

## TERMS AND CONDITIONS OF SALE

**Stramit Corporation Pty Limited (ABN 57 005 010 195)**

Effective Date: 1 July 2022

By submitting an application for a Credit Account and/or ordering Goods from Us, You agree that the following Terms and Conditions of Sale ("**Conditions**") will apply to the supply.

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 In these Conditions:

- (a) **Anti-Corruption Law** means any law prohibiting or relating to bribery, corruption, kickbacks, secret commissions or money laundering, including without limitation, the Foreign Corrupt Practices Act 1977(US), the Bribery Act 2010 (UK), the Criminal Code Act 1995 (Cth) and any anti-corruption regulations and provisions applicable in the European Union or in any other locations in which We or any member of the We carry on business;
- (b) **Australian Consumer Law** means the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as updated from time to time;
- (c) **Australian Standards** means the applicable codes and guidelines published from time to time by Standards Australia;
- (d) **Consumer Contract** means a contract for the supply of goods or services to an individual whose acquisition of the goods or services is wholly or predominantly for personal, domestic or household use or consumption. However, if the relevant parts of the definition of 'Consumer Contract' under the Australian Consumer Law are amended at any time, this definition is also amended accordingly;
- (e) **Contract** means the contract for the sale and/or supply of Goods between You and Us as set out in clause 2.1;
- (f) **Credit Account** means, if applicable, the commercial credit account You have with Us under the Contract;
- (g) **Due Date** means the date You must pay for the Goods as specified on Our invoices in line with the terms of the Credit Account;
- (k) **Fletcher Group** means Fletcher Building Limited (ARBN 096 046 936) and its related bodies corporate (as that term is defined in the Corporations Act 2001 (Cth));
- (l) **Fletcher Group Member** means any member of the Fletcher Group;
- (m) **Force Majeure Event** means any event outside a party's reasonable control including acts of God, declared or undeclared war, act of terrorism, fire, flood, storm, earthquake, hurricane, cyclone, riot, power failure, industrial action, epidemic, pandemic, defaults of manufacturers or suppliers, the inability to obtain equipment, supplies or other facilities that are not caused by a failure to pay, labour disputes, theft, any criminal act, effects of a pandemic or epidemic or other similar events beyond a party's control that may prevent or delay a party from performing their obligations under any Contract;
- (p) **Goods** means all goods, merchandise and/or services requested by You in any Order and/or supplied by Us to You under a Contract from time to time;
- (q) **GST** and related terms have the meanings given to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (r) **Guarantors** means the guarantors (if any) set out in the Credit Account;
- (s) **Insolvency Event** means the occurrence of any of the following events in relation to a party: (a) the party becomes insolvent as defined in the Corporations Act 2001 (Cth), states that it is insolvent or presumed to be insolvent under an applicable Law; (b) the party is wound up by resolution or an order of a court or declared bankrupt; (c) the party becomes an insolvent under administration as defined in the Corporations Act; (d) the party becomes subject to one of the forms of external administration provided for in Chapter 5 of the Corporations Act; (e) the party enters into or becomes subject to: (i) any arrangement or composition with one or more of its creditors or any assignment for the benefit of one or more of its creditors; or (ii) any re-organisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors; (f) any application or order is made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken which is preparatory to or could result in any of (b), (c), (d) or (e) above; (g) the party is taken, under section 459F(1) of the Corporations Act, to have failed to comply with a statutory demand; or (h) the party suspends payment of its debts, ceases or threatens to cease to carry on all or a material part of its business;
- (t) **Order** means a request by You to Us for the supply of Goods;
- (u) **Personal Information** has the meaning given in the Privacy Act 1988 (Cth).
- (v) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (w) **Price List** means the price list issued by Us from time to time in the particular State or Territory in which an Order is placed;
- (x) **Quotation** means the verbal or written estimate given by Us for the cost to supply specified Goods, and includes a Price List issued by Us from time to time;
- (z) **Small Business Contract** has the meaning given to that term in the Australian Consumer Law;
- (aa) **Special Building Products** means the Goods, materials and/or products which are purchased, produced or supplied by Us in accordance with a particular design, drawing or specification that is requested by You;
- (bb) **Special Conditions** means any special conditions issued by Us from time to time that may apply to a particular transaction;
- (cc) **"We", "Us" or "Our"** means Stramit Corporation Pty Limited (ABN 57 005 010 195) and any subsidiaries, associated, related and parent companies or businesses, successors or assigns, including the businesses trading as 'Stramit Building Products', 'Integrated Steel Solutions', 'Eziform Sheetmetal' and 'Taurean Door Systems'; and
- (dd) **You or Your** means any individual, company, organisation or any other entity stated in the Contract to whom or to which We supply or offer to supply Goods

under these Conditions, including any person, entity or agent acting on their behalf.

