

TERMS AND CONDITIONS OF TRADE

Interpretation

1. In these Terms and Conditions:
 - (a) **ACL** means the Australian Consumer Law under the *Competition and Consumer Act 2010 (C'th)*.
 - (b) **Agreement** means an agreement entered into between The Pump House and the Customer (and, where relevant, each Guarantor) to which these Terms and Conditions apply. For the avoidance of doubt, each time The Pump House accepts an Order, a separate Agreement is formed incorporating the Order and these Terms and Conditions. Any other terms or conditions (e.g. appearing on the Customer's Orders, website or stationery) do not form part of an Agreement unless expressly agreed in writing to the contrary.
 - (c) **Application for Credit** means a form of application for Credit completed by the Customer;
 - (d) **Collateral, Financing Statement, Financing Change Statement, Security Agreement and Security Interest** have the same meanings as in the PPSA.
 - (e) **Construction Work** has the same meaning as in the *Building and Construction Industry Payments Act 2004 (Qld)*.
 - (f) **Credit** means the Customer's deferred debt to the Pump House for the purchase of Goods and Services in connection with a business carried on by the Customer.
 - (g) **Customer** means the purchaser of Goods and Services from The Pump House as specified in any invoice, Application for Credit, Order or other document, and if there is more than one purchaser, is a reference to each purchaser jointly and severally.
 - (h) **Delivery** means:
 - (i) in the case of Goods, delivery by The Pump House to the Customer at the location or place specified by the Customer in an Order; or
 - (ii) in the case of Services, the date of completion of those services; and includes such other place or date (as the case may be) as the parties may agree or as The Pump House may, without Obligation and at its sole discretion, consider reasonable in the circumstances.
 - (i) **Descriptive Matter** means and includes without limitation, Specifications, descriptions, pictures, drawings, diagrams, particulars of varieties/weights/dimensions or any other form of description or measurement submitted with or prior to any offer or invitation by The Pump House or contained in its website, catalogues, price lists or advertising matter.
 - (j) **Dispatched** means Goods have been removed from the premises of The Pump House for the purpose of Delivery to the Customer, or any third party, pursuant to an Order and **Dispatch** has a corresponding meaning.
 - (k) **Due Date** means, where The Pump House has agreed to provide Credit to the Customer, the date is at the end of the month following the month of the invoice issued by The Pump House's for the Goods and Services;
 - (l) **Goods** means all products sold or supplied (whether gratuitously or not) by The Pump House to the Customer as specified in the Quote or Order or as otherwise agreed between The Pump House and the Customer.
 - (m) **Grantor** refers to the Customer and has the same meaning as in the PPSA.
 - (n) **Guarantor** means the person or persons, if any, named in an Application for Credit who have agreed to guarantee the performance by the Customer of any of its Obligations to The Pump House.
 - (o) **GST** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999 (C'th)*.



- (p) **Intellectual Property** means any intellectual or industrial property, including (without limitation):
- (i) any patent, trademark or service mark, copyright, registered design, trade secret or confidential information; or
 - (ii) any licence or other Right to use or to grant the use of any of the above or to be the registered proprietor or user of any of them;
- (q) **Interest Rate** means the rate which is 3% per annum above the rate charged by The Pump House's bank from time to time on unsecured overdrafts of \$100,000 or more, conclusive evidence of which will be confirmation in writing by a manager of The Pump House's bank.
- (r) **Non-Excludable Condition** means any condition, warranty or guarantee provided or implied by any state, territory or commonwealth law, including but not limited to the statutory consumer guarantees described in the ACL, and the provisions of any state or territory legislation which cannot be lawfully excluded.
- (s) **Obligation** means any express or implied legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability.
- (t) **Order** means any purchase order or other request by the Customer for the supply of Goods and Services by The Pump House, whether that supply is to the Customer or to any third party and whether the request amounts to an offer or an invitation to treat from the Customer, or is constituted by the acceptance by the Customer of a Quote provided by The Pump House.
- (u) **PMSI** means a Purchase Money Security Interest within the meaning of section 14 of the PPSA.
- (v) **PPSA** means the *Personal Property Securities Act 2009 (C'th)*.
- (w) **PPSR** means the Personal Property Securities Register established pursuant to the PPSA.
- (x) **Price** means the price payable for Goods and Services as agreed between The Pump House and the Customer in accordance with clause 6 of these Terms and Conditions.
- (y) **Quote** means any quotation form or other document provided by The Pump House to the Customer detailing the Goods and Services to be provided.
- (z) **Rates** means the hourly rates set out in the Schedule of Hourly Rates for The Pump House which can be found on The Pump House's website, currently located at www.thepumphouse.com.au/hourlyrates or the hourly rates stated in the relevant Quote if they are different from those stated in the Schedule of Hourly Rates.
- (aa) **Right** includes any legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.
- (bb) **Services** means the services to be performed (whether gratuitously or not) by The Pump House as specified in the Quote or Order or as otherwise agreed between The Pump House and the Customer.
- (cc) **Specifications** means any written specification relating to Goods that details the quantities, processes and/or conditions required for the correct use of the Goods.
- (dd) **Terms and Conditions** means these Terms and Conditions and includes, where the context requires, any additional Terms and Conditions agreed to by The Pump House in writing from time to time.
- (ee) **The Pump House** means Gainfoot Pty Ltd ACN 010 665 424 as trustee for The Pump House Unit Trust, trading as *The Pump House*.
- (ff) where the context requires, a reference to "Goods and Services" will mean and include a reference to "Goods" or "Services" or "Goods and/or Services".
- (gg) singular includes plural and vice versa and any gender includes every gender.

