

Last Updated April 2024

Terms and Conditions of Sale

Definitions

1. In these terms and conditions:

a. **Agreement** means an agreement between Fusion Qld and the Customer for the sale and supply of Goods to the Customer subject to the terms and conditions herein, the terms of any quotation, purchase order, Credit Application, Deed of Guarantee, and Indemnity and/or Invoice and any document expressly agreed in writing by the parties.

b. **Credit** means the Customers deferred debt to Fusion Qld for the purchase of Goods on the Terms and subject to the Agreement.

c. **Credit Application** means Fusion Qld's Credit Application & Agreement for Credit completed by the Customer.

d. **Customer** means:

- i. any corporate entity (whether as trustee of a trust or otherwise), association, partnership, sole trader, authority, government entity or agency or other body, person, individual or otherwise (or any person or agent acting on behalf and with the authority of the Customer) who enters into a Contract with Fusion Qld for the supply of Goods; and
 - ii. the Party or Parties named as the Applicant(s) in the attached Credit Application who enter into an Agreement (or permits/authorises another to) with Fusion Qld for the supply of Goods (if applicable).
- e. **Fusion Qld** means Fusion Qld Pty Limited ACN 118 560 348;
- f. **Goods** means goods supplied by Fusion Qld to the Customer from time to time, including but not limited to, goods described in the Order Confirmation and/or Invoice, in accordance with these Terms.
- g. **Goods Made to Order** mean goods supplied by Fusion Qld to the Customer from time to time, including but not limited to:
- i. **Non-standard Goods**; or

- ii. Goods made to order; or
- iii. Goods specifically purchased for the Customer, or
- iv. Goods manufactured to drawings and/or specifications provided by or on behalf of the Customer.

h. **GST** means is a goods and services tax as imposed by the GST law;

i. **GST Law** means has the meaning given to the term in a New Tax System (Goods and Services) Act 1999;

j. **Interpretation** means:

- i. A reference to one gender includes all genders and the neuter.
- ii. A reference to the singular includes the plural and vice versa.
- iii. Headings are for convenience only and do not affect the interpretation of this document.
- iv. Reference to legalisation or regulations include any modification or re-enactment of them, and any instrument, regulations or orders issued under them.
- v. A provision given by more than one person or party binds them jointly and severally.

k. **Invoice** means any tax invoice issued by Fusion Qld to the Customer in respect of any Goods, or Goods Made to Order, supplied by Fusion Qld to or for the Customer;

l. **Order** means the Customer's purchase order placed or communicated by the Customer to Fusion Qld (in writing or verbally);

m. **Order Confirmation** means written confirmation (including via email) by Fusion Qld to the Customer outlining the ordered Goods and the Price;

n. **Premises** means 13 Vision Court, Noosaville QLD 4566, or 42-44 South Link, Dandenong South VIC 3175 as updated by Fusion Qld.

- o. **Price** means the price agreed to be paid for the supply of the Goods as outlined in the Order Confirmation and/or Invoice (the Invoice Price overriding any previous Price), in Australian currency (\$AUD);
- p. **Quotation** means any quotation or price list issued by Fusion Qld to the Customer;
- q. **Terms** means these Terms & Conditions.

Terms of Agreement

2. The Agreement between Fusion Qld and the Customer on which Goods are to be provided from Fusion Qld to the Customer comprise;
 - a. These Terms;
 - b. The terms of any Quotation;
 - c. The terms of any Order Confirmation, as set out in or incorporated by reference of the Order;
 - d. The terms of any Credit Application, as set out in or incorporated by reference of the Credit Application;
 - e. The Terms of the Deed of Guarantee and Indemnity; and
 - f. Any other terms and conditions which are imposed by law and cannot be excluded.
3. The Customer agrees to purchase Goods from Fusion Qld subject to these Terms. Fusion Qld is not obligated to supply the Goods.
4. This Agreement and the Terms will be accepted by the Customer if the Customer:
 - a. signs, dates and returns a copy of this Agreement and/or a Credit Application;
 - b. proceeds to purchase Goods after receiving an Order Confirmation from Fusion Qld, which includes these Terms; or
 - c. continues to instruct Fusion Qld in relation to the supply of Goods.
5. To the extent of any inconsistency between these Terms, the terms of any Quotation, the terms of any Order Confirmation, the terms of any Credit Application, and/or any other provision purporting to form part of the Agreement, these Terms will take precedence.
6. All amendments or additions to these Terms shall be in writing signed by Fusion Qld. No variation to these Terms will be of effect unless agreed in writing signed by Fusion Qld
7. Fusion Qld may amend these Terms from time to time at its discretion. These Terms and any changes to them will be available on the website <https://www.fusionqld.com.au>. Upon receipt of an Order Confirmation or Invoice, the Customer agrees to be bound by Fusion Qld Terms and Conditions applicable as at that date;
8. The Customer will promptly notify Fusion Qld of any change in the structure of the Customers business

(including, but not limited to, any transfer of business name or change in the corporate structure of any company/entity acting as trustee of any trust) or any of the information supplied by the Customer to Fusion Qld.