- 1.2 Headings are for convenience only and do not form part of these Conditions.
- 1.3 Reference to any legislation includes a modification, revision, amendment, re-enactment of, legislation enacted in substitution for, regulation, order-in-council or any other instrument from time to time issued, enacted or made under that legislation.
- 1.4 Reference to the singular includes the plural and the plural includes the singular.
- 1.5 The words include and including are not terms of limitation.
- 1.6 Terms and expressions used in these Conditions that are defined in the Australian Consumer Law, the GST Act or the PPSA have the same meanings respectively given to those terms and expressions in those Acts.

## 2. GENERAL MATTERS

- 2.1 The contract between You and Us is constituted by:
  - (i) these Conditions;
  - (ii) the application for a Credit Account;
  - (iii) any Special Conditions, and
  - (iv) the extent to which We accept an Order in accordance with clause 3.1(each a "Contract").

The Conditions, the application for a Credit Account, the Special Conditions and the extent to which We accept the Order, govern all contracts for the supply of Goods by Us to You and constitute the entire agreement in connection with the supply of Goods between Us and You. To the extent of any inconsistency, the order or precedence set out in this clause 2.1(i) to (iv) applies. All prior representations, trade custom or previous dealings between Us and You are excluded and are not applicable in the interpretation of the Contract. No modification or variation to the Conditions or the application for a Credit Account, any additional terms or conditions or any terms inconsistent with the Conditions or the application for a Credit Account provided by You (whether put forward in the Order, Your specification or otherwise) will bind Us, unless expressly and specifically agreed to in writing by Us. The Conditions and the application for a Credit Account supersede any terms and conditions which have previously governed a contract for the sale of Goods between You and Us. The Condition and application for a Credit Account will prevail to the extent of any inconsistency between them and any quotation, order or other documents from You. The Condition and application for a Credit Account bind you even if you or We do not sign them promptly or at all.

- 2.2 By placing an Order, or accepting delivery of Goods pursuant to any Order, You are deemed to have read, understood and accepted these Conditions as binding on You.

## 3. ORDERING AND SUPPLY OF GOODS

- 3.1 A quotation by Us is an estimate only and will not constitute an offer to sell Goods to You. You may seek to purchase Goods by placing an Order with Us verbally or in writing. An Order constitutes an offer by You to purchase Goods from Us pursuant to these Conditions. No contract for the supply of Goods will exist between Us and You until Your Order has been accepted by Us (we may accept or decline, in whole or in part an Order and such acceptance of Your Orders may be made and communicated by Us in writing including an Order

acknowledgment or by overt act of acceptance. If only part of an Order is accepted, We will notify You of this. You are deemed to have agreed to only part of the Order being accepted unless written notice is received by Us that You wish to cancel the whole Order within 5 days of the date of issue of Our notice). You will be under no obligation to place an Order with Us. We reserve the right to accept or refuse any Order for Goods or services in our absolute discretion and may make our acceptance of an Order conditional upon the earlier of it receiving a satisfactory credit assessment of You or payment in full (as applicable).

- 3.2 The parties acknowledge and agree that acceptance of an Order by Us gives rise to a Contract under these Conditions.
- 3.3 Subject to clauses 3.1 and 13.4, You may not withdraw, cancel or revoke an Order after Our acceptance without Our written consent.
- 3.4 No Quotation will constitute an offer to supply Goods to You. We reserve the right to alter the quote or price list without notice to You, however such changes will not affect prices which are part of already accepted Orders unless agreed under clause 4.3. We reserve the right to vary or withdraw any Quotation before an Order is accepted.
- 3.5 You must obtain Our written consent if You wish to resell any Goods online.
- 3.6 We reserve the right to modify the design of Goods, cease to manufacture or supply Goods or allocate supply of Goods without notice. If the Contract is a Consumer Contract or a Small Business Contract and We modify the design of Goods after we have accepted Your Order for those Goods: (a) We will give you notice of the modification in writing; and (b) You may consider the modification and, if not acceptable, may elect not to proceed with the purchase of Goods ordered before the date of the notice, but which are intended to be subject to the modification.

