3.1 The Contract is subject to any Special Conditions set out in the Goods and Services Order (each a Special Condition). In the event of any inconsistency between any Special Condition and any provision of these terms or trade, the Special Condition shall prevail.

4. PRICE

4.1 Price Change

The prices shown in the Supplier's price list are subject to alteration without notice.

4.2 Price of Goods and Services

If the Supplier accepts an order it will supply the Goods and Services at the price shown in the price list current when the Supplier accepts the order, unless otherwise agreed in writing.

4.3 Goods and Services Tax

The price at which the Goods and Services are supplied does not (unless otherwise stated or agreed in writing) include Goods and Services Tax or other governmental taxes directly applicable to the supply of goods or services, which must be added to the price and paid by the Customer as part of the Contract Price.

5. PAYMENT

5.1 Payment Terms

- (1) The whole amount of the Contract Price shall be due and payable immediately unless terms of credit have been extended by the Supplier upon completion of the Supplier's official Application for Credit Form.
- (2) The terms of credit extended to the Customer (if any) will be specified in the Supplier's invoice.
- (3) If the Supplier issues a credit note to the Customer (whether on request by the Customer, or at its own discretion or otherwise), the Customer agrees that the issue of the credit note is an act of commercial good faith by the Supplier and not an admission of liability to the Customer in relation to any of the matters pertaining to the issue of the credit note.

5.2 Timing of Payment

Payment is deemed to be made:

- (1) If cash is tendered – on the date it is tendered;
- (2) If a cheque (bank or otherwise) or other negotiable instrument is tendered – on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Supplier's bankers; and

- (3) If funds are remitted by electronic funds transfer (EFT) or other form of inter-bank transfer system – on the date upon which the remittance is credited by the Supplier’s bankers to the Supplier’s nominated account.

5.3 Time of the Essence

Time is of the essence in respect of the Customer’s obligation to make payment for Goods sold and Services supplied by the Supplier to the Customer.

5.4 Late Payment

If the Customer defaults in making payment to the Supplier in accordance with these terms of trade, the Supplier may in its absolute discretion:

- (1) Charge the Customer interest calculated on all or part of the Customer’s overdue account at the rate of 2% above the Supplier’s bank overdraft rate per month from the date on which the payment was due;
- (2) Require the Customer to reimburse the Supplier for all collection costs including legal costs incurred by the Supplier calculated on a solicitor and client basis as a consequence of the Supplier instructing its solicitor to provide advice to it in connection with the default and/or to institute such recovery process as the Supplier in its discretion decides;
- (3) Withhold supply and dispose of any indent and/or stock order held;
- (4) Institute legal action for recovery of outstanding balance and costs incurred without notice; or
- (5) Terminate credit facilities;

and the Supplier shall not be liable to the Customer for any loss or damage resulting directly or indirectly from such action.

5.5 Application for Payments

Any payments tendered by the Customer to the Supplier must be applied as follows:

- (1) Firstly, as reimbursement for any collection costs incurred by the Supplier;
- (2) Secondly, in payment of any interest charged to the Customer;
- (3) Thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer’s account.

6. SUPPLY AND DELIVERY OF GOODS

6.1 Delivery

The delivery time made known to the Customer is an estimate only and the Supplier shall not be liable for late delivery or non-delivery including any loss, damage or delay occasioned to the Customer or its customers arising from late or non-delivery.

6.2 Goods in Transit

The Supplier is not responsible for any loss or damage to the Goods in transit. The Supplier shall render to the Customer such assistance as may be necessary to make claims on carriers provided the Customer notified the Supplier and the carriers in writing immediately such loss or damage is discovered.

6.3 Surplus Goods

The Supplier may supply surplus materials as a precaution against damage or loss. On completion of the Contract any surplus materials will remain the property of the Supplier and will be promptly removed from Site. In the event that any surplus materials owned, rented or furnished by the Supplier (and left on Site) are damaged or destroyed then the Customer shall indemnify the Supplier for any costs, losses or damages (whether direct or indirect) suffered by the Supplier as a result of such damage and/or destruction irrespective of whether such damage and/or destruction was caused by the Customer or the Customer’s sub-contractors agents or employees.

