

GENERAL TERMS OF SALE

1. Defined Terms

The following words have the following meanings for these Terms of Sale:

Account Customer means a person or entity who has a current Credit Account with Eastern States Framing. It means the person, partnership, corporation or other legal entity which places an Order with ESF for the supply of Goods and/or Services;

Credit Account means the commercial credit account the Customer has with ESF under the Credit Agreement;

Credit Agreement means the document headed "Credit Agreement";

Credit Limit means the maximum cumulative monetary limit for all debts owed by the Customer to ESF at any time for Goods and Services purchased on credit;

Delivery Site means any place to which the Customer requests the supply of goods and services by ESF in accordance with these Terms of Sale;

Deposit means the deposit specified in the quotation;

ESF or Eastern States Framing Pty Ltd means:

- (a) Eastern States Framing Pty Ltd ABN 86 605 220 791;
- (b) any company or other "related body corporate" or "subsidiary" of ESF as those terms are defined in the *Corporations Act 2001* (Cth);
- (c) the successors and approved assigns of those companies; and
- (d) the seller of Goods and Services under the business names of Eastern Framing Solutions or any other Business name used by ESF;

Event of Default means any one or more of the following:

- (a) if the Customer breaches any term under this Terms and Conditions, Credit Agreement, Guarantee, or any other contract between the Customer and ESF;
- (b) if the Customer (if an individual) commits an act of bankruptcy within section 40 of the *Bankruptcy Act 1966* or seeks to enter into an agreement, composition or arrangement with his or her creditors under the *Bankruptcy Act 1966* or otherwise; or
- (c) if the Customer (if a corporation) is serviced with a creditor's statutory demand or commits an act of insolvency or becomes subject to any form of external administration including being an externally-administered body corporate under the *Corporations Act 2001* or enters into any composition or arrangement with its creditors, or
- (d) if the Customer (if a trust) is subject to any resolution or petition for winding up, or has a receiver appointed to it;

Goods means the products requested by the Customer in its Order and for the purposes when in reference to charged property, the term takes the meaning as defined under the PPSA;

GST means goods and services tax as defined under the *A New Tax System (Goods and Services Tax) 1999* (Cth);

Invoice means any tax invoice issued by ESF to the Customer;

Non-Account Customer means a person or entity that does not have a current credit account with ESF;

Order means a request by the Customer to ESF for the supply of Goods and/or Services;

PPS Register means the personal properties security register established under the PPSA;

PPSA means the *Personal Property Securities Act 2009* (Cth) as it exists from time to time;

Quotation means a quotation for Goods and/or Services issued to the customer by ESF;

Security Interest has the meaning given to it under the PPSA;

Services means any services performed by ESF for the Customer and includes any services associated with supply of Goods and delivery of Goods;

Terms of Sale means the terms and conditions of sale and supply of Goods and Services by ESF to the Customer contained in the document headed "General Terms of Sale".

2. Acceptance of Customer's Order

- a) These terms of sale as well as any Customer Credit Application with attached Agreement and Personal Guarantee & Indemnity executed by or on behalf of the Customer apply to every sale contract between ESF and the Customer and by ESF to the Customer and any terms and conditions of the Customer's order and/or any other terms whether oral or in writing which may deviate from or are inconsistent with these terms and conditions are expressly excluded, obviated and rejected by ESF. This exclusion and rejection include any statement by the Customer that the Customer's terms and conditions shall prevail notwithstanding any stipulation by the Customer regarding the manner of declaring such rejection. The parties agree if any term of this Agreement is to be amended or overridden that it can only be done by specifically referring to the term being modified.
- b) A contract is only concluded between ESF and the Customer for the supply of goods when the order has been accepted by ESF. The terms of this Clause apply to every quotation or offer by ESF for the supply of goods. In the event that ESF accepts an order, such order remains subject to the availability of raw materials, and ESF shall be entitled to satisfy an order only in part or at a later time in accordance with the availability of the raw materials, and no liability shall be taken by ESF in respect of any unavailability of raw materials at any time and from time to time.
- c) The Customer shall make orders in writing. In the event that the Customer attempts to make a verbal order, where ESF, in its sole and unfettered discretion, elects to satisfy such order ESF may by facsimile transmission or email confirm such order with the Customer, and immediately after sending such facsimile transmission or email shall be entitled to satisfy such order on the terms and conditions of the order as confirmed by ESF. The terms and conditions of any confirmation of order sent by ESF in accordance with this clause shall be conclusive evidence of the terms and conditions of the order, and any alleged term or condition which is inconsistent with such terms and conditions

whether oral or in writing shall be void.