## 4. PRICES, GST AND OTHER EXPENSES

- 4.1 Subject to these Conditions, the price of the Goods will be as agreed between Us and You at the time of Our acceptance of Your Order. The price is exclusive of any freight charges, packing charges, customs duty and GST or similar taxes, which You will pay in addition to the price at the same time and in the same manner as the price.
- 4.2 Except where expressly agreed otherwise, at any time prior to delivery We may, upon giving You not less than 30 days prior written notice (which You agree may be given by electronic direct mail), vary the prices specified on Your quotation, order confirmation or invoice (as applicable) to reflect our new updated Price List.
- 4.3 You may consider any variation referred to in clause 4.2 and, if not acceptable, may elect within 10 business days written notice of the variation, not to proceed with the purchase of the Goods ordered before the date of the variation, but which are intended to be subject to the variation. If no written notice is received by us during these 10 business days, You are deemed to accept such variation referred to in clause 4.2.
- 4.4 Unless otherwise expressly stated, all amounts payable by You for Goods are exclusive of GST.
- 4.5 If GST is imposed on any supply of Goods made in accordance with a Contract, You must pay to Us an additional amount equal to the GST payable on or for that taxable supply of Goods. Payment of any GST must be made at the same time as payment for the Goods.

## 5. PAYMENT AND CREDIT

- 5.1 Unless otherwise agreed between the parties, payment for Goods is to be made by You on or before the Due Date.
- 5.3 You authorise Us to open a Credit Account in Your name listed on the application for a Credit Account and to debit the price of the Goods supplied to You and all other amounts owed by You to Us (including fees and interest payable under a Contract).
- 5.4 Any Credit Account granted by Us must only be used by You and cannot be assigned, transferred or made available for use by any other entity or person (including by a subsequent purchaser of You) without Our prior written consent.
- 5.5 If You are in default of any payment, We are entitled to:
- (a) charge You a reasonable surcharge for processing payments made by credit card, at an amount advised by Us from time to time;
  - (b) charge You interest on all overdue accounts at a rate of 10%, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that such interest charge is not a penalty;
  - (c) require the payment of Goods prior to delivery of any further Goods;
  - (d) charge You a reasonable fee where any payment is dishonoured or returned by Your financial provider (or where We are otherwise unable to process any payment from Your financial provider) at an amount advised by Us from time to time; and
  - (e) preclude You from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs until Your account is no longer overdue.
- 5.6 You agree to indemnify Us for:
- (a) all reasonable legal costs, debt recovery fees, collection agency fees and other expenses which are incurred by Us or are likely to be incurred by Us as a result of any breach or negligent act or omission by You arising either directly or indirectly from or in connection with these Conditions including legal fees in the recovery or attempted recovery of any overdue amount for Goods; and
  - (b) any stamp duty or other government rates, taxes (including GST) or charges levied on Us in connection with the Credit Account, any Contract for the supply of Goods and any deed of guarantee, indemnity and charge; and
  - (c) all costs associated with the registration, maintenance and withdrawal of any Security Interest which secures Your obligations under any part of the Credit Account, Contract and these Conditions and which We consider are reasonably necessary in order to protect Our legitimate interests under the Contract.
- 5.7 The parties acknowledge and agree that:
- (a) We may apply any payment received from You towards any debt owed by You to Us;
  - (b) We may set-off any credit amount that We owe to You against any debt owed by You to Us; and
  - (c) You may not withhold payment of any money in respect of any set-off or claim You might have against us without Our prior written consent.
- 6. DELIVERY**
- 6.1 Unless the method is otherwise agreed between the parties, We may make the Goods available for Your collection or deliver the Goods, including delivery by a third-party carrier and delivery by instalments. Subject to clause 13.4, You will not be entitled to cancel the balance of an Order if We fail to deliver any instalment.
- 6.2 You authorise Us to deliver the Goods to the place nominated by You and to leave the Goods at such place whether or not any person is present to accept delivery. We are not obliged to obtain a signed receipt, signed delivery docket or other acknowledgement of the Goods from any person at the nominated place for delivery, but if such signature or acknowledgement is obtained from a person reasonably believed by Us to hold authority to sign for or otherwise take delivery of the Goods, then such signed receipt, signed delivery docket or other acknowledgement will be conclusive evidence of Your acceptance of the Goods delivered.
