

TERMS OF SALE

1. DEFINITIONS.

1.1 **'AMPAC'** means AMPAC Pty Limited ABN 81 634 063 200 and where the context permits and includes any related body corporate of that company within the meaning of section 50 of the Corporations Act 2001 (Cth) that is a manufacturer or seller of Goods.

1.2 **"Anti-Corruption Laws"** means any Laws or international conventions proscribing bribery or other corrupt business practices including:

- i. the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997;
- ii. the United Nations Convention against Corruption 2003; and
- iii. Chapter 4, Division 70 of the Criminal Code Act 1995 (Cth).

1.3 **'Anti-Slavery Laws'** means any and all Laws anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2018 (Cth).

1.4 **'Applicable Law'** means any Law which governs this Contract, the legal status of a Party, or the conduct of the parties pursuant to this Contract from time to time including Anti—Corruption Laws, Anti-Slavery Laws and Data Protection Laws.

1.5 **'Trader Contract'** means a contract for the sale of Goods by AMPAC to the Trader incorporating these terms of sale.

1.6 **'Data Protection Laws'** means any laws in force from time to time that relate to data protection, the processing of personal data and privacy applicable to the parties to this contract and/or the subject matter or performance of this contract.

1.7 **'Force Majeure Event'** means (a) act of God; (b) war, insurrection, riot, civil commotion, act or threat of terrorism; (c) lightning, earthquake, fire, flood, storm, or extreme weather condition; (d) theft, malicious damage; (e) strike, lockout, industrial dispute (whether affecting the workforce of a party and/or any other person); (f) breakdown or failure of plant or machinery; (g) inability to obtain essential supplies or materials; (h) change in Applicable Law; (i) any failure or default of a supplier or sub-contractor of AMPAC; or (j) any event or circumstance to the extent it is beyond the reasonable control of AMPAC.

1.8 **'Goods'** means the goods, equipment, material and, if applicable, associated services specified in an Order to be supplied by AMPAC to the Trader.

1.9 **'Law'** means the provisions of any statute, rule, regulation, proclamation, decree, ordinance or by-law, present or future, whether made under national, provincial or local government authority.

1.10 **'Order'** means an order placed by the Trader with AMPAC for the sale and delivery of Goods, whether by way of acceptance of a quotation issued by AMPAC or otherwise.

1.11 **'Prescribed Rate'** means the interest rate as agreed between the parties and in the absence of express agreement being the National Australia Bank benchmark rate plus 5%.

1.12 **'Purchase Price'** means the price for the Goods payable by the Trader under a Contract.

1.13 **'Trader'** means the legal entity to whom AMPAC sells Goods and/or services.

2. INTERPRETATION.

2.1 In this Contract unless the contrary intention appears:

- i. an obligation or a liability assumed by, or a right conferred on, two or more parties binds or benefits each of them severally
- ii. the expression 'person' includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- iii. a reference to any party includes that party's executors, administrator, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- iv. a reference to any document (including this document) is to that document as varied, novated, ratified or replaced from time to time;
- v. a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- vi. words importing the singular include the plural (and vice versa);
- vii. words importing gender include every other gender;
- viii. where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- ix. the word 'includes' in any form is not a word of limitation; and
- x. a reference to '\$' or 'dollar' is to Australian currency.

2.2 **HEADINGS:** The headings in this document are not part of the Contract and do not affect its meaning.

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3. STATUTORY PROVISIONS.

3.1 THE TRADER'S ATTENTION IS DRAWN TO STATUTORY PROVISIONS WHICH MAY APPLY TO THIS CONTRACT. Any rights, remedies, liabilities, conditions, warranties, standards or specifications which apply to or in respect of the Contract under or by virtue of the *Competition and Consumer Act 2010* (Cth) (the 'Act'), or any other Applicable Law and which cannot be excluded from the Contract will apply

to the Contract, notwithstanding any inconsistency with these terms of sale.

3.2 Subject to clause 3.1; no conditions or warranties expressed or implied, by law and no representations of statements are binding on AMPAC unless set out in these terms of sale or expressly incorporated into the Contract by agreement in writing.

