

1. CONTRACT DOCUMENTS

- 1.1 These Terms of Trade apply to all transactions between the Buyer and Seller relating to the provision of Goods and Services. This includes all quotations, orders, variations and invoices.
- 1.2 These Terms of Trade shall take precedence over any other terms of trade contained in any document of the Buyer or otherwise.

2. AGREEMENT TO SELL AND PURCHASE

In return for the Buyer paying the purchase price specified in the Order Form, the Seller agrees to sell and the Buyer agrees to purchase the Goods and Services identified in the Order Form in accordance with these Terms of Trade.

3. QUOTES

- 3.1 The Seller may provide the Buyer with a Quote. Any Quote given by the Seller must be in writing and will remain current for fourteen (14) days from the date it is given, and the Seller reserves the right to alter its prices for the quoted goods after that period has expired.
- 3.2 All prices quoted or estimated by the Seller are:
- (a) unless otherwise stated, exclusive of GST; and
 - (b) exclusive of freight and transport charges for delivery of the Goods to the Buyer's premises or nominated delivery address.
- 3.3 Unless expressly stated a Quote does not include installation of the Goods or delivery to the Buyer's premises.
- 3.4 The Buyer acknowledges that prices quoted or estimated by the Seller are based in part on currency exchange rates and shipping and transport costs that are current at the time the quote was prepared.
- 3.5 The Seller is not obliged to commence work until an Order has been placed by the Buyer.
- 3.6 In the event of a fluctuation in the currency exchange rates or shipping and transport costs between provision of the quote and delivery of the goods the subject of the order, the Seller reserves the right to amend the

quoted price, provided the Buyer is notified of the amended price as soon as reasonably practicable.

- 3.7 Any indication in a quote of the time frame for the provision of the Goods and Services is an estimate only and is not a fixed time frame that the Seller is bound to comply with.

4. ORDERS

- 4.1 The Buyer must order the Goods and Services from the Seller in writing. Each Order must be signed by the Buyer and clearly specify:
- (a) the Goods the Buyer wishes to purchase;
 - (b) the quantity of Goods the Buyer wishes to purchase;
 - (c) any special conditions that are to apply to the Order;
 - (d) the delivery address and preferred delivery date for the Goods; and
 - (e) if applicable, the Installation Site.
- 4.2 The Seller will advise the Buyer within seven (7) Business Days of receipt of the Order whether it is possible to deliver the Goods on the preferred delivery date. If the Seller is unable to deliver the Goods on the preferred delivery date, the Seller will agree a new delivery date with the Buyer.
- 4.3 The Buyer is liable for any fees, expenses, or charges incurred by the Seller in reliance on any incorrect or inadequate information provided by the Buyer in the Order.
- 4.4 Placement of an Order by the Buyer signifies acceptance by the Buyer of these Terms of Trade and the most recent Quote provided by the Seller relating to that Order.
- 4.5 An Order cannot be cancelled without the prior written consent of the Seller. Where an Order is cancelled, the Buyer indemnifies the Seller against any Loss incurred by the Seller as a result of the cancellation.
- 4.6 Where an Order is cancelled but has already been dispatched, the Buyer is responsible for all transport costs associated with returning the Order to the Seller's premises together with a 10% re-stocking fee.

4.7 The Seller will not accept returns for custom or special orders.

5. ACCEPTANCE OF ORDERS

The Seller may, in its absolute discretion, refuse to accept any Order and no Order will bind the Seller unless the Seller issues an Invoice or otherwise explicitly indicates its acceptance of the Order in writing.

6. VARIATIONS

6.1 Any request by the Buyer to vary the Order must be provided to the Seller in writing. Any variation must be agreed to in writing by the Seller to have effect.

6.2 If the Buyer wishes to vary its requirements after a Quote has been prepared by the Seller or after the placement of an Order, the Seller reserves the right to vary the Quote to include any Additional Charges in respect of any extra costs incurred or additional work carried out due to the variation, in accordance with its then current charge rates. A revised Quote issued by the Seller in respect of the requested variation supersedes the original Quote.

6.3 By agreeing to vary the Order, the Seller will receive an automatic extension of time for the provisions of the Goods and Services, equal to the delay caused by the variation.

7. INVOICING AND PAYMENT

7.1 The Seller will, issue an invoice to the Buyer prior to commencing the provision of the Goods or Services, for an amount equal to the Quote and any Additional Charges. Where no Quote has been provided by the Seller, the Seller's usual charges for the Goods and/or Services will be charged as described in the Order.

