



**JCAVE HOLDINGS PTY LTD (ACN 125 910 750)
AS TRUSTEE FOR KV & JJ TRUST T/A RAINFILL
TANKS & CURVED ROOFING SUPPLIES -
STANDARD TERMS AND CONDITIONS OF
TRADE FOR ACCOUNT HOLDERS**

1. Definitions

1.1. In this document:

Agreement means the agreement between the Customer and the Company for the supply of Goods, Curving Services and or Installation Services, comprising:

- (a) these Terms;
- (b) the Credit Application completed by the Customer and provided to the Company;
- (c) the quote issued by the Company to the Customer;
- (d) the Confirmation Order; and
- (e) any other documents specified by the Company in the quote or Confirmation Order;

Attendance Fee means an amount notified from time to time by the Company to the Customer;

Business Day means a day which is not a Saturday, Sunday or public or bank holiday in Perth, Western Australia;

Claim includes any allegation, debt, cause of action, Liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise;

Company means JCave Holdings Pty Ltd (ACN 125 910 750) as trustee for KV & JJ Trust t/a Rainfill Tanks & Curved Roofing Supplies and its successors and assigns;

Confirmation Order means an order confirming the supply of the Goods, Curving Services and or Installation Services to be provided by the Company to the Customer;

Credit Application means the application for credit made by and signed by the Customer for the Company's supply of the Goods, Curving Services and or Installation Services to the Customer or to another person at the Customer's direction;

Curved Sheets means steel sheets as curved by the Company according to the specifications in the Confirmation Order;

Curving Services means the steel curving services supplied by the Company to the Customer in accordance with the Confirmation Order;

Customer means the legal entity placing an order with the Company and any employee, agent, representative, contractor or sub-contractor of that customer;

Customer's Steel means the steel sheets owned by the Customer and supplied to the Company for the application of the Curving Services;

Deposit means a sum of money, the amount of which is not less than 15% of the total amount (including GST) specified by the Company to the Customer as the quoted price for the supply of Goods, Curving Services and or Installation Services, as security for the Company's fulfilment of the Customer's Confirmation Order;

Dispute means a dispute between the parties in respect of any fact, matter or thing arising out of or in connection with the Goods, Curving Services and or Installation Services or the Agreement;

Dispute Notice means written notice given by one party to the other giving full particulars of the Dispute and that party's assertion as to the correct position in relation to the Dispute;

Goods means the Tanks, Raised Garden Beds and or Curved Sheets purchased by the Customer from the Company and delivered by the Company to the Customer or to another person at the Customer's direction;

GST means the same as in the GST Law;

GST Law means the same as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Guarantor means the person(s) so named in the Customer's Credit Application;

Installation Services means the Tank installation services supplied by the Company to the Customer or to another person at the Customer's direction;

Interest means the rate of interest equal to the Cash Rate Target published by the Reserve Bank of Australia as applicable at the date the relevant invoice was issued, increased by 2 percentage points;

Liability includes all liabilities (whether actual, contingent or prospective), Claims, Loss, damages, costs and expenses of any nature or description (including without limitation, legal fees, costs and disbursements on a full indemnity basis) irrespective of when the acts or events or things giving rise to the liability occurred;

Loss includes any damage, loss, cost, Claim, Liability or expense (including (but not limited to) legal costs and expenses) and includes consequential loss;

New Account Holder means a Customer who has completed and submitted a Credit Application to the Company and who places a purchase order with the Company, but who has not yet been approved by the Company as a credit account holder for the Requested Credit Limit;

PPSA means the *Personal Property Securities Act 2009* (Cth);

PPSR means the Personal Property Securities Register created under the PPSA;

Raised Garden Beds means the curved steel raised garden beds supplied by the Company according to the specifications in the Confirmation Order;

Requested Credit Limit means the monthly credit amount requested by the Customer as stated in the Credit Application;

Security Interest means a PPSA Security Interest under the PPSA;

Tanks means the steel rainwater tanks supplied by the Company according to the specifications in the Confirmation Order; and

Terms means these terms of trade (including any special terms applicable to the supply of Goods, Curving Services and or Installation Services set out in writing by the Company to the Customer) as may be supplemented, amended or varied from time to time in accordance with clause 25.3.

1.2. These Terms:

- (a) replace all prior terms of trade issued by the Company to the Customer in respect of the supply of Goods, Curving Services and or Installation Services from the date the Customer is given notice of these Terms or accepts them or is deemed to have accepted them in accordance with clause 25.3;
- (b) and the other documents comprising the Agreement take precedence over any of the Customer's terms including any purchase order issued by the Customer; and
- (c) do not constitute a new security agreement for any existing security interest registered on the PPSR.

