

TERMS & CONDITIONS OF SALE

By submitting a credit application and/or ordering goods (“**goods**”) or services (“**services**”) to Baron Insulation Pty Ltd ABN 99 132 459 931 trading as Baron Insulation (“**Company**”) the Purchaser agrees that the following terms and conditions of sale (“**Conditions**”) will apply to the supply.

1. INTERPRETATION

(a) Definitions

The following words have the following meanings in these Conditions, unless the context requires otherwise:

Anti-Corruption Law means any law prohibiting or relating to bribery, corruption, kickbacks, secret commissions or money laundering, including the Foreign Corrupt Practices Act 1977(US), the Bribery Act 2010 (UK), the Criminal Code Act 1995 (Cth), the Crimes Act 1961 (NZ), the Secret Commissions Act 1910 (NZ) and any anti-corruption regulations and provisions applicable in the European Union or in any other locations in which any member of the Fletcher Group carries on business.

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

Company means Fletcher Insulation Pty Ltd ABN 72 001 175 355 trading as Fletcher Insulation and includes any member of the Fletcher Group that is named as the party making or accepting an order.

Consumer means a consumer as that term is defined in the Australian Consumer Law.

Consumer Contract means a contract for the supply of goods or services to an individual whose acquisition of the goods or services is wholly or predominantly for personal, domestic or household use or consumption. However, if the relevant parts of the definition of ‘Consumer Contract’ under the Australian Consumer Law are amended at any time, this definition is also amended accordingly.

Contract has the meaning given to that term in clause 2(a).

Fletcher Group means Fletcher Building Limited (ARBN 096 046 936) and its related body corporate (as that term is defined in the Corporations Act 2001 (Cth)).

Force Majeure Event means any event outside a party’s reasonable control including acts of God, declared or undeclared war, act of terrorism, fire, flood, storm, earthquake, hurricane, cyclone, riot, power failure, industrial action, pandemic, epidemic, defaults of manufacturers or suppliers, the inability to obtain equipment, supplies or other facilities

that are not caused by a failure to pay, labour disputes, theft, any criminal act or other similar events beyond a party's control that may prevent or delay a party from performing their obligations under any Contract.

Goods means any goods supplied by the Company to the Purchaser pursuant to the Conditions.

Interest Rate means the rate of 4% above the cash rate last published by the Reserve Bank of Australia (as at the due date for payment).

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

PPSA means the Personal Property Securities Act 2009 (Cth).

Purchaser means a person whose order for the purchase of Goods or Services is accepted by the Company.

Small Business Contract has the meaning given in the Australian Consumer Law.

Services means any services supplied by the Company to the Purchaser pursuant to the Conditions.

(b) Interpretation

The following rules apply in the interpretation of the Conditions, unless the context requires otherwise:

- (i) a reference to the singular includes the plural number and vice versa;
- (ii) "includes" or "including" is not a term of limitation; and
- (iii) person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.

2. OFFER AND ACCEPTANCE

(a) The contract between the Purchaser and the Company is constituted by: (i) the Conditions; (ii) the terms of the credit agreement between the Purchaser and the Company set out in this Application for a Commercial Credit Account (**Credit Terms**); and (iii) the extent to which the Company accepts an order in accordance with clause 2(b) (each a **Contract**). The Conditions, the Credit Terms and the extent to which the Company accepts the order govern all contracts for the supply of Goods and/or Services by the Company to the Purchaser and constitute the entire agreement in connection with supply of Goods and/or Services between the Company and the Purchaser. To the extent of any inconsistency, the order or precedence set out in clauses 2(a)(i) to (iii) applies. All prior representations, trade custom or previous dealings between the Company and the Purchaser are excluded and are not applicable in the interpretation of the Contract. No modification or variation to the Conditions or the Credit Terms, any additional terms or conditions or any terms inconsistent with the Conditions or the Credit Terms provided by

the Purchaser (whether put forward in the order, the Purchaser's specification or otherwise) will bind the Company, unless expressly and specifically agreed to in writing by the Company. The Conditions and the Credit Terms supersede any terms and conditions which have previously governed a contract for the sale of Goods or Services by the Company to the Purchaser. The Conditions and Credit Terms will prevail to the extent of any inconsistency between them and any quotation, order or other documents from the Purchaser. The Conditions and Credit Terms bind the Purchaser even if the Company or the Purchaser do not sign them promptly or at all.