7.2 The amount payable by the Buyer to the Seller will be as follows:

(a) Where the Seller determines that the Order is a Category A Order, the Buyer will be required to pay:

(i) 35% of the purchase price upfront;

(ii) a further 35% of the purchase price when the Goods land on site; and

(iii) the balance of the purchase price within seven (7) days from the date of practical completion.

(b) Where the Seller determines that the Order is a Category B Order, the Buyer will be required to pay:

(i) 50% of the purchase price upfront;

(ii) the balance of the purchase price within seven (7) from the date of practical completion.

(c) Where the Seller determines that the Order is a Category C Order, the Buyer will be required to pay:

(i) 50% of the purchase price upfront;

(ii) the balance of the purchase price prior to installation or dispatch/delivery of the Goods.

(d) Where the Seller determines that the Order is a category D Order, the Buyer will be required to pay the full amount of the purchase price within 30 days from the end of the month.

7.3 Subject to clauses 7.2(a)(iii) and 7.2(b)(ii) and unless otherwise agreed to in writing by the Seller, the Buyer must pay an invoice issued by the Seller to the Seller within fourteen (14) days of the invoice being issued to the Buyer.

7.4 Time for payment is of the essence and nothing in these Terms of Trade obliges the Seller to order, obtain or supply any Goods or perform any Services unless the Buyer has complied with their payment obligations.

7.5 If any invoice is due but unpaid, the Seller may withhold the provision of any further Goods or Services until the overdue amounts are paid in full.

7.6 The Seller may in its absolute discretion apply any payment received from the Buyer to any amount owing by the Buyer to the Seller.

7.7 The Buyer is not entitled to retain any money owing to the Seller notwithstanding any default or alleged default by the Seller of these Terms of Trade, including (but not limited to) the supply of allegedly faulty or defective goods, provision of Services to an inadequate

standard or a delay in the provision of Goods or Services. Nothing in this paragraph affects the Buyer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

- 7.8 The Buyer is to pay the Seller on demand interest at a rate of 8% per annum on all overdue amounts owed by the Buyer to the Seller, calculated daily.
- 7.9 All costs and expenses associated with collecting overdue amounts, including (but not limited to) legal fees and internal costs and expenses of the Seller, are to be paid by the Buyer as a debt due and payable under these Terms of Trade.
- 7.10 The Buyer and the Seller agree to comply with their obligations in relation to Goods and Services Tax (**GST**) under the A New Tax System (Goods and Services Tax) Act 1999 and any other applicable legislation governing GST.

8. ADDITIONAL CHARGES

- 8.1 The Seller may require the Buyer to pay Additional Charges in respect of costs incurred by the Seller as a result of reliance on inadequate or incorrect information or material provided by the Buyer or information or material supplied later than required by the Seller in order for it to provide the Goods or Services within the specified time frame (if any).
- 8.2 The imposition of Additional Charges may also occur as a result of:
- (a) cancellation by the Buyer of an Order where cancellation results in Loss to the Seller;
 - (b) storage costs for Goods not collected from the Seller within two (2) weeks of the date on which the Goods are manufactured, fabricated, created or formed;
 - (c) photocopying, courier, packing or handling charges not included in the Quote;
 - (d) Government or council taxes or charges not included in the Quote; or
 - (e) additional work required by the Buyer or any other occurrence which causes the Seller to incur costs in respect of the

Buyer's Order additional to the quoted cost.

9. SUPPLY AND DELIVERY

- 9.1 If the Goods are being delivered to the Buyer to be installed by the Seller (or its subcontractors) at a later date, the Buyer must:
- (a) unload the Goods from the delivery truck using their own equipment;
 - (b) store the Goods safely and securely under a roof or awning;
 - (c) subject to clause 9.2 assume responsibility for the condition of the Goods.
- 9.2 If the Buyer fails to advise the Seller in writing of any default in the Goods or failure of Goods to accord with the Buyer's Order within seventy-two (72) hours of delivery, the Buyer is deemed to have accepted the Goods and to have accepted that the Goods are not faulty and accord with the Buyer's Order. Nothing in this paragraph affects the Buyer's rights for any alleged failure of a guarantee under the Australian Consumer Law.

10. INSTALLATION

- 10.1 If provided in an Order the Seller (or its subcontractors) will install the Goods at the Installation Site. Unless otherwise agreed in writing, Installation will occur between ordinary business hours Monday – Friday.
- 10.2 The Buyer must, at the time of installation, ensure the Installation Site is a clear working site and there is adequate access for the Seller (or its subcontractors) to complete installation.
- 10.3 The Seller (or its subcontractors) may in their absolute discretion refuse to install the Goods if the Installation Site is not clear and readily accessible or if there is any other circumstance which would prevent installation of the Goods.
- 10.4 The Buyer must provide the Seller (or its subcontractors) with all reasonable assistance and access to any necessary facilities to enable the Seller (or its subcontractors) to complete installation of the Goods. This

includes, but is not limited to adequate lighting and access to 240 V power supply.