- 6.3 You must provide a suitable and safe area at the nominated delivery site to unload the Goods and ensure that Our (or Our agents, employees or contractors) use of the nominated delivery site is compliant with relevant work health and safety legislation.
- 6.4 You acknowledge and accept that any period or date for delivery stated by Us is intended as an estimate only and is not a contractual commitment. We will not in any circumstances be liable for any loss or damage suffered by You or any third party for failure to meet any estimated date or time for delivery of Goods or performance of services provided such Goods or services are delivered and performed (as applicable) within a reasonable time. Provided delivery is made within a reasonable time You will not have a right to cancel or terminate Your Order or refuse to pay for the Goods.
- 6.5 Delivery of the Goods is deemed to occur when they are handed to You or Your representative, are delivered to the premises or site nominated by You, or are collected from Us by You or Your representative, whichever occurs first. Subject to the other terms of the Contract, we shall not be liable on any basis whatsoever for loss suffered by You after delivery of the Goods to You.
- 6.6 You agree to examine the Goods immediately after delivery.
- 6.7 You must pay and We reserve the right to charge You all costs and fees incurred as a result of:
- (a) any delay in delivery of the Goods which is caused by You or the conditions of the nominated delivery site or the nature of the Goods being delivered;
  - (b) any unexpected labour or additional costs in connection with the delivery; and
  - (c) any permit or licence or other extraordinary costs of transporting or delivering Goods (including wide or long loads).
- 6.8 Goods ordered for collection will be held for a maximum period of 10 Business Days after the specific collection date. If the Goods are not collected by that time, they may be delivered to (at Our option) Your site or store or to a store selected by Us and all reasonable costs incurred by Us in relation to the holding and delivery of the Goods will be charged to and be paid by You.
- 6.9 If You are collecting the Goods You acknowledge and agree that entry onto Our premises by You or Your agents, employees, contractors or other representatives is at Your/their own risk and We will not be liable for any loss, damage or injury caused by any act or omission whatsoever by You or Your agent, employee, contractor or other representative whilst on Our premises.
- 6.10 You agree to indemnify Us (and Our agents, employees or contractors) from any and all claims, loss and damage caused by You arising out of:

- (a) delivery of the Goods (including any loss or damage caused by delivering the Goods to an unattended site and any loss or damage suffered by Us as a result of any property damage or personal injury caused by the delivery and unloading the Goods);
- (b) Your or Your agent, employee, contractor or other representative's attendance at Our premises; and
- (c) Your failure to provide a safe, suitable and compliant nominated delivery site in accordance with Clause 6.3.

## 7. RISK, TITLE AND CHARGE

- 7.1 Unless otherwise agreed by the parties in writing, all risk in the Goods passes to You upon delivery or collection of the Goods.
- 7.2 Title to any Goods supplied by Us will not pass to You until all amounts owing by You on any account whatsoever under the Contract have been received by Us.
- 7.3 Until title in the Goods passes to You, the Goods supplied are held by You for Us as bailee and You must store the Goods separately from Your own Goods and those of any other party in a manner which clearly identifies the Goods as Our property and which ensures the Goods do not become damaged or spoiled.
- 7.4 You may resell any Goods before title in the Goods passes to You, provided that You:
- (a) resell any such Goods to a third party in the ordinary course of business;
  - (b) act in any such transaction as Our fiduciary agent;
  - (c) hold the proceeds of sale of any such Goods on trust for Us and in a separate account with separate records; and
  - (d) account to Us in respect of those proceeds or any other payment made by a third party for any sale of the Goods and allow us to inspect any records of any payments.
- 7.5 We may repossess any Goods (wherever they are located) if any amount due by You in respect of the Goods remains unpaid:
- (a) after the Due Date and You have failed to make such payment within 5 days of the Due Date; or
  - (b) where You suffer an Insolvency Event.
- 7.6 You irrevocably grant to Us or Our agents or any other nominated representative an unrestricted right and licence without notice to enter any premises occupied by You to identify and repossess any of the Goods pursuant to the right in clause 7.5 without in any way being liable to You or any other third party.
- 7.7 You must insure the Goods, and keep the Goods insured, at Your own cost and expense to the full extent of the price paid or payable for those Goods between the time that risk in the Goods passes to You and the date that title in the Goods passes to You.
- 7.8 You must indemnify Us in full for any claims, costs or expense incurred by Us in connection with loss or damage occasioned to the Goods between the time that risk in the Goods passes to You and the time that title in the Goods passes to You.