(b) Any quotation or price list given by the Company is not an offer to sell or to provide the Goods or Services and no order given in pursuance of any quotation will bind the Company until accepted by it in writing or by the commencement of supply or the provision of Goods or Services. Unless otherwise agreed in writing, all orders are subject to acceptance by the Company within 30 days of receipt by the Company of the Purchaser's order either in writing or by overt act of acceptance. The Company may accept or refuse any order for Goods or Services in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Purchaser.

(c) Notwithstanding any prior or existing agreement, the Company reserves the right to vary the quote or price list by giving notice to the Purchaser. If the Contract is a Consumer Contract or a Small Business Contract, then the Purchaser may consider the variation and, if not acceptable, may elect not to proceed with the purchase of Goods and Services ordered before the date of variation, but which are intended to be subject to the variation, by providing written notice to the Company. Otherwise, the Purchaser agrees that Goods delivered or Services performed and/or ordered after the date of the notice of variation will be subject to the variation and acceptance of the Goods or Services or the placing of the order will be deemed to be an acceptance of such varied terms and conditions.

3. DELIVERY OF GOODS AND SERVICES

(a) Any date quoted for delivery or performance is an estimate only and unless a guarantee has been given by the Company in writing providing for liquidated damages for failure to deliver by the quoted date, the Company will not be liable to the Purchaser for any failure to deliver or perform on or before the quoted date provided such Goods or Services are delivered and performed (as applicable) within a reasonable time. The Purchaser will accept and pay for Goods and Services if and when delivered or performed notwithstanding any failure by the Company to deliver the Goods or perform the Services by the quoted date provided such Goods or Services are delivered and performed (as applicable) within a reasonable time.

(b) The Company reserves the right to deliver by instalments. Subject to clause 3(a), if delivery is made by instalments, the Purchaser will be not be entitled to:

(i) terminate or cancel the Contract in whole or in part; or

(ii) make any claim,

for failure by the Company to deliver any instalments on or before the quoted date.

(c) The Company will not be responsible for delay in manufacture or delivery caused by any Force Majeure Event.

(d) Any quotation containing a provision to supply Goods “ex stock” is subject to fulfilment of prior orders at the date of receipt of the Purchaser’s order.

4. CANCELLATION

Without limiting any statutory entitlement of a Consumer to rescind a Contract or any right to do so under the Conditions, any order may only be cancelled, varied or suspended with the written consent of the Company and in the event of such cancellation, variation or suspension, the Purchaser undertakes to reimburse and indemnify the Company for any costs, expenses or charges incurred by the Company in preparation for, and in the execution of, an order for Goods or Services that will no longer be supplied to the Purchaser as a result of the cancellation, variation or suspension.

5. PRICE

(a) Subject to these Conditions, the price of the Goods and Services will be the agreed price which will be charged by the Company at the date of delivery or performance plus the amount which the Company is required to pay on account of any goods and services tax, excise or any other taxes or charges which may be established or levied by any governmental authority (domestic or foreign) upon the Goods or Services or any part thereof, or the manufacture, use, sale of or delivery thereof.

(b) Unless otherwise specified, any prices quoted do not include transportation costs. Goods will be supplied ex works.

(c) The prices quoted are based on present day cost of labour and materials and will be subject to variation at the option of the Company.

(d) If the Contract is a Consumer Contract or a Small Business Contract, then the Purchaser may consider any price variations referred to in this clause and, if not acceptable, may elect not to proceed with the purchase of the Goods and Services ordered before that date of variation, but which are intended to be subject to the variation.

(e) The Purchaser must not assert any right of set off against the Company and will pay all amounts owing to the Company without deduction.

6. DESCRIPTION AND SPECIFICATIONS

(a) If the Purchaser is not a Consumer and the Contract is not a Consumer Contract or a Small Business Contract, whilst every effort is made to ensure their accuracy, the descriptions, illustrations and material contained in any catalogue, price list, brochures, leaflets or other descriptive matter provided by or on behalf of the Company, represent the general nature only of the items described therein and, save where the Company has accepted an order for Goods or Services specified as so described or illustrated, will not form any part of the Contract or amount to any representation or warranty and, save as

aforesaid, the use of such description or illustration will not constitute a contract of a sale by description.