2. **Orders**

- 2.1. The Customer may from time to time, place an order for the supply of Goods, Curving Services and or Installation Services by providing to the Company, a purchase order which contains all of the information the Company requires to supply the Goods, Curving Services and or Installation Services.
- 2.2. If the Customer places an order for the supply of Curved Sheets or Curving Services, it must provide to the Company:
 - (a) a drawing containing all of the information the Company requires to supply the Curved Sheets or Curving Services; or
 - (b) a template containing all of the measurements the Company requires to supply the Curved Sheets or Curving Services; or

- (c) the authority to attend on site to take the measurements the Company requires to supply the Curved Sheets or Curving Services.

- 2.3. If the Company is required to attend on site to take the measurements the Company requires to supply the Curved Sheets or Curving Services, the Customer must pay the Attendance Fee which unless otherwise advised by the Company, will be due and payable at the same time and in the same manner as the payment for the supply of the Goods, Curving Services and or Installation Services.

- 2.4. If the Customer places an order for the supply of Installation Services, it must, unless otherwise advised by the Company, provide to the Company an installation plan which contains all of the information the Company requires to supply the Installation Services.

- 2.5. The Company reserves the right to accept or reject any purchase order placed by the Customer, in its sole and absolute discretion.

3. **Acceptance by Customer of these Terms**

By the Customer placing an order with the Company for the supply of Goods, Curving Services and or Installation Services, the Customer indicates acceptance of these Terms for the supply of the Goods, Curving Services and or Installation Services.

4. **Quotations and Confirmation Orders**

- 4.1. Quotes from the Company to the Customer are open for acceptance by the Customer for 30 days from the date of the quote.
- 4.2. All prices quoted are strictly net of all discounts. GST on the Goods, Curving Services and Installation Services supplied is payable by the Customer in addition to the quoted price.
- 4.3. Upon the Customer accepting a quote from the Company, the Company will send to the Customer, a Confirmation Order.
- 4.4. Unless the Company receives written notification by email or otherwise from the Customer within 2 Business Days from the date on which the Confirmation Order was sent, that any part of the Confirmation Order requires amendment, the Customer is deemed to:
 - (a) have accepted the details as set out in the Confirmation Order as true and correct; and
 - (b) have authorised the Company to proceed with fulfilling the Confirmation Order.
- 4.5. If the Company receives written notification by email or otherwise from the Customer within 2 Business Days from the date on which the Confirmation Order was sent, that the Confirmation Order requires amendment, subject to the Company in its sole and absolute discretion accepting the requested amendment, the Company will re-issue the Confirmation Order incorporating the amendment.