## 8. APPLICATION OF THE PPSA

- 8.1 You acknowledge and agree that:
- (a) these Conditions constitute a security agreement for the purposes of the PPSA ("Security Agreement") and creates a security interest in the Goods supplied by Us from time to time and any proceeds of the sale of the Goods to secure payment for the Goods ("Security Interest");

- (b) each sale or supply of Goods by Us under these Conditions is subject to the Security Agreement for the purposes of the PPSA; and
- (c) We may lodge a financing statement on the Personal Property Securities Register ("PPSR") in respect of the Security Interest in the Goods and the proceeds of the sale of the Goods, including as a purchase money security interest (as that term is defined in the PPSA) ("PMSI"), pursuant to these Conditions.

- 8.2 You must do all such things, provide all such information and sign all such documents as are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods.
- 8.3 You must not change Your name, change Your structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any manner which would impact on our registered Security Interest without Our prior written consent. No such event shall affect Your liability under these Conditions, as You are named in any applications for credit, until a new application for credit made in Your new entity name as restructured or changed is received and approved by Us in writing.
- 8.4 To the extent permitted by law if the PPSA applies You irrevocably waive Your rights to:
- (a) receive notices or statements under sections 95, 118, 121(4), 129, 130, 132(2), 132(4) or 135(2);
  - (b) redeem any products under section 142;
  - (c) reinstate any Contract under section 143; or
  - (d) receive a verification statement as defined in the PPSA.
- 8.5 If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).
- 8.6 You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- 8.7 The parties shall not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
- (a) disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
  - (b) We disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- 8.8 Notwithstanding Clause 8.10(a), You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- 8.9 Nothing in this part will prevent any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.
- 8.10 If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Conditions, the general law and the PPSA.



8.11 Nothing in this Clause 8 limits or is limited by any other provision of these Conditions or any other agreement between the parties.

## **9. BUILDING PRODUCTS AND MANUFACTURE**

9.1 No sale under these Conditions constitutes a sale by sample, description or specification. You acknowledge and agree that:

- (a) all samples, descriptions, illustrations and any other specification contained in any of Our Price List, product and service guide, catalogue or advertising material are approximate and may vary from the Goods sold, supplied or produced (within Australian Standards);
- (b) You are liable for ensuring that the Goods are suitable for Your intended use; and
- (c) We are not liable to You for any loss, damage, cost or expense suffered by You as a result of Your reliance upon any such description, illustration, specification or any other characteristic of a sample except to the extent that We have committed an act of negligence, breach of law or breach of a Contract.

9.2 We are not obliged to accept any materials supplied by You for the manufacture of any Special Building Products. If We do accept such materials on Your request then You acknowledge and agree that:

- (a) We make no warranty or representation as to the quality, fitness for purpose or suitability of such materials supplied by You; and
- (b) We are not liable for any failure, delay, loss or damage caused or in connection with any materials supplied by You or any Special Building Products which are manufactured from materials supplied by You.

9.3 Except where the Contract is a Consumer Contract or a Small Business Contract and to the extent permitted by law, You acknowledge and agree that:

- (a) We will not be liable for any lack of fitness for purpose, property damage or personal injury caused by, or any other failure of Special Building Products;
- (b) any skill, judgment, advice, recommendation, information or assistance provided by Us in relation to Special Building Products is so provided in good faith and You do not rely on such skill, judgment, advice, recommendation, information or assistance as to the suitability of any particular purpose of Special Building Products; and
- (c) You will indemnify Us and hold Us harmless from any liability for any loss or damage caused to or suffered by You or any third party as a result of a Special Building Product.