9. To the extent that the Customer seeks to impose terms and conditions on Fusion Qld, these Terms will take precedence in respect of the supply of Goods from Fusion Qld to the Customer.

Quotation & Purchase of Goods

10. All Quotations for the supply of Goods, however made, do not constitute offers to sell Goods and are provided only as indicative statements of estimated prices.
 11. Fusion Qld reserves the right to alter the Price of any Quotation or Order Confirmation after 30 days from the date of issue, without further notice to the Customer.
 12. If a Customer wishes to purchase Goods specified in a Quotation or Order Confirmation after 30 days from the date of issue, Fusion Qld may, in its sole discretion, elect to provide such Goods to the Customer at the Price or an alternative price.
 13. The Customer may purchase Goods from Fusion Qld by providing Fusion Qld with an Order. By placing an Order, the Customer:
 - a. is making a binding offer to purchase the Goods from Fusion Qld; and
 - b. is agreeing and acknowledging that the Customer is solvent and able to pay Fusion Qld when payment for the Goods is due and payable.
 14. All Orders for the provision of Goods are subject to availability. Orders may be required to meet minimum quantities as specified by Fusion Qld from time to time.
 15. In the event that the Goods ("Original Goods") are not available, Fusion Qld reserves the right to provide the Customer with substitute goods ('Substitute Goods'). The Substitute Goods shall be of a similar type, functionality, quality, and value to the Original Goods.
- The Customer shall have the option to either accept the Substitute Goods or return Substitute Goods within seven (7) days of receipt of the Goods. If the Customer:
- a. Elects to return the Substitute Goods, the Substitute Goods must be returned within seven (7) days of receipt of the Substitute Goods and the Substitute Goods must:
 - i. Not have been used;
 - ii. Remain in their original packaging; and
 - iii. Have not been damaged

- b. does not return the Substitute Goods within seven (7) days of receipt of the Substitute Goods, the Substitute Goods will be deemed to have been accepted by the Customer.

In the event that the Customer accepts the Substitute Goods, these Terms shall apply to the Substitute Goods as if they were the Original Goods.

The Customer acknowledges and agrees that Fusion Qld shall not be liable for any loss or damage suffered by the Customer as a result of the unavailability of the Original Goods or the supply of Substitute Goods.

- 16. The estimated date for dispatch of the Goods for delivery will be specified in the Order Confirmation and/or Invoice.
- 17. The Customer may cancel or vary an Order (excluding Goods Made to Order) subject to written notice being provided to Fusion Qld of such cancellation or variation, at least 5 business days prior dispatch of the Goods.
- 18. The Customer from time to time may request Goods Made to Order. These may include:
 - a. Non-standard Goods; or
 - b. Goods made to order; or
 - c. Goods specifically purchased for the Customer, or
 - d. Goods manufactured to drawings and/or specifications provided by or on behalf of the Customer.
- 19. All Goods Made to Order, unless agreed in writing between Fusion Qld and the Customer:
 - a. cannot be returned, exchanged, credited, or cancelled after accepted by Fusion Qld and the issuing of an Order Confirmation by Fusion Qld; and
 - b. require an initial deposit to be paid at the time the Order Confirmation is issued by Fusion Qld;
 - c. the initial deposit will be mutually agreed in writing between Fusion Qld and the Customer at the time the Order is accepted; and
 - d. shall pay the balance of the Price on a cash before delivery basis, or as agreed in writing between Fusion Qld and the Customer.
- 20. The Customer agrees to indemnify and to keep indemnified Fusion Qld from and against:
 - a. all claims, costs, losses, and damages claimed in relation to any design defect in any Goods Made to Order; and
 - b. any third-party claims that the Goods Made to Order as manufactured infringe any patent, registered design, copyright, or common law intellectual property right of any person.