- 10.5 The Seller (or its subcontractors) are happy to attend site safety inductions and courses to ensure safe working practice is adhered to at the Installation Site. The Buyer must advise the Seller if there are any specific requirements for personal protective equipment. If site safety inductions exceed 15 minutes per person the Buyer will be responsible for any Additional Charges that may apply.
- 10.6 The Buyer will indemnify the Seller (or its subcontractors) for any direct or indirect costs arising out of any delay caused under this paragraph.
- 10.7 Unless otherwise stated in the Quote it is assumed the Buyer will make a forklift available to the Seller (or its subcontractors) at any time throughout the installation.
- 10.8 Unless otherwise stated if the Seller (or its subcontractors) is removing the Buyer's existing racking system any existing dyna bolts will be cut flush with the concrete floor.
- 10.9 If the Seller installs the Goods, the Buyer warrants that the structure in which the Goods are to be installed is sound and can accommodate the Goods and the required installation work.
- 10.10 Where the Seller is only supplying the Goods it takes no responsibility for the construction or installation of the Goods.
- 10.11 If the Buyer does not comply with this clause 10 and the Seller or its agent are required to complete additional works the Seller is entitled to charge as an Additional Charge an hourly rate of \$65 (plus GST) for each person, including the Seller's agents that is required to complete the additional work.

11. TITLE AND RISK

- 11.1 Risk in the Goods passes to the Buyer immediately upon delivery.
- 11.2 Property and title in Goods supplied to the Buyer under these Terms of Trade does not pass to the Buyer until all money (including money owing in respect of other transactions between the Seller and the Buyer) due and payable to the Seller by the Buyer have been paid in full.

11.3 Where the Seller supplies the Goods to the Buyer without payment in full, the Buyer:

- (a) is a bailee of the Goods until property in them passes to the Buyer;
- (b) irrevocably appoints the Seller to be its attorney and do all acts and things reasonably necessary to ensure the retention of title to goods including the registration of any security interest in favour of the Seller with respect to the Goods under applicable law;
- (c) must be able upon demand by the Seller to separate and identify as belonging to the Seller Goods supplied by the Seller from other goods which are held by the Buyer;
- (d) must not allow any person to have or acquire any security interest in the Goods;
- (e) agrees that the Seller may reposes the Goods if payment is not made within fourteen (14) days (or such longer time as the Seller may, in its complete discretion, approve in writing) of the supply of the Goods; and
- (f) the Buyer grants an irrevocable licence to the Seller or its agent to enter the Buyer's premises to recover possession of the Goods pursuant to this paragraph. The Buyer indemnifies the Seller for any damage to property or personal injury which occurs as a result of the Seller entering the Buyer's premises.

11.4 Where Goods are supplied by the Seller to the Buyer without payment in full of all moneys payable in respect of the Goods and any Services provided by the Seller in response of those Goods, and:

- (a) the Buyer makes a new object from the Goods, whether finished or not;
- (b) the Buyer mixes the Goods with other goods; or
- (c) the Goods become part of other goods (**New Goods**),

then the Buyer agrees with the Seller that ownership of the New Goods immediately passes to the Seller. The

Buyer will hold the New Goods on trust for the Seller until payment of all sums owing to the Seller whether under these Terms of Trade or any other contract that may have been made. The Seller may require the Buyer to store the New Goods in a manner that clearly shows ownership of the Seller.

11.5 For the avoidance of doubt, under clause 11.4, the ownership of the New Goods passes to the Seller at the beginning of operation or event by which the Goods are converted into, are mixed with or become part of other goods.

11.6 Despite paragraph 11.4, the Buyer may transfer, sell or dispose of Goods, including New Goods, to a third party in the ordinary course of business. This is provided that:

(a) where the Buyer is paid by a third party in respect of Goods including New Goods, the Buyer holds the whole of the proceeds of sale, less any GST on trust for the Seller, in a separate account, until all amounts owed by the Buyer to the Seller have been paid; or

(b) where the Buyer is not paid by a third party, the Buyer agrees to assign all of its rights against the third party to the Seller upon the Seller giving the Buyer notice in writing to that effect and for the purpose of giving effect to that assignment the Buyer irrevocably appoints the Seller as its attorney.

11.7 Where the Goods are supplied by the Seller to the Buyer without payment in full of all moneys payable in respect of the Goods and Services provided by the Seller in respect of those Goods, the Buyer acknowledges that the Seller has a right to register and perfect a personal property security interest.