9.4 We reserve the right to:

- (a) charge You, or otherwise recover any reasonable cost We incur, for any necessary testing or inspection of Special Building Products or Goods which are manufactured using materials supplied by You;
- (b) charge You, or otherwise recover any reasonable cost We incur, for Our acquisition and/or use of any tool, equipment, pattern, design, system or any other device of manufacture ("Manufacturing Tools") required to satisfy, complete or perform an Order made by You in connection with a Special Building Product; and
- (c) hire Manufacturing Tools to You on agreed terms.

9.5 You acknowledge and agree that any charges, costs, payment for charges or costs, or agreement for hire does not vest in You any right of title or intellectual property in the Manufacturing

Tools and You may not use the Manufacturing Tools without Our prior written consent.

9.6 You warrant to Us that all drawings and specifications and other design information provided to Us for the manufacture of special orders or tooling are accurate and correct in all respects and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of a third party.

9.7 You agree to indemnify Us against any claim, demand or suit arising out of any loss, damage or personal injury caused to You, Your agents or employees or any other third party, by a Manufacturing Tool provided by Us.

## **10. RETURN OF GOODS – CONSUMERS**

If You are a Consumer (as defined under Australian Consumer Law), the provisions of this clause 10 apply:

- (a) Subject to clause 10(e), unless agreed in writing by Us, We will not accept the return of goods. Goods accepted for return by Us may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by Us and recoverable from You.
- (b) The proof of purchase from You must accompany all goods returned to Us.
- (c) The goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage in accordance with the Australian Consumer Law. You are entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. You are entitled to have services re-supplied or be paid for the cost of having the services re-supplied if the services do not comply with the guarantees.
- (d) The guarantees under the Australian Consumer Law are given by Us.
- (e) If You believe the goods or services do not comply with the statutory guarantees, You must contact Us and the parties may make arrangements for the return of the goods. Any returned goods must be accompanied by proof of purchase. If We agree that the goods or services do not comply with the statutory guarantee We will refund the costs of returning the goods to Us and, in all other respects, act in accordance with its obligations under the Australian Consumer Law.
- (f) Subject to clause 10 (d), all other terms, representations, warranties, guarantees and conditions that might otherwise be granted or implied by law are expressly excluded to the maximum extent permitted by law, unless agreed by Us in writing. We do not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between a supplier and customer by law.

## **11. RETURN OF GOODS – (NON-CONSUMERS)**

If You are not a Consumer (as defined under Australian Consumer Law), the provisions of this clause 11 apply:

- (a) Unless agreed in writing by Us, We will not accept the return of goods. Goods accepted for return by Us may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by Us and debited to Your credit account.
- (b) The proof of purchase from You must accompany all goods returned to Us.

(c) All claims for Our failure to comply with Your order whether due to shortfall, defect, incorrect delivery or otherwise must be made by:

(i) for goods that are delivered as part of a consolidated shed or patio kit set Order (whether these items are across one delivery or a number of deliveries for the same Order) (**Consolidated Kit Sets**), giving written notice to Us within ten (10) business days from the date of delivery of goods or performance of services; or

(ii) for any product supplied by Stramit not delivered as part of a Consolidated Kit Set, giving written notice to Us within five (5) business days from the date of delivery of goods or performance of services.

(d) If You fail to provide such notice then You will be deemed to have accepted the goods and services.

(e) All terms, representations, warranties and conditions that might otherwise be granted or implied by law are expressly excluded to the maximum extent permitted by law, unless We agree in writing. We do not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between Us and You by law.

(f) Our liability for breach of a non-excludable condition or warranty is limited at the Our option, to any one of the following:

(i) the replacement of the goods or the supply of equivalent goods;

(ii) the repair of the goods;

(iii) the payment of the cost of providing replacement goods or of acquiring equivalent goods;

(iv) the payment of the cost of having the goods repaired; or

(v) in the case of services, the re-supply of the services or paying for the cost of re-supplying the services.