6.4 Unloading of Goods

The provision of labour and a suitable forklift for the unloading and handling of the Supplier materials on Site and provision of a covered storage area when required by Supplier is the responsibility of the Customer, unless otherwise agreed in writing. Any charges arising from delay in unloading, for which the Supplier is not responsible, will be to the Customer’s account.

6.5 Storage

Where the Supplier’s materials are stored on Site for any reason whatsoever between the time of delivery and the start of installation, the care and protection of such materials is the sole responsibility of the Customer. Where the storage is at a location remote from the Site where installation is to occur, transfer of the Supplier’s materials to Site is the responsibility of the Customer. Charges arising out of delay to installation due to materials not being on Site will be to the Customer’s account

6.6 Time for Delivery

Subject to clause 6.1, any times quoted for completion or delivery are effective from the date of receipt by the Supplier of a Goods and Services Order, together with all information and particulars the Supplier requires to proceed with the manufacture without interruption or delay. All such times are to be treated as estimates only and the Supplier shall not be liable for failure to dispatch, install, or otherwise perform within such times unless otherwise agreed in writing. In all cases, the time allowed for completion or delivery shall be extended to reasonable periods for delays caused by the Customer, or by any other cause whatsoever beyond the Supplier’s reasonable control.

6.7 Goods Supplied by Third Party

Where the Supplier supplies in connection with the supply of Goods or Services any goods or services supplied by a third party, then the Supplier does not give any warranty, guarantee or other term as to the quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the party supplying the goods or services to the Supplier.

6.8 Bulk Deliveries

If the Goods are of a type commonly supplied in bulk the Supplier reserves the right to delivery up to 5% under or over the quantity ordered by the Customer. In this event the Customer will pay for the additional quantity delivered within 14 days of the invoice or the Supplier will credit the Customer with the price of the shortfall within 14 days of delivery, as the case may be.

6.9 Special Delivery

If the Customer requires delivery by overnight transport, airfreight, or other special delivery, the costs must be added to the price and paid by the Customer as part of the price.

6.10 Customer Indemnity

Except in respect of death or personal injury caused by the Supplier’s wilful negligence, the Supplier shall not be liable for any claims, damages, loss or expenses resulting from the Customer’s use of the Goods supplied by the Supplier and the Customer shall indemnify the Supplier against any financial liability or loss suffered or incurred by the Supplier as a result of any claim by the Customer or any other third party in respect thereof.

6.11 Packing

If the Customer requires special packing in relation to the Goods it must be agreed to in writing between the Customer and the Supplier, and the cost of the same is to the Customer’s account and accordingly will be included in the Contract Price. If the Supplier fails to include the cost of special packing in the Contract Price the Customer must pay to the Supplier such costs on demand.

7. ACCEPTANCE OF CLAIMS

7.1 Time for Acceptance

The Customer must inspect the Goods immediately upon delivery, or in the event of delivery and installation of the Goods, then upon completion of installation, and must within 7 days after date of inspection give written notice to the

Supplier, with particulars, of any claim that the Goods are not in accordance with the Contract. If the Customer fails to give that notice, then to the extent permitted by statute the Goods are deemed to have been accepted by the Customer and the Customer must pay for the Goods in accordance with the provisions of these terms of trade. For the purpose of this clause no account shall be taken of additions, minor omissions or defects which do not materially affect the commercial use of Goods.

7.2 Claims subject to the Supplier’s Inspection

All claims will be subject to inspection of the Goods by the Supplier and accordingly acceptance of the return of the Goods by the Supplier or its agent will not constitute acceptance of a claim in respect of those Goods.

8. RETURN OF GOODS

8.1 Terms Applying to all Returns

The Customer must not return any Goods including Goods which the Customer claims are not in accordance with the Contract unless the Supplier has first given its approval to their return and supplied a Returns Authorisation Number (“**RAN**”) for the Goods. Their return must then be with freight prepaid by the Customer and the shipping documents must quote the RAN.

8.2 Returns where Goods in accordance with Contract

If the Supplier has given its approval to the return of Goods deemed to be accepted under clause 8.1 the Supplier may charge a handling charge equivalent to 20% of the price of the Goods returned, unless the Customer is a “consumer” for the purposes of the Australian Consumer Law.

8.3 Returns where Goods not in accordance with Contract

If the Supplier has given its approval to the return of Goods which are not deemed to have been accepted by the Customer under clause 8.1, the Supplier must refund the freight to the Customer if the Customer’s claim that the Goods are not in accordance with the Contract is found to be valid.