- 4.6. Upon the re-issue of the Confirmation Order, the Customer is deemed to have:
- (a) accepted the details as set out in the re-issued Confirmation Order as true and correct; and
 - (b) authorised the Company to proceed with fulfilling the re-issued Confirmation Order.
- 5. Supply of Goods and Installation Services**
- 5.1. The Customer acknowledges and agrees that any time or date nominated by the Company for the supply of the Goods and or Installation Services is an estimate only and does not constitute a condition or an essential term of the Agreement.
- 5.2. Unless otherwise agreed by the Company, the Company will provide the Goods and Installation Services to the Customer as follows:
- (a) Unless otherwise directed by the Customer, the Company will deliver the Goods to the Customer.
 - (b) The Company will deliver the Goods to the boundary of the Customer's site or the site as directed by the Customer, as the case may be.
 - (c) If the Company receives a request to deliver the Goods to a place on the site other than at the boundary of that site, the Customer acknowledges and agrees that:
 - (i) the requested delivery will be at the Customer's sole risk;
 - (ii) the Company will not be liable for any Loss and or injury suffered to any property and or person as a result of, in relation to, arising out of or connected with the Company's agreement to fulfil that request or its carrying out of that request;
 - (iii) the Customer indemnifies the Company and its employees and agents from any and all Loss and or injury to any property and or person suffered as a result of, in relation to or arising out of or connected with the Company's agreement to fulfil that request or its carrying out of that request; and
 - (iv) the Company may impose an additional fee or charge on the Customer for its carrying out of that request and that fee or charge will be due and payable at the same time and in the same manner as the payment for the supply of the Goods and or Installation Services.
 - (d) If the Customer does not agree to pay the Company's fees to protect the Goods by way of bubble wrap in preparation for delivery to the Customer or at the Customer's direction, the Customer acknowledges and agrees that:
 - (i) the delivery of the Goods without protection by way of bubble wrap will be at the Customer's sole risk;
 - (ii) the Company will not be liable for any Loss and or injury to the Goods and or person suffered as a result of, in relation to or arising out of or connected with the Company delivering the Goods to the Customer, without protection by way of bubble wrap; and
 - (iii) the Customer indemnifies the Company and its employees and agents from any Loss and or injury to the Goods and or person suffered as a result of, in relation to or arising out of or connected with the Company delivering the Goods to the Customer, without protection by way of bubble wrap.
- 6. Supply of Curving Services**
- 6.1. The Customer acknowledges and agrees that any time or date nominated by the Company for the supply of the Curving Services is an estimate only and does not constitute a condition or an essential term of the Agreement.
- 6.2. If the Company is requested to supply Curving Services using the Customer's Steel, the Customer acknowledges and agrees that:
- (a) the Customer's Steel remains at the risk of the Customer despite that it may be located at the Company's premises or is transported by way of the Company's vehicles;
 - (b) the Customer will keep the Customer's Steel fully insured;
 - (c) the Customer is satisfied as to the suitability of the Customer's Steel supplied to the Company for the provision of the Curving Services;
 - (d) the Company will not be liable for any Loss suffered by the Customer as a result of providing unsuitable steel or steel which is used in any way that is contrary to the manufacturer's instructions or recommendations; and
 - (e) the Curving Services are applied to the Customer's Steel at the risk of the Customer.
- 6.3. The Customer warrants to the Company that to the best of the Customer's knowledge and belief, the Customer's Steel is free from any defect or fault and is suitable for the purpose for which it was supplied to the Company.
- 7. Variation of Specification of Goods**
- 7.1. The Customer accepts that while the Company will use its best endeavours to supply Goods in accordance with the specifications in the Confirmation Order, due to factors including but not limited to the material of the Goods and the temperature of the place at which the Goods are to be or are installed, the specification of the

Goods supplied by the Company to the Customer may vary from the specifications in the Confirmation Order.

7.2. The Customer accepts and agrees that:

- (a) with respect to the supply of Tanks, a variation of specifications such that the diameter of the Tank is not less or more than 50 millimetres than the diameter stated in the Confirmation Order;
- (b) with respect to the supply of Curved Sheets or Curving Services, a variation of specifications such that the length of the Curved Sheet or Customer's Steel as curved by the Company's application of the Curving Services is not less or more than 10 millimetres than the length as stated in the Confirmation Order;
- (c) with respect to the supply of Raised Garden Beds, a variation of specifications such that the length or width of the Raised Garden Bed is not less or more than 50 millimetres than the length or width stated in the Confirmation Order,

is not a major variation, failure or defect and the Company's supply of such Goods and or Curving Services will be taken as the Company having satisfactorily supplied the Goods and or Curving Services according to the Confirmation Order.

8. Payment Terms

- 8.1. The Customer must pay all invoices issued by the Company by the due date for payment specified on the invoice.
- 8.2. Unless otherwise agreed by the Company and subject to clause 8.8, if there is no due date specified on the invoice issued by the Company, the Customer must pay the invoice within 14 days from the date on which the invoice was issued.
- 8.3. The Customer must pay all invoices in full without demand, deduction, abatement, counter-claim or set-off and in Australian dollars.
- 8.4. If the Customer defaults in making payment to the Company in accordance with clause 8.1 or 8.2 as the case may be, the Company may at its absolute discretion:
 - (a) suspend and or cancel any credit account or facility held by the Customer and require that any purchase orders accepted by the Company prior to the default must be paid in full prior to the Goods, Curving Services and or Installation Services being provided;
 - (b) charge the Customer, Interest on the amount due from time to time, calculated monthly from the date on which the default arose until the date all amounts and Interest are paid in full;
 - (c) suspend and or cancel any of the Company's fulfilment of any or all other Confirmation Orders sent to the Customer (if any) and refuse to supply further Goods, Curving Services and or Installation Services until payment in full is made;

- (d) if the Confirmation Order to which the unpaid invoice relates includes the supply of Curving Services, retain the Customer's Steel by way of lien as security for all money payable to the Company by the Customer for the Goods, Curving Services and or Installation Services supplied; and or

- (e) cease to offer the Company's wholesale pricing for the Goods, Curving Services and or Installation Services to the Company's future supply of Goods, Curving Services and or Installation Services to the Customer and instead, offer the Company's retail pricing for the supply of Goods, Curving Services and or Installation Services to any such future supply.