11.8 If:

(a) a PPS Law applies or commences to apply to these Terms of Trade or any transaction contemplated by them, or the Seller determines (based on legal advice) that this is the case; and

(b) in the Seller's opinion, the PPS Law:

(i) does or will adversely affect the Seller's security position obligations; or

(ii) enables or would enable the Seller's security position to be improved without adversely affecting the Buyer,

then the Seller may give notice to the Buyer requiring the Buyer to do anything (including amending these Terms of Trade or execute new terms and conditions) that in the Seller's opinion is necessary, to the maximum possible extent, to overcome the circumstances contemplated in clause 11.8(b)(i) or improve the security position as contemplated in clause 11.8(b)(ii). The Buyer must comply with the requirements of that notice within the time specified in the notice. If having contemplated everything reasonably practicable as required under this paragraph, in the Seller's opinion the Seller's security position or obligations under or in connection with these Terms of Trade have been or will be materially adversely affected, the Seller may by further notice to the Buyer cancel these Terms of Trade. If this occurs, the Buyer must pay to the Seller any money owed to the Seller by the Buyer immediately.

12. PRIVACY

The Buyer consents to the Seller using any information relating to the Buyer (including but not limited to personal information within the meaning given to that term in the *Privacy Act 1988* (Cth)) that the Seller may come to possess for the purpose of obtaining credit references, or otherwise investigating and satisfying itself as to the Buyer's creditworthiness and financial position.

13. AGENCY AND ASSIGNMENT

13.1 The Buyer agrees that the Seller may at any time appoint or engage an agent to perform any obligation of the Seller arising out of or in accordance with these Terms of Trade.

13.2 The Seller has the right to assign and transfer to any person all of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from these Terms of Trade provided that the assignee agrees to assume any duties and obligations of the Seller owed to the Buyer under these Terms of Trade.

13.3 The Buyer is not to assign, or purport to assign, any of its obligations or rights under these

Terms of Trade without the prior written consent of the Seller.

14. DEFAULT BY BUYER

14.1 Each of the following occurrences constitutes an event of default:

- (a) the Buyer breaches or is alleged to have breached these terms of trade for any reason (including, but not limited to, defaulting on any payment due under these terms of trade) and fails to remedy that breach within 14 days of being given notice by the Seller to do so;
- (b) the Buyer, being a natural person, commits an act of bankruptcy;
- (c) the Buyer, being a corporation, is subject to:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Buyer to be wound up, deregistered or dissolved;
 - (ii) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Buyer's property and undertaking;
 - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (iv) any assignment for the benefit of creditors;
- (d) the Buyer purports to assign its rights under these terms of trade without the Seller's prior written consent; or
- (e) the Buyer ceases or threatens to cease conduct of its business in the normal manner.

14.2 Where an event of default occurs, except where payment in full has been received by the Seller, the Seller may:

- (a) terminate these Terms of Trade;

- (b) terminate any or all Orders and credit arrangements (if any) with the Buyer;
- (c) refuse to deliver Goods or provide further Services;
- (d) pursuant to clause 11.311.3(e), repossess and re-sell any Goods delivered to the Buyer, the payment for which has not been received; or
- (e) retain (where applicable) all money paid by the Buyer on account of Goods or Services or otherwise.

14.3 In addition to any action permitted to be taken by the Seller under paragraph 14.2, on the occurrence of an event of default all invoices will become immediately due and payable.

15. INDEMNITY

15.1 The Buyer agrees to indemnify and keep indemnified the Seller, its servants and agents in respect of any claim or demand made or action commenced by any person (including, but not limited to the Buyer) against the Seller or, for which the Seller is liable, in connection with any Loss arising from or incidental to the provision of the Goods or Services, and Order or the subject matter of these Terms of Trade.

15.2 This includes, but is not limited to, any legal costs incurred by the Seller in relation to meeting any claim or demand or any party/party legal costs for which the Seller is liable in connection with any such claim or demand.

16. FORCE MAJEURE

16.1 If circumstances beyond the Seller's control prevent or hinder its provision of the goods or services, the Seller is free from any obligation to provide the goods and services whilst those circumstances continue. The Seller may elect to terminate the Contract or keep the Contract on foot until such circumstances have ceased.

16.2 Circumstances beyond the Seller's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or

malfunction of computers or other information technology systems.

17. DISPUTE RESOLUTION

17.1 If a dispute arises between the Buyer and the Seller, the following procedure applies:

- (a) either party may give the other party notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause.
- (b) a party must not commence legal proceedings (except legal proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this paragraph.
- (c) a party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this paragraph.