8.4 The Supplier’s Nominated Carrier

- (1) Returns must be via the Supplier’s nominated carrier, at normal rates, except that where it is impractical to use the Supplier’s carrier the cheapest alternative service may be used.
- (2) The Supplier will not accept liability for:
 - (i) insurance of Goods returned;
 - (ii) freight at express service rates; or
 - (iii) freight with carriers not authorized under sub-clause 8.4(1).

8.5 Returns without Authorisation

Goods returned to the Supplier without authorization will be at the risk of the Customer. The Supplier reserves the right to dispose of any Goods returned without authorisation within 30 days of notice to the Customer of non-acceptance of credit and the Supplier shall not be obliged to account to the Customer for any disposal of Goods under this clause.

9. RISK AND INSURANCE

9.1 Goods supplied by the Supplier to the Customer are at the Customer’s risk immediately upon dispatch for delivery to the Customer or into the Customer’s custody (whichever is the sooner). The Customer must insure the Goods at its cost from dispatch of the Goods until they are paid for in full against fire, theft and other usual risks and produce a certificate to this effect to the Supplier on request.

10. RETENTION OF TITLE

10.1 When Property Passes

Property in the Goods sold under any particular invoice (“the Goods”) will not pass from the Supplier to the Customer until all monies which are or become due to the Supplier by the Customer for the sale of the Goods or any other Goods supplied by the Supplier to the Customer have been paid in full.

10.2 Relationship of Bailment

The relationship between the Supplier and the Customer in respect of the Goods will be that of bailor and bailee until property in the Goods passes to the Customer.

10.3 Customer’s Obligations until paid for

The Customer must store the Goods at the Customer’s usual place of business and in a manner so that the Goods may be clearly identified as the Goods of the Supplier until property in the Goods passes to the Customer.

10.4 Customer’s Right to Resell

The Customer will be entitled in the course of its business to resell the Goods before property in the Goods passes to the Customer in which event the Customer will contract as a principal but must hold the proceeds of sale on separate account for the Supplier as a fiduciary obligation.

10.5 Notification and Indemnity

- (1) Where the Customer has on sold the Goods to a third party customer before ownership of the Goods has passed to the Customer then the Customer shall:
 - (i) put the third party customer on written notice that the Supplier retains ownership of the Goods until paid for by the Customer and reserves the right to reclaim the Goods without notice to the Customer or third party customer;
 - (ii) indemnify the Supplier for any costs, losses or damages suffered by the Supplier in respect to Goods not paid for in full by the Customer and on sold to a third party customer.

10.6 The Supplier’s Authority to Inspect

- The Customer irrevocably authorises the Supplier at any time, to enter any premises:
- (1) upon which the Goods are stored to enable the Supplier to inspect the Goods; and
 - (2) upon which the Customer’s records pertaining to the Goods are held to inspect and copy the records.

10.7 The Supplier’s Right to Reclaim

Subject to provisions of the PPSA, if any monies owing by the Customer to the Supplier are overdue the Supplier may by its employees or agents enter upon the Customer’s premises and recover and resell the Goods in which event the Supplier’s only obligation to the Customer will be to credit the Customer with the Contract Price stated in the invoice (excluding any delivery charges or other charges included in the invoice not directly related to the price of the Goods) and less, firstly, the Supplier’s costs incurred in exercising its rights pursuant to this clause 10.7 and, secondly, the Supplier’s reasonable estimate of any diminution in the value of the Goods below the Contract Price arising from their possession by the Customer.

11. INSOLVENCY OF CUSTOMER

11.1 When Breach Occurs

If before property in the Goods passes, the Customer becomes insolvent for the purposes of the Bankruptcy Act or the Corporations Act 2001 or a receiver or manager of the whole or any part of the Customer’s business or property is appointed, the Contract for the sale of the Goods shall be deemed to be repudiated by the Customer and the repudiation to be accepted by the Supplier, subject at all times to the provisions of Part 5.3A of the Corporations Act 2001.

11.2 Right of Set-Off

Notwithstanding that a Customer may become insolvent, if the Supplier is at any time indebted to the Customer for any reason, the Supplier will be entitled to set-off the sum of that debt against any monies owed by the Customer under a contract.