3. Prices, Quotations and Payment

- a) Unless otherwise expressly stated in writing, the price of Goods and/or Services will be the price on ESF's Invoice plus any duties, fees, taxes (including GST), delivery charges and levies charged or imposed on or in respect of a contract, plus any amount that reflects any increase in exchange rates, costs of labour, materials and overheads in connection with ESF's supply.
- b) If ESF is not entitled to an input tax credit for a taxable supply which is purchased by ESF in order to satisfy an order made by the Customer, then ESF may increase the price in respect of such order by the GST paid by ESF in respect of that taxable supply.
- c) All quotations made by ESF shall be effective for a period of 30 days from the making thereof and shall not be construed as an offer or obligation to sell or supply in accordance with the quotation. ESF Reserves the right to accept or reject at its discretion any offer to purchase received by it. Only the written acceptance by ESF of the Customer's offer shall constitute a contract.
- d) Where ESF publishes or discloses a price list:
 - i) this list is an invitation to treat only and ESF reserves the right to accept or reject in its absolute unfettered discretion and orders which may be received by it; and
 - ii) this list is subject to alteration at any time without notice, save that in the event that a Customer orders goods pursuant to a price list and in respect of such goods ESF is no longer willing or able, in its sole and unfettered discretion, to supply such goods at the price appearing in the price list, ESF shall notify the Customer that the price listed in the price list in respect of the goods ordered by the Customer is no longer applicable and the supply of the goods shall be subject to agreement at that time as to price between ESF and the Customer.
- e) The Customer will pay for all goods and services supplied to the Customer by ESF as follows
 - i) Account Customers - within thirty (30) days from the end of month of the invoice date unless another date is agreed by ESF in writing.
 - ii) Non-Account Customers – on a cash basis prior to commencement of supply.
 - iii) Final engineering certificates, including Form 12 and Form 15, will only be released to the customer on receipt by ESF of payment in full for all amounts invoiced to the customer for Products, Equipment and Services supplied.
- f) ESF shall accept payments by the Customer on EFT. Where the Customer has nominated other payment facilities in writing, ESF may decline or authorise the Customer in writing of its acceptance of such facilities. ESF shall charge 2.5% of the total payment amount (including GST) ("Facility Levy") where any payment is made using a facility other than EFT or where payments are made after the above payment-term date.
- g) ESF may, in its sole and unfettered discretion, charge interest to the Customer on all amounts which are ninety (90) days after the invoice date to ESF for the date of sale of the goods until payment at Default Interest Rate. Where payment is not made by the due date, the Customer shall, in addition to any other obligations imposed hereunder, pay to ESF on demand all costs of ESF (including but not limited to storage, delivery, collection, obsolescence, debt recovery, commission costs and legal costs on a full indemnity basis) incurred by ESF in recovering overdue

amounts from the Customer.

- h) Time shall be of the essence in respect of payment of any Invoice for any Goods and/or Services between the Customer and ESF.
- i) The Customer will not assert any right of set-off against ESF and will pay all sums due and payable without deduction.
- j) ESF shall be entitled at any time to set-off any moneys then or contingently owed to ESF by the Customer against any debt ESF owes to the Customer.