- 21. Fusion Qld is not liable in any way for any loss of trade or profit occurring to the Customer, or loss or damage whatsoever, resulting directly or indirectly from non-availability of the Goods, or if delivery of the Goods is frustrated or delayed due to strikes, riots, lockouts, trade disputes, acts or restraints of governments, the imposition of restrictions on importation, delays in manufacturing or delivery or from any other cause not within the control of the Fusion Qld.

Price

- 22. The Price of the Goods is the price the Customer agrees to pay for the supply of the Goods as outlined in the Order Confirmation and/or Invoice and/or as outlined in Fusion Qld's price list, current at the time the Goods are delivered.
- 23. If there is a discrepancy between the Price in the Order Confirmation Invoice, price list or written correspondence between Fusion Qld and the Customer, the Price in the Invoice will take precedence.
- 24. The Price is exclusive of GST, exclusive of all other taxes or duties levied or assessed in connection with the supply of the Goods, exclusive of all costs of testing, inspection, labelling and packing and freight, unless specifically outlined in the Order Confirmation or Invoice.
- 25. The Price may not be amended without the prior written approval of Fusion Qld.
- 26. If delivery of the Goods is to be made after thirty (30) days from the date of the Order Confirmation, Fusion Qld reserves the right to vary the Price as it determines at any time prior to dispatch of the Goods. The Customer shall be notified of any Price increase prior to dispatch of the Goods and may terminate the Order if the new price is not acceptable and notifies Fusion Qld within 5 business days of receiving notice of the price increase.

Invoices & Payment

- 27. Upon acceptance of a Customer's Order, Fusion Qld shall issue an Order Confirmation for the Goods.
- 28. The Customer's Order is not binding on Fusion Qld until accepted in writing by Fusion Qld, or by way of the issuing of an Order Confirmation, or Invoice to the Customer, or by despatching the Goods at the request of the Customer.
- 29. The Customer agrees that all Goods are supplied on a cash before delivery basis until and unless Fusion Qld notifies the Customer in writing that credit terms have been granted, subject to approval of the Customer's Credit Application.
- 30. Upon the granting of credit from Fusion Qld to the Customer, the Customer agrees and acknowledges

that the sale of the Goods are made in accordance with these Terms and the Credit Application terms at the time the Customer's account is established and as amended by Fusion Qld from time to time

31. All Credit Application approvals by Fusion Qld shall be in writing signed by an authorised officer of Fusion Qld or their duly authorised representative and, unless approved in such manner, credit shall not be deemed to have been given to a Customer.
32. Where Fusion Qld has agreed to provide the Customer credit (subject to the Credit Application terms and these Terms), payment shall, unless otherwise agreed in writing by Fusion Qld, be due and payable by the Customer within thirty (30) days following the end of the month after delivery of the Goods.
33. The Customer agrees that Fusion Qld is authorised to allocate the payment of any monies received from the Customer against any outstanding account of the Customer.
34. Fusion Qld may at any time, in its absolute discretion, upon providing 7 days' notice to the Customer, withdraw approval of any credit facility, vary a Customer's credit limit and/or refuse to accept any subsequent Order from a Customer.
35. If a Customer fails to make payment in accordance with these Terms and/or the terms of any Credit Application, the Customer agrees and acknowledges that Fusion Qld in its absolute discretion may:
 - a. suspend any discounts offered to the Customer;
 - b. refuse to supply Goods to the Customer;
 - c. charge interest on all outstanding sums at the rate of 12% per month, calculated and payable monthly, compounded from the due date until the date the Invoice or all outstanding sums are paid in full. For the sake of clarity, interest on all outstanding sums will be calculated at the end of each calendar month and such sum added to the original outstanding sum. Interest will then continue to accrue on the new outstanding balance;
 - d. without providing notice, take further action to recover and/or sue for the outstanding monies. Collection fees that are applicable to recovering any outstanding funds will be charged on an indemnity basis to the Customer at the time of payment of the outstanding monies;
 - e. recover its legal costs (on a solicitor/client basis) and other expenses payable pursuant to these Terms (or any Credit Application terms, guarantee or other security documents signed by the Customer) in relation to obtaining advice due to the Customer's default and/or breach of the

Agreement and/or the recovery process; and/or

- f. charge a handling fee for any dishonoured cheques or declined credit card payments.

36. Any delay in Fusion Qld charging or recovering the amounts set out in clause 33 does not constitute a waiver of Fusion Qld's right to recover the same in the future.
37. All sums that Fusion Qld is entitled to be paid pursuant to the Terms must be paid by the Customer in full by the due date, without set off or deduction for any reason, irrespective of whether the Customer claims to be owed money and/or damages by Fusion Qld.