8.5. Acceptance by the Company of any late payment by the Customer or the Customer exceeding the credit limit set by the Company will not amount to any waiver by the Company of its right to payment in accordance with the agreed terms, nor is it an agreement to provide credit other than in accordance with these Terms and the approved Credit Application.

8.6. The Company may require the Customer to provide security for payment in a form acceptable to the Company prior to the supply of the Goods, Curving Services and or Installation Services.

8.7. The Customer:

- (a) must pay the Company the cost of all bank fees arising from dishonoured cheques paid by the Customer to the Company; and
- (b) indemnifies the Company and keeps the Company indemnified with respect to all other costs and charges incurred by the Company (including (but not limited to) legal costs and expenses on a full indemnity basis) arising from and or in connection with the recovery or attempted recovery of monies owed by the Customer to the Company or the Customer's failure to make payment for the supply of the Goods, Curving Services and or Installation Services in accordance with clauses 8.1 or 8.2.

8.8. If the Customer is a New Account Holder and for so long as the Customer remains a New Account Holder:

- (a) The Customer must, upon the Company's issue of a Confirmation Order, pay the Deposit within 1 Business Day of the date of the Confirmation Order.
- (b) The Company will not be obliged to fulfil the Confirmation Order unless and until it receives the Deposit in cleared funds in its bank account.
- (c) The Company will, on notifying the Customer that the Goods are ready for collection or delivery or that the Curving Services have been applied to the Customer's Steel and the Customer's Steel is ready for collection or delivery, issue an invoice to the Customer.
- (d) The Company will not be obliged to:

- (i) deliver the Goods or Customer's Steel as the case may be to the Customer or at the Customer's direction; or
- (ii) make the Goods or Customer's Steel as the case may be, available for collection by the Customer,
- unless and until the Customer has paid the invoice issued by the Company in full.
- 8.9. The Company will not be liable for any Loss sustained by the Customer or by any other person by reason of any delay or failure to provide the Goods or Customer's Steel as curved through the Company's application of the Curving Services, which is caused by the Customer, being a New Account Holder:
- (a) not paying the Deposit within 1 Business Day of the date of the Confirmation Order; and or
- (b) not paying an invoice issued by the Company in full by the due date specified on the invoice.
- 8.10. A Customer will cease to be a New Account Holder when:
- (a) the Company has issued and the Customer has received Confirmation Orders over the period of 3 months, the aggregate of which per month amounts to the Requested Credit Limit;
- (b) the Customer has, upon the Company's issue of each of the Confirmation Order described in clause 8.10(a), paid the Deposit within 1 Business Day of the date of each relevant Confirmation Order;
- (c) all of the Confirmation Orders described in clause 8.10(a) have been fulfilled by the Company;
- (d) the Customer has paid the invoices issued by the Company for all of the Confirmation Orders described in clause 8.10(a) in full by the due date specified on the relevant invoice; and
- (e) the Company has provided written notice to the Customer that they are no longer a New Account Holder.
- 8.11. The Company can vary or withdraw any credit arrangements at any time and without any liability to the Customer or any party claiming through the Customer.
- 9. Risk & Acceptance**
- 9.1. Risk in the Goods passes to the Customer immediately on receipt by the Customer of the Goods at the Customer's site or the site as directed by the Customer.
- 9.2. The Company retains full title to and ownership of the Goods supplied to the Customer until payment in full is received by the Company. The Customer acknowledges that until payment in full is made, the Customer holds the Goods as bailee of and for the Company and that a fiduciary relationship exists between the Customer and the Company.
- 9.3. The Customer acknowledges that if it sells any of the Company's Goods either solely or jointly with another item, building and or land, it sells the Goods as a fiduciary agent of the Company and any such sales will not give rise to any obligation on the Company to the transferee of the Goods.
- 9.4. The Customer bears the obligation before taking receipt of the Goods to satisfy itself in all respects that the Goods are fit for purpose and appropriate for the Customer's needs and requirements and are in accordance with the Confirmation Order, and accepts that the Company makes no warranties (express or implied) to this effect.
- 9.5. Subject to clause 9.6, the Goods, Curving Services and Installation Services and or price will be deemed to be in accordance with the Confirmation Order upon the Customer receiving the Goods or the Customer's Steel as curved through the Company's application of the Curving Services, as the case may be, at the Customer's site or the site as directed by the Customer.
- 9.6. If the Customer has provided the Company with a template containing all of the measurements the Company requires to supply the Curved Sheets or Curving Services as the basis on which the Confirmation Order was issued, and the Customer disputes that the Company's supply of Curved Sheets or Curving Services are in accordance with the specifications stated in the Confirmation Order, the Customer acknowledges and agrees that:
- (a) the Customer authorises the Company to attend on site at any reasonable time and from time to time with the template provided to the Company to conduct an assessment of the Curved Sheets or Customer's Steel as the case may be;
- (b) if the template reasonably fits the Curved Sheets or Customer's Steel, as the case may be, the subject of the dispute:
- (i) the relevant Curved Sheets or Curving Services applied to the Customer's Steel will be deemed to have been supplied by the Company to the Customer in accordance with the Confirmation Order; and
- (ii) the Company may charge an additional fee to the Customer for the Company's attendance on site request and that fee will be due and payable at the same time and in the same manner as the payment for the supply of the Goods, Curved Services and or Installation Services; and
- (c) if the template does not reasonably fit the Curved Sheets or Customer's Steel as the case may be, the subject of the dispute:
- (i) the Customer will promptly make the Curved Sheets available for collection by the Company at a location on the site to which they were delivered by the Company which is central, convenient and readily accessible by heavy vehicle, or promptly re-supply the Customer's Steel