4. CONTRACTS.

4.1 Other than the particulars of the Goods, Purchase Price and delivery requirements set out in an Order, the only terms of a Contract which are binding upon AMPAC are:

- i. those set out in these terms of sale or otherwise agreed to in writing by AMPAC;
- ii. those, if any, which are imposed by Law and which cannot be excluded.

4.2 Without limitation of clause 4.1, AMPAC will not be bound by any terms of trade presented by the Trader subsequently to the receipt by the Trader of these terms of sale (whether contained or referred to in the Order or otherwise) unless AMPAC has expressly agreed in writing to incorporate them in the Contract. In any event, these terms of sale shall prevail over any terms and conditions stipulated by the Trader to the extent of any inconsistency, unless expressly agreed otherwise. The Trader acknowledges that AMPAC will not be deemed to have accepted other terms of trade by accepting the Order.

4.3 Every quotation of AMPAC is by way of invitation to treat only and shall not be deemed to be an offer by AMPAC. There shall be no contract between AMPAC and the Trader until an Order is accepted by AMPAC in writing and such contract shall only be on the terms contained therein.

4.4 All quotations are open for acceptance for the number of days specified in the quotation or if not specified then not more than 30 days from the date of the quotation.

4.5 AMPAC's quotation relates only to such Goods as are specified therein and is given subject to such Goods being available at the time of receipt of the Order.

4.6 Prices included in AMPAC's quotation are based upon the quantities of Goods referred to in the quotation. If the Trader offers to purchase a quantity of Goods which is at variance to the quantity referred to in the quotation, AMPAC reserves the right to amend the price quoted for such Goods.

4.7 The prices quoted in a published price list are for the stipulated quantities only and must not be taken to apply to an Order for any lesser quantity. Changes in quantities may result in increases in unit prices and possible delays in delivery.

4.8 Once an order has been accepted under clause 0 or a quotation has been accepted under clause 0 it cannot be withdrawn or the Contract cancelled by the Trader without the prior approval of AMPAC. AMPAC may impose conditions upon its approval including the payment by the Trader of reasonable compensation for any work done by AMPAC prior to cancellation of the Contract.

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

4.10 The Trader acknowledges that a breach by AMPAC of its obligations under a Contract does not constitute repudiation of that Contract or of any other existing Contract between the parties. The Trader's remedies shall be limited to a claim for compensation for the breach in accordance with these terms of sale.

4.11 The Trader acknowledges that the Goods are acquired and the Trader has held itself out to AMPAC as acquiring the Goods for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, or in the course of a process of production or manufacture, or of repairing or treating other goods or fixtures on land.

5. SPECIFICATIONS.

5.1 The Trader shall be responsible for and bear the cost of any alteration to Goods supplied by AMPAC arising from any discrepancy, error or omission in any drawing, specification or other information supplied by or approved by the Trader.

5.2 Unless AMPAC has specifically been advised in writing otherwise, it is deemed to have no knowledge of the use to which the Trader proposes to put any Goods supplied by AMPAC to the Trader other than as specified in clause 0.

5.3 Any performance figures given by AMPAC in respect of the Goods are estimates only. AMPAC has no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

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6. DESIGN CHANGES

6.1 Unless expressly agreed otherwise in the Contract, AMPAC may at any time without notifying the Trader make any changes to the design or materials in the Goods which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Goods.

7. PRICES.

7.1 Prices quoted by AMPAC are those stated at the date of quotation and shall be subject to variation without notice.

7.2 If AMPAC accepts an Order that does not refer to a specific quotation it will supply the Goods at the price shown in the price list current when AMPAC accepts the order, unless otherwise agreed in writing.

7.3 The cost of any special packing and packaging materials used in relation to the Goods and of any freight costs incurred in meeting the Trader's delivery requirements are at the Trader's expense notwithstanding that such cost may have been omitted from any quotation.

7.4 Unless otherwise stated in writing in any quotation, any sales tax, stamp duty, impost goods and services tax or value added tax or any other taxes, levy or the like, imposed now or in the future on either the sale, manufacture, dealing with distribution, import or use of Goods or measured by the selling price of Goods or otherwise how so ever shall not be included in the Purchase Price of the Goods. The Trader shall pay such sales tax, stamp duty, impost goods and services tax or value added tax to AMPAC in addition to the Purchase Price of the Goods at the same time as it pays the Purchase Price.

8. PAYMENT.

8.1 Unless otherwise agreed in writing by AMPAC and the Trader, payment shall be made by electronic transfer of cleared funds into a bank account nominated in advance by AMPAC on delivery ('the Payment Date').

8.2 If the Trader defaults on any payment due to AMPAC then AMPAC shall have the right, in addition to all other remedies to which it is entitled at law, to charge interest on the overdue amount, to be charged at the Prescribed Rate calculated on a daily basis, from the Payment Date.

8.3 If payment is not made by the Payment Date AMPAC shall, without prejudice to any other remedies be entitled to withhold further deliveries until payment of such overdue amount is made and/or to cancel the Contract in respect of the whole or any part of the Goods remaining undelivered.

8.4 AMPAC shall be entitled to claim all costs of the collection of overdue payments, of any unpaid monies including legal fees whether incurred in or out of court, on appeal, in arbitration in the bankruptcy court or in any insolvency proceedings.

9. CONSEQUENTIAL LOSS.

9.1 AMPAC hereby expressly excludes to the extent permitted by Law any liability (arising either in contract or in tort or however otherwise arising) for:-

- i. Consequential loss or damage caused by or arising out of the use of the Goods or occurring in respect of the Goods.
- ii. Loss or damage due to fair wear and tear and negligence or improper use, operation, storage or handling or (without prejudice to the generality of the foregoing) the use or operation of the Goods other than strictly in accordance with AMPAC's written instructions as supplied with the Goods

10. JOINT AND SEVERAL LIABILITY.

Every covenant, agreement, warranty or obligation expressed or implied in this Contract by which two or more persons covenant, agree or are bound shall bind such person jointly and each of them severally and every covenant, agreement, warranty or obligation expressed or implied in this Contract which applies to two or more persons shall apply to such persons jointly and each of them severally

11. NON-WAIVER.

9.2 Any failure or omission by a party either wholly or in part to enforce strict compliance with any provision of this Contract or any act, omission, delay, forbearance or indulgence granted by a party to the other shall not operate as a waiver and shall not affect or impair that provision in any way of the rights of the party to avail itself of the remedies it may have in respect of any breach of any such provision.

9.3 No waiver by a party of any breach of any provision of this Contract shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision.

12. REMEDIES CUMULATIVE.

The rights, powers or remedies provided in this Contract are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Contract.

13. SEVERABILITY.

If one or more of the provisions of this Contract is held to be void, unenforceable or invalid, the remaining provisions of this Contract shall not be affected and shall continue in full force and effect.

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14. ASSIGNMENT.

Unless otherwise agreed in writing by AMPAC the Trader must not assign either the benefit or the burden of the Contract.

15. CREDIT CHECKS.

15.1 Where goods are supplied to the Trader on credit the Trader irrevocably authorises AMPAC, its employees and agents to make such enquiries as it deems necessary to investigate the credit worthiness of the Trader including (without limitation) making enquiries from persons nominated as trade referees, the bankers of the Trader or any other credit providers ("Information Sources") and the Trader authorizes the Information Sources to disclose to AMPAC all information concerning the Trader which is within their possession and which is requested by AMPAC. The Trader further authorises AMPAC to disclose to the Information Sources all information concerning the Trader which is within AMPAC's possession and which is reasonably requested by an Information Source.

15.2 If in AMPAC's reasonable opinion the Trader's credit is unsatisfactory or satisfactory security for payment is not given on request, AMPAC may require payment of the whole or part of the Purchase Price from the Trader in advance and pending such payment delivery may be suspended. If such advance payment is not made within a reasonable period stipulated by AMPAC, AMPAC may cancel the Contract without liability.

16. DELIVERY.

16.1 Unless otherwise specified in the Order, AMPAC will prepare each Order for collection from AMPAC's premises. The Trader must remove the Goods from AMPAC's premises within 7 days of being notified that the Goods are ready for collection.

16.2 Where a place of delivery other than AMPAC's premises is specified by the Trader, AMPAC will pay the costs of transportation of the Goods to the place of delivery, and unless otherwise agreed in writing, the costs will be added to the Purchase Price and paid by the Trader as part of the Purchase Price of the Goods.

16.3 If a delivery date is specified by AMPAC that date is an estimate only unless expressly agreed otherwise in writing and AMPAC is not liable for any delay in delivery. Without limitation of the foregoing, AMPAC will make reasonable endeavour to avoid delay.

16.4 The period given for delivery starts from the date the Order is accepted by AMPAC.

16.5 Delivery at a destination other than AMPAC's premises, unless otherwise specified in the quotation, shall be completed when the vehicle carrying the Goods arrives at the destination specified in the Order.

16.6 Carriage is by any method of transport at AMPAC's option and is subject to the conditions of carriage agreed with the carrier by AMPAC.

16.7 Where AMPAC is responsible for transport, AMPAC will replace or repair free of charge Goods lost or damaged in transit provided AMPAC is advised (together with the carrier in the case of damaged Goods) within twenty one days of issue of invoice in case of non-delivery and within three days of delivery in case of damaged Goods.

16.8 The Trader shall ensure that the Goods supplied are inspected as soon as reasonably practicable after receipt by the Trader but in no event later than fourteen (14) days after receipt. Inspection expenses should be borne by the Trader and failure to notify AMPAC within fourteen (14) days of receipt of any matter making the Goods non-conforming with the Contract shall constitute unqualified and irrevocable acceptance and a waiver by the Trader of any claim with respect to the delivery or condition of the Goods.

16.9 If at the date specified for delivery acceptance of the Goods is delayed for reasons outside AMPAC's control the Goods will be stored by AMPAC and the Trader shall be liable to pay reasonable storage charges for the period of delay plus the cost of any additional handling and transporting incurred. AMPAC further reserves the right to give the Trader notice in writing to accept delivery of the Goods within the period (not less than fourteen (14) days) specified in the notice and to cancel the Contract if delivery is not effected within such period. After cancellation AMPAC will be entitled to dispose of the Goods and to obtain from the Trader compensation for the loss of profit in addition to any other sums due from the Trader under the Contract.

16.10 Deliveries which are delayed at the Trader's request may be invoiced and dated the date AMPAC is prepared to deliver. Additional charges for warehousing, transport and other incidental expenses created by the delay may be levied by AMPAC on the Trader.

16.11 AMPAC reserves the right to make partial deliveries of any Goods unless expressly prohibited by the terms of an Order, and to invoice such deliveries separately. Each delivery of goods in respect of which an invoice is raised by AMPAC will be deemed to constitute a separate Contract between the parties.

16.12 If AMPAC is prevented (directly or indirectly) from making delivery of the Goods or any part thereof by reason of acts of God, war, strikes, lockouts, trade disputes, fire, breakdowns, suspension of production, accidents, interruption of transport, government action or any other cause what so ever (whether or not of a like nature to those specified above) outside its reasonable control AMPAC shall be under no liability whatsoever to the Trader and shall be entitled as its option either to cancel this Contract or to extend the time of its performance and the Trader shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery or despatch.

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17. FREIGHT.

In the event that any agreements, arrangements or understandings between the Trader and AMPAC in relation to supply of Goods is terminated by agreement between the Trader and AMPAC, the Trader shall at the cost of the Trader be obligated to arrange the return of any relevant Goods to AMPAC using the same method of freight as that used to transport the relevant Goods to the Trader and the risk in the Goods shall remain with the Trader until the same are re-delivered to AMPAC.

18. RISK AND PRIORITY.

18.1 All Goods shall be at the Trader's risk from the moment of delivery by AMPAC as set out in clause 16.2 herein.

18.2 Notwithstanding any delivery of the Goods or any part thereof or any other provision of this contract the Goods shall remain the sole and absolute property of AMPAC as full legal and equitable owner until such time as the Trader shall have paid AMPAC the Purchase Price in full together with the full price of any other goods sold to the Trader by AMPAC.

AMPAC is entitled to register a security interest in the Goods by any method permitted by Law including the *Personal Property Securities Act 2009* (Cth) ('the PPSA').

18.3 The Trader acknowledges that the Trader is in possession of the Goods delivered by AMPAC solely as bailee for AMPAC until such time as the full Purchase Price thereof is paid to AMPAC together with the full price of any other goods sold to the Trader by AMPAC.

18.4 Until such time as the Trader becomes owner of the Goods:

- i. it will store them on its premises separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the goods of AMPAC;
- ii. the Trader is authorised by AMPAC to, in the ordinary course of the Trader's business, process the Goods in such fashion as it may wish and/or incorporate them in/or with any product
- iii. or products subject to the express condition that the new product or products or any chattel whatsoever containing any part of the Goods shall be separately stored and marked so as to be identifiable as being and are the property of AMPAC;
- iv. if Goods which are the property of AMPAC are mixed with goods which are the property of a person other than the Trader or are processed with or incorporated therein, the product thereof shall be owned in common with that other person;
- v. the Trader shall be at liberty to agree to sell AMPAC's Goods or any product produced from or with AMPAC's Goods on the express condition that such an agreement to sell shall take place as agent and bailee for AMPAC and that the entire proceeds of sale and moneys therefore are held in trust for AMPAC and are not mingled with any other moneys and shall at all times be identifiable as AMPAC's moneys;
- vi. if the Trader has not received the proceeds of any such sale, it will if called upon to do so by AMPAC, within seven (7) days thereof assign and sell all rights against the person or persons to whom it has supplied any product or chattel made from or with AMPAC's Goods.

18.5 Each of the above sub-clauses of this clause 188 shall be deemed to be distinct and separate conditions and the validity or invalidity or any particular sub-clause shall not affect the validity or invalidity of the remaining sub-clauses.

18.6 Subject to provisions of the PPSA, if any monies owing by the Trader to AMPAC are overdue AMPAC may by its employees or agents enter upon the Trader's premises and recover and resell the Goods in which event AMPAC's only obligation to the Trader will be to credit the Trader with the invoiced price of the Goods.

19. PERSONAL PROPERTIES SECURITIES ACT ("PPSA")

19.1 Defined terms in this clause have the same meaning as given to them in the PPSA.

19.2 The Trader and AMPAC agree that these terms of sale and Contract constitute a security agreement and may give rise to a Purchase Money Security Interest ("PMSI") in favour of AMPAC over the goods supplied or to be supplied to the Trader, as grantor, pursuant to these terms of sale.

19.3 The Trader acknowledges and agrees that by assenting to these terms of sale the Trader grants a security interest (by virtue of clause 188 (Risk and Priority)) to AMPAC over all goods supplied by AMPAC to the Trader (if any) and all after acquired goods supplied by AMPAC to the Trader (or for the Trader's account) and this grant of security interest will be effective notwithstanding anything express or implied to the contrary contained in the Trader's purchase order.

19.4 The Trader acknowledges and agrees that AMPAC may apply to register a security interest in the goods at any time before or after delivery of the goods.

19.5 The Trader agrees to do anything required by AMPAC for the purposes of:

- i. ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
- ii. enabling AMPAC to apply for any registration, complete any financing statement or financing change statement or give any notification, in connection with the Security Interest; and/or
- iii. enabling AMPAC to exercise rights in connection with the security interest; and/or
- iv. ensuring that AMPAC has priority over all other Security Interests in the goods.

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19.6 The Trader waives its right under section 157 of the PPSA to receive the verification statement confirming registration, financing statement or financing change statement relating to a security interest granted by the Trader, as grantor, to AMPAC.

19.7 The Trader must not register a financing change statement as defined in Section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the goods without the prior written consent of AMPAC.

19.8 To the maximum extent permissible at law, AMPAC and Trader agree that sections 95, 121(4), 123(2), 125(1), 130, 132(3)(d), 132(4), 135, 142, and 143 of the PPSA shall be excluded and shall not apply to the enforcement by AMPAC of its Security Interest in the goods.

19.9 AMPAC and the Trader agree not to disclose information of the kind mentioned in section 275(1) of the PPSA and the Trader will not authorise, and will ensure that no other party authorises, the disclosure of such information. This clause 19.9 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

19.10 The Trader must not create any Security Interest in the goods to any person other than AMPAC.

19.11 For the purposes of section 125 of the PPSA the Trader agrees that a 'reasonable period' shall not mean less than 12 months regardless of the circumstances.

19.12 The Trader agrees to pay AMPAC, on demand all of AMPAC's reasonable legal fees, disbursements, costs and expenses associated with:

- i. registration, amendment, or discharge of any financing statement registered by or on behalf of AMPAC; and
- ii. enforcement of any security interest granted to AMPAC by the Trader.

19.13 Nothing in this clause is limited by any other provision of these terms of sale or any other agreement between the parties.

20. DESIGN RIGHTS.

20.1 AMPAC's tender or quotation and any subsequent document provided pursuant to the Contract may contain trade secrets and/or confidential information for the Trader's confidential use based on AMPAC's own design and development work and that of AMPAC's technical collaborators. The Trader must not disclose this information to any third party without AMPAC's consent in writing. The Trader must not make or have made by any third party any goods described in the tender or quotation and in any drawings, designs, proposals, photographs, plans, reports, recommendations, specifications or any other visible data provided to the Trader by or on behalf of AMPAC whether before or after the making of the Contract.

20.2 The Trader must indemnify AMPAC against all costs or damages incurred if any design or instruction provided by the Trader to AMPAC involves AMPAC in actual or threatened litigation or arbitration for alleged infringement of any letters patent, registered designs, trademarks, copyrights or any other form of industrial property.

21. WARRANTY.

21.1 AMPAC warrants to the Trader that Goods manufactured by AMPAC shall be free from defects due to faulty design, materials and workmanship (except as regards defects specifically drawn to the Trader's attention, before the Contract is formed between AMPAC and the Trader, or, if the Trader examines the Goods before the Contract is formed then except as regards defects which that examination ought to reveal).

21.2 If it is proven to AMPAC's reasonable satisfaction that Goods manufactured by AMPAC are not free from defects due to faulty design, materials and workmanship (except as revealed by examination as referred to in Clause 21.1) then AMPAC shall, at its cost and its option and (to the full extent permitted by Law) as the Trader's sole remedy, either:

- i. repair or pay for the cost of repair of such Goods;
- ii. replace such Goods with the same or equivalent goods at the point of delivery applicable to the Contract under which such Goods are supplied to the Trader by AMPAC; or
- iii. refund to the Trader the Purchase Price of such Goods.

21.3 This warranty does not apply in respect of defects due to or arising from

- i. incorrect or negligent handling, disregard of operating and/or maintenance instructions, overloading, unsuitable operating conditions, defective civil or building work, lightning, accident, neglect, faulty erection (unless carried out by AMPAC), acts of God caused beyond AMPAC's control or unauthorised repairs or alterations which have been carried out;
- ii. to Goods of a consumable nature;
- iii. in respect of defects occurring more than thirty-six (36) calendar months after the Goods have been delivered to the Trader. If delivery was delayed for reasons beyond AMPAC's control, then thirty-six (36) calendar months from delivery or forty-two (42) calendar months after AMPAC first notified the Trader that AMPAC was ready to deliver the Goods (whichever period expires earlier);

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- iv. unless AMPAC is notified in writing within seven (7) days of the alleged defect first coming to the notice of the Trader and the Trader returns the defective Goods to AMPAC, or if directed by AMPAC, at the sole discretion of AMPAC, to the works where such Goods were manufactured or assembled, at the Trader's expense of charge; and
- v. unless the Trader has fulfilled all its contractual obligations.

21.4 This warranty will only apply if the Goods, the subject of warranty, are returned to the original point of delivery. It is the responsibility of, and at the risk of, the purchaser to return the Goods to the original point of delivery.

21.5 The benefit of this warranty is personal to the Trader and is non-assignable without the prior written consent of AMPAC.

22. LIMITATION OF LIABILITY.

22.1 Subject to clauses 3.1, 16.4 and 20 of these terms, but notwithstanding anything else express or implied in these terms, AMPAC shall not be liable for any injury to persons, damage to property or for any special indirect or consequential loss or damage whatsoever or (without limiting the generality thereof) loss of profits arising in any way whether directly or indirectly and whether as a result of negligence on the part of AMPAC or its servants, agents and contractors or otherwise arising out of or resulting from whether directly or indirectly the use of or installation of the Goods except in the case where the Trader is a 'consumer' for the purpose of the *Competition and Consumer Act 2010* (Cth) (the 'Act').

22.2 If the Trader is a 'consumer' as defined in section 4B of the Act then:

- i. If the Goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, AMPAC acknowledges that the Trader has certain rights, in addition to its rights under clause 21, under Part V of the Act, which are not capable of being excluded, restricted or modified and which AMPAC does not purport to exclude, restrict or modify;

23. FORCE MAJEURE

23.1 AMPAC will not be in breach of the Contract or otherwise liable to the Trader for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.

23.2 If a Force Majeure Event occurs AMPAC will as soon as reasonably practicable after becoming aware of the Force Majeure Event give written notice to the Trader that the Force Majeure Event has occurred and, subject to clause 0, the Trader will not be in breach of the contract or otherwise liable to AMPAC for any failure to perform or delay in performing its obligations under the contract to the extent that this is due to a Force Majeure Event affecting AMPAC.

23.3 If AMPAC is affected by a Force Majeure Event the Trader will continue to pay AMPAC's invoices in accordance with clause 8.1 in respect of any Goods which AMPAC continues to supply notwithstanding the occurrence of the Force Majeure Event.

23.4 If a Force Majeure Event which gives rise to relief from liability under clause 23.1 continues for a period of more than 60 days, either party will be entitled to terminate the Contract immediately by giving written notice to that effect to the other party.

24. ANTI-CORRUPTION

24.1 The Trader must not give or offer to give (directly or indirectly) to any person any bribe, gift, gratuity or other thing of value, which would or could be construed as a corrupt practice, as an inducement or reward including but not limited to the Anti-corruption Laws:

- (i) for doing or attempting to do any action in relation to this Agreement; or
- (ii) for showing or for attempting to show any favour or disfavour to any person in relation to this Agreement.

25. ANTI-SLAVERY

The Supplier must at all times:

- (i) comply with all relevant Anti-slavery Laws, and ensure that no forced labour, slavery, servitude or similar practices are in any way involved in supply of the Goods;
- (ii) maintain appropriate policies and procedures designed to ensure your compliance with Anti-slavery Laws; and
- (iii) supply all information and evidence reasonably requested by us concerning your compliance with this clause within 30 days of receiving a written request from us.

26. GOVERNING LAW AND JURISDICTION.

26.1 Except as may be otherwise agreed in writing between AMPAC and the Trader, the Contract arising between AMPAC and the Trader shall be governed the laws of and applicable in the State of Western Australia and AMPAC and the Trader agree to submit to courts that have jurisdiction in that State.

27. SITE PREPARATION.

The Trader shall at the Trader's expense prepare the site for installation of the Goods so as to satisfy the installation standards of the goods and any special physical site requirements as specified by AMPAC or the manufacturer of the Goods.

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28. LOSS OR DAMAGE IN TRANSIT

28.1 AMPAC is not responsible to the Trader or any person claiming through the Trader for any loss or damage to goods in transit caused by an event of any kind by any person (whether or not AMPAC arranged the carriage or is legally responsible for the person who caused or contributed to that loss or damage).

28.2 AMPAC must provide the Trader with such assistance as may be necessary to press claims on carriers so long as the Trader:

- i. has notified AMPAC and the carriers in writing immediately after loss or damage is discovered on delivery of goods; and
- ii. lodges a claim for compensation on the carrier within 3 Business Days of the date of delivery of the goods.

29. MAXIMUM AGGREGATE LIABILITY

29.1 AMPAC's maximum aggregate liability to the Trader under or in any way connected with a Contract for damage caused by defective goods supplied by AMPAC is limited:

- i. where the liability arises from an event or occurrence which is an insured risk under an insurance policy or policies required to be maintained by AMPAC under the Contract to the amount recovered under that policy or policies, or where that amount has been reduced or there is no recovery, due to an act or omission of AMPAC, including without limitation a failure to effect or maintain a policy or policies, a failure to diligently pursue a claim or an act or omission which vitiates a claim under a policy or policies, the amount that would have been recoverable but for that act or omission, or
- ii. where the liability arises in circumstances other than those described in the preceding subparagraph (1), to the amount payable by the Trader under the Contract.