Delivery

38. Unless otherwise agreed with the Customer in writing, the Customer agrees to collect the Goods from Fusion Qld's Premises (or such other location nominated by Fusion Qld) within three (3) business days of Fusion Qld notifying the Customer that the Goods are ready for collection.
39. If the Customer does not collect the Goods within ten (10) business days of Fusion Qld issuing notification that the Goods are ready for collection, the Customer agrees and acknowledges that:
 - a. the Customer is liable for reasonable storage fees; and
 - b. assumes risk in the Goods, including storage of the Goods.
40. If Fusion Qld agrees in writing to deliver, or arrange for the delivery of the Goods, delivery is at the Customer's own risk and the Customer shall be liable to pay all costs associated with the delivery, including the costs of packaging, freight, insurance, handling, and other charges, unless otherwise agreed in writing.
41. The Customer acknowledges and agrees that:
 - a. any period or date for delivery stated by Fusion Qld is intended as an estimate only. Fusion Qld will make all reasonable efforts to deliver, or arrange for delivery by the estimated delivery date but will not in any circumstances be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated delivery date; and
 - b. Fusion Qld will not be liable for any loss or damage arising from or relating to the delivery of the Goods.
42. Fusion Qld will make reasonable attempts for delivery to be made within normal business hours between Monday – Friday, 8:00am – 5:00pm (unless otherwise agreed to in writing).

43. Fusion Qld is entitled to charge a reasonable fee for storage of the Goods and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Goods.
44. The Customer accepts that the Goods may be delivered separately and/or in instalments and that payment is required for each separate instalment in accordance with these Terms.
45. The Customer acknowledges and accepts that it is not relieved from any obligation arising under these Terms by reason of any delay in delivery.

Defects & Returns

46. Any Goods Made to Order may not be returned for credit under any circumstances.
47. The Customer agrees to inspect the Goods immediately upon delivery and notify Fusion Qld in writing, within seven (7) days of receipt of the Goods, with particulars of any claim that the Goods have not been provided in accordance with the Terms or Agreement.
48. If a Customer makes a claim against Fusion Qld in respect of the "quality" of the Goods, the Customer:
 - a. consents to Fusion Qld, or its agent to enter upon the premises in which the Goods are stored, for the purpose of inspecting the Goods that are subject to the claim. Any inspection is at Fusion Qld's own discretion; and
 - b. shall keep the Goods in the state and condition in which they were delivered until such time as Fusion Qld or its duly authorised agent inspects the Goods.
49. If the Customer fails to give notice within the timeframe referred at clause 45 or refuses to allow Fusion Qld to inspect the Goods, then to the extent permitted by law, the Goods are treated as having been accepted by the Customer (and the Customer shall have no claim against Fusion Qld in relation to the Goods) and the Customer must pay for the Goods in accordance with these Terms.
50. The Customer cannot return to Fusion Qld without the written agreement from Fusion Qld.
51. After inspection has taken place as provided for by clause 46 and subject to clause 51:
 - a. If Fusion Qld reasonably determines that;
 - 51.a.1. the Goods have not been used;
 - 51.a.2. the Goods remain in their original packaging;
 - 51.a.3. the Goods have not been damaged; and
 - 51.a.4. the Goods have not been in the possession of the Customer for more than thirty (30) days,

Fusion Qld will accept the return of the Goods, subject to the Customer:

- 51.a.5. paying a handling and administration fee to Fusion Qld of thirty (30) percent of the Price of the Goods; and
 - 51.a.6. paying for and arranging for the safe return of the Goods to Fusion Qld, including freight, insurance, handling and any other charges.
 - b. Fusion Qld accepts no liability for any damage that occurs to any Goods in return transit.
52. After inspection has taken place as provided for by clause 46 and subject to clause 51:
 - a. If Fusion Qld reasonably determines that;
 - 52.a.1. the Goods are damaged but were not damaged by the Customer and that the Customer took reasonable steps to prevent the Goods from becoming damaged; or
 - 52.a.2. the Goods are not in conformity with the Order Confirmation, the Customer is entitled to, at the election of Fusion Qld:
 - 52.a.2.1. replacement Goods or the supply of equivalent Goods; or
 - 52.a.2.2. the repair of the Goods.
 53. If determined by Fusion Qld that the Goods were damaged by the Customer or the Customer failed to take reasonable steps to prevent the Goods from becoming damaged, the Customer is deemed to have accepted the Goods and Fusion Qld will refuse any refund or claim and Fusion Qld will be entitled to the Price pursuant to these Terms.