(b) The Company reserves the right to modify the design of Goods without notice. However, if the Contract is a Consumer Contract or a Small Business Contract, the Company will give written notice of the modification to the Purchaser and the Purchaser may consider the modification. If the modification is not acceptable to the Purchaser, the Purchaser may elect not to proceed with the purchase of Goods or Services ordered before the date of the notice but which are intended to be subject to the modification.

(c) The Purchaser warrants that any Goods manufactured, constructed or supplied by the Company and Services performed by the Company, which are based in whole or in part upon designs, drawings or specifications supplied to the Company by or on behalf of the Purchaser will not infringe any letters patent, registered designs, copyright or other rights of any third party..

(d) If the Purchaser is not a Consumer and the Contract is not a Consumer Contract or a Small Business Contract, the Company does not warrant or guarantee, and it will not be a term of any Contract, that any Goods manufactured, constructed or supplied by the Company or Services performed by the Company which are based upon any designs drawings or specifications supplied to the Company by or on behalf of the Purchaser, will achieve any standard of performance or capacity whatsoever and the Purchaser acknowledges that it does not rely on the skill and judgment of the Company for the fitness for any purpose of any Goods so manufactured, constructed or supplied or Services performed by the Company.

7. ACCESS

In respect of any work done on the Purchaser's premises or elsewhere (other than at the Company's premises), it will, subject to any written agreement to the contrary, be the duty of the Purchaser to ensure that the conditions under which the work has to be performed, the layout, means of access, accessibility of the different parts of the subject matter being worked upon or handled and other material circumstances will be suitable to the Company failing which the Company will be entitled to charge a reasonable increase in the price having regard to the prevailing circumstances. If the Contract is a Consumer Contract or a Small Business Contract, the Company will give written notice of the price increase to the Purchaser. If the price increase is not acceptable to the Purchaser, the Purchaser may elect not to proceed with the purchase of Goods or Services ordered before the date of the notice but which are intended to be subject to the price increase.

8. WAIVER

Failure by the Company to insist upon strict performance of any term of a Contract will not be deemed a waiver of any rights which the Company may have and will not, and nor will any express waiver, be deemed to be a waiver of any subsequent breach of the Contract.

9. RETURN OF GOODS

(a) Subject to clause 9(b)(iii), the Purchaser may only return Goods with the prior approval of the Company in accordance with the Company's returns policy published at the date of

the invoice. The proof of purchase from the Purchaser must accompany all Goods returned to the Company. Goods accepted for return by the Company may attract a charge to recover restocking and repackaging charges. The amount of this charge will be determined by the Company and debited to the credit account of the Purchaser.

(b) If the Purchaser is a Consumer, the provisions of this clause 9(b) apply.

(i) The Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law (**statutory guarantees**). The Purchaser is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage in accordance with the Australian Consumer Law. The Purchaser is entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. The Purchaser is entitled to have Services re-supplied or be paid for the cost of having the Services re-supplied if the Services do not comply with the statutory guarantees.

(ii) The guarantees under the Australian Consumer Law are given by the Company.

(iii) If the Purchaser believes the Goods or Services do not comply with the statutory guarantees, they must contact the Company and the parties may make arrangements for the return of the Goods. Any returned Goods must be accompanied by proof of purchase. If the Company agrees that the Goods or Services do not comply with the statutory guarantee, the Company will refund the costs of returning the Goods to the Company and, in all other respects, act in accordance with its obligations under the Australian Consumer Law.

(iv) Subject to clause 9(b)(ii), all other terms, representations, warranties, guarantees and conditions that might otherwise be granted or implied by law are expressly excluded to the maximum extent permitted by law, unless agreed by the Company in writing. The Company does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between the Company and the Purchaser by law.

(c) If the Purchaser is not a Consumer, the provisions of this clause 9(c) apply.

(i) All claims for the Company's failure to comply with the Purchaser's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to the Company within fourteen (14) days from the date of delivery of Goods or the performance of Services. If the Purchaser fails to provide such notice then the Purchaser will be deemed to have accepted the Goods and Services.

(ii) All terms, representations, warranties and conditions that might otherwise be granted or implied by law are expressly excluded to the maximum extent permitted by law, unless the Company agrees in writing. The Company does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified except to a limited extent, as between the Company and the Purchaser by law.

(iii) The Company's liability for breach of a non-excludable condition or warranty is limited at the Company's option, to any one of the following:

(A) the replacement of the Goods or the supply of equivalent Goods;

(B) the repair of the Goods;

(C) the payment of the cost of providing replacement Goods or of acquiring equivalent Goods;

(D) the payment of the cost of having the Goods repaired; or

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

10. INDEMNITY

(a) If the Purchaser defaults in the performance or observance of its obligations under any Contract of which these Conditions form part, then:

- (i) the Company will give the Purchaser notice of such default requesting that the Company remedies any breach within the time stipulated in these Conditions or, if no time is stipulated, a reasonable time; and
- (ii) if that breach is not remedied within the time stipulated in the notice then the Purchaser will indemnify the Company in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that the Company has suffered arising therefrom.

(b) The Purchaser's liability to indemnify the Company under a provision of the Contract (including these Conditions) will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by the Company or a breach of the Company's obligations under Contract or the Company's breach of law has contributed to the claim, loss, damage, or cost which is the subject of the indemnity.

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

(d) For each indemnity in a Contract, the Company will take steps to mitigate its loss and damage and act reasonably in relation to the applicable default by the Purchaser.

(e) Without limiting clause 10(a), the Purchaser indemnifies the Company for any loss, cost, damage or expense suffered by the Company arising from or in connection with any failure to install the Goods in accordance with their applicable installation instructions and manuals provided with the Goods or to operate the Goods in accordance with their applicable operation instructions and manuals provided with the Goods or in connection with the negligence of the Purchaser including in relation to the installation or operation of the Goods.

(f) To the extent permitted by law, neither the Company or the Purchaser is liable to the other:

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

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

11. INSOLVENCY & DEFAULT

If:

(a) there is any default or failure by the Purchaser in making a payment to the Supplier and the Purchaser fails to make such payment within a further 5 days of the date for payment;

(b) the Purchaser fails to take delivery of any Goods;

(c) a resolution is passed or proposed or a petition is presented or an application filed for the winding up of the Purchaser;

(d) a receiver or receiver and manager is appointed in respect of the property or any part of the property of the Purchaser;

(e) the Purchaser makes or proposes to make any arrangement with its creditors;

(f) the Purchaser is placed under administration;

(g) execution is levied upon the assets of the Purchaser for an amount in excess of \$1,000.00 and is not within seven days satisfied;

(h) subject to clause 11(a), there is a material breach by the Purchaser of the Contract or any other agreement between the Purchaser and the Company or any other member of the Fletcher Group; or

(i) contractual performance by either the Company or the Purchaser is delayed or prevented due to a Force Majeure Event,

then,

(j) all monies payable by the Purchaser to the Company may, at the Company's election, become immediately due and payable notwithstanding the due date for payment may not have expired; and

(k) the Company may at its option:

- (i) suspend, vary or withdraw any approved credit limit which may have been provided to the Purchaser;
- (ii) withhold further deliveries of Goods or performance of Services;
- (iii) immediately terminate or suspend the whole or any outstanding part of any Contract;
- (iv) in respect of any Goods delivered in which title has not passed to the Purchaser, require the Purchaser to return the Goods to it on demand or enter onto the Purchaser's premises to recover and resell the Goods for its own benefit;
- (v) recover from the Purchaser the cost incurred by the Company for materials or goods acquired for the purpose of future deliveries of Goods or the performance of Services which the Company will not otherwise be able to recover from refunds or future sales to other customers;
- (vi) exercise such rights as are afforded to the Purchaser under the PPSA; and
- (vii) register a default with any credit reference facility.

If the Contract is a Consumer Contract or Small Business Contract and either:

- (l) an administrator, liquidator, provisional liquidator or external manager is appointed in respect of the Company;
- (m) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Company;
- (n) contractual performance by the Company is prevented due to any Force Majeure Event; or
- (o) the Company commits a breach of a material term of the Contract which is not rectified within 5 days of such breach,

the Purchaser may immediately terminate or suspend the whole or any outstanding part of any Contract.

12. TITLE

- (a) Title in and to the Goods will not pass from the Company to the Purchaser until the Company receives payment (without deduction or set-off) in full for all Goods and Services and all monies owing by the Purchaser to the Company under the Contract.
- (b) Until title in and to the Goods has passed to the Purchaser in accordance with clause 12(a), the Purchaser holds the Goods as fiduciary agent and bailee and the Purchaser will store the Goods separately in such a manner that they are clearly identified as the property of the Company.

(c) Notwithstanding that title in and to the Goods may not have passed to the Purchaser, the Purchaser may sell the Goods to a customer in the ordinary course of its business. In such circumstances, the Purchaser sells the Goods as fiduciary agent of the Company provided that such sales will not give rise to any obligations on the part of the Company.

(d) If the Purchaser sells any of the Goods before title in and to the Goods has passed in accordance with clause 12(a), the Purchaser will hold such part of the proceeds of sale equal to the amount owed by the Purchaser to the Company on trust for the Company and will hold such proceeds in a separate account which clearly identifies such proceeds as monies held on trust for and on behalf of the Company.

(e) If the Purchaser uses the Goods in manufacturing or production and sells the finished product in the ordinary course of business (which it is authorised to do unless otherwise notified in writing) the Purchaser must hold that part of the proceeds of the finished product relating to the Company's Goods in a separate account on trust for the Company. That part will be taken to be of equal value to the amount owing by the Purchaser to the Company at the time of receipt of the proceeds.

(f) The Purchaser will insure the Goods against theft or any damage until such Goods have been paid for or until they are sold by the Purchaser whichever occurs first and the Company will be entitled to call for details of the insurance policy. Excluding Consumer Contracts and Small Business Contracts, if the Purchaser does not insure the Goods or fails to supply details of the insurance policy, the Purchaser will reimburse the Company for the cost of any insurance which the Company may reasonably arrange in respect of the Goods supplied to the Purchaser.

13. SECURITY INTEREST UNDER PPSA

(a) The Purchaser agrees that:

(i) each order accepted by the Company, being an order accepted under the Conditions, may create a registrable security interest under the PPSA in any Goods supplied under it and their proceeds;

(ii) it will do all things necessary and execute all documents reasonably required to register the security interest and to ensure that the Company acquires a perfected security interest in the Goods and their proceeds under the PPSA;

(iii) the Purchaser acknowledges the right of the Company to register a financing statement under the PPSA with respect to the security interest created by the Conditions;

(iv) if the Company registers a security interest under the PPSA, the Company may exercise any or all remedies afforded to the Company as a secured party under it without prejudice to any other rights or remedies arising out of a breach by the Purchaser of any agreement with the Company;

(v) the Goods are collateral for the purposes of the PPSA; and

(vi) it will, upon demand, pay all of the Company's reasonable expenses and legal costs in relation to or in connection with the registration of the Company's security interest and all other costs associated with protection and enforcement of the Company's security interest created by the Conditions or by undertaking an audit under the provisions of the PPSA which the Company considers reasonably necessary in order to protect its legitimate interests under the Contract.

(b) The Company's security interest does not lose its priority as a result of the renewal, refinancing, consolidation or restructure of the subject matter of the Conditions and any purchase money obligations.

(c) The Purchaser waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law, to:

(i) receive a notice of intention of removal of an accession (s.95);

(ii) receive a notice that the Company has determined to enforce its security interest in accordance with land law (s118);

(iii) receive a notice of enforcement action against liquid assets (s121(4));

(iv) receive a notice of disposal of Goods by the Company purchasing the Goods (s129);

(v) receive a notice to dispose of the Goods (s130);

(vi) receive a statement of account following disposal of the Goods (s132(2));

(vii) receive a statement of account if no disposal of the Goods, six monthly (s132(4));

(viii) receive notice of any proposal by the Company to retain the Goods (s135(2));

(ix) object to any proposal by the Company to either retain and dispose of the Goods (s137(2));

(x) redeem the Goods (s142);

(xi) reinstate the security agreement (s143); and

(xii) receive a notice of any verification statement (s157(1) and 157(3)).

(d) To the extent permitted by the PPSA, the Conditions exclude any provisions of the PPSA which may be excluded in the Company's discretion and which would otherwise confer rights on the Purchaser.

(e) The Purchaser further agrees that where the Company has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.

(f) The Purchaser's right to possession of Goods still owned by the Company under the Conditions will cease if:

(i) where the Purchaser is an individual, the Purchaser commits an act of bankruptcy;

(ii) where the Purchaser is a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Purchaser's assets, any proceedings are instituted for winding up of the Purchaser or the Purchaser enters into a Deed of Company Arrangement;

(iii) the Purchaser ceases or threatens to cease conducting business in the normal manner or applies for deregistration or receives a deregistration notice;

(iv) any cheque the Purchaser provides to the Company or any member of the Fletcher Group is dishonoured for payment;

(v) the Purchaser fails to comply with any demand for payment issued by the Company or any member of the Fletcher Group for an amount which is overdue under the Contract; or

(vi) the Purchaser materially breaches any of the Conditions and/or any other agreement between the Company or any other member of the Fletcher Group and the Purchaser.

(g) The Purchaser expressly and irrevocably agrees that, until such time as title in the Goods passes to the Purchaser, if any event set out in clause 13(f) occurs, the Company may require the Purchaser to return the Goods to it on demand and is entitled to enter any premises where the Goods supplied by the Company are located to repossess, remove and sell such Goods. The Purchaser (its successors and assigns, including any external manager or administrator) will not object to the Company, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep the Company indemnified in respect of any claims, actions and costs that may arise against the Company in relation to the removal, repossession and sale of the Goods pursuant to the Conditions including any claims brought by third parties.

(h) The Purchaser agrees that repossession and retention of the Goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Company by the Purchaser, as is equivalent to the Company's estimation of the market value of the Goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest the Company has on the value of the Goods recovered.

(i) Until ownership of the Goods passes, the Purchaser must not give the Company a written demand or allow any other person to give the Company a written demand requiring the Company to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.

(j) The Purchaser agrees not to change the Purchaser's name or undertake any changes to any documents that the Company has registered, requires to be registered or are capable of being registered without the prior written consent of the Company.

14. RISK

Unless otherwise agreed in writing, all Goods will be at the Purchaser's risk upon delivery to the Purchaser, its carrier or agent.

15. PAYMENT

(a) Until the Company confirms that a credit facility has been granted to the Purchaser, all Goods and Services must be paid for on a cash on delivery or performance basis. Once a credit facility has been granted, unless otherwise agreed in writing, the Purchaser must make payment for all Goods and Services within 30 days from the end of the month in which the Goods are delivered to the Purchaser, its carrier or agent or the Services are performed by the Company.

(b) If payment is not received by the Company within the time frame allowed for in clause 15(a):

(i) the Company reserves the right to charge interest on monies due at the Interest Rate on a daily basis from the due date for payment until the actual date of payment and payable together with the overdue amount. The parties agree that any interest charged in accordance with clause 15(b)(i) is a genuine pre-estimate of the loss that will be suffered by the Company for late payment; and

(ii) the Company will charge a surcharge for any payments by an accepted credit card (Bankcard, Mastercard or Visa only). This surcharge for card payments is as follows: 0.5% for debit cards; 1.0% for credit cards

(c) If the Company does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification that they are ready, from the 15th day the terms of payment will apply. The Purchaser will be liable for the Company's storage charges for the Goods payable monthly on demand, with storage being at the Purchaser's risk except to the extent of any wilful destruction or negligence by the Company.

(d) Payment of any amount by the Purchaser must be treated as being received in the following order:

(i) first, to obligations that are not secured ("secured" in this clause means secured under the PPSA), in the order in which those obligations were incurred;

(ii) second, to obligations that are secured, but not by purchase money security interests, in order in which those obligations were incurred; then,

(iii) third, to obligations that are secured by purchase money security interests, in the order in which those obligations were incurred.

16. GST

(a) In the Conditions, the expressions “GST”, “tax invoice”, “recipient” and “taxable supply” have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

(b) Unless stated otherwise, the price quoted by the Company and any other amount payable by the Purchaser under any Contract does not include GST.

(c) If GST is imposed on any supply made under or in accordance with any Contract, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with the Contract, subject to the provision of a tax invoice.

17. PRIVACY

(a) The Purchaser acknowledges and agrees that the Company may collect Personal Information and credit information about the Purchaser and its directors, officers, partners and the guarantors (each a **Relevant Party**).

(b) The Company’s Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters (**Company’s Policies**) are available on its website or upon request to the Company, forms part of each Contract.

(c) The Company’s website may be hosted, or some data may be stored overseas for reasons of uniformity and convenience for the Fletcher Group. All Personal Information or credit information derived from Australia will still be treated in accordance with the Company’s Privacy Policy while being stored overseas.

(d) In accordance with the Company’s Policies, the Purchaser agrees that the Company may use or disclose information to the Fletcher Group and to third parties for the reasons set out in the Company’s Privacy Policy.

(e) The Purchaser warrants to the Company that it has obtained the consent of each of the Relevant Parties to the collection, use and disclosure of their Personal Information and credit information by the Company in accordance with this clause 17 and the Company’s Policies.

18. ASSIGNMENT

The Conditions and any Contract may not be assigned by the Purchaser without the prior written consent of the Company, which must not be unreasonably withheld.

19. VARIATION AND SEVERANCE

(a) The Company is entitled to vary the Conditions or Credit Terms at any time by giving the Purchaser written notice. If the Contract is a Consumer Contract or a Small Business Contract, then the Purchaser may consider the variation and, if not acceptable, may elect not to proceed with the purchase of Goods or Services ordered before the date of the variation, but which are intended to be subject to the variation. If the Contract is not a Consumer

Contract or a Small Business Contract, the Purchaser agrees that Goods delivered and Services performed and/or ordered after the date of a notice of variation will be subject to the variation and acceptance of the Goods or Services or the placing of the order will be deemed to be an acceptance of such varied terms and conditions.

(b) If any of the terms and conditions in the Conditions are invalid or unenforceable in any jurisdiction, they are, if possible, to be read down so as to be valid and enforceable. The read down provision will only apply in the relevant jurisdiction. If the provision cannot be read down, and it can be severed to the extent of the invalidity or unenforceability, it is to be severed. The rest of the provisions, and the validity and enforceability of the affected provision in any other jurisdiction, will not be affected.

20. GOVERNING LAW

(a) Unless varied by notice in writing by the Supplier, each Contract will be governed by and construed in accordance with the laws of Queensland. The parties submit to the exclusive jurisdiction of the courts in Queensland.

(b) The parties agree that proceedings may be commenced in any such Court of Queensland and consent to that Court having jurisdiction by virtue of clause 20(a).

21. ANTI - CORRUPTION

(a) The Purchaser agrees to comply with the Anti-Corruption Law and must not commit any act or omission which causes or would cause it or the Company to breach, or commit an offence under, any Anti-Corruption Laws.

(b) The Purchaser warrants and represents that it has not been convicted of any offence, and has not been the subject of any investigation or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence, under Anti-Corruption Laws.

(c) The Purchaser must, to the extent permitted by law, promptly notify the Company in writing if it becomes aware at any time during the term of any Contract that any of the representations or warranties in clause 21(b) are, or might reasonably be expected to be, no longer correct.

12. CONTAINERS

Containers (which includes stillages, bobbins and pallets) in or on which Goods are delivered and for which a deposit charge is made, remain the property of the Company. On the container's return in good order and condition (subject to fair wear and tear and any damage caused prior to delivery), the deposit will be returned to the Purchaser. The deposit for containers which the Purchaser returns otherwise than in good order and condition (subject to fair wear and tear and any damage caused prior to delivery) will only be refunded in part having regard to their actual condition. Containers will be deemed to be not returned by the Purchaser until received into the Company's stores.

23. GENERAL

(a) If the Contract is not a Consumer Contract or a Small Business Contract, the Company will be entitled to set off against any money owing to the Purchaser amounts owed to the Company by the Purchaser on any account whatsoever.

(b) The failure of the Company to exercise a right or remedy, or any delay by the Company in exercising a right or remedy, or the exercise by the Company of only part of a right or remedy, or the granting of any indulgence by the Company in favour of the Purchaser does not:

(i) affect the Company's rights against the Purchaser;

(ii) constitute a waiver of any term or condition; or

(iii) prohibit the Company from exercising that right or remedy in relation to that breach or any other breach.

(c) A waiver of a breach of a term or condition does not constitute a waiver of another breach of the same term or any other term.

(d) The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

Updated 9 November 2023.