

TERMS OF CONTRACT

1 SUPPLY

- 1.1 Subject to the agreement of payment terms, Contractor will supply all goods and services (together an **Installation**) on the following provisions (**terms and conditions**) as amended from time to time. Contractor and Client (each a **party**) agree that on Contractor counter-signing this document, these terms and conditions will govern all dealings between the parties and will be incorporated into all supply agreements between them.
- 1.2 Contractor will only agree to provide an Installation in accordance with its quotation and duly signed by a senior representative on behalf of Contractor (**Quotation**) and these terms and conditions (**Contract**).
- 1.3 All Quotations will expire 5 Business Days after the date of delivery to the Client unless otherwise specified. Contractor may vary prices in its Quotation where a significant error or fact can be shown in the original quotation.
- 1.4 Client will ensure when placing its order or otherwise accepting the Contract (**Acceptance**) that it provides any information requested by Contractor in its Quotation and agrees that if there is any inconsistency between the provisions of its order and the Contract, the Contract prevails.
- 1.5 All prices quoted by Contractor are based on the taxes and charges applicable at the time of the Quotation. Should these vary from the date of the Quotation to the date of the invoice, Client will also be liable to Contractor for the difference.
- 1.6 If specified in the Quotation, Contractor may require the payment of a deposit. If a deposit is required, Acceptance will not be deemed to have occurred until the deposit has been paid.

2 PRICES/DELIVERY/FORCE MAJEURE

- 2.1 The total price for the Installation will be the price specified in the Quotation (and any increases to that price arising from changes to labour rates or other inputs which occur at least 30 days after Acceptance) and any variations agreed between the parties (**Contract Price**).
- 2.2 Prior to Acceptance, Contractor may, at its discretion:
 - (a) withdraw any Quotation;
 - (b) vary the price of any Quotation;
 - (c) vary the terms and conditions; or
 - (d) postpone or cancel the delivery of an Installation.
- 2.3 The Contract Price assumes that:
 - (a) all existing works at the Premises comply with law, regulations and relevant Australian Standards. The additional costs of any work required to make the Premises compliant; or
 - (b) the Contractor will have access to the Premises during the Contractor's normal working hours at the Premises. If the Contractor's access to the site is impeded in any way; or
 - (c) if Premises measurements vary or if changes are made to Client supplied working drawings, these changes will constitute a variation.
- 2.4 All orders and instructions issued to Contractor by Client or its agents or servants by telephone are to be confirmed in writing to within 3 Business Days.
- 2.5 Where fittings, materials or products provided by Contractor at the direction of the Client (whether at the cost of Client or provided by Client at no cost to Contractor but the installation or use of which may incur costs additional to those allowed for in the Contract Price) (**Prime Cost Items**) and/or provisional sums have been included in the Contract Price and a greater amount is spent than the allowance, Client shall pay the difference to Contractor within 5 Business Days of the date of dispatch of the invoice.
- 2.6 Where a Client orders a particular brand of product which for any reason whatsoever is not immediately available to Contractor then Contractor, may in its absolute discretion supply another product with identical or similar properties to that which was ordered and the Client will be obliged to accept and pay for that other product in the

same way as if the branded product had been supplied. This term will not apply if, and only if, the Client has given notice in writing to Contractor stating that the Client is only prepared to accept products bearing the brands or trademarks specified in its orders.

- 2.7 Contractor will deliver the Installation to the address in this Contract unless advised otherwise in writing by Client (eg in the order) (**Premises**). Client is responsible to ensure that this address is correct. Any additional costs incurred by Contractor from an incorrect or incomplete addresses will be payable by Client.
- 2.8 Contractor will use reasonable endeavours to supply the Installation in accordance with Client's order.
- 2.9 If Client or anyone on its behalf cancels an order for Installation prior to delivery, Client must pay to the Contractor as a liquidated and ascertained debt the cost (if any) to the Contractor, including overheads and administrative costs, of work done in preparing for the Installation or partly producing the Installation up to that time prior to the date of cancellation.
- 2.10 Unless expressly addressed in the Quotation, the Contract Price makes no provision for the costs associated with the identification or removal and cartage of Asbestos Containing Material (**ACM**) that may be encountered during Installation. Costs associated with the identification and removal of ACM constitute a variation and Client authorises any such variation as an additional charge.
- 2.11 Contractor is not responsible for any failure to perform any obligation under this Contract due to any reasons beyond its reasonable control, including change of law, government order, fire, lightning, explosion, flood, earthquake, storm, hurricane, action of the elements, riots, civil commotion, malicious damage, armed conflicts, acts of terrorism, war (declared or undeclared), blockade, revolution, sabotage, radioactive contamination, toxic or dangerous chemical contamination or natural catastrophe (each a **Force Majeure Event**).
- 2.12 If by reason of a Force Majeure Event, the delay or non-performance of Contractor's obligations continues for more than 90 consecutive days, Contractor may refund any monies paid for Installation that have not been delivered and cancel any order.

3 INSTALLATION

- 3.1 The Client:
 - (a) must provide reasonable access for Contractor, its servants, agents and subcontractors to the Premises during the supply of the Installation as required by Contractor. Client will also provide for the use of Contractor (at Client's expense) sufficient connections for electricity and any other similar services required by Contractor.
 - (b) is responsible for any existing defects discovered by Contractor in the course of the Installation. Contractor will be solely responsible for determining what remedial action is required. Without prejudice to Contractor's existing rights, they may terminate this Contract if the Client does not undertake and complete the required remedial action as instructed by Contractor. Any additional expense incurred by Contractor will be a variation and Client's responsibility;
 - (c) must ensure that any necessary permits, permissions or authorisations are obtained for the Installation, other than as expressly agreed with Contractor;
 - (d) will pay for the costs for any return trips by Contractor to complete works due to non-completion by other trades;
 - (e) provide scaffolding and/or access equipment for the Installation (and it must be industry approved scaffolding for all works with fall heights from eave gutter greater than 2.7 metres) unless otherwise agreed in writing. Client can arrange Contractor to arrange scaffolding on at an additional cost; and
 - (f) all materials removed from the Clients site/premises shall be deemed to be the property of the Contractor unless the Contractor is otherwise notified by the Client.

- 3.2 The Contractor will:
- commence the Installation on the date specified in the Quotation (unless amended in writing by the parties) (**Commencement Date**). The Contractor will use reasonable endeavours to complete the Works by the Completion Date but is not liable in any manner if the Works are not completed by the Completion Date. This includes weather delays, or any other facts beyond the control of the Contractor. The Client hereby releases the Contractor from any claim, liability or damages that may arise if the works are not completed by the Completion Date;
 - when the Installation has been completed, give notice to the Client (.. Any call out after Handover will be subject to a further fee;
 - perform all work in respect of the Installation in a professional manner as required in Australian Standards and the MPMSAA Code of Ethics; and
 - handle any fixtures, fittings, materials and/or equipment provided by the Client with reasonable care.
- 3.3 Client is deemed to have accepted the Installation (including any claimed short delivery, damage or defect) (**Handover**) unless within 10 Business Days (time being of the essence) of delivery, Client provides to Contractor notice of the deficiency, damage or defect, accompanied by relevant high resolution photographs (if relevant).
- 3.4 Contractor reserves the right, and Client will procure access to the Contractor to inspect the Installation and makes its own assessment of any notice under clause 3.3. Notwithstanding clause 3.3, if Client does not procure access to Contractor when reasonably required, Client will be deemed to have accepted the Installation.

4 RISK AND TITLE

- 4.1 All risk in any Installation supplied to Client will, unless otherwise expressly agreed in writing or by law, pass to Client upon payment in full or all amounts owing.
- 4.2 Property and ownership, both legal and equitable, in all Installation supplied by Contractor will not pass to Client and will remain with Contractor until Client has paid for the Installation in full and paid all and any other amounts owing by Client to Contractor, notwithstanding delivery of the Installation to Client.
- 4.3 Client acknowledges and agrees that until all amounts owing by Client to Contractor have been paid in full:
- Client charges all its present and future property with the repayment of all monies that may be owing by Client to Contractor under this Contract or otherwise and:
 - consents to the Contractor registering a caveat over any real property owned by Client at any time;
 - grants Contractor a security interest in the Installation (or any goods delivered to Client by Contractor to be incorporated in the Installation) supplied to Client, as security for all monies payable and obligations to be performed by Client to Contractor;
 - any security interest granted to the Contractor extends to all proceeds of and any accession to the Installation;
 - Client will hold any proceeds of sale of the Installation on trust for the benefit of Contractor absolutely to the exclusion of all others and in a bank account separate from all other funds of Client;
 - until all goods to be incorporated in the Installation are so incorporated or Client otherwise relinquishes control of them, Client agrees to keep those goods separately stored and readily identifiable; and
 - Client will not grant or seek to grant any charge, security interest or other analogous right in the Installation (or any part of it whether incorporate or not) adverse to any interest of Contractor.

5 PAYMENT/MONTHLY TRADING

- 5.1 Contractor will render invoices to Client for the Contract Price and Client must pay Contractor by paying the deposit and any progress payments as agreed in writing by the parties.
- 5.2 The Contract Price is fully payable on or before Handover, with no allowance for retention.
- 5.3 If Client fails to pay for any Installation, Contractor may refuse to supply further Installation until all outstanding payments are received in full by Contractor.

- 5.4 Contractor may at its sole discretion allocate and set a credit limit for Client and if Client exceeds that credit limit, Contractor may, at its sole discretion, require Client to reduce or satisfy in full the credit limit before Contractor supplies any further Installation to Client.
- 5.5 Contractor may revoke or vary a Client's credit limit at any time and without notice to Client. On Contractor revoking a credit limit, all amounts owing by Client to Contractor are immediately due and payable.
- 5.6 Client must pay Contractor's invoices in full without set-off, deduction or counterclaim and Client acknowledges that this clause may be produced in bar of any proceeding for set-off, deduction or counterclaim.
- 5.7 If Client fails to pay the full amount owing on the relevant due date, interest on the outstanding amount may be charged and compounded monthly at 4% above the penalty interest rate prescribed in the *Penalty Interest Rates Act 1983* (Vic).
- 5.8 Client must pay any costs incurred (including commissions and legal costs on an indemnity basis) by Contractor in respect of obtaining payment of amounts owing by Client.

6 WARRANTY AND INDEMNITY

- 6.1 These terms and conditions do not exclude or limit the application of any laws, (including the *Competition and Consumer Act 2010* (Cth) (**ACL**)) where to do so would contravene those laws or cause any part of the Contract to be void. To the maximum extent permitted by law, the Contract excludes all implied conditions and warranties except any implied condition or warranty, the exclusion of which would contravene any laws or cause this condition to be void (**non-excludable condition**).
- 6.2 The Contractor's liability for a breach of a non-excludable condition is limited at Contractor's option to the re-supply of replacement or equivalent Installation, payment of the costs of having the Installation replaced or repaired or the repair of the Installation.
- 6.3 To the maximum extent permitted by law, the Contractor excludes any liability to the Client or any other person for any Loss or damage, loss of profits, consequential or otherwise arising directly or indirectly and not limited to any loss of profits arising out of or in connection with the provision and use of the Installation.
- 6.4 The parties agree that Contractor:
- will not be liable for:
 - any special, incidental, indirect, punitive or consequential damages (including, lost profits, injury to goodwill, and damages for injuries to persons or to property);
 - damage to persons or property resulting from the use of the Installation, including in any manufacturing processes, or in combination with other substances, or otherwise;
 - poor workmanship or failure to supply the Installation conforming to the Client's order unless the claim is made in writing to Contractor within 10 Business Days of Handover;
 - any Loss of any kind whatsoever arising directly or indirectly from the Client's failure to obtain independent professional and/or tradesman's advice in relation to the suitability of the Installation for any specific purpose;
 - will be released from all warranties in respect of the Installation to the extent of any damage arising from repair, overhaul or modification of the Installation, other than by Contractor; and
 - any technical or safety advice it provides or procures concerning the Installation and that all such advice is given without charge or warranty and accepted at Client's risk; and
 - limits its liability to Client, including Loss arising from Contractor's negligence or breach of contract or warranty, to the lesser of the relevant Purchase Price that has been paid to the Contractor is based and \$5,000 (other than expressly excluded in this clause), and Client forever discharges Contractor from any other Loss, claim, demand or cause of action.
- 6.5 Neither party will be liable to the extent that the other one of them or its agents, employees or subcontractors have caused or contributed to any Loss.
- 6.6 Subject to the following, the warranties on Prime Cost Items are limited to the warranties provided by the relevant manufacturer. Contractor:
- will take all reasonable care to ensure that Prime Cost Items are fit for the purpose; and
 - has no liability in respect of the costs associated with the

removal or installation of Prime Cost Items that must be replaced under manufacturer's warranty.

- (c) not be liable for any damage caused by defects in, or the unsuitability of Prime Cost Items or other Client sourced, materials, and/or equipment for the purposes for which they were intended by the Client.

- 6.7 To the maximum extent permitted by law, the Client indemnifies the Company, its affiliates, and their employees, agents, contractors and keep them indemnified and held harmless from and against any liability, cost, claim, expense (including attorney's fees and expenses) or any loss or damage of any kind whatsoever including, without limitation, any material or immaterial damage in the form of personal injury, illness or death to any person or damage to any property arising directly from or in connection with any breach of failure to perform obligations under these Terms by the Client.

7 INSURANCE

- 7.1 From Acceptance, the Contractor will procure any insurances that they are required by any legislation (**statutory insurance**) to obtain.
- 7.2 From Acceptance, the Client will:
- effect all insurance (other than statutory insurance) customarily required for risks associated with the Installation; and
 - indemnify the Contractor for any liability that arises on respect of those risks, unless the parties agree that certain insurance (as specified in writing) will be the responsibility of the Contractor, in which case they will be listed as variations with the Client being responsible for the applicable premiums and any excesses.

8 SECURITY

- 8.1 Client acknowledges and agrees that Contractor may register its security interest at any time and it will:
- provide all information and execute all documents necessary to enable Contractor to register and perfect its security interests; and
 - promptly inform Contractor in writing of any change of name of Client or of any other change relevant to any registration of Contractor's security interest.
- 8.2 Contractor may apply any money received from Client first to satisfy any portion of the debt due to Contractor that arises in respect of Installation no longer held by Client, second to satisfy any portion of debt that is unsecured, third to satisfy any portion of debt that is secured but not by a PMSI and then to all other debts due and payable to Contractor in the order that Contractor determines.
- 8.3 If any Installation is damaged or destroyed following delivery, but prior to ownership passing to Client, Contractor is entitled to recover all insurance proceeds payable for the Installation. Client authorises its insurance company to accept this document as sufficient evidence of Contractor's rights to receive the insurance proceeds.
- 8.4 Client will provide Contractor with whatever information and support it requires to obtain and retain that priority and Client waives its right to receive any notice under the PPSA (including notice of a verification statement after registration or variation of a registration) or restriction on enforcement of any security unless a requirement for notice cannot be excluded under the PPSA.
- 8.5 If Client is a company, it will procure that each of its directors provides an unlimited, irrevocable guarantee in favour of Contractor and guarantees to Contractor the performance by Client of all of its obligations under this Contract and indemnify and hold Contractor harmless from and against all and any Loss arising out of the breach or non-performance by Client of this Contract.
- 8.6 The guarantee and indemnity referred to in clause 8.5 continues during the currency of this Contract and until all obligations under this Contract have been satisfied to the discretion of Contractor. The Guarantor's liability will not be affected by Contractor giving time or any other concession indulgence or compromise to the Client for the performance of its obligations.
- 8.7 This guarantee and indemnity may be enforced against the Guarantor without Contractor first taking action against the Client or pursuing any other available recourse and may be enforced despite any neglect or omission to enforce any rights against the Client or if any agreement between Contractor and Client are wholly or partially unenforceable or if the Client goes into liquidation.

- 8.8 Each Client and Guarantor owner of real property mortgages all of their interest in that property in favour of Contractor to secure all amounts arising and performance of all obligations to Contractor under this Contract.

- 8.9 Each Client and Guarantor acknowledges and agrees that Contractor may lodge a caveat over any of its real property, which will be withdrawn once all payments and obligations payable to Contractor have been met.

9 SUSPENSION/TERMINATION OF CONTRACT

- 9.1 Where the Client fails to comply with any of provision of this Contract and does not rectify that failure within a period of notice from Contractor (the period of notice for a failure to pay will be 5 Business Days and for any other failure will be 10 Business Days), they may by notice suspend the Installation until the Client remedies the default (to the satisfaction of Contractor (acting reasonably)).
- 9.2 If the Client does not remedy a default within 5 Business Days of the date of suspension specified in the relevant notice, the Contractor may terminate the Contract by notice to the Client.
- 9.3 The Contractor's right to suspend or terminate this Contract exists in addition to their other rights to seek compensation for the Installation to the date of suspension/termination.

10 ENFORCEMENT

- 10.1 Client grants Contractor an irrevocable and exclusive licence to enter the Premises or any location where the Installation (or any constituent part of it) is located. Upon the occurrence of a Default Event, Contractor may (without prejudice to any other rights and remedies) recover, detach, remove and/or sell the Installation. Contractor has no obligation to make good any damage caused by that action.
- 10.2 The parties agree that clauses 4 to 9 apply notwithstanding any agreement between the parties unless expressly stated.

11 INTELLECTUAL PROPERTY

- 11.1 Client warrants that it must not, in any way, infringe or allow any other party to infringe on Contractor's intellectual property rights, including any patent, copyright, registered design or trademark (**IPR**).
- 11.2 Client warrants that all designs or instructions provided to Contractor by Client will not cause Contractor to infringe any IPR in the execution of the order and Client indemnifies and holds Contractor harmless against any and all Loss incurred as a result of such infringement.

12 NOTICES

12.1 Method of giving

- (a) A notice, consent, approval or other communication under this Contract must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
- delivered to that person's address;
 - sent by registered pre-paid mail to that person's address; or
 - sent by email to that person's email address.
- (b) Communications sent by email are deemed to be signed by the named sender.

12.2 Time of receipt

- (a) Unless a later time is specified in a notice, the notice takes effect from the time it is received.
- (b) A notice is deemed to be received if:
- delivered by hand, when so delivered;
 - sent by pre-paid post, on the fifth clear Business Day after the date of posting; and
 - sent by email at the time on the day that it is sent unless the sender receives within 12 hours of that time an automated message that the email has not been delivered.

12.3 Address for notices

For the purpose of this clause, the address or email address of a person is the address or email address set out in this Contract or as notified by a party in writing.

13 GENERAL

13.1 Interpretation

- (a) In this Application, reference to:
- the singular includes the plural, reference to the masculine includes the feminine and neuter, and words importing persons will apply to corporations;

- (ii) a party includes its personal representatives, successors, permitted assigns, executors, trustees and where applicable liquidators, receivers or administrators;
 - (iii) a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation;
 - (iv) words defined in PPSA have the same meaning in this agreement;
 - (v) "include" and similar language will not be construed as a word of limitation; and
 - (vi) writing or written includes faxes and emails.
- (b) Any instructions to proceed with the Installation provided by Client to Contractor after receiving the Quotation will constitute acceptance of this Contract.

13.2 Jurisdiction

Contractor and Client acknowledge and agree that this Contract will be governed by and construed in accordance with the laws of the State in which the Installation is supplied and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.

13.3 Credit Reports, notice and consent

The Client and each Guarantor acknowledges and agrees that Contractor and any related bodies corporate may:

- (a) give certain information about them to related bodies corporate of the supplier, a credit reporting agency, other credit providers, collecting agencies or legal firms (some being located in foreign countries) in order to obtain a credit report about them or to recover money which is due and payable from them. The information which may be given is covered by s18E(1) of the *Privacy Act 1988* (Cth) (**Act**) and may include, as relevant, identity particulars and the fact that the Client has applied for credit or the Guarantor has offered to act as guarantor;
- (b) give a consumer credit report to collect overdue payment on commercial credit; and
- (c) in assessing whether to grant the Client's credit application or whether to accept the Guarantor as a guarantor, seek and obtain information about them from a credit reporting agency or another credit provider and may give information about them to another credit provider. The information may include anything about credit worthiness, history, standing or capacity (including information about commercial credit) which credit providers are permitted by the Act to obtain or receive.

13.4 Variation

The Contract may only be amended or supplemented in writing, signed by the parties.

13.5 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction will be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. The severance of that term or part of it will not invalidate the remaining provisions or affect the validity or enforceability of the severed term or part term in any other jurisdiction.

13.6 Assignment

No party may transfer any right (including all rights) in respect of this agreement without first obtaining the written consent of Contractor.

13.7 Sub-Contracting

Contractor reserves the rights to sub-contract the installation and/or supply of any part of the Installation.

13.8 Other documentation

The Client expressly agrees and acknowledges that it is a condition of the Contractor approving the Client's application for credit that any supply of Installation by the Contractor is subject only to these terms and conditions.

13.9 Costs

Client will be liable for all costs of whatsoever nature associated with the exercise of Contractor's rights under this Contract, including costs/commission of a law firm and/or debt collection agency on an indemnity basis.

13.10 Goods and Services Tax (GST)

- (a) Unless the contrary intention appears, any published or advertised price and/or invoice is exclusive of GST.
- (b) For the purposes of this clause, the terms words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth), have the same meaning in this Application.
- (c) If GST has any application to any supply made under or in connection with this Contract, the party making the supply (for the purposes of this clause only, **Supplier**) may in addition to any amount or consideration expressed as payable elsewhere in this Agreement, recover from the recipient of the supply (for the purposes of this clause only, **Recipient**) an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable by the Recipient for the relevant supply by the prevailing GST rate.
- (d) Any additional amount on account of GST recoverable from the Recipient under this clause shall be calculated without any deduction or set-off of any amount, and is payable by the Recipient at the same time and in the same manner as paying the amount or consideration for the relevant supply under this Contract.
- (e) The Supplier must issue to the Recipient a Tax Invoice, and must do anything else which may be reasonably required to enable or assist the Recipient to claim or verify any input tax credit, set off, rebate or refund in relation to any GST payable under this Contract or in respect of any supply under this Contract.
- (f) Where an adjustment event in relation to a supply under this Contract has occurred, the Supplier must issue an adjustment note to the Recipient no later than 5 Business Days after that adjustment event.

14 DEFINITIONS

In this Contract:

- (a) **Business Day** means a day that the banks are open for business in Melbourne that is not a week end or public holiday;
- (b) **Client** means any person, firm or corporation including successors, administrators and assignors who have requested the supply of Installation by Contractor;
- (c) **Default Event** means the occurrence of any one or more of the following events:
 - (i) default by a party in the due or punctual payment of any amount or observance or performance of any obligation in the Contract; or
 - (ii) Client disputes the terms of any title retention or payment protection provision applicable to any Installation, or refuses to return any property to Contractor upon demand;
- (d) **Installation** means any goods which Contractor has agreed to supply to Client;
- (e) **Guarantor** means the person described in Item 1 of the Schedule of the Guarantee and Indemnity attached to this Contract; and
- (f) **Loss** means any liability, however it arises (including as a result of negligence) and includes any loss, claim, damage, demand, injury or death, fine or penalty (imposed by a statutory or other authority), loss of profits, anticipated savings or consequential loss or cost (including legal costs on a full indemnity basis); and
- (g) **PPSA** means the *Personal Property Securities Act 2009* (Cth).

On behalf of Client:

(a) I declare that:

- (i) by signing this Application I am authorised to execute it on its behalf of Client;
- (ii) Client agrees to the Terms and conditions and that they will govern all its dealings with Contractor; and
- (iii) the information provided by Client in this Contract is true and correct to the best of my knowledge; and

(b) the Client authorise the use of its personal information as detailed in clause 13.3.

Name (please print): _____ **Position:** _____

Signature: _____ **Date:** _____

**This Contract is binding when signed by the Client and counter-signed by:
B Anderson Roofing Pty Ltd ACN 158 540 286 (Contractor):**

Name (please print): _____ **Position:** _____

Signature: _____ **Date:** _____

B ANDERSON ROOFING PTY LTD
ACN 158 540 286
PO Box 600 Essendon, Victoria 3040
Ph: 0418 394 875

DEED OF GUARANTEE AND INDEMNITY

DATED: day of

BETWEEN:

[xx] PTY. LTD. ABN **[xx]** of **[address]** (**Contractor**)

and

the parties described in Items 1 (Guarantor) and 2 (Client) of the Schedule

Capitalised words defined in the Contract attached to this deed have the same meaning in this deed and the interpretation clause in the Contract applies to this deed as if it were stated here in full.

BACKGROUND:

- A.** At the request of Client and Guarantor, Client has received or will receive Installation and services from Contractor in accordance with the Terms and conditions.
- B.** Guarantor guarantees and indemnities the obligations of Client to Contractor on the terms of this deed.

OPERATIVE PROVISIONS

1 GUARANTEE AND INDEMNITY

- 1.1 Guarantor irrevocably and unconditionally guarantees to Contractor on a continuing basis that Client will:
 - (a) pay to Contractor on time all money owing to Contractor pursuant to the Terms and conditions; and
 - (b) observe and perform its obligations under the Terms and conditions.
- 1.2 If for any reason Client does not pay any amount owing to Contractor, Guarantor will on demand from Contractor, immediately pay all monies owing by Client to Contractor.
- 1.3 Guarantor irrevocably and unconditionally indemnifies Contractor on a continuing basis against any Loss suffered by Contractor where:
 - (a) Client does not pay money owing to Contractor on time or observe or perform their obligations under the Terms and conditions on time or where Client otherwise breaches the Terms and conditions; or
 - (b) Client or Guarantor suffers an Insolvency Event; or
 - (c) money owing by Client to Contractor (or money which would be owing if it were not recoverable) is not recoverable; or
 - (d) a liability of Client to pay money owing to Contractor is not enforceable against Client or Guarantor (as a surety) for any reason, whether or not Contractor knew or ought to have known anything about it.
- 1.4 As security for all moneys owing from time to time by Client to Contractor, Guarantor as beneficial owner grants a continuing security interest to Contractor and charges in favour of Contractor all interests in land which it now has or acquires during the currency of this deed.
- 1.5 Guarantor indemnifies Contractor for all taxes (other than on the income of Contractor), costs and expenses, including legal costs and expenses on a full indemnity basis which Contractor pays or is liable to pay in connection with the Terms and conditions or this deed and Guarantor will pay to Contractor on demand the sums payable under this indemnity.
- 1.6 This guarantee, indemnity and charge is irrevocable and continuing and remains in force until the whole of monies owing to Contractor and all obligations have been fully paid, satisfied and performed.
- 1.7 The liability of Guarantor under this guarantee, indemnity and charge is not limited or affected, and the rights of Contractor against Client and Guarantor remain fully enforceable notwithstanding any of the following circumstances:
 - (a) the granting of any indulgence or concession at any time by Contractor to Client;
 - (b) any variation of the Terms and conditions, irrespective of Guarantor's knowledge;
 - (c) any compromise, release, discharge, waiver, or variation of any right by Contractor;
 - (d) the fact that monies payable by Client may not be recoverable or may cease to be recoverable in whole or in part;
 - (e) the existence now, or at any future time, of any legal disability in respect of Client or Guarantor;
 - (f) the death of the person named as a Guarantor (in which case his or her estate shall have continuing liability under this deed);
 - (g) the bankruptcy of the Guarantor or them entering into any deed of arrangement, or composition for the benefit of their creditors; or
 - (h) the fact that one or more of the persons named as Guarantor may not execute this deed, or incorrectly execute this deed, or that the execution becomes unenforceable.
- 1.8 This deed binds the personal representatives, assigns, transferees, or successors of Guarantor.
- 1.9 Guarantor acknowledges that before signing this deed it has been advised to obtain independent legal and financial advice to assist them to understand fully the nature and effect of this guarantee, indemnity and charge.
- 1.10 This guarantee, indemnity and charge continues to bind Guarantor notwithstanding any changes that may take place in the directors or shareholders of Client.
- 1.11 Guarantor acknowledges that multiple transactions over an unspecified period of time are contemplated under the Contract and that Guarantor's obligations under this deed apply to each of those transactions. Guarantor acknowledges that Contractor is not obliged to contact Guarantor each time it enters into a transaction with Client.

1.12 Contractor is not obliged to take any action or give notice to Client or make demand against Client before claiming against Guarantor.

2 POWER OF ATTORNEY

Each of Client and Guarantor:

- (a) appoints Contractor and its officers severally as their attorney to do anything which they must do under this deed or the Terms and conditions or under any security given in favour of Contractor on their behalf and in their name or otherwise;
- (b) declares the power of attorney conferred by this deed is irrevocable until such time as Contractor by notice in writing advises that all monies owing to Contractor by Client have been paid in full; and
- (c) indemnifies and holds harmless any attorney appointed under this clause from and against all Loss incurred in connection with anything done as attorney.

3 GRANT OF SECURITY

- 3.1 Guarantor acknowledge and agree that until all monies due by Client and Guarantor to Contractor on any account are paid to Contractor, Guarantor grants Contractor a security interest in all their present and after acquired property to secure all monies owing by Client and Guarantor to Contractor on any account.
- 3.2 Guarantor agrees to provide all information and execute all documents necessary to enable Contractor to register and perfect its security interests.
- 3.3 Client waives their rights to receive any notice under the PPSA (including notice of a verification statement after registration or variation of a registration) unless a requirement for notice cannot be excluded under the PPSA.

SCHEDULE

Executed as a deed

SIGNED SEALED AND DELIVERED by:

Item 1 Name: _____
Guarantor(s): [Print full name]

Name: _____
[Print full name]

Signature: _____

Signature: _____

Witness signature: _____
[Print full name]

Witness signature: _____
[Print full name]

Witness name: _____
[Print full name]

Witness name: _____
[Print full name]

Witness usual address: _____

Witness usual address: _____

Executed by:

Item 2 by _____
Company: Corporations Act 2001 (Cth)

LIMITED pursuant to the provision of section 127 of the

Signature of Director

Signature of *Director*/Secretary [**delete whichever does not apply*]

[Print full name block letters]

[Print full name block letters]

Executed by:

Contractor

[xx] Limited pursuant to the provision of section 127 of the *Corporations Act 2001* (Cth)

Signature of Director

Signature of *Director*/Secretary [**delete whichever does not apply*]

[Print full name]

[Print full name]