Title and Risk

54. Ownership of the Goods does not pass to the Customer until the Goods have been paid in full and all outstanding accounts of the Customer are paid in full.
55. Until ownership passes to the Customer, the Customer agrees and acknowledges that it will hold the Goods and any proceeds of sale from the sale of the Goods on trust for Fusion Qld until the Customer accounts to Fusion Qld for the Price.
56. The Customer accepts all risk of loss and damage to the Goods, whether caused by the Customer or a third party (e.g. courier), once the Goods have been collected from the Premises by the Customer, its agent or third party (e.g. courier).
57. If the Customer elects delivery of the Goods, the Customer shall insure the Goods on or before delivery against all losses which may be sustained as a result of the loss, damage or destruction of the Goods or any part thereof by accident, theft, fire, flood, negligence and such other insurable causes as

may be available and shall include Fusion Qld as co-insured.

58. If any Goods are lost, damaged, or destroyed once the Goods have left the Premises but prior to delivery to the Customer, Fusion Qld is entitled to receive all insurance proceeds payable for the Goods to the extent of any indebtedness of the Customer to Fusion Qld in respect of such Goods. The production of these Terms by Fusion Qld is sufficient evidence of Fusion Qld's rights and entitlement to receive the insurance proceeds.
59. If the Customer requests that Goods are delivered to an unattended location, or left outside an elected delivery location, or are left outside of Fusion Qld's Premises for collection by the Customer (or their agent), the Customer acknowledges that collection and delivery of the Goods occurs at the Customer's sole risk once the Goods have left the Premises or been left outside the Premises for collection.

Credit and Charging Provisions

60. The Customer agrees at the request of Fusion Qld, that it shall, or it shall procure its directors to, sign a personal guarantee and indemnity of the Customer's obligations to pay any amount due and payable to Fusion Qld.
61. In consideration of Fusion Qld providing credit or continuing to provide Goods and/or materials on credit to the Customer, it is an essential condition of these Terms that the Customer:
- a. acknowledges and agrees that the information provided in any credit application submitted to Fusion Qld regarding the financial standing and credit worthiness of the Customer (and the incorporated body or guarantors) is true and correct;
 - b. in accordance with the Privacy Act 1988 as amended from time to time:
 - 61.b.1. authorises and agrees to Fusion Qld making any reasonable enquiries it requires and obtaining reports and information from credit reporting agencies and/or banking institution, and/or information concerning the Customers (or director(s)) commercial activities or commercial credit worthiness obtained from a person or body carrying on business or undertaking involving the provision of information about the commercial credit worthiness of a person, for the purpose of assessing an application for credit or commercial credit or assessing whether to accept the Customer (or its director(s)) as Guarantors as the case may be, including but not limited to a credit report containing personal credit information about the Customer;
 - 61.b.2. authorises Fusion Qld to contact business referees listed in any Credit Application;
 - 61.b.3. acknowledges that Fusion Qld has informed the Customer that certain items of personal information about the Customer, its directors or guarantors contained in any Credit Application is permitted to be kept on a credit information file and might be disclosed to credit reporting agencies. The information which may be given to an agency is covered by the Privacy Act 1988 and includes such permitted particulars about an individual which allow that individual to be identified; the fact that the Customer and/or the individual have applied for finance and the amount; the fact that the above-named credit provider is a current credit provider to the Customer; payments which become overdue more than sixty (60) days, and for which collection action has commenced; advice that payments are no longer overdue and in specified circumstances, that in the opinion of the above-named credit provider, the Customer has committed a serious credit infringement;
 - 61.b.4. authorises Fusion Qld to exercise the Customer's (or its directors) rights of access to the Customer's (or its directors) credit information files and credit reports;
 - 61.b.5. agree that Fusion Qld may give to and seek from any credit providers (whether or not named in the applicable Credit Application) reports and information that has any bearing on the Customer's credit worthiness, credit standing, credit history or credit capacity and which credit providers are allowed to give or receive from each other under the Privacy Act 1988 for any of the following purposes:
 - 61.b.5.1. to assess an application by the Customer for credit or commercial credit;
 - 61.b.5.2. to notify other credit providers of a default the Customer and any guarantor and of any judgment obtained by Fusion Qld;
 - 61.b.5.3. to exchange information with other credit providers as to the status of the Customer's account where the Customer and/or any guarantor