without cost to the Company, as the case may be;

- (ii) the Customer authorises the Company to attend on site at any reasonable time and from time to time to take the measurements the Company requires to re-supply the Curved Sheets or Curving Services; and
- (iii) the Company will as soon as practicable, send the Customer a revised Confirmation Order.

10. Limitation of Liability for Breach of a Guarantee

- 10.1. Pursuant to schedule 2 section 64A of the *Competition and Consumer Act 2010* (Cth) the following clause applies in respect of any Goods, Curving Services and or Installation Services supplied under these Terms which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, provided that this clause will not apply if the Customer establishes that reliance on it would not be fair and reasonable.
- 10.2. The Company's liability in respect of breaches of express or implied guarantees relating to the supply of Goods, other than the guarantee as to title, undisturbed possession and undisclosed securities, is limited to either of the following as determined by the Company:
- (a) the replacement of the Goods; or
 - (b) the payment of the cost of replacing the Goods.
- 10.3. The Company will not be liable for any damage arising out of or in connection with any Claim or Loss suffered or incurred as a result of a breach unless the liability is imposed on the Company by the *Competition and Consumer Act 2010* (Cth).
- 10.4. The Company's liability in respect of breaches of express or implied guarantees relating to the supply of Curving Services or Installation Services is limited to either of the following as determined by the Company:
- (a) the supplying of the Curving Services or Installation Services as the case may be, again; or
 - (b) the payment of the cost of having the Curving Services or Installation Services as the case may be, supplied again.
- 10.5. In addition to the *Competition and Consumer Act 2010* (Cth), the limitations of the Company's Liability in respect of breaches of express or implied guarantees as expressed in the clauses 10.2 and 10.4 will be varied to the extent required to also limit the Company's liability to the extent permitted by the *Fair Trading Act 2010* (WA).

11. Termination or Suspension

If the Company is not satisfied as to the Customer's ability to pay for the Goods, Curving Services and or Installation Services, it may suspend or terminate supply and will not be liable in any way for any Claim or

Loss arising from or in connection with the suspension or termination, and all monies payable and unpaid by the Customer to the Company become immediately due and payable.

12. PPSA

- 12.1. Words which start with a capital letter in this clause 12 of these Terms and not expressly defined in these Terms have the meaning given to them in the PPSA.
- 12.2. The Company and the Customer agree that these Terms constitute a Security Agreement and give rise to a Purchase Money Security Interest (PMSI) in favour of the Company over the Goods (and all comingled goods in which the Goods are incorporated) supplied or to be supplied to the Customer by the Company and in respect of which the Company has not been paid in full.
- 12.3. The Company and the Customer acknowledge that the Company, as a Secured Party, is entitled to register its interest in the Goods (and all comingled goods in which the Goods is incorporated) supplied or to be supplied to the Customer as grantor under these Terms, on the PPSR and the Customer agrees to provide all assistance reasonably required by the Company to facilitate such registrations.
- 12.4. The Customer waives its right to receive notification of or a copy of any Verification Statement confirming registration of a Financing Statement or a Financing Change Statement relating to the registration of a Security Interest granted by the Customer, as grantor, to the Company on the PPSR.
- 12.5. The Customer indemnifies the Company and will keep the Company indemnified on demand for all costs and expenses, including legal costs and expenses on a solicitor/client basis arising from and or in connection with the:
- (a) registration or amendment or discharge of any Financing Statement or Financing Change Statement registered by or on behalf of the Company; and
 - (b) enforcement or attempted enforcement of any Security Interest granted to the Company by the Customer.
- 12.6. The Customer agrees:
- (a) that to the extent permitted at law, nothing in sections 95, 118, 121(4), 125, 127, 129(2) and (3) and 130 to 143 of the PPSA will apply to these Terms or the Security Interest under these Terms;
 - (b) if section 115(1) of the PPSA does not allow section 125 of the PPSA to be excluded, that at any time after any interest provided for by these Terms or Agreement has become enforceable, the Company may delay disposing of, or taking action to retain, the whole or part of the collateral to the extent permitted by law; and
 - (c) to the extent permitted, to waive its right to do any of the following under the PPSA:

- (i) receive notice under any of sub-sections 95(1), 121(4), 129(2) and 130(1) and sections 135 and 157;
 - (ii) receive notice of an intention to seize Collateral under section 123;
 - (iii) receive notice of disposal of Collateral under section 130;
 - (iv) receive a statement that includes the information referred to in sub-section 132(3)(d);
 - (v) receive a statement under sub-section 132(4);
 - (vi) receive notice of retention of Collateral under section 135;
 - (vii) redeem the Collateral under section 142;
 - (viii) reinstate the Security Agreement under section 143;
 - (ix) object to the purchase of Collateral by the Secured Party under section 129;
 - (x) receive a Statement of Account under sub-section 132(3)(d) following a disposal showing the amounts paid to other Secured Parties and whether Security Interests held by other Secured Parties have been discharged; and
 - (xi) give notice of objection under section 137.
- 12.7. Where the Company has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 12.8. The Customer consents to and appoints the Company to be an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.
- 12.9. Subject to this clause 12 but regardless of any other terms in these Terms, notices or documents required or permitted to be given to either party for the purposes of the PPSA must be given in accordance with the PPSA.
- 12.10. The Customer agrees to notify the Company in writing of any change to the Customer's details as provided to the Company in the Credit Application within 5 days from the date of such change.
- 12.11. The Customer agrees not to register or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of the Company.
- 13. Liability and Indemnity**
- 13.1. The Customer acknowledges and agrees that the Company is not liable to the Customer:
- (a) for any Loss which is not a direct result of a breach by the Company of the Agreement; and
 - (b) for any Claim or Loss which the Customer suffers, incurs or becomes liable for in respect of the supply of Goods, Curving Services and or Installation Services where it is reasonably shown that the Customer's Steel was defective or faulty or not fit for purpose.
- 13.2. The Customer releases the Company and its officers, agents, employees or consultants from any or all Liability to the Customer for any Loss or Claim under clause 13.1.
- 13.3. The Customer agrees to indemnify the Company and its officers, agents, employees or consultants against:
- (a) any Claim that is made against the Company by or on behalf of any third party for any Loss (including property damage and injury or death) arising from or in connection with the supply of Goods, Curving Services and or Installation Services except to the extent that such Loss was caused by the negligent act or negligent omission of the Company or its officers, agents, employees or consultants; and
 - (b) all Liability incurred by the Company as a result of a breach by the Customer of a term of this Agreement.
- 14. Trustee Limitation of Liability**
- The Customer acknowledges and agrees that the Company enters into the Agreement with the Customer, as trustee of a trust and in no other capacity and that the Company will not be personally liable to the Customer for any breach of the Company's covenants, conditions and obligations express or implied in the Agreement of which these Terms form part and if liable to the Customer for damages, that the Customer will only be able to claim damages from the Company to the extent that the Company is able to be reimbursed from the net assets of that trust and no officers of the Company will be personally liable to the Customer. This clause will apply despite anything to the contrary express or implied in the Agreement.
- 15. Warranties and Covenants**
- The Customer warrants and covenants to the Company that the Customer (and any person instructing the Company) has all necessary consents, approvals and authorities to contract with the Company and to bind the Customer to the Agreement.
- 16. GST**
- 16.1. The price payable for the Company's supply of the Goods, Curving Services and or Installation Services will be increased by an amount equal to the amount of GST payable.
- 16.2. The Customer agrees to pay to the Company, the applicable GST at the same time the Customer is obliged to make payment for the price payable for the Company's supply of the Goods, Curving Services and or Installation Services.