- 12. PERSONAL PROPERTIES SECURITIES ACT ("PPSA")**
- 12.1** Defined terms in this clause have the same meaning as given to them in the PPSA.
- 12.2** The Customer and Supplier agree that the terms of trade and Contract constitute a security agreement and may give rise to a Purchase Money Security Interest ("PMSI") in favour of the Supplier over the Goods supplied or to be supplied to the Customer, as grantor, pursuant to the terms of trade.
- 12.3** The Customer acknowledges and agrees that by assenting to these terms of trade the Customer grants a security interest (by virtue of clause 10 (Retention of Title)) to the Supplier over all Goods supplied by the Supplier to the Customer (if any) and all after acquired Goods supplied by the Supplier to the Customer (or for the Customer's account) and this grant of security interest will be effective notwithstanding anything express or implied to the contrary contained in the Customer's purchase order.
- 12.4** The Customer acknowledges and agrees that the Supplier may apply to register a security interest in the Goods at any time before or after delivery of the goods.
- 12.5** The Customer agrees to do anything required by the Supplier for the purposes of:
- (1) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
 - (2) enabling the Supplier to apply for any registration, complete any financing statement or financing change statement or give any notification, in connection with the security interest; and/or
 - (3) enabling the Supplier to exercise rights in connection with the security interest; and/or
 - (4) ensuring that the Supplier has priority over all other security interests in the Goods.
- 12.6** The Customer waives its right under section 157 of the PPSA to receive the verification statement confirming registration, financing statement or financing change statement relating to a security interest granted by the Customer, as grantor, to the Supplier.
- 12.7** The Customer must not register a financing change statement as defined in Section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of the Supplier.
- 12.8** To the maximum extent permissible at law, the Supplier and Customer agree that sections 95, 121(4), 123(2), 125(1), 130, 132(3)(d), 132(4), 135, 142, and 143 of the PPSA shall be excluded and shall not apply to the enforcement by the Supplier of its security interest in the goods.
- 12.9** The Supplier and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA and the Customer will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 12.9 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- 12.10** The Customer must not create any security interest in the Goods to any person other than the Supplier.
- 12.11** For the purposes of section 125 of the PPSA the Customer agrees that a 'reasonable period' shall not mean less than 12 months regardless of the circumstances.
- 12.12** The Customer agrees to pay the Supplier, on demand all of the Supplier's reasonable legal fees, disbursements, costs and expenses associated with:
- (1) registration, amendment, or discharge of any financing statement registered by or on behalf of the Supplier; and
 - (2) enforcement of any security interest granted to the Supplier by the Customer.
- 12.13** Nothing in this clause is limited by any other provision of these trading terms or any other agreement between the parties.
- 13. GOODS SUPPLIED ON CREDIT**
- 13.1** The provisions of clause 10, clause 11 and clause 12 apply despite any arrangement between the parties under which the Supplier grants the Customer credit.
- 14. EXCLUSION OF IMPLIED CONDITIONS AND WARRANTIES**
- 14.1 Imposed by Statute**
- The only conditions and warranties which are binding on the Supplier in respect of:
- (1) the state, quality or condition of the Goods and Services supplied by it to the Customer; and/or
 - (2) advice, recommendation(s), information or services supplied by it or its Personnel to the Customer regarding the Goods and Services, their use and application;
- are those imposed and required to be binding by statute (including the Australian Consumer Law).
- 14.2 Limitation on Liability**
- To the extent permitted by statute the liability, if any, of the Supplier arising from the breach of the conditions or warranties referred to in clause 14.1 are, at the Supplier's option, limited to and completely discharged by either:
- (1) the supply by the Supplier of equivalent Goods and Services; or
 - (2) the replacement by the Supplier of the Goods and Services supplied to the Customer.
- 14.3 Exclusion of other Conditions and Warranties**
- Except as provided in clause 14.1, all conditions and warranties whether express or implied by law in respect of the state, quality or condition of the Goods and Services which may apart from this clause be binding on the Supplier are excluded.
- 14.4 Exclusion of Consequential Loss**
- (1) Except to the extent provided in this clause 14, the Supplier has no liability (including liability in negligence) to any person for:
 - (i) any loss or damage consequential or otherwise suffered or incurred by that person in relation to the Goods and Services; and
 - (ii) in particular without limiting sub-clause 14.4(1)(i) any loss or damage consequential or otherwise suffered or incurred by that person caused by or resulting directly or indirectly from any failure, defect or deficiency of any kind of or in the Goods and Services.
- 15. PATENTS DESIGNS AND COPY RIGHT**
- 15.1** All descriptions, illustrations, particulars of weight and dimensions contained in the Supplier's catalogues, price lists and other advertising matter, are intended merely to give an indication of the Goods described therein. All drawing and specifications prepared by the Supplier shall remain the Supplier's property and all copyright therein shall belong entirely to the Supplier.
- 15.2** If the Supplier has followed a design or instructions given by the Customer, the Customer shall indemnify the Supplier against all damages, penalties, costs and expenses of the Supplier arising from any infringement of a patent, trademark, registered design, copyright or common law right. The Customer on its part warrants that any design or instructions given by it will not cause the Supplier to infringe any patent, registered design, trademark, copyright or common law right.
- 16. IMPRINTS**
- 16.1** Where the Supplier's patents, registered designs or copyright features are embodied in the design of the Goods, an imprint to that effect may be affixed and it must not be defaced, obliterated or removed from the Goods. Unless otherwise