4. Default

- a) If the Customer commits an Event of Default, then without limitation to any of ESF's other rights, ESF may:
 - i) suspend the Credit Account;
 - ii) vary these Sale Terms and/or the Credit Agreement;
 - iii) terminate or suspend any contract or agreement in force between it and the Customer;
 - iv) suspend further deliveries of Goods or performance of the Services to the Customer;
 - v) require immediate payment of all money owing by the Customer to ESF under the Credit Account, or under any agreement or contract between them whatsoever;
 - vi) immediately re-possess any Goods to which title has not passed;
 - vii) charge interest to the Customer pursuant to terms of this agreement; and
 - viii) immediately enforce any security it holds over the land or personal property of the Customer.
- b) ESF may in its sole discretion apply any payment received from the Customer towards any debt (including interest charged under this Terms and Conditions) owed by the Customer to ESF at any time.
- c) The Customer must pay to ESF on demand all costs, charges and expenses (including legal expenses on an indemnity basis) that ESF incurs as a result of any breach of Terms and Conditions, Credit Agreement or any other contract between ESF and the Customer from time to time.
- d) ESF is entitled to recover from the Customer, in addition to the price all losses, expenses, costs (including legal fees) and disbursements, that ESF incurs or will incur consequent upon the Customer's failure to pay on the due date, on a full indemnity basis and are recoverable from the Customer by ESF as a liquidated debt.

5. Information Provided by the Customer

- a) The Customer acknowledges and agrees that it must provide ESF with all information reasonably necessary (including without limitations all necessary plans, specifications, engineering requirements and special instructions) to enable supply of goods and/or performance of services by ESF before the commencement of supply and/or performance.
- b) The Customer acknowledges and agrees that
 - i) If the necessary information is not provided by the Customer, ESF may refuse or suspend supply of its Goods and Services to the Customer until the information is provided;
 - ii) ESF is not liable for any loss, damage, cost or expense incurred by the Customer due to a suspension or cancellation of supply by ESF of its Goods and Services as a result of the Customer's failure to supply necessary information;
 - iii) If an error occurs as a result of information

supplied by the Customer or a third party to ESF, the customer must pay all rectification costs.

- c) The Customer indemnified ESF against all claims, costs liabilities and expenses incurred by ESF as a result of:
 - i) Any inaccuracy, omission or error in the documents supplied by the Customer, or a third party;
 - ii) Any breach of a third party's intellectual property rights arising from any documents supplied by the Contractor or a third party for the purpose of, or in the course of the supply of, the Goods and Services.

6. Variations

- d) The Customer acknowledges and agrees that where the customer proposes any variations, substitutions, additions and deletions to drawings, engineering requirements, specifications or special instructions after a quotation has been accepted by the customer and/or order placed with ESF;
- e) The customer must obtain ESFs written consent to the variations.
- f) The provision of consent or otherwise is at ESFs complete discretion. ESF will not be liable for any loss, damage, cost or expense incurred by the Customer as a result of ESFs refusal of consent.
- g) The Customer must pay ESF for any work completed and/or goods provided under the contract up to the date ESF is notified in writing of any proposed variation.
- h) ESF reserves the right to charge the Customer for any changes made after an order is accepted including cancellation, amendments in full or in part. This will include recovery of any costs of goods, materials, labour, to the date of cancellation or amendment

7. Charged Property & Risk

- i) The risks in the goods sold pass to the Customer when all or part of the goods are loaded for consignment at ESF's premises whether by carrier employed or engaged by ESF or the Customer's. Notwithstanding anything contained herein, property in and legal title to the goods does not pass to the Customer until payment for all debts owing to ESF by the Customer has been received by ESF including all debts under this agreement or related agreement (including the Guarantee) owed by the Customer to ESF.
- j) Until title to the Goods passes, the Customer:
 - i) holds the Goods as bailee and fiduciary agent of ESF;
 - ii) must store the Goods separately and securely and in such manner as to indicate clearly that they remain the property of ESF;
 - iii) must insure the Goods for their full replacement value;
 - iv) must not create or allow to be created any Security Interest or any other form of encumbrance over the Goods which is Inconsistent with ESF's title to the Goods;
 - v) must not assign, charge or encumber or grant any interest over any obligations which any third party may owe to the Customer as a result of the use, manufacture or resale of the Goods;
 - vi) may not claim any lien or interest in the Goods to secure any liquidated or un-liquidated debt or obligation that ESF owes to the Customer;
 - vii) must assist ESF in perfecting any security interest granted by this Agreement (including entering into a new or specific security agreement if required);

viii) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.