- 16.3. The Company must separately identify the amount of GST payable by the Customer on the Company's tax invoice.
- 17. Force Majeure**
- 17.1. Unless otherwise agreed in the Confirmation Order, the Company will not be responsible for or have any Liability for any delays by the Company in its supply to the Customer of the Goods, Curving Services and or Installation Services.
- 17.2. The Company will:
- (a) not be liable for any Loss sustained by the Customer or by any other person by reason of any delay or failure to supply the Goods, Curving Services and or Installation Services which is caused by an event or circumstance which is beyond the reasonable control of the Company, including (but not limited to) an act of war (whether declared or not) or terrorism, the mobilisation of armed forces, civil commotion or riot, natural disaster, industrial action or labour disturbance (including (but not limited to) shortage of labour), currency restriction, embargo, action or inaction of a government agency or a failure of a supplier, public utility or common carrier, and a pandemic; and
 - (b) be entitled to suspend the fulfilment of a Confirmation Order for a period it thinks reasonable or terminate the Agreement with the Customer promptly after suspending the fulfilment of a Confirmation Order and will not be liable for any Loss sustained by the Customer or by any other person arising from or in connection with the suspension or termination.
- 18. Charging clause**
- 18.1. The Customer charges all right, title and interest in its property (present and future, real and personal) in favour of the Company as security for the performance by the Customer of all of its obligations under the Agreement, including the payment of all monies owed by the Customer to the Company for the supply of the Goods, Curving Services and or Installation Services, and consents to the Company lodging and maintaining a caveat on the Register of Titles to record and give notice of the Company's rights and entitlements under the Agreement.
- 18.2. The Customer undertakes and warrants to the Company to do all things and sign all documents necessary to effect and perfect any lodgement of the nature referred to in the preceding clause.
- 19. Privacy Policy**
- 19.1. Personal information provided by the Customer to the Company may be disclosed elsewhere within the Company.
- 19.2. The Company will use the information to manage its business dealings with the Customer, for example:
- (a) to provide the Customer with the Goods, Curving Services and Installation Services as the Customer orders;
 - (b) to assess the Customer's credit worthiness;
 - (c) to manage the Customer's payments or accounts; and
 - (d) to comply with the Company's legal obligations, and may supply the Customer's information to contractors and advisers that help the Company to do this.
- 19.3. Individuals may access personal information held by the Company about them, subject to the *Privacy Act 1988* (Cth).
- 20. Disputes**
- 20.1. If a Dispute arises, either party may give a Dispute Notice to the other party and if a Dispute Notice is given, the Dispute must be determined in accordance with these Terms.
- 20.2. If the parties do not resolve the Dispute within 14 days of the Dispute Notice (or such longer period as the parties may agree), the Dispute must be referred to the authorised representative of each party who must meet and undertake genuine and good faith negotiations with a view to resolving the Dispute.
- 20.3. If the parties' efforts to resolve the Dispute under clause 20.2 fails and:
- (a) 21 days have elapsed since the giving of the Dispute Notice (or such longer period of time as the parties may agree); and
 - (b) the quantum of the Dispute is less than AUD \$50,000.00,
- the Dispute must be submitted for expert determination to be conducted by a person appointed by the parties or failing agreement on such appointment within 35 days after the giving of the Dispute Notice, a person appointed by the President for the time being of the Law Society of Western Australia. Either party may request the President for the time being of the Law Society of Western Australia to appoint such a person.
- 20.4. The person appointed to determine the Dispute must act as an expert and not as an arbitrator and his or her decision will be final and binding upon the parties.
- 20.5. Unless otherwise agreed between the parties and the person appointed to determine the Dispute, the person appointed to determine the Dispute must determine the dispute within 90 days of his or her appointment.
- 20.6. Each party will bear its own costs in respect of any expert determination undertaken in accordance with this clause 20 and each party must pay one-half of the costs of the person appointed to determine the Dispute.