agreed the Supplier shall be entitled to write or affix the Supplier's name or trade plate on the Goods.

17. PERMITS AND APPROVALS

17.1 Unless specified elsewhere it is the Customer's responsibility to comply with all applicable laws, orders and regulations of all authorities having jurisdiction over the Goods and to obtain any permits, approvals, licences or any such other compliance certificates ("approvals") it may require in respect to the import supply and installation of the Goods. The Customer shall bear all costs in obtaining such approvals.

18. INDEMNITY

18.1 Supplier Indemnity

The Supplier shall indemnify the Customer during the defects liability period stipulated in clause 19 for any loss, damage, injury or liability, cost or claim in respect of the Goods if and only if any such loss, damage, injury or liability cost or claim is as a direct result of the Supplier's sole negligence or wilful misconduct, and subject at all times to clause 14.4.

18.2 Customer Indemnity

The Customer shall indemnify the Supplier against all liability arising out of the performance by the Supplier (or its employees, agents or sub-contractors) of its obligations under the Contract, provided the liability of the Customer to indemnify the Supplier shall be reduced proportionately to the extent that the actions or omissions were contributed to by the Supplier.

19. DEFECTS LIABILITY PERIOD

19.1 The Goods will be warranted hereunder for a period of 12 months from the date of acceptance of the Goods and this warranty is only valid for defects or failure under proper use and which arise solely from faulty design (if and only if designed by the Supplier), materials or workmanship.

20. INSTALLATION SERVICES

20.1 Services subject to Contract and Terms of Trade

In addition to the provision of Goods the Supplier shall, where required by the Customer, provide the Services to the Customer subject to these terms of trade and the Contract.

20.2 Service Availability

The Services shall, subject to these terms of trade, be provided in accordance with the Contract. The Services are offered subject to the availability of the Supplier's Personnel at the time of the Goods and Services Order, and in the event that appropriate Personnel are not available at the time the Services Order is accepted by the Supplier, the Supplier reserves the right to subcontract the Services to suitably qualified persons.

20.3 Compliance

The Supplier may at any time without notifying the Customer make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.

21. WARRANTIES IN RESPECT TO SUPPLY OF INSTALLATION SERVICES

21.1 Warranties in respect to Services

The Supplier warrants that:

- (1) All of the Services will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (2) In relation to the performance of the Services:
 - (i) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - (ii) any equipment provided by the Supplier and used on Site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent persons;

- (3) All the Services will be of a high standard and in accordance with the Contract.

21.2 Indemnity

Except in respect of death or personal injury caused by the Supplier's wilful negligence, or as expressly provided in these terms of trade, the Supplier shall not be liable to the Customer or any third party by reason of any representation (unless fraudulent) or any implied warranty, condition of other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expense or other claims (whether caused by the negligence of the Supplier, its Personnel or otherwise) which arise out of or in connection with the provision of the Services and the entire liability of the Supplier under or in connection with the Contract shall not exceed the amount of the Supplier's charges for the provision of the Services, except as expressly provided in these terms of trade.

21.3 Delay

The Supplier shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Supplier's reasonable control.