- k) Subject to obtaining the prior written consent of ESF, the Customer must not do or agree to do any of the following in relation to the Goods:
 - i) create or attempt to create or agree or permit to exist any Security Interest over the Goods other than a Permitted Security Interest;
 - ii) sell, assign or otherwise dispose of the Goods;
 - iii) lease or licence the Goods or allow a surrender or variation of any lease or licence of the Goods;
 - iv) give control of the Goods to another person other than the Secured Party;
 - v) part with possession of the Goods (including any chattel paper) other than by giving possession to the Secured Party;
 - vi) allow a set-off or combination of accounts in respect of a book debt;
 - vii) change the nature of the Goods;
 - viii) permit any of the Goods that is goods other than inventory (within the ordinary meaning of that word or within the definition of that word in the PPSA) to:
 - i. become an accession to any goods except those that are or are to be fixed to any Land which is Goods or subject to a Goods Security; or
 - ii. be commingled with any product or mass that is not Goods or subject to a Goods Security; and
 - ix) in each case, only if the priority of the Security Interest created by this Deed or Goods Security in the Goods, Land, product or mass is no less favourable than the priority of the Secured Party's Security Interest in the goods that are or are to become an accession or a fixture or commingled in the product or mass;
 - x) where the Goods is located in Australia, remove or permit the removal of the Goods to any place outside Australia;
 - xi) where the Goods is Serial Numbered Property, change any serial number;
 - xii) if the Goods is goods, change the location of the Goods from which the Grantor carries on business or on which the Goods is situated; or
 - xiii) deal in any other way with the Goods or interest in it or allow any interest in it to arise and be varied, except for a disposal of inventory in the ordinary course of the Customer's ordinary business. If, at the time this Deed is signed you, or if the ESF so requests, at the time of that request, the goods include any Serial Numbered Property, you must provide details of the Serial Numbered Property to ESF in a form requested by the Secured Party. You must protect and enforce ESF title to, and rights as a secured party of the Goods, even if your business involves installing or manufacturing or commingling the Goods together with other personal property or even if the goods are to be located on a third parties' property.
- l) Until all such monies have been paid:
 - i) ESF has the right to call for or recover possession of the Goods (for which purpose ESF's employees or agents may enter onto the Customer's premises) and the Customer must deliver up the Goods if so directed by ESF;
 - ii) the Customer irrevocably authorises ESF to repossess the Goods and to enter any site owned, possessed or controlled by the Customer at any time and without notice to search for, inspect or repossess the Goods, whether such Goods are in their original form, or in a modified form or mixed with other products of the Customer;

- iii) the Customer agrees ESF is not liable to the Customer as a result of any action taken pursuant to this clause; and
- iv) ESF may delay taking action to dispose of or retain the repossessed Goods under the PPSA for a period of up to 12 months.
- m) To the extent permitted by the PPSA the parties agree to contract out of the following sections of the PPSA; to the extent that ESF is required to give notice to you: sections 95, 118, 121(4), 130 and 135; sections 125, 132(3)(d) and 132(4). You waive your right to receive notice from us of a registration event under section 157(1) of the PPSA.
- n) To secure payment for all moneys which are or may become payable by the Customer to ESF under these Terms and Conditions the Customer (or where the Customer is comprised of two or more persons then each person jointly and severally) hereby charges with the due payments of all those moneys all of the Customer's interest in all property owned by the Customer including real property wherever located both present and future and the Customer consents to ESF lodging a security including a financing statement under the PPSA or a caveat or caveats over such property to protect its interests.
- o) Upon demand by ESF, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to ESF to further secure the Customer's indebtedness to ESF.
- p) Should the Customer fail within a reasonable time of such demand to execute such mortgage or other instrument then the Customer appoints irrevocably a proper duly authorised officer of ESF to be the Customer's lawful attorney to execute any such mortgage or other instrument.
- q) It is the intention of the parties that there is created for the benefit of ESF a:
 - i) Purchase Money Security Interest in all unpaid goods charged by this clause 5; and/or
 - ii) general security interest in all present and after acquired property of the Customer securing the amounts owing under this Agreement.
- r) The Customer agrees that ESF may register a financing statement of its purchase money security interest, its general security interest and any other security interest in the Goods created by these Terms and Conditions on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) in respect of any financing statement or financing charge statement (as those terms are defined in the PPSA) registered by ESF in respect of any personal property of the Customer.
- s) The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on ESF, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that ESF otherwise agrees to in writing.
- t) The provisions under this clause apply despite any arrangement between the parties under which ESF grants the Customer credit.
- u) ESF may enforce any contract made with respect to these Terms and Conditions regardless of whether property in the Goods has passed to the Customer.
- v) The Customer indemnifies ESF against any claim by a third party arising from, or in connection with ESF enforcing any of its rights under this clause.
- w) The Customer agrees to indemnify, and upon demand reimburse, ESF for all expenses incurred in registering a financing statement or financing charge statement in the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby.