- 20.7. Should either party fail or refuse to pay their share of the costs of the person appointed to determine the Dispute, the other party may pay the defaulting party's share on the defaulting party's behalf and recover the monies paid on the defaulting party's behalf as a debt due and owing.
- 20.8. If:
- (a) the Dispute is not resolved under clause 20.2 within 21 days after the giving of the Dispute Notice (or within such longer period of time as the parties may agree); and
 - (b) the quantum of the Dispute is AUD \$50,000.00 or greater,
- either party may commence legal proceedings against the other to resolve the Dispute.
- 20.9. This clause 20 will survive the termination of this Agreement.
- 21. Confidentiality**
- 21.1. The Customer acknowledges and agrees that all pricing information and any other commercially sensitive or confidential information relating to the Goods, Curving Services and or Installation Services, the business of the Company and the Agreement is strictly confidential.
- 21.2. Other than disclosure to its professional advisers or if required to disclose information by law, the Customer must not permit any of its officers, employees, agents, contractors or related bodies corporate to disclose any of the information described in clause 21.1 to any person, without the prior written consent of the Company.
- 21.3. This clause 21 will survive the termination of the Agreement or these Terms.
- 22. Guarantee and Indemnity**
- 22.1. In consideration of the Company, at the request of the Customer, agreeing to supply the Goods, Curving Services and or Installation Services to the Customer on credit terms, the Guarantor:
- (a) guarantees to the Company, the due and punctual observance and performance of the Customer's obligations under the Agreement; and
 - (b) indemnifies and keeps indemnified the Company against all Loss incurred or reasonably incurred by the Company by reason of any breach of the Customer's obligations under the Agreement, including Loss incurred or reasonably incurred by the Company by reason of enforcing a remedy for breach of the Customer's obligations under the Agreement.
- 22.2. The Guarantor's obligations under the Agreement are an irrevocable and continuing guarantee and indemnity, and the Guarantor will not be wholly or partially released from the obligations of this clause by any matter or thing.
- 22.3. The Agreement is enforceable against the Guarantor and the Guarantor is liable under the Agreement despite any claims that the Company is estopped from enforcing any provisions of the Agreement or that the Customer has any other defence against an action by the Company to enforce any provision of the Agreement, and binds the Guarantor until the Customer is released from its obligations under the Agreement.
- 22.4. The Guarantor's obligations under the Agreement are principal obligations and are not ancillary or collateral to any other obligation or instrument.
- 22.5. This guarantee and indemnity continues until the Customer has performed all of its obligations under the Agreement.
- 22.6. The Guarantor may not, without the Company's consent:
- (a) raise a set-off or counterclaim available to the Guarantor against the Customer in reduction of the Guarantor's liability under this clause;
 - (b) provide or claim in any bankruptcy, liquidation, or arrangement in relation to the Customer until the Company has received 100 cents in the dollar in respect of the money owing by the Customer under the Agreement and the Guarantor holds in trust for the Company any proof or claim or any dividend received by the Guarantor from that proof or claim; or
 - (c) claim to be entitled to the benefit of any other security held by the Company in connection with the Agreement, whether because of the rules of contribution, indemnity, subrogation, marshalling or for any other reason.
- 22.7. If a payment to the Company in connection with the Agreement is void or voidable under laws relating to insolvency or protection of creditors, the Company remains entitled to the rights against the Guarantor which the Company had under this clause before that payment was made.
- 22.8. If the Guarantor comprises more than 1 person, the obligations of each Guarantor are joint and several.
- 23. Agreement**
- 23.1. The Agreement constitutes the entire agreement between the Customer and the Company and contains all of the representations, warranties, covenants and agreements between the parties and there are no other statements, representations, undertakings, covenants or agreements between the parties whether expressed or implied.
- 23.2. Any variations, alterations or additions to the Agreement are only applicable if agreed to in writing and signed by the Company.
- 23.3. In the event of any inconsistency between these Terms and any the other documents comprising the Agreement, these Terms will prevail to the extent of the inconsistency.
- 23.4. Should the Customer provide the Company with other terms and conditions concerning the supply of the

Goods, Curving Services and or Installation Services to the Customer, those other terms and conditions (unless expressly acknowledged and agreed in whole in writing by the Company before the supply of the Goods, Curving Services and or Installation Services starts) will be disregarded and not form part of the Agreement.

24. Severance

If any clause of these Terms is held to be unenforceable, then to the extent reasonably necessary to give effect to the provisions of these Terms, the unenforceable clause will be severed from this document so that the remaining clauses and each remaining clause is valid and enforceable to the fullest extent permitted by law.

25. Miscellaneous

25.1. Unless otherwise provided for in the Agreement, any notice, demand or other communication required to be given or made under the Agreement:

- (a) must be in writing; and
- (b) must be served personally or by Express Post to each of the parties at their respective addresses; and
- (c) will be deemed to be served:
 - (i) if served personally, at the time of handing the notice to the recipient; and
 - (ii) if sent by Express Post, on the third Business Day after the date of posting; and
- (d) if given by the Company, may be signed by the Company or a solicitor or agent of the Company.

25.2. No waiver of any provision of the Agreement will be effective unless it is in writing and then such waiver is effective only in the specific instance and for the purpose for which it is given.

25.3. The Company reserves the right to supplement, amend or vary all or any of these Terms upon providing not less than 30 days' written notice to the Customer. The placing of a purchase order or an express or implied acceptance of a Confirmation Order by the Customer after notice has been given and the notice period has expired, is deemed to be an acceptance by the Customer of the supplemented, amended or varied Terms.

25.4. The Agreement is governed by and is to be construed in accordance with the laws of Western Australia.