## 12. INDEMNITY

(a) If you default in the performance or observance of Your obligations under any Contract of which these Conditions form part, then:

(i) we will give you notice of such default and request that you remedy any breach within the time stipulated in these Conditions or, if no time is stipulated, a reasonable time; and

(ii) if that breach is not remedied within the time stipulated in the notice then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.

(c) Your liability to indemnify us under a provision of the Contract (including these Conditions) will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under Contract or our breach of law has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.

(d) Each indemnity in a Contract is a continuing obligation separate and independent from Your other obligations and survives the termination or performance of any contract of which these Conditions form part.

(e) For each indemnity in a Contract, we will take steps to mitigate our loss and damage and act reasonably in relation to Your applicable default.

(f) Without limiting clause 12(a), You indemnify Us for any loss, cost, damage or expense suffered by Us arising from

any failure to install the goods in accordance with their applicable installation instructions and manuals provided with the goods or to operate the goods in accordance with their applicable operation instructions and manuals provided with the goods, or in connection with the negligence of You including in relation to the installation or operation of the goods.

(g) To the extent permitted by law, neither party is liable to the other for:

(i) any loss, cost, damage or expense to the extent that it is for indirect, special, economic or consequential loss, where consequential loss means any loss, cost, damage or expense beyond the normal measure and beyond that which every plaintiff in a like situation would suffer; and

(ii) any loss of revenue, business or profits of any nature whatsoever, loss of expected savings, loss of chance or business opportunity, business interruption, loss or reduction of goodwill or damage to reputation or any loss of value of intellectual property.

## 13. VARIATION AND DEFAULT

13.1 We may at any time, and from time to time vary these Conditions, the terms of the Credit Account or a Contract by notice in writing to You. If the Contract is a Consumer Contract or a Small Business Contract, then You may consider the variation and if not acceptable may elect not to proceed with the purchase of Goods ordered before the date of the variation but which are intended to be subject to the variation. If the Contract is not a Consumer Contract or a Small Business Contract, You agree that Goods delivered and services performed and/or ordered after the date of the notice of variation will be subject to the variation and acceptance of the Goods or services or the placing of the order will be deemed to be an acceptance of such varied terms and conditions.

13.2 The Contract (including these Conditions and the terms of the Credit Account) may not be varied, altered or amended by You unless such variation, alteration or amendment is in writing and signed by or on behalf of Us.

13.3 We reserve the right in Our sole discretion to immediately:

(a) suspend or cancel delivery of Goods or any current Order(s) for the supply of Goods; and/or

(b) suspend or terminate Your Credit Account; and/or

(c) require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired; and/or

(d) register a default with any credit reporting agency, where applicable; and/or

(e) enforce Our rights under any Security Interest; and/or

(f) suspend or terminate the Contract;

where any of the following occurs:

(g) any amounts payable for Goods remain unpaid after the Due Date and You have failed to make such payment within 5 days of the Due Date; and/or

(h) You exceed the limit of Your Credit Account and You have failed to rectify this within 5 days of the date of such exceedance; and/or

(i) subject to paragraphs (g) and (h), You breach a material term of the Contract; and/or

(j) either of the parties suffer a Force Majeure Event which delays or prevents performance of the whole or any part of the Contract; and/or

(k) You suffer an Insolvency Event; and/or

- (l) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA; and/or
  - (m) any other circumstances where We are of the reasonable opinion that You are unable to pay Your debts under the Contract as and when they fall due and payable.
- 13.4 You are entitled to immediately terminate or suspend the whole or any part of the Contract, or Your Credit Account, where:
- (a) the Contract is a Consumer Contract or Small Business Contract; and
  - (b) We suffer an Insolvency Event and/or suffer a Force Majeure Event which delays or prevents performance of the whole or any part of the Contract and/or We commit a breach of a material term of the Contract.
- 13.5 You acknowledge and agree that on termination of the Contract We may recover from You the reasonable cost of materials or Goods acquired for the purpose of future Orders, delivery or supply of Goods to You.