- are in default with Fusion Qld or with another credit provider;
- 61.b.5.4. to assess the Customer's credit worthiness or commercial credit worthiness at any time;
- 61.b.5.5. to assess whether to accept and individual as a Guarantors or to continue supplying credit to the Customer/s.
- 61.b.6. agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by the Customer from Fusion Qld or, while any moneys are owed on any account by the Customer or any guarantor of the Customer.
62. Upon approval of credit facilities to the Customer and any Guarantor, the Customer and any Guarantor hereby (jointly and severally) agree to charge all real and personal property, both equitable and legal, present or future, of the Customers and/or the Guarantors (as the case may be), in favour of Fusion Qld, to secure performance of their obligations pursuant to these Terms, including payment of all monies owed to Fusion Qld by the Customer or any guarantors and will consent to Fusion Qld lodging a caveat over any and all real property to protect its interests.
63. Without limiting the generality of the charge in clause 60, the Customer and any Guarantor:
- consent to Fusion Qld registering a caveat over any real property and registering its interest in other property on the Personal Property Security Register; and
 - agree to execute any documents and do all things reasonably necessary for Fusion Qld to register a mortgage security or lodge a caveat over any real property.
64. In the event that the Customer and any Guarantor fails to deliver the documents required pursuant to clause 61, the Customer and/or Guarantor (as the case may be):
- appoint Fusion Qld to be their lawful attorney for the purposes of executing and registering such documents; and
 - agree to indemnify Fusion Qld against all costs and expenses associated with the preparation, execution and lodgement of any such documents, including but not limited to a mortgage or caveat.
65. The Customer warrants that it will advise Fusion Qld of any act of insolvency on its part, any change in name, ownership or control, and any material sale of assets (being a sale of greater than 20% of the Customer's assets), no later than two business days after such a transaction.
66. Information received from the Customer/s and any individual will otherwise be treated in accordance with Fusion Qld's Privacy Policy and the Privacy Act 1988.

Personal Property Securities Act (PPSA)

67. The Customer agrees and acknowledges that by entering into an Agreement with Fusion Qld, including these Terms, the Customer grants a security interest to Fusion Qld in the Goods (and their proceeds derived from, or from dealing with the Goods) now or supplied in the future by Fusion Qld to the Customer (or to its account).
68. The Customer undertakes to do all things necessary (including the provision of information) to:
- allow Fusion Qld to acquire and maintain one or more first ranking perfected security interests pursuant to the PPSA in respect of the Goods and their proceeds;
 - ensure that any security interest which is purported to be reserve od rerated under or in connection with these Terms is perfect by possession or control;
 - allow Fusion Qld to register and maintain (including renew before expiry) a financing statement or financing change statement on the Personal Property Securities Register (PPSR) as a security interest and a purchase money security interest (PMSI); and
 - ensure that Fusion Qld's security position, and rights and obligations, are not adversely affected by the PPSA;
 - remove any financing statement which is registered in respect of the Goods;
 - not change its name, ACN or ABN or other details required on the PPSR without first giving Fusion Qld ten (10) business days' notice; and
 - pay Fusion Qld's costs of any discharge or necessary amendment of any financial statement or financing change statement.
69. Unless the Customer has obtained Fusion Qld's prior written consent, the Customer undertakes not to:
- register a financing change statement in respect of a security interest contemplated or constituted by these Terms; and
 - create or purport to create any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.
70. The Customer and Fusion Qld, to the maximum extent allowed by the PPSA and the law:
- agrees and consents to, the following provisions of the PPSA being waived, not

applying and hereby contracted out of, section 95 (to the extent that it requires the secured party to give notices to the grantor), section 118 (to the extent that it allows a secured party to give notices to the grantor), section 121(4), section 125, section 130, section 132(3)(d), section 132(4), section 135, section 138B(4), section 142 and section 143, section 157 and Part 4.3; and

- b. agrees that the following provisions of the PPSA will not apply, they will be excluded, and the Customer will have no rights under them, section 127, section 129(2), section 129(3), section 130, section 132; section 134(2); section 135; section 136(3), (4) and (5); and section 137.

- 71. Notwithstanding section 275 of the PPSA, the parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.
- 72. The Customer irrevocably grants to Fusion Qld the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if Fusion Qld has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify Fusion Qld from any claims made by any third party as a result of such exercise.
- 73. The Customer will be responsible for Fusion Qld's reasonable costs and expenses in exercising its rights under clause 70 where the Customer is otherwise in default of these Terms. Where Fusion Qld exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Fusion Qld, its employees, servants, or agents.
- 74. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in the Agreement or any other address later notified to Fusion Qld by the Customer or the Customer's authorised representative.
- 75. The Customer further agrees that where Fusion Qld has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.

Default & Cancellation of Terms of Credit

- 76. Fusion Qld may immediately terminate the Agreement, cease supplying the Goods and/or terminate and/or suspend the Customer's credit facility, if the Customer:
 - a. breaches these terms, or the Agreement;
 - b. commits an act of bankruptcy or makes an arrangement with all or any number of its

creditors, or has a receiver or liquidator appointed.

- 77. Should Fusion Qld determine the following;
 - a. any reasonable grounds to believe that the Customer may not be able to make payment to Fusion Qld of any monies owing by the Customer pursuant to these Terms, or there is any default or failure by the Customer in making such payments; or
 - b. an administrator, liquidator, provisional liquidator or external manager is appointed in respect of the Customer; or
 - c. a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer; or
 - d. the Customer goes into bankruptcy or is wound up; or
 - e. the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due; or
 - f. there is a breach by the Customer of any of these Terms or the Agreement;

then all monies payable by the Customer to Fusion Qld, subject to written notice by Fusion Qld, shall become immediately due and payable notwithstanding the due date for payment shall not have expired and Fusion Qld may without prejudice to any other rights it may have, do any or all of the following:

- a. withdraw any credit facilities which may have been extended to the Customer;
 - b. withhold any further delivery of Goods;
 - c. in respect of Goods already delivered, enter onto the Customer's premises to recover and resell the Goods for its own benefit;
 - d. recover from the Customer the cost of materials or Goods acquired for the purpose of future deliveries;
 - e. exercise such rights as are afforded to Fusion Qld under the PPSA; and
 - f. register a default with any credit reference facility.
- 78. At its sole discretion, Fusion Qld reserves the right to withdraw credit at any time upon provision of 24 hours' written notice.
- 79. Upon the withdrawal of credit, or upon termination of the Agreement, all monies due and owing by the Customer become immediately payable to Fusion Qld.
- 80. For the avoidance of doubt, termination of the Agreement will not affect:
 - a. the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and

- b. the rights and/or obligations pursuant to the Terms and Agreement which by their nature are intended to survive termination of the Agreement.

Liability

- 81. To the maximum extent permitted by law, Fusion excludes its liability (including but not limited to liability in tort, contract and for breach of statute) to the Customer or any other person for:
 - a. any loss, damage, or injury (consequential or otherwise) including but not limited to loss of profits, contracts or revenue arising out of or in connection with the provision of the Goods whether as a result of any breach, default or negligence by Fusion Qld, its agents or another person in relation to the Goods; and
 - b. any loss or damage suffered or incurred by the Customer, or any other person cause by or resulting from any failure, defect or indemnity of any kind of or in the Goods.
- 82. To the maximum extent permitted by law, any liability to the Customer shall in not circumstances exceed the Price of the Goods which give rise to such liability.
- 83. Fusion shall not be liable for defects arising from fair wear and tear or misuse of the Goods.
- 84. To the maximum extent permitted by law, Fusion Qld will not be liable for any loss or damage whatsoever suffered by the Customer as a result of any act, omission or statement made by Fusion Qld, its employees, contractors or agents whether negligent or not.

Indemnity

- 85. The Customer agrees to indemnify and hold harmless Fusion Qld against all claims, actions, proceedings, injuries, loss, damages, costs, penalties and all expenses legal or otherwise (including courts costs and legal fees reasonably incurred) and of whatsoever kind and nature arising out of, or alleged to arise out of, the delivery, selection, acceptance or rejection, ownership, possession, use or storage of the Goods.

Warranty

- 86. Subject to terms of any written warranty and to the extent permitted by law where Goods supplied by Fusion Qld are demonstrated to Fusion Qld's reasonable satisfaction to be defective, the liability for Fusion Qld for breach of condition, warranty as to quality, description, fitness for purpose is limited to, at Fusion Qld's option, the repair of the Goods, the replacement of the Goods or replacement of like Goods, or if that is not possible, reimbursement of the Price.

- 87. The Customer is liable for the transport or other cost of sending warranty claim Goods to Fusion Qld, and for collection or repaired or replacement Goods.
- 88. Fusion Qld does not exclude or limit any provision of any applicable legalisation or regulation (including the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene the relevant law or cause part of these Terms, or the Agreement to be void and these Terms should not be interpreted as doing so.

Trust and Trustees

- 89. If the Customer or Guarantors are a trustee of a trust (whether disclosed to Fusion Qld or not), the Customer warrants to Fusion Qld that:
 - a. the Customer and the Guarantors enter into the Agreement in both its capacity as trustee and in its personal capacity;
 - b. the Customer and/or the Guarantors have the right to be reasonably indemnified out of trust assets;
 - c. the Customer and/or the Guarantors have the power under the trust deed to enter into the Agreement; and
 - d. the Customer and/or the Guarantors will not retire as trustee of the trust or appoint any new or additional trustee without providing Fusion Qld with 5 business days' notice and have the new or additional trustee enter into an Agreement on substantially the same terms as this Agreement.
- 90. The Customer must give Fusion Qld a copy of the trust deed upon request.

Force Majeure

- 91. No failure or omission to carry out or observe any of the conditions of the Agreement shall give rise to any claim against Fusion Qld or result in a breach of the Agreement if such failure or omission arises by reason of delay, breakdown of machinery, inability to obtain materials or shortage of the Goods, act of God, flood, fire, storm or other action of the elements, accidents, government restrictions or from other causes whether like or unlike the foregoing which are unavoidable or otherwise beyond the control of Fusion Qld.

Waiver

- 92. Failure by Fusion Qld to insist upon the performance of any one or more of the conditions herein or enforce any provision of the Terms shall not be treated as a waiver of that provision, nor shall it affect Fusion Qld's right to enforce that provision or exercise and enforce any of right, power or remedy in respect of these Terms or the law in the future.

93. No provision of the Agreement shall be deemed to have been waived by Fusion Qld unless such waiver is in writing and signed by an officer of Fusion Qld.

Notices

94. Any notice required to be given under the Agreement shall:
- a. if the notice is given by Fusion Qld, be signed by any person being or purporting to be a Director, Manager, or Senior officer
 - b. if the notice is given by the Customer:
 - 94.b.1. if a Company, be signed by any person being or purporting to be a Director; and
 - 94.b.2. if not a Company, then by the party themselves.
95. A notice, consent or communication is only effective if it is in writing:
- a. served personally on Fusion Qld or the Customer;
 - b. sent via email to the email address provided in these Terms, the Order, the Credit Application or as advised at a later date. A notice sent via email will be deemed to be served at the time that notice was sent:
 - 95.b.1. unless sent after 5pm on a business day in which case it will be deemed to be served the following business day; or
 - 95.b.2. unless an "undeliverable mail" notification message is received, in which case the email will be deemed not to have been served.
 - c. sent by prepaid mail (and by prepaid airmail if the person is overseas) to the address of Fusion Qld or the Customer as listed in these Terms or as advised at a later date. A notice by way of preparing mail shall be deemed to have been given on the second day following posting it to the registered office or principle place of business or last known address as the case may be of the party to whom the notice is being sent.

Variations

96. These Terms may only be varied, modified and/or amended in writing with the consent of a Director, Manager or Senior Office of Fusion Qld.

Disputes

97. If any dispute arises in relation to Goods supplied by Fusion Qld to the Customer, Fusion Qld may, at its sole discretion, by notice in writing to the Customer at any time prior to determination by a court require that such dispute or part thereof be determined by arbitration

98. The arbitration is to be conducted in accordance with the relevant Commercial Arbitration Act (of whatever name) of the State or Territory nominated as being the governing law and in the capital city of that State or Territory. Fusion Qld may give notice that any dispute with the Customer is arbitrated with any other dispute relating to the same Goods or issues. There is to be a single arbitrator appointed by agreement or failing agreement by the president of the law society of that State or Territory. The arbitrator's decision is final and binding subject to any right of appeal under the relevant Commercial Arbitration Act.
99. The reference of a dispute to arbitration does not affect the Customer's obligation to pay the Price for the Goods when due which must be paid without deduction or equitable or other set off pending the resolution of any dispute whether referred to arbitration or otherwise.

Proper Law

100. These Terms will be governed by and construed in accordance with the laws of Queensland or as otherwise elected by Fusion Qld. The Customer irrevocably submits to the exclusive jurisdiction of a competent court in Queensland, or as otherwise elected by Fusion Qld.

Intellectual Property

101. The Customer acknowledges and agrees that these Terms do not give the Customer any intellectual property rights in the Goods and that Fusion Qld retains all such ownership rights

Severability

102. Nothing in these Terms may be read or applied so as to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law and which by law cannot be excluded, restricted or modified.
103. If any of these Terms are or become invalid, illegal, void or unenforceable, the validity, existence, legality or enforceability of any remaining provisions shall not be adversely affected, prejudiced or impaired.