17.2 If a party issues a notice of dispute, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within fourteen (14) Business Days.

17.3 If the parties cannot resolve the dispute in accordance with clause 17.2, then the parties must endeavour to resolve the dispute by mediation using the following procedure:

- (a) either party can give the other party notice stating that the dispute has not been resolved and therefore the dispute should be referred to mediation; and
- (b) within fourteen (14) days of receipt of the notice under clause 17.3(a), the parties agree to appoint a mediator and if the appointment of a mediator cannot be agreed, then the parties agree to the appointment of a mediator by LEADR – Association of Dispute Resolvers.

17.4 The parties shall share the cost of the mediator equally but will each be responsible for their own costs of the mediation.

17.5 If the dispute cannot be resolved in accordance with clause 17.3, either party may, by notice in writing of not less than fourteen (14) days to the other, refer the dispute to legal action. Service of notice under this clause is a condition precedent to the commencement of any litigation proceedings in respect of such dispute.

18. GENERAL PROVISIONS

18.1 **Subcontract** the Seller reserves the right to subcontract any and all of its obligations under these Terms of Trade.

18.2 **Waiver** no failure to exercise, and no delay in exercising any right under this Contract will operate as a waiver. No single or partial exercise of any rights will preclude any other, or further exercise of that or any other right.

18.3 **All Reasonable Steps** each party agrees to take all reasonable steps, execute all documents and do all acts and things as may be reasonably required by the other party to give effect to the transaction contemplated by the Contract.

18.4 **Severance** if a Court of competent jurisdiction decides that any part of this document is invalid or unenforceable that part of the document shall be modified (if possible) so that it is enforceable. If the part cannot be modified it shall be severed and the rest of the document will continue to operate.

18.5 **Variation** the parties may vary this document by written agreement.

18.6 **Entire Agreement** this document contains the entire agreement between the parties as to its subject matter and in relation to that subject matter supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party.

18.7 **Governing Law** this document is governed by the law in force in Western Australia and each party submits to the non-exclusive jurisdiction of the court of Western Australia.

19. DEFINITIONS

Additional Charge means:

- (a) fees or charges for additional work performed at the Buyer's request or reasonably required as a result of the Buyer's conduct, calculated in accordance with the Seller's then current prices; and
- (b) expenses incurred by the Seller, at the Buyer's request or reasonably required as a result of the Buyer's conduct.

Australian Consumer Law means the Australian Consumer Law located in the *Competition and Consumer Act 2010* (Cth) Sch 2.

Buyer means the person identified on a Quote or Order Form as the buyer and includes the Buyer's agents and permitted assigns.

Goods means any goods supplied by the Seller in accordance with these Terms of Trade.

Installation means the installation of the Goods at the Installation Site.

Installation Site means the site specified on the Order Form.

Invoice means an invoice issued by the Seller in accordance with these Terms of Trade.

Loss includes but is not limited to, costs (including party to party legal costs and the Seller's legal costs) expenses, lost profits, award of damages, personal injury and property damage.

Order Form means a purchase order for Goods or Services placed by a Buyer in response to a Quote and as varied in writing from time to time by the parties.

Parties means the Seller and the Buyer.

Practical Completion means the project has reached a stage in construction where it can be used for its intended purpose.

Quote means a written description of the Goods or services to be provided, an estimate of the Seller's charges for performance of the required work and an estimate of the time frame for the performance of the work.

Seller means Storite Equipment Pty Ltd (ACN 602 040 200) t/as Storite Systems.

Services means the services to be provided by the Seller to the Buyer in accordance with a Quote and these Terms of Trade

Terms of Trade means these Terms of Trade as varied in writing from time to time by the parties.

20. CONSTRUCTION

Business Day: anything required by these Terms of Trade to be done on a day which is not a Business Day must be done effectually on the next Business Day.

Clauses: a reference to a clause or paragraph is a reference to a clause or paragraph of these Terms of Trade.

Headings: headings appear as a matter of convenience and do not affect the construction of these Terms of Trade.

Parties: a reference to a party to these Terms of Trade or any other document or arrangement includes that party's executors, administrators, successors and permitted assigns.

Person: a reference to a person includes a reference to a body corporate, a governmental agency and to an unincorporated body of persons.

Singular, Plural and Gender: the singular includes the plural and vice versa and words importing gender include all genders.

States and Regulations: a reference to an enactment or any other regulation is a reference to that enactment or those regulations as amended or to any enactments or regulations subsisted for that enactment or those regulations.

Writing: a reference to written or in writing includes all modes of presenting and reproducing words, figures and symbols in a tangible and permanently visible form.