#### 14. NOTICES

- 14.1 Notices to be given by You to Us may be delivered personally or sent to the National Credit Manager at Our address at 1051 Nudgee Road, Banyo, QLD, 4014 or sent by email to Credit@stramit.com.au and unless the contrary is proved the notice will be taken as delivered in the case of mail: on the third business day following posting and in the case of email: immediately provided no notification of sending error is received by You.
- 14.2 Notices to be given by Us to You may be delivered personally or sent by prepaid post to Your last known address or sent by email to Your last known email address and unless the contrary is proved the notice will be taken as delivered, in the case of mail: on the third business day following posting and in the case of email: immediately provided no notification of sending error is received by Us. Invoices and statements are deemed to be received by You on the third business day after posting.

#### 15. ELECTRONIC EXECUTION

- 15.1 Each party consents and agrees that this agreement may be executed and delivered:
- (a) by any and all parties by way of electronic signature; and
  - (b) by email or other electronic means and this has the same force and affect as delivery of an original document with original signatures.
- 15.2 If this agreement is executed by any party by way of electronic signature it must be considered an original and each party consents and agrees to be legally bound by this agreement's terms and conditions. Each party agrees that no certification authority or other third party verification is necessary to validate its electronic signature and that the lack of such certification or third party verification will not in any way affect the enforceability of its electronic signature or any resulting contract between the parties.
- 17.3 Each party must do all things and execute all documents necessary to give full effect to this agreement.

#### 16. SEVERANCE, TRANSFER AND WAIVER

- 16.1 If any part of these Conditions (including any provision, part, paragraph, phrase or word) is illegal, invalid or unenforceable it will be read down so far as necessary to give it a valid and enforceable operation. If that is not possible, it will be severed from these Conditions without affecting the remaining provisions of these Conditions (which will remain in full force and effect).

- 16.2 Obligations and rights under these Conditions cannot be assigned or transferred to any third party without Our written consent.

- 16.3 The failure, delay or partial exercise of a party in exercising any right or remedy, or the granting of any indulgence by a party in favour of the other, under these Conditions does not prohibit, affect or constitute a waiver of the parties' rights and remedies against each other under these Conditions.

#### 17. PRIVACY

- 17.1 You acknowledge and agree that We may collect Personal Information and credit information about You and Your directors, officers, partners and the Guarantors (each a "Relevant Party").
- 17.2 Our Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters ("Supplier's Policies") are available on Our website or upon request to Us and form part of these Conditions.
- 17.3 Our website may be hosted, or some data may be stored, overseas for reasons of uniformity and convenience for the Fletcher Group. All Personal Information and credit information derived from Australia will still be treated in accordance with the Supplier's Policies while being stored overseas.
- 17.4 In accordance with the Supplier's Policies, You agree that We may use or disclose information to the Fletcher Group and to third parties as set out in Our Privacy Policy.
- 17.5 You warrant to Us that You have obtained the consent of each of the Relevant Parties to the collection, use and disclosure of their Personal Information and credit information by Us in accordance with this clause 17 and the Supplier's Policies.

#### 18. TRUST AND TRUSTEES

- If You are acting as the trustee of any trust (whether disclosed or not), then:
- (a) You declare that it is entering into this Contract both in Your own capacity and as trustee of the trust with the ability to bind and the intention of binding both;
  - (b) You will be liable both in your own name and as trustee of the trust; and
  - (c) You acknowledge that the assets of the trust will be available to meet payment and obligations under this Contract, and of the Your accounts.

#### 19. LAWS TO GOVERN PROVISIONS OF AGREEMENT

- (a) Unless varied by notice in writing by the Supplier, each Contract will be governed by and construed in accordance with the laws of Queensland. The parties submit to the exclusive jurisdiction of the courts in Queensland.
- (b) The parties agree that proceedings may be commenced in any such Court of Queensland and consent to that Court having jurisdiction by virtue of clause 19 (a).

#### 20. ANTI CORRUPTION

- 20.1 You agree to comply with the Anti-Corruption Law and must not commit any act or omission which causes or would cause You or Us to breach or commit an offence under any Anti-Corruption Law.
- 18.2 You warrant and represent that you have not been convicted of any offence, and have not been the subject of an investigation or enforcement proceedings by a governmental, administrative or regulatory body regarding any offence or alleged offence, under Anti-Corruption Laws.
- 18.3 You must, to the extent permitted by Law, promptly notify Us in writing if You become aware at any time during the term of any Contract that any of the representations or warranties in

clause 20.2 are, or might reasonably be expected to be, no longer correct.