22. INSTALLATION REQUIREMENTS

22.1 Installation

- (1) Where installation of the Goods is included in the Contract the provision of a Site with a clear working area and adequate access will be the responsibility of the Customer. It is the Supplier's normal practice to notify delivery in advance in order to facilitate the clearance of the working area for the Supplier. The Supplier reserves the right to make an inspection of the working area, and to delay moving on to Site at no penalty to the Supplier if inadequate access or facilities exist. Installation work will require a reasonable standard of lighting and access to power supply within 30 meters of the work area. In the case of structures which require on-site welding a three phase supply with sole access and adequately maintained voltage is also to be provided by the Customer. A representative of the Supplier will be happy to discuss any difficulties in the provision of these requirements and make alternative provisions if necessary, but unless otherwise agreed in writing, any additional costs will be to the Customer's account.
- (2) The Customer acknowledges that it is normal procedure to bolt racking structures to the floor, and unless specified in writing otherwise, the price in the Quotation makes allowance for this. However, if the floor slab is reinforced with grid steel mesh or similar materials to a level less than 70 mm below the surface, special drilling equipment will be required and any additional costs incurred will be to the Customer's account.
- (3) Unless specified in writing otherwise the price in the Quotation presumes that the condition of the floor of the Site is reasonably flat. Flatness tolerance should be within 3 mm inside a 9 metre radius. Additional installation costs incurred to cater for a faulty or uneven floor will be to the Customer's account.

23. INDEMNITIES

23.1 Customer Indemnity

The Customer will indemnify (and will keep indemnified) the Supplier and its Personnel from and against all liabilities that the Supplier or its Personnel, sustains or incurs, arising from any one or more of the following:

- (1) the breach by the Customer or its Personnel of any of the Customer's obligations (including any warranty) under the Contract and/or any Goods Services Order;
- (2) any negligent act or omission or willful misconduct by the Customer or its Personnel.

23.2 Limited Indemnity

The Customer will not be liable under clause 23.1 to the extent that the liability was caused, or contributed to, by (as the case requires) the Supplier's negligent acts or omissions or willful misconduct.

23.3 Continuing Indemnity

Each indemnity in the Contract is a continuing obligation separate and independent from the Customer's other obligations and survives termination of the Contract.

23.4 Enforcement of Indemnity

It is not necessary for the Supplier, or its respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

- (1) that any illegal or unenforceable provision will be severed from this document and will not affect the continued operation of the remaining provisions which are self-sustaining and capable of separate enforcement; and
- (2) use their best endeavours to replace any severed provision with a legal and enforceable provision having a commercial import as close as permissible to the severed provision.

31.2 Notwithstanding that any provision of this document which is prohibited or unenforceable in any jurisdiction shall be construed to be ineffective to the extent of such prohibition or unenforceability in that jurisdiction, this construction will not affect the validity or enforceability of the provision in any other jurisdiction.

24. PRIVACY

24.1 Where Goods are supplied to the Customer on credit, the Customer irrevocably authorises the Supplier, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Customer including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Customer or any other credit providers ("**Information Sources**") and the Customer authorises the Information Sources to disclose to the Supplier all information concerning the Customer which is within their possession and which is requested by the Supplier.

24.2 The Supplier will comply with its obligations under the Privacy Act 1988.

25. CLERICAL ERRORS

25.1 Errors and omissions in the Supplier's invoices will not be binding upon the Supplier and may be corrected by the issue of a supplementary invoice or revised invoice which is otherwise in the same terms including the due date for payment.

26. VIENNA SALES CONVENTION

26.1 The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention 1980 is excluded.

27. FORCE MAJEURE

27.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

28. WAIVER AND ASSIGNMENT

28.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right, and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

28.2 A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

28.3 The Supplier reserves the right to assign or subcontract out the whole or any part of the Contract at its sole discretion.

29. GOVERNING LAW AND JURISDICTION

29.1 The law of the State or Territory in which the Goods are sold governs these terms of trade, and in the event of bona fide dispute as to the place of sale the law of Western Australia will apply.

29.2 The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.

30. VARIATION OF TERMS

30.1 The Supplier reserves the right to replace or vary these terms of trade from time to time upon 30 day's notice. All contracts from orders received by the Supplier after the expiry of 30 day's notice shall be deemed to be subject to the replacement or varied terms.

31. SEVERABILITY OF PROVISIONS

31.1 The parties agree: