

Airbridge Global Trading

Terms and conditions

All Goods supplied by **AIRBRIDGE GLOBAL TRADING PTE. LTD.** (Airbridge) to the Customer are supplied on, and subject to, the terms and conditions set out in this document (Terms). By placing an Order, accepting delivery of Goods, making payment for Goods, requesting supply of Goods, or otherwise dealing with Airbridge on the basis of these Terms, the Customer agrees to be bound by these Terms.

1. Contract

- 1.1. A contract between Airbridge and the Customer (Contract) is formed when Airbridge accepts an Order from the Customer in writing. Airbridge may accept or reject any Order in its absolute discretion (in whole or in part).
- 1.2. Each Order accepted by Airbridge, together with these Terms, any quotation issued by Airbridge (Quotation) and any special conditions agreed in writing between the parties (Special Conditions), constitutes the single Contract.
- 1.3. By placing an Order, requesting supply of Goods, accepting delivery of Goods, making payment for Goods or otherwise dealing with Airbridge on the basis of these Terms, the Customer accepts these Terms, subject to any Special Conditions agreed in writing. Where an Order is placed otherwise than in writing, any written confirmation of the Order issued by Airbridge is deemed to correctly record the Order unless the Customer notifies Airbridge of any error within 2 Business Days of receipt.

2. Quotation

- 2.1. Airbridge may provide a Quotation, which:
 - 2.1.1. will remain valid for 30 days from the date of issue unless otherwise stated in writing;
 - 2.1.2. is indicative only and does not constitute an offer or obligation to supply Goods;
 - 2.1.3. may be withdrawn or varied by Airbridge at any time prior to acceptance of an Order; and
 - 2.1.4. is exclusive of GST, duties, freight and insurance unless otherwise stated.
- 2.2. Any estimate, calculation, dimension, quantity or other information provided by Airbridge (whether in a Quotation or otherwise) based on information supplied by the Customer or any third party is indicative only. Airbridge is not responsible for verifying the accuracy of that information and the Customer:
 - 2.2.1. must independently verify all specifications, dimensions and quantities; and
 - 2.2.2. accepts full responsibility for any Order placed.

3. Specifications, Suitability and Supplier Information

- 3.1. If the Customer requires Goods for a particular purpose, that purpose and any related requirements must be expressly agreed in writing in the Special Conditions. If:
 - 3.1.1. the Customer does not specify the purpose; or
 - 3.1.2. Airbridge does not expressly agree in writing that the Goods will be fit for that purpose, then the Customer acknowledges that it has not relied on the skill or judgment of Airbridge in relation to the suitability of the Goods.
- 3.2. Where Goods are supplied by reference to an applicable standard (including any Australian Standard), the Goods are subject to the tolerances, variations and measurement methodologies permitted under that standard. The Customer agrees that Goods supplied within those tolerances comply with the Contract and may be invoiced accordingly.
- 3.3. The Goods will comply with the specifications and standards expressly agreed in writing between the parties, to the extent that such specifications and standards are based on information, certifications or representations provided by the relevant supplier. Airbridge does not warrant compliance with any specifications or standards not expressly agreed in writing.
- 3.4. The Customer acknowledges that Airbridge acts as a distributor of the Goods and that any specifications, standards, certifications or technical information

relating to the Goods are derived from upstream suppliers. Airbridge does not independently verify such information.

4. Price

- 4.1. The price payable for the Goods (Price) will be:
 - 4.1.1. as agreed in writing between the parties in the Contract; or
 - 4.1.2. failing agreement, as determined by Airbridge in its discretion, having regard to:
 - 4.1.2.1. Airbridge's then current price list (if applicable); or
 - 4.1.2.2. any applicable Quotation, subject to clause 2.1 and correction of any error or omission.
- 4.2. The Price is exclusive of GST, duties, tariffs, freight, insurance and other charges unless otherwise agreed in writing. The Customer must pay:
 - 4.2.1. GST on any taxable supply; and
 - 4.2.2. any duties, tariffs, port charges, handling fees or similar costs associated with the supply of the Goods, in addition to the Price.
- 4.3. Airbridge may vary the Price on written notice to the Customer (including prior to delivery) where there is any increase in the cost of supplying the Goods, including as a result of:
 - 4.3.1. increases in the cost of procuring the Goods from upstream suppliers;
 - 4.3.2. changes in freight, shipping, port or logistics costs;
 - 4.3.3. currency exchange rate fluctuations;
 - 4.3.4. delays, changes or suspension of delivery schedules; or
 - 4.3.5. the imposition or variation of any tax, duty, levy, tariff or governmental charge.
- 4.4. Where the Price is varied under clause 4.3, the Customer may, within 2 Business Days of receiving notice of the variation, notify Airbridge that it does not accept the revised Price. In that case, Airbridge may cancel the affected Order without liability (other than refunding any amounts paid for undelivered Goods).
- 4.5. Airbridge may charge a payment surcharge for credit card or other payment methods equal to its reasonable cost of acceptance.
- 4.6. Any price list issued by Airbridge may be amended at any time. A change to a price list does not affect the Price of Goods already the subject of an accepted Order, except as provided in clause 4.3.
- 4.7. Where the Customer has an approved commercial credit account with Airbridge, invoices are due and payable on the last Business Day of the month following the month in which the Goods are delivered, or such other date as agreed in writing.
- 4.8. Where the Customer does not have an approved credit account, the Price must be paid:
 - 4.8.1. at the time the Order is placed; or
 - 4.8.2. by such later time specified by Airbridge in writing or in the Contract.
- 4.9. Where payment is required prior to supply under clause 4.2, Airbridge is under no obligation to procure, manufacture, ship or supply any Goods until payment has been received in cleared funds.
- 4.10. The Customer must:
 - 4.10.1. check all invoices upon receipt; and
 - 4.10.2. notify Airbridge of any error or omission within 5 Business Days.
- 4.11. If the Customer does not notify Airbridge in accordance with clause 4.10, the invoice is deemed to be accepted.
- 4.12. The Customer must pay all amounts due in full without deduction, withholding or set-off of any kind, except to the extent of any bona fide dispute notified in accordance with clause 4.13.
- 4.13. If the Customer disputes any invoice, it must:
 - 4.13.1. pay the undisputed portion of the invoice; and
 - 4.13.2. provide reasonable details of the dispute within 2 Business Days.
- 4.14. Airbridge may, at any time and in its discretion:
 - 4.14.1. vary or withdraw any credit terms;
 - 4.14.2. require payment in advance; or

4.14.3. impose credit limits.

5. Default

- 5.1. If the Customer fails to pay any amount owing to Airbridge by the due date, then without limiting any other rights or remedies, Airbridge may:
 - 5.1.1. charge interest on the overdue amount at the rate of 12% per annum, calculated daily from the due date until payment is received in full;
 - 5.1.2. suspend or withhold the supply of any Goods (including under any other Contract);
 - 5.1.3. cancel any outstanding Orders;
 - 5.1.4. require payment in advance for any further supply; and
 - 5.1.5. declare all amounts owing by the Customer to Airbridge immediately due and payable.
- 5.2. The Customer must indemnify Airbridge against all Loss incurred by Airbridge in connection with the recovery of any overdue amounts, including legal costs (on a full indemnity basis), debt recovery fees and internal administrative costs.
- 5.3. Any payment received by Airbridge may be applied by Airbridge in its absolute discretion to any amounts owing by the Customer.
- 5.4. The Customer acknowledges that a failure to make payment in accordance with these Terms constitutes a material breach of the Contract.
- 5.5. Airbridge's rights under this clause are in addition to, and do not limit, any other rights or remedies available at law or in equity.

6. Variations

- 6.1. No variation to a Contract (including any variation to the scope, specifications, quantity or delivery of Goods) is binding unless agreed in writing by Airbridge.
- 6.2. If the Customer requests any variation to an Order or Contract, Airbridge may, in its discretion:
 - 6.2.1. accept or reject the request; and
 - 6.2.2. require an adjustment to the Price, delivery timetable or other terms as a condition of accepting the variation.
- 6.3. Where a variation is agreed, the Contract is taken to be amended to the extent of that variation.

7. Suspension and Cancellation

- 7.1. Airbridge may suspend or cancel an Order (in whole or in part) at any time where:
 - 7.1.1. the Customer is in default under this Contract;
 - 7.1.2. an insolvency event occurs in respect of the Customer;
 - 7.1.3. a force majeure event occurs; or
 - 7.1.4. Airbridge is unable to procure or supply the Goods due to circumstances beyond its reasonable control.
- 7.2. Unless otherwise agreed in writing, the Customer may not cancel an Order (in whole or in part) once it has been accepted by Airbridge.
- 7.3. If Airbridge agrees to:
 - 7.3.1. cancel an Order;
 - 7.3.2. accept the return of Goods; or
 - 7.3.3. suspend or defer an Order or delivery, Airbridge may require the Customer to reimburse Airbridge for all Loss incurred or to be incurred as a result, including:
 - 7.3.4. costs of procurement or manufacture;
 - 7.3.5. freight, shipping, handling and storage costs;
 - 7.3.6. restocking or reprocessing costs;
 - 7.3.7. third party costs and charges; and
 - 7.3.8. any other incidental costs or expenses.
- 7.4. The Customer may not cancel, suspend or defer an Order where the Goods:
 - 7.4.1. have been specifically procured, manufactured or processed for the Customer; or
 - 7.4.2. are subject to committed upstream purchase arrangements, unless Airbridge agrees otherwise in writing.
- 7.5. Where Airbridge agrees to suspend, delay or defer an Order or delivery:
 - 7.5.1. Airbridge may adjust the Price in accordance with clause 7.3; and
 - 7.5.2. the Customer indemnifies Airbridge against all Loss arising from or in connection with that suspension, delay or deferral, including any third party claims.
- 7.6. Airbridge is not liable for any Loss suffered by the Customer or any third party arising from any

suspension, cancellation, delay or deferral of an Order or delivery under this clause.

8. Delivery

- 8.1. Delivery costs will be:
 - 8.1.1. as agreed in writing; or
 - 8.1.2. failing agreement, as set out in the applicable Quotation or determined by Airbridge.
- 8.2. Any delivery date or timeframe provided by Airbridge is an estimate only and is not a contractual commitment. To the maximum extent permitted by law, Airbridge is not liable for any Loss suffered by the Customer or any third party arising from any delay in delivery, including delays caused by:
 - 8.2.1. upstream suppliers;
 - 8.2.2. shipping or freight providers;
 - 8.2.3. port, customs or regulatory processes; or
 - 8.2.4. any circumstances beyond Airbridge's reasonable control.
- 8.3. Delivery occurs in accordance with the agreed delivery terms (including any applicable Incoterms). Where no delivery terms are agreed, delivery occurs when the Goods are made available for collection or dispatch.
- 8.4. Where the Goods are delivered using third party carriers (including where arranged by Airbridge), the Customer acknowledges that Airbridge is not responsible for any act, omission, delay, damage or loss caused by the carrier.
- 8.5. Where delivery is to a site nominated by the Customer:
 - 8.5.1. the Customer must ensure that access to the site is safe, suitable and compliant with all applicable requirements;
 - 8.5.2. the Customer must notify Airbridge in advance of any special delivery requirements; and
 - 8.5.3. if access is unsafe or unsuitable, Airbridge (or its carrier) may deliver the Goods to the nearest safe location, which will be deemed delivery.
- 8.6. The Customer is responsible for unloading the Goods unless otherwise agreed in writing. Airbridge is not responsible for any Loss arising from unloading, whether undertaken by the Customer, the carrier or any other person.
- 8.7. Delivery is deemed to occur:
 - 8.7.1. where Goods are supplied on an ex works, FOB or similar basis, when the Goods are collected by or on behalf of the Customer or delivered to the carrier; and
 - 8.7.2. where Goods are delivered to a site, when the Goods arrive at or near the nominated delivery location.
- 8.8. Airbridge may deliver Goods by instalments. Each instalment constitutes a separate delivery and may be invoiced separately.
- 8.9. If the Customer:
 - 8.9.1. fails to accept delivery;
 - 8.9.2. delays delivery; or
 - 8.9.3. requests a change to delivery timing,Airbridge may charge the Customer for all resulting Loss, including storage, handling, demurrage, re-delivery and third party costs.
- 8.10. The Customer acknowledges that additional charges may apply where delivery is delayed or where vehicles are required to wait at a site beyond a reasonable period.
- 8.11. Airbridge's delivery records (including delivery dockets, shipping records or carrier confirmations) are conclusive evidence of delivery unless proven otherwise.
- 8.12. The Customer must notify Airbridge in writing of any failure or delay in delivery within 2 Business Days of the scheduled delivery date. The Customer waives any claim relating to delay or non-delivery unless notice is given within that period.

9. Inspections, Returns and Claims

- 9.1. The Customer must inspect the Goods promptly upon delivery and must notify Airbridge in writing of any claim that the Goods (in whole or in part) are not in accordance with the Contract, including full particulars of the claim:
 - 9.1.1. within 48 hours of delivery to a construction site; or
 - 9.1.2. within 5 Business Days of delivery in all other cases; or

- 9.1.3. for latent defects, within a reasonable time after discovery,
whichever is earlier.
 - 9.2. Upon giving notice under clause 9.1, the Customer must:
 - 9.2.1. allow Airbridge (and its representatives or suppliers) reasonable access to inspect the Goods; and
 - 9.2.2. leave the Goods in the state and condition in which they were delivered, and not install, process, modify or use the Goods,
until the inspection has been completed or Airbridge has otherwise agreed in writing.
 - 9.3. If the Customer:
 - 9.3.1. fails to give notice within the time required under clause 9.1;
 - 9.3.2. fails to provide sufficient details of the claim;
 - 9.3.3. refuses or fails to allow inspection; or
 - 9.3.4. installs, processes, modifies or uses the Goods prior to inspection,
then, to the maximum extent permitted by law, the Goods are deemed to have been accepted and the Customer has no claim against Airbridge, and must pay the Price in full.
 - 9.4. After inspection of the Goods, if Airbridge reasonably determines that:
 - 9.4.1. the Goods comply with the Contract;
 - 9.4.2. any damage or defect arises from:
 - 9.4.2.1. handling, storage or use after delivery;
 - 9.4.2.2. installation or processing;
 - 9.4.2.3. failure to comply with applicable standards or guidelines; or
 - 9.4.2.4. the claim is otherwise not valid,
then the Goods are deemed accepted and the Customer must pay the Price.
 - 9.5. If Airbridge reasonably determines that the Goods do not comply with the Contract, Airbridge may, at its option:
 - 9.5.1. replace the Goods or supply equivalent Goods;
 - 9.5.2. repair the Goods; or
 - 9.5.3. pay the cost of replacing or repairing the Goods, and Airbridge may also require the return of the Goods, in which case Airbridge will bear the reasonable cost of their return.
 - 9.6. Except as provided in clause 9.5, no Goods may be returned without Airbridge's prior written consent, and any approved return is subject to clause 7 (Suspension and Cancellation) and any applicable restocking, handling or other charges.
 - 9.7. To the maximum extent permitted by law:
 - 9.7.1. Airbridge is not liable for any claim relating to the Goods unless the Customer complies strictly with this clause; and
 - 9.7.2. Airbridge is not liable for any Loss arising from the use, installation or incorporation of the Goods into any structure or project.
- 10. Risk**
- 10.1. Risk of loss of, or damage to, the Goods passes to the Customer in accordance with the agreed delivery terms (including any applicable Incoterms).
 - 10.2. Where no delivery terms are expressly agreed in writing, risk passes to the Customer when the Goods are:
 - 10.2.1. made available for collection; or
 - 10.2.2. delivered to a carrier for transport to the Customer.
 - 10.3. Where Goods are delivered by or on behalf of Airbridge, risk passes to the Customer upon delivery in accordance with clause 8.
 - 10.4. Where the Customer requests that Goods be:
 - 10.4.1. delivered to an unattended location;
 - 10.4.2. left outside a nominated site; or
 - 10.4.3. held, stored or delayed by Airbridge or any third party at the Customer's request,
the Goods are held, delivered or stored at the Customer's sole risk.
 - 10.5. The Customer acknowledges that, where Goods are transported by third party carriers (including where arranged by Airbridge), all risk in the Goods during transport is borne by the Customer from the time risk passes under this clause.
- 11. Title**
- 11.1. Until the Customer has paid in full:
 - 11.1.1. the Price for the Goods; and
 - 11.1.2. all other amounts owing by the Customer to Airbridge on any account,
title in the Goods does not pass to the Customer.
 - 11.2. Until title passes to the Customer:
 - 11.2.1. Airbridge retains legal and equitable title to the Goods;
 - 11.2.2. the Customer holds the Goods as bailee and fiduciary for Airbridge;
 - 11.2.3. the Customer must store the Goods separately and in a manner that clearly identifies them as the property of Airbridge; and
 - 11.2.4. the Customer must not mix the Goods with other goods in a way that prevents identification.
 - 11.3. The Customer may resell the Goods in the ordinary course of its business, but:
 - 11.3.1. does so as agent and bailee for Airbridge; and
 - 11.3.2. must hold the proceeds of sale (and any receivable arising from the sale) on trust for Airbridge to the extent of all amounts owing to Airbridge.
 - 11.4. The Customer's liability to Airbridge is not discharged by any resale of the Goods, but is reduced only to the extent that Airbridge receives payment.
 - 11.5. Until title passes, Airbridge may, on reasonable notice (or without notice where payment is overdue), enter any premises where the Goods are located to:
 - 11.5.1. inspect the Goods; and
 - 11.5.2. recover possession of the Goods.
 - 11.6. The Customer irrevocably authorises Airbridge to enter those premises for this purpose.
 - 11.7. The Customer indemnifies Airbridge against all Loss incurred in exercising its rights under this clause, including legal costs on a full indemnity basis.
- 12. Security and PPSA**
- 12.1. The Customer acknowledges that by agreeing to these Terms, the Customer grants a security interest to Airbridge in:
 - 12.1.1. all Goods supplied by Airbridge to the Customer (whether now or in the future); and
 - 12.1.2. the proceeds of those Goods,
and that this security interest constitutes a "purchase money security interest" for the purposes of the Personal Property Securities Act 2009 (Cth) (PPSA).
 - 12.2. The Customer undertakes to do anything reasonably required by Airbridge:
 - 12.2.1. to enable Airbridge to acquire and maintain one or more perfected security interests under the PPSA;
 - 12.2.2. to register a financing statement or financing change statement; and
 - 12.2.3. to ensure that Airbridge's security position, and rights and obligations, are not adversely affected by the PPSA.
 - 12.3. Unless the Customer has obtained Airbridge's prior written consent, the Customer must not:
 - 12.3.1. register or permit to be registered a financing change statement in respect of the security interest created under these Terms; or
 - 12.3.2. create, or purport to create, any security interest in the Goods, or register, or permit to be registered, any financing statement in favour of a third party in respect of the Goods.
 - 12.4. The Customer:
 - 12.4.1. waives its right under section 157 of the PPSA to receive a copy of any verification statement relating to a security interest created under these Terms;
 - 12.4.2. agrees that, to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of:
 - 12.4.2.1. section 95 (to the extent that it requires the secured party to give notices to the grantor);
 - 12.4.2.2. section 96;
 - 12.4.2.3. section 118 (to the extent that it allows a secured party to give notices to the grantor);
 - 12.4.2.4. section 121(4);
 - 12.4.2.5. section 125;
 - 12.4.2.6. section 130;
 - 12.4.2.7. section 132(3)(d);
 - 12.4.2.8. section 132(4);
 - 12.4.2.9. section 135;
 - 12.4.2.10. section 142; and
 - 12.4.2.11. section 143; and

- 12.4.3. agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them:
- 12.4.3.1. section 127;
 - 12.4.3.2. section 129(2) and (3);
 - 12.4.3.3. section 130(1);
 - 12.4.3.4. section 132;
 - 12.4.3.5. section 134(2);
 - 12.4.3.6. section 135;
 - 12.4.3.7. section 136(3), (4) and (5); and
 - 12.4.3.8. section 137.
- 12.5. The Customer agrees that it will, if requested by Airbridge, promptly:
- 12.5.1. sign any documents;
 - 12.5.2. provide any information; and
 - 12.5.3. do anything else required, to ensure that any security interest created in Airbridge's favour is perfected and remains enforceable and effective under the PPSA.
- 12.6. Notwithstanding section 275 of the PPSA, the parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, except where disclosure is required by law.
- 12.7. The Customer irrevocably grants to Airbridge the right to enter upon the Customer's premises (and any premises where the Goods are located), with notice (or without notice where permitted by law), and without liability to the Customer or any third party, for the purpose of exercising any rights under:
- 12.7.1. this Contract; or
 - 12.7.2. (b) sections 123 and 128 of the PPSA.
- 12.8. The Customer must pay all costs and expenses (including legal costs on a full indemnity basis) incurred by Airbridge in exercising its rights under this clause, where the Customer is in default.
- 12.9. The Customer acknowledges that, where Airbridge has rights in addition to those under Part 4 of the PPSA, those rights continue to apply.
- 12.10. Where the Customer has previously granted any security interest, charge or mortgage in favour of Airbridge (including under any prior agreement), those security interests:
- 12.10.1. continue to apply;
 - 12.10.2. secure all amounts owing under this Contract; and
 - 12.10.3. may be varied by Airbridge on reasonable notice to align with these Terms.
- 13. Insolvency**
- 13.1. If:
- 13.1.1. the Customer becomes Insolvent; or
 - 13.1.2. in the reasonable opinion of Airbridge, there is an adverse change in the creditworthiness of the Customer; and/or
 - 13.1.3. for a Customer that holds (or has held) a commercial credit account with Airbridge:
 - 13.1.3.1. one or more Guarantors becomes Insolvent; or
 - 13.1.3.2. in the reasonable opinion of Airbridge, there is an adverse change in the creditworthiness of one or more Guarantors; or
 - 13.1.3.3. one or more Guarantors revokes or purports to revoke their guarantee without a suitable replacement guarantor having provided a replacement guarantee acceptable to Airbridge prior to that revocation; or
 - 13.1.3.4. there is a change in ownership or control of the Customer without the prior written consent of Airbridge,
- Airbridge may, without prejudice to any other rights it has under these Terms or at law:
- 13.1.4. immediately suspend or cancel any Order, or the delivery or collection of any Goods, and/or refuse to accept any further Orders from the Customer, and promptly notify the Customer in writing; and/or
 - 13.1.5. where the Customer has a commercial credit account, immediately suspend that account and promptly notify the Customer in writing. If:
 - 13.1.5.1. the Customer or any Guarantor is Insolvent; or
 - 13.1.5.2. the suspension of the commercial credit account continues for 7 days or more and the issue giving rise to the suspension has not been resolved to Airbridge's satisfaction,
- Airbridge may cancel the commercial credit account, and upon cancellation all amounts owing by the Customer to Airbridge become immediately due and payable.
- 13.2. If the Customer becomes Insolvent, then to the maximum extent permitted by law:
- 13.2.1. the Customer remains liable under these Terms and each Contract for all amounts owing; and
 - 13.2.2. the Customer's liability is not discharged or reduced by any dividend, payment or distribution received by Airbridge in connection with the Customer's insolvency.
- 14. Indemnity**
- 14.1. The Customer indemnifies Airbridge against all Loss (including liability, claims, damage, costs and expenses, including collection costs, debt recovery fees, bank dishonour fees and legal costs on a full indemnity basis) that Airbridge may suffer or incur at any time, directly or indirectly, arising from or in connection with any default by the Customer in the performance or observance of its obligations under a Contract or these Terms.
- 14.2. The Customer indemnifies Airbridge against all Loss that Airbridge may suffer or incur at any time, directly or indirectly, arising from or in connection with any third party claim made against Airbridge as a consequence of, relating to or arising from:
- 14.2.1. a Contract;
 - 14.2.2. the supply of Goods by Airbridge to the Customer; or
 - 14.2.3. the supply, use, incorporation or on-sale of the Goods by the Customer to any third party.
- 14.3. The Customer's liability under this clause is a continuing obligation, separate from its other obligations, and survives termination or completion of any Contract.
- 14.4. Airbridge is not required to incur any expense or make any payment before enforcing its rights of indemnity under this clause.
- 15. Limitation of Liability**
- 15.1. Subject to clauses 15.2 to 15.7, any liability of Airbridge for any Loss, however caused (including by the negligence of Airbridge), suffered or incurred by the Customer in connection with a Contract is limited to:
- 15.1.1. direct Loss only; and
 - 15.1.2. the amount paid by the Customer to Airbridge in respect of the relevant component of the Order giving rise to the claim.
- 15.2. The limitation in clause 15.1 is an aggregate limit for all claims made in connection with a Contract, whenever made.
- 15.3. To the maximum extent permitted by law, Airbridge is not liable for any Excluded Loss, however caused (including by the negligence of Airbridge), suffered or incurred by the Customer in connection with a Contract or these Terms.
- 15.4. Without limiting clauses 15.1 to 15.3, those clauses apply to any claim arising from or in connection with:
- 15.4.1. a breach of Contract;
 - 15.4.2. an anticipated breach of Contract; or
 - 15.4.3. any other conduct, regardless of the seriousness or nature of that breach or conduct.
- 15.5. Airbridge is not liable for any Loss suffered or incurred by the Customer arising from or in connection with any incorrect, incomplete or inaccurate information provided by or on behalf of the Customer.
- 15.6. Except as expressly agreed in writing in the Special Conditions, the Customer acknowledges and agrees that it has not relied, and will not rely, on:
- 15.6.1. any representations made or advice given by Airbridge or its employees in connection with the design, specifications, dimensions, installation or use of the Goods, and Airbridge is not liable for any Loss arising from any error or omission in such representations or advice, whether or not given negligently; or
 - 15.6.2. any description, illustration or specification contained in any catalogue, marketing material or other document provided by Airbridge, which is provided for general information only and does not constitute a representation or warranty as to fitness for purpose.

- 15.7. If the Competition and Consumer Act 2010 or any other applicable law provides that there is a guarantee in respect of any Goods supplied under a Contract, and Airbridge's liability for failing to comply with that guarantee cannot be excluded but may be limited, then to the extent permitted by law Airbridge's liability is limited, at its option, to:
- 15.7.1. replacing the Goods; or
 - 15.7.2. supplying equivalent Goods.
- 15.8. To the maximum extent permitted by law, all terms, conditions, warranties, guarantees, indemnities and representations (whether express, implied, statutory or otherwise) not expressly set out in a Contract are excluded, and Airbridge disclaims all liability in relation to them.
- 15.9. To the fullest extent permitted by law, Airbridge is not liable for any Loss suffered by the Customer or any third party arising from Airbridge exercising its rights under clause 7 (Cancellation and Suspension of Orders).
- 16. Costs**
- 16.1. Subject to clauses 16.2 and 16.3, payments made by, or on behalf of, the Customer will be applied by Airbridge as follows:
- 16.1.1. first, in payment of any collection costs and legal costs incurred by Airbridge in accordance with clauses 5, 11, 12 and/or 14;
 - 16.1.2. second, in payment of any interest incurred; and
 - 16.1.3. third, in payment of outstanding invoices, or part thereof, in such order as Airbridge determines in its absolute discretion.
- 16.2. To the extent that payments have been allocated to invoices in Airbridge's business records, Airbridge may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever, including in a manner inconsistent with clause 16.1.
- 16.3. Any allocation or reallocation of payments under clauses 16.1 or 16.2 is taken to have occurred on the date the relevant payment was received.
- 17. Customer Materials**
- 17.1. The Customer warrants that any information, specifications, drawings, data or other materials provided by or on behalf of the Customer (Customer Material) is accurate, complete and correct. To the maximum extent permitted by law, Airbridge accepts no liability for any Loss (including damage, costs or expenses, including rectification costs) suffered or incurred by the Customer or any third party arising from or in connection with any inaccuracy or omission in the Customer Material.
- 17.2. Where the Customer provides Customer Material to Airbridge:
- 17.2.1. the Customer grants Airbridge a non-exclusive, royalty-free licence to use that Customer Material for the purpose of supplying the Goods;
 - 17.2.2. the Customer warrants that the use of the Customer Material does not infringe the Intellectual Property Rights of any third party; and
 - 17.2.3. the Customer indemnifies Airbridge against all Loss arising from or in connection with any claim that the Customer Material infringes (or is alleged to infringe) the Intellectual Property Rights of any third party.
- 18. Intellectual Property**
- 18.1. The Customer acknowledges and agrees that:
- 18.1.1. all Intellectual Property Rights owned by Airbridge and existing at the date a Contract is formed (Airbridge IP) are and will at all times remain the property of Airbridge;
 - 18.1.2. unless otherwise agreed in writing, any Intellectual Property Rights created or developed by Airbridge in connection with a Contract vest in Airbridge immediately upon creation and will at all times remain the property of Airbridge; and
 - 18.1.3. the Customer has no rights to use Airbridge IP except as expressly permitted under these Terms or otherwise agreed in writing by Airbridge.
- 19. Assignment, Subcontracting, Waiver and Set-off**
- 19.1. Except as provided in clause 19.2, neither party may assign or novate its rights or obligations under a Contract without the prior written consent of the other party, which must not be unreasonably withheld.
- Airbridge may withhold its consent to any assignment or novation by the Customer if, in Airbridge's reasonable opinion, the proposed assignee is not at least as creditworthy as the Customer.
- 19.2. Airbridge may assign or transfer its rights or benefits under any Contract to a related body corporate by giving written notice to the Customer. The Customer's consent is not required for any such assignment.
- 19.3. Airbridge may subcontract any of its obligations under a Contract without the consent of the Customer.
- 19.4. A waiver of any provision of these Terms or any Contract, or of any breach of them, is only effective if made in writing by an authorised representative of the party granting the waiver.
- 19.5. Except where strictly stated in the terms, a failure or delay by a party to exercise any right or remedy does not constitute a waiver of that right or remedy, nor does it prevent any subsequent exercise of that or any other right.
- 19.6. All payments to be made by the Customer must be made in full without any set-off, counterclaim, deduction or withholding, except as required by law or as agreed in writing by Airbridge.
- 19.7. Airbridge may set off any amount owing to it by the Customer against any amount payable by Airbridge to the Customer.
- 20. Joint and Several Liability**
- 20.1. If two or more persons are included within the same defined term in these Terms:
- 20.1.1. these Terms operate separately in relation to each of them;
 - 20.1.2. any liability or obligation of those persons is a joint liability or obligation of all of them and a several liability or obligation of each of them; and
 - 20.1.3. any right given to those persons is a right given severally to each of them.
- 21. Force Majeure**
- 21.1. Airbridge is not liable to the Customer for any delay or failure to perform its obligations under a Contract to the extent that such delay or failure is caused by a Force Majeure Event.
- 21.2. If a Force Majeure Event occurs, the time for performance of Airbridge's obligations (including delivery of Goods) is extended by the period of the delay, as notified by Airbridge to the Customer.
- 21.3. If a delay or failure to perform due to a Force Majeure Event continues for more than 14 days, Airbridge may terminate the affected Contract by written notice to the Customer without liability for breach or any antecedent breach. Airbridge is entitled to payment for all Goods supplied up to the date of termination.
- 21.4. If any delay or failure to perform is caused or contributed to by an act or omission of the Customer or its personnel, the Customer indemnifies Airbridge against all Loss arising from that delay or failure, including any Loss associated with termination under clause 21.3.
- 22. Other Terms**
- 22.1. If any provision of these Terms or any Contract is not enforceable in accordance with its terms, the remaining provisions which are capable of separate operation will continue to be enforceable.
- 22.2. If any provision of these Terms or any Contract is invalid or unenforceable, that provision is deemed to be deleted and the remainder of the Terms remains in full force and effect.
- 22.3. The Customer agrees that these Terms may be varied, added to or amended by Airbridge at any time by written notice to the Customer. Unless otherwise agreed in writing, any such variation takes effect 20 Business Days after the date of the notice in respect of all Contracts entered into after that date.
- 22.4. Nothing in these Terms limits Airbridge's rights of recovery, contribution or subrogation against any supplier, carrier, insurer or third party. The Customer must provide reasonable assistance in relation to any recovery action requested by Airbridge or its insurers.
- 22.5. Airbridge may correct clerical errors (including typographical or grammatical errors) at any time without notice, and clause 22.3 does not apply to such corrections.

- 22.6. Any request by the Customer to vary these Terms must be made in writing. Airbridge may accept or reject any such request in its discretion.
- 22.7. Any variation requested by the Customer is only binding if agreed in writing and signed by an authorised representative of Airbridge, and may take the form of Special Conditions applying to a specific Contract or generally, as agreed.
- 22.8. These Terms and each Contract are governed by the laws of New South Wales and the Commonwealth of Australia.
- 22.9. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to hear appeals from those courts.
- 22.10. Each Contract constitutes the entire agreement between the parties in relation to its subject matter. All prior negotiations, representations, warranties, understandings or agreements are merged into the Contract and have no further effect. No oral statement or information affects the interpretation of these Terms or creates any collateral agreement.
- 22.11. Where there is an existing written agreement between Airbridge and the Customer (including a credit application or prior terms), these Terms operate as a variation of that agreement such that the prior terms are replaced by these Terms, except to the extent that:
- 22.11.1. those prior terms are expressly preserved; or
- 22.11.2. they cannot be amended without breaching that agreement, in which case they continue to apply alongside these Terms, and these Terms prevail to the extent of any inconsistency.
- 22.12. These Terms apply to every Contract between Airbridge and the Customer. Any terms or conditions of the Customer (including in any Order or other document) that are inconsistent with or additional to these Terms are expressly rejected and do not bind Airbridge unless agreed in writing.
- 22.13. The Customer agrees to accept service of any notice, demand or other document (including under a Contract or applicable law) by:
- 22.13.1. delivery by hand;
- 22.13.2. prepaid post to any address nominated by the Customer; or
- 22.13.3. email to any email address nominated by the Customer.
- 22.14. A notice is taken to be received:
- 22.14.1. if delivered by hand, at the time of delivery;
- 22.14.2. if sent by post, 3 Business Days after posting; and
- 22.14.3. if sent by email, at the time of transmission in accordance with applicable electronic transactions legislation.

23. Definitions

- 23.1. In these Terms and any Contract:

Airbridge means AIRBRIDGE GLOBAL TRADING PTE. LTD.

Business Day means a day other than a Saturday, Sunday or public holiday in Sydney, New South Wales, Australia.

Confidential Information means information that:

- (a) is, by its nature, confidential;
- (b) is designated by Airbridge as confidential; or
- (c) the Customer knows or ought reasonably to know is confidential,

relating to the Goods or Airbridge's business which is not in the public domain, including trade secrets, know-how, scientific, technical, product, market or pricing information.

Consumer has the meaning given in section 3 of the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010.

Contract means a contract between Airbridge and the Customer for the supply of Goods, constituted by any Quotation, Order, these Terms and any Special Conditions.

Corporations Act means the Corporations Act 2001 (Cth).

Customer means any person, firm, organisation, partnership, corporation, trustee of a trust or other entity (including successors and permitted assigns) to whom Goods are supplied.

Customer Material means all information, specifications, data and documents provided by or on behalf of the Customer to Airbridge in connection with the supply of Goods.

Deed of Guarantee means a deed of guarantee and indemnity in a form acceptable to Airbridge provided by any Guarantor in connection with a commercial credit account.

Excluded Loss means consequential loss, loss of revenue, loss of reputation, loss of profits, loss of bargain, indirect loss, special loss, loss of opportunity (including opportunities to enter into arrangements with third parties), loss arising from third party claims, or loss or corruption of data.

Force Majeure Event means any circumstance beyond Airbridge's reasonable control, including strikes, lockouts, fire, flood, storm, riot, war, embargo, civil commotion, supplier shortages, plant or mechanical breakdown, failure of a third party supplier or carrier, delay in shipping or transport, epidemic or pandemic, quarantine restrictions, government action or regulation, or any act of God.

Goods means all goods supplied by Airbridge to the Customer, including steel, and building products, as described in any invoice, Quotation or Order.

GST has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Guarantor means any person who has provided a Deed of Guarantee in connection with a commercial credit account.

Insolvency or Insolvent means, in relation to a person, the occurrence of any one or more of the following:

- (a) inability to pay debts when due;
- (b) seeking protection from creditors;
- (c) being insolvent under administration or otherwise insolvent under the Corporations Act;
- (d) resolution to wind up or dissolve;
- (e) entering into any arrangement with creditors;
- (f) application to a court for winding up or similar order (unless contested in good faith and resolved within 14 days);
- (g) appointment of a receiver, administrator or similar;
- (h) failure to comply with a statutory demand under section 459F of the Corporations Act;
- (i) occurrence of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (j) where the person is an individual, committing an act of bankruptcy; or
- (k) any analogous event under applicable law.

Intellectual Property Rights means all industrial and intellectual property rights worldwide, whether present or future, including copyright, trade secrets, know-how, trade marks, designs, patents and all rights to apply for registration of those rights.

Order means any written or oral request by the Customer for the supply of Goods.

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

Price means the price payable for the Goods as determined in accordance with clause 4.

Proceeds has the meaning given in section 31 of the PPSA.

Quotation means any quotation issued by Airbridge in respect of the supply of Goods.

Related Entity means any entity with common directors, shareholders or control with Airbridge.

Small Business Customer means a Customer that, at the time a Contract is formed, either:
(a) employs fewer than 100 persons (calculated on a full-time equivalent basis); or
(b) has annual turnover in the previous financial year of A\$10,000,000 or less,
as reasonably determined by Airbridge based on information available to it.

Special Conditions means any terms agreed in writing between the parties that supplement or vary these Terms.

Supplier means Airbridge.

Supplier IP means all Intellectual Property Rights owned by or licensed to Airbridge, including in Confidential Information, documents, reports, systems and materials created in connection with a Contract.

Terms means these Terms and Conditions of Sale as amended from time to time.

Working Documents means all materials created by Airbridge in connection with a Contract in which Intellectual Property Rights subsist, including drafts, designs and related materials.

24. Consumers and Small Business Customers

24.1 This clause 24 applies where, and only to the extent that:

- (a) the Customer is a Consumer or a Small Business Customer; and
- (b) the relevant provision of these Terms would otherwise be inconsistent with any non-excludable rights or remedies the Customer has under the Australian Consumer Law or any other applicable consumer law.

24.2 Except as expressly modified by this clause 24, these Terms (including the limitations of liability and risk allocation provisions in clause 15 and the indemnities in clause 14) apply in full to Consumers and Small Business Customers.

24.3 Nothing in these Terms excludes, restricts or modifies any consumer guarantee, right or remedy conferred on a Customer by the Australian Consumer Law or any other applicable law that cannot be excluded, restricted or modified.

24.4 For Consumers and Small Business Customers, clause 3 (Specifications, Suitability and Supplier Information) is modified as follows:

(a) *Specifications and standards*

- (i) Where specifications or standards for the Goods are expressly agreed in writing between Airbridge and the Customer, Airbridge agrees that the Goods supplied under the relevant Contract will conform to those agreed specifications and standards, to the extent that such specifications and standards are based on information, certifications or representations provided by the relevant upstream supplier in relation to the Goods.
- (ii) Airbridge will ensure that the Goods are sourced from upstream suppliers whose information, certifications or representations reasonably indicate compliance with the agreed specifications and standards.

(b) *Supplier information and certifications*

- (i) Airbridge will pass on to the Customer any material product information and certifications received from upstream suppliers that relate to compliance of the Goods with any agreed specifications and standards.
- (ii) If Airbridge becomes aware that any such information or certification is inaccurate, incomplete or withdrawn, Airbridge will use reasonable efforts to obtain updated or replacement information or certifications from its upstream suppliers and provide those to the Customer.

(c) *Fitness for purpose*

- (i) Where the Customer has expressly made known to Airbridge, in writing prior to entering into a Contract, the particular purpose for which the Goods are required and has expressly relied on Airbridge's skill or judgment,

Airbridge agrees that the Goods supplied under that Contract will be reasonably fit for that purpose, based on and subject to the information, certifications and representations provided by upstream suppliers in relation to the Goods.

- (ii) The Customer remains responsible for ensuring that any Customer Material (including specifications, drawings and instructions) it provides to Airbridge is complete and accurate, and, to the maximum extent permitted by law, Airbridge is not liable for any Loss arising from or in connection with any inaccuracy or omission in the Customer Material.

(d) *No independent testing obligation*

For clarity, nothing in this clause 24.4 requires Airbridge to undertake independent testing, certification or verification of the Goods. Airbridge's obligations are limited to acting reasonably on the basis of information, certifications and representations provided by upstream suppliers and to passing through that information to the Customer.

24.5 For Consumers and Small Business Customers, clause 15 (Limitation of Liability) is modified as follows:

- (a) clause 15.1 continues to apply, but Airbridge's aggregate liability for all claims arising out of or in connection with a Contract (whether in contract, tort (including negligence), statute or otherwise) is limited, at Airbridge's option and to the extent permitted by law, to:

- (i) in the case of Goods:
 - 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 replacing the Goods or of acquiring equivalent goods; or
 - D. the payment of the cost of having the Goods repaired; and
- (ii) in any event, an amount not exceeding the total Price paid or payable by the Customer to Airbridge in respect of the relevant component of the Order giving rise to the claim;

- (b) clause 15.3 (Excluded Loss) continues to apply to Consumers and Small Business Customers, except that it does not exclude liability for any Loss to the extent that such exclusion would be inconsistent with any non-excludable guarantee, right or remedy the Customer has under the Australian Consumer Law or any other applicable law; and

- (c) clause 15.7 is to be read together with this clause 24.5 so that, to the extent the *Competition and Consumer Act 2010* (Cth) or any other applicable law does not permit a limitation or exclusion of liability, the Customer retains the benefit of any non-excludable rights or remedies under that law.