8. Cancellation

- a) Cancellation of any contract of sale between the Customer and ESF requires approval in writing from ESF otherwise the goods will be delivered to the Customer and ESF will be entitled to payment from the Customer.
- b) ESF is not obliged to supply goods in relation to any contract and may cancel the contract at any time if:
 - i) There is a breach of any term of any contract between ESF and the Customer; or
 - ii) The Customer has provided any false or misleading information to ESF including information set out in any application for credit or to open an account with ESF; or
 - iii) The Customer commences to be wound up or is placed under official management or a receiver or receiver and manager or voluntary administrator is appointed in respect of the Customer, its undertaking or property or any part thereof, or an encumbrancer, by itself or by an agent, takes or purports to take possession of the Customer's undertaking or property or part thereof; or
 - iv) ESF is unable to supply goods as a result of the failure of any supplier of ESF to deliver raw materials or provide services which are required in order for ESF to supply the goods to the Customer.

9. Site Access and Delivery

- a) ESF may:
 - i) make the Goods available for collection at ESF's premises; or
 - ii) deliver (or arrange delivery) of the Goods in the manner it deems fit to the Delivery Site.
- b) Where the goods are to be delivered to site by ESF;
 - i) The Customer's Order must request if delivery is required and must confirm the terms of this agreement will be adhered to otherwise ESF may refuse to deliver the goods as requested without notice to the Customer.
 - ii) ESF may deliver the goods by instalments or partial shipment and the Customer will accept each such delivery. Requirements of the Customer are not a condition of the essence of the contract.
 - iii) The Customer must provide assistance on site to the delivery driver. If no on-site assistance is provided the driver will place the supplied goods on the ground. ESF accepts no liability for any loss, damage or costs incurred by the Customer whether directly or indirectly as a result of goods supplied to the customer being placed on the ground under this clause.
 - iv) The customer acknowledges and agrees that any costs associated with the transport of steel frames, or beams, closer to the site due to limited access for delivery by a semi-trailer will be at the Customers expense.
 - v) The customer acknowledges and agrees that provision of clear and unobstructed access to the site for semi-trailer, body trucks and other such delivery vehicles is the sole responsibility of the customer. The Customer acknowledges and agrees that all costs incurred by ESF or its contractors that are caused directly or indirectly by delays or difficulties in accessing site will be charged to the customer. Such costs include delays backcharged from contractors.
- c) ESF will use all reasonable endeavours to deliver on or before the agreed date for delivery, but, to the extent possible by law:

- i) the Delivery Date is subject to extension for any delay caused by strikes, lockouts, war, breakdowns, accidents, delays in transport, fire, pandemics or any cause beyond the reasonable control of ESF; and
- ii) ESF will not be liable for any loss, damage or other liability whether in contract, tort, negligence or otherwise and whether directly or indirectly arising from the Goods and/or Services not being delivered or performed by the Delivery Date for any reason; and
- iii) the Customer must accept and pay for the Goods and/or the Services notwithstanding any extension or delay in the delivery or the availability of Goods for collection or in the performance of any services.
- d) The Customer must pay for any permit or licence or other extraordinary costs of transporting or delivering order Goods, including wide or long loads.
- e) Where the scope of supply includes the installation of Frames and Trusses or other related goods,
 - i) The Customer will ensure that ESF has uninterrupted access to the site from the Commencement date until the work has been completed;
 - ii) The Customer must provide all reasonable assistance to ESF and its contractors to enable the provision of the services;
 - iii) The Customer must ensure that ESF has full and safe access to the Site and to any necessary essential services, such as electrical power.
 - iv) All quotations given to the Customer by ESF are on the basis of uninterrupted access to the site by ESF.
 - v) The Customer acknowledges and agrees that it bears sole responsibility for supplying, arranging and paying for:
 - a. Any necessary crane hire and scaffolding,
 - b. Any necessary acrow props and trestles,
 - c. Any costs associated with the lifting of trusses and structural beams,
 - d. Any costs associated with sheet flooring being lifted onto joists.
 - vi) ESF will use all reasonable endeavours to perform the services in a competent, proper and workmanlike manner, exercising a reasonable standard of skill and diligence, but is not liable for any inaccuracy, error or omission arising from the performance of the services.
- f) If the Customer does not collect the Goods by the collection date, then ESF may, without limiting any other rights available to it, store the Goods or deliver them to the Delivery Site and the Customer must, on demand, pay all costs of delivery and any additional charges (including storage costs) and costs incurred by ESF.
- g) The Customer must pay all costs and fees resulting from any or all of the following:
 - i) any delay in delivery;
 - ii) unexpected labour costs;
 - iii) any additional costs as a result of the Delivery Site conditions; and
 - iv) the nature of the Goods and/or Services ordered by the Customer.
- h) ESF is under no liability for either direct or consequential loss or damage to the Customer arising from delay or postponement in delivery of goods and/or services.
- b) Goods which have been specifically produced by ESF or altered by the Customer cannot be returned if the Customer changes their mind.
- c) The Customer must notify ESF of any claim in writing within:
 - i) two (2) days after delivery or collection that the Goods and/or Services supplied do not accord with those ordered;
 - ii) fourteen (14) days of receiving an Invoice from ESF that it disputes the Invoice;
 - iii) two (2) days of delivery or collection of Goods that it is alleged they are defective or damaged; or
 - iv) two (2) days of performance of any allegedly deficient Services.

If the Customer does not make a claim on the timeline outlined above it agrees that it waives any right it might have to make such a claim.

11. Rectification Work

- a) Requests by the Customer to ESF for approval to undertake rectification work in relation to the goods and services supplied to the customer, must
 - i) Be in writing and made within 28 days of the Goods and Services being supplied by ESF;
 - ii) Clearly indicate the order number to which the proposed rectification works relate; and
 - iii) Provide sufficient details of the rectification work proposed to be undertaken by the Customer and the contractor or other party that the Customer proposes to undertake the rectification work.
- b) ESF does not accept obligation or liability to undertake rectification works in the absence of a written request made in accordance with clause 11a).
- c) ESF accepts no liability for any costs, loss, damage, or expense incurred by the Customer associated with rectification works undertaken by the Customer or its agents or contractors without prior written approval from ESF.
- d) ESF may at its completed discretion approve or refuse a rectification request made by the customer.

12. Limitation of Liability

- a) All implied guarantees, warranties and conditions under statute or common law as to merchantability, description, quality, suitability, or fitness for purpose as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded to the maximum extent permitted by law.
- b) ESF's obligations to the Customer in respect of a breach of any term, warranty or condition of a contract (whether implied by statute or otherwise) will, at ESF's option, be limited to:
 - i) the repair or replacement of the Goods or the supply of equivalent Goods; or
 - ii) paying for the cost of repair or replacement of the Goods or supply of equivalent goods; or
 - iii) in the case of Services, the re-supply of Services or paying for the cost of resupplying the Services by a service provider approved in writing by ESF.
- c) ESF's obligations if clause 9(b) applies do not include:
 - i) the cost of removing defective Goods whether installed or otherwise;
 - ii) the cost of installing replacement Goods; or
 - iii) defects in Goods caused by improper installation or improper maintenance or care of Goods or related components or normal wear and tear.

10. Returns

- a) The Customer agrees any Goods returned are only accepted with the prior written approval of ESF and may be subject to a handling/restocking fee which ESF will confirm prior to accepting return of the Goods.

- d) To the extent permitted by law, ESF will not be liable to the Customer or any other person for any direct, indirect, special, incidental or consequential loss or damage (including loss or damage caused by negligence or any wilful act or default of ESF, its employees or agents) whatsoever arising from the use of the Goods, or a breach of a contract related to or reliant on these Terms of Conditions or any statutory implied warranty, term or condition in relation to the Goods. In this clause, "direct, indirect, incidental or consequential loss or damage" includes:
 - i) any loss of income, profit, or business;
 - ii) any loss of goodwill or reputation; and
 - iii) any loss of value of intellectual property.
- e) To the extent permitted by law, ESF will not be liable to the Customer, its employees, agents or customers for any costs, claims, damages or demands arising from personal injury, loss or damage whatsoever occurring by reason of:
 - i) the Goods or their design, production or processing;
 - ii) the Services;
 - iii) any act or omission of ESF, its employees or agents; or
 - iv) any statement, representation, recommendation, advice, supervision or assistance made or given by an employee or agent of ESF, whether oral or written.

You indemnify ESF in respect of damage or loss resulting from a claim made in breach of this clause.

- f) The goods are sold as is where is and technical advice is not provided with the goods. You may not rely on any advice provided by ESF or its employees.
- g) The Customer acknowledges that ESF does not make and has not made any representations or warranty regarding the Goods and/or Services or any matter which is or might be relevant to the Customer other than as set out in these Terms and Conditions.

13. Indemnities relating to Accessing Premises

- a) Any Customer, or its agent, employee or contractor (Customer's Representatives) who enters ESF's premises does so at his/her own risk. ESF will not be liable for any loss, damage or injury caused by any act or omission whatsoever whilst the Customer's Representative attends ESF's premises. The Customer indemnifies and will forever hold ESF harmless against all claims, demands or suits made by a Customer's Representative in connection with his/her attendance at ESF's premises.
- b) Where ESF or its agent, employee or contractor (ESF Representative) enters upon a Delivery Site, the Customer must provide full and safe access to the Delivery Site and ensure that the Delivery Site is compliant with all occupational health and safety legislation. The Customer will be liable for, and must indemnify ESF against the costs of any loss or damage to property and personal injury to any ESF Representative occurring directly or indirectly as a result of the Customer's failure to comply with this clause.

14. General Matters

- a) ESF may vary or waive any or all of these Terms and Conditions at any time and will notify the Customer in writing of any variation or waiver.
- b) ESF may subcontract the performance of the whole or part of the Goods and Services it is to provide under the

Contract.

- c) The failure of ESF to exercise a right or remedy, or any delay by ESF in exercising a right or remedy, or the exercise by ESF of only part of a right or remedy, or the granting of any indulgence by ESF in favour of the Customer does not:
 - i) affect ESF's rights against the Customer;
 - ii) constitute a waiver of any term or condition; or
 - iii) prohibit ESF from exercising that right or remedy in relation to that breach or any other breach.
- d) A waiver of a breach of a term or condition does not constitute a waiver of another breach of the same term or any other term.
- e) The Customer must not assign any of its rights or obligations under these Terms and Conditions without the prior approval of ESF.
- f) The Customer agrees that these Terms and Conditions, Credit Agreement and any other contract subject to these Terms and Conditions between the Customer and ESF shall be construed according to the laws of the State or Territory as ESF may in its sole discretion determine. Failing such determination, the Customer consents to any proceedings being instituted and heard by an appropriate Court sitting in the State of Queensland applying the laws of that State.
- g) Any contract between ESF and the Customer may be executed on behalf of the Customer by any agent or employee of the Customer and the Customer shall be bound by these terms and conditions irrespective of whether any such execution was unauthorised or fraudulent. The Customer shall indemnify and keep indemnified ESF from and against all actions, claims, liabilities, obligations, losses, damages, costs and expenses of whatever nature suffered or incurred, sustained or threatened against ESF in any way whatsoever in respect of ESF's acceptance and or conduct in respect of the satisfaction of any order received from the Customer or from persons purporting to act on behalf of the Customer.
- h) If any provision of these terms and conditions is void, voidable, illegal or unenforceable in accordance with its terms, but would not be void if it were read down and is capable of being read down, such provision will be read down accordingly. If such clause is read down and remains void, voidable, illegal or unenforceable, or is incapable of being read down and the provision would not be void, voidable, illegal or unenforceable if a word or words were omitted, that word or words shall be severed and in any other case the whole provision is severed, save that in any case the remainder of these terms and conditions shall remain in full legal force and effect. The failure, delay, relaxation or indulgence on the part of any party in exercising any power or right conferred upon that party by this Deed does not operate as a waiver of the power or right, nor does any single exercise of any power or right preclude any other or further exercise of that power or right or the exercise of any other power or right under this Deed.