- (hh) a reference to a person includes corporations, trusts, associations, partnerships, a government authority and other legal entities, and where necessary, include successor bodies.
- (ii) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes.
- (jj) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of these Terms and Conditions.
- (kk) a reference to a party includes that party’s executors, administrators, substitutes, successors and permitted assigns.
- (ll) nothing in these Terms and Conditions may be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, Right or remedy implied by law (including the ACL and the PPSA) and which by law cannot be excluded, restricted or modified.

Terms of Sale

- 2. Goods and Services sold or supplied by The Pump House are sold or supplied strictly on these Terms and Conditions, which can only be waived or varied in writing by The Pump House. Unless an Order expressly provides otherwise, these Terms and Conditions will prevail over all conditions expressed or implied in any Order placed by the Customer (or in any standard terms and conditions of the Customer) to the extent of any inconsistency.
- 3. The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms and Conditions if the Customer places an Order for or accepts Delivery of Goods and Services.
- 4. Goods and Services to be sold or supplied by The Pump House to the Customer are as described on the Order accepted by The Pump House and the description of Goods and Services on the Order as accepted (modified only as may be agreed in writing) will prevail over all other descriptions including any prior enquiry by the Customer.
- 5. The Pump House reserves the right to update from time to time the Terms and Conditions which will apply to an Agreement. If The Pump House makes a change to these Terms and Conditions, that change will take effect from the date on which The Pump House provides reasonable notification to the Customer of such change. The Customer confirms that notification on The Pump House’s website of the updated Terms and Conditions or reference to the updated Terms and Conditions in any material provided to the Customer will be reasonable steps taken by The Pump House to inform the Customer. The Customer will be taken to have acknowledged and accepted such change if the Customer makes a subsequent request for The Pump House to provide Goods and Services to the Customer. The Pump House declares and the Customer acknowledges that the most up-to-date version of the Terms and Conditions which form part of the Agreement can be found on The Pump House’s website, currently located at www.thepumphouse.com.au/termsoftrade.

Price and Payment

- 6. At The Pump House’s sole discretion the Price shall be:
 - (a) as indicated on any invoice provided by The Pump House to the Customer; or
 - (b) The Pump House’s quoted prices (subject to clause 7) which will be valid for the period stated in the Quote or otherwise for a period of fourteen (14) days, unless earlier withdrawn. The Pump House reserves the Right to refuse any Order based on any Quote within 14 days after the date of receipt of the Order.
- 7. The Pump House reserves the Right to change the Price if a variation to The Pump House’s Quote is requested or if there is a change in the scope, timing or order of the Goods and Services. The Pump House will be entitled to payment of an additional amount which is reasonable in the circumstances. In particular, but without limitation, if Goods are returned as defective but are not in fact defective after testing, then The Pump House is entitled to



- charge the Customer for all relevant additional freight and handling costs and for the costs of The Pump House's labour in investigating the alleged defects in the Goods. Any additional Goods and Services required by the Customer will be charged to the Customer on the basis of a further Quote from The Pump House. Any additional Services required by the Customer may be charged to the Customer calculated on the basis of the Rates.
8. At The Pump House's sole discretion, a non-refundable deposit may be required prior to acceptance of an Order.
 9. Time for payment for Goods and Services will be of the essence and unless otherwise agreed by The Pump House in response to any Application for Credit, the Price must be paid by the Customer on or before Delivery of the Goods and Services or by such other date determined by The Pump House in its sole discretion. If The Pump House has agreed to provide Credit, then payment must be made by cleared funds on the Due Date or otherwise in accordance within the terms specified on the Application for Credit.
 10. Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (plus the maximum credit card bank fee, merchant fee and administration surcharge permitted by law), or by any other method as agreed in writing between the Customer and The Pump House.
 11. The Pump House may charge interest at the Interest Rate on all moneys due and owing by the Customer to The Pump House from time to time for the period from the due date for payment of such moneys until the date upon which payment is ultimately received by The Pump House.
 12. Should The Pump House become a creditor of the Customer, the Customer authorises The Pump House to collect, retain, use, record, and disclose credit information about the Customer for the purpose of assessing and reporting matters related to the Customer's credit-worthiness.
 13. If the Customer breaches the payments terms, The Pump House may, as its discretion, terminate the Agreement and report the breach to any credit provider or credit reference organisation. The Customer understands that this may affect its credit rating.
 14. Unless otherwise stated the Price as charged includes GST. The Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
 15. The cost of any permits, licence fees and/or toll charges incurred by The Pump House, and any special packing and packing materials used in relation to Goods and Services, will be charged to the Customer despite that such cost may have been omitted from any Quote.

Descriptive Matter, etc

16. The descriptions, illustrations and performances contained in any Descriptive Matter do not form part of the Agreement for sale or supply of Goods and Services or of the description applied to any Goods and Services. The Customer acknowledges that it has not relied upon any descriptions, illustrations and performances contained in any Descriptive Matter as an inducement into entering into any Agreement or other contract for sale or supply with The Pump House. The Customer must determine whether the Goods and Services requested by the Customer and supplied by The Pump House are adequate for the purpose intended by the Customer. The Pump House is not capable of determining all of the Customer's objectives in relation to the Goods and Services and relies on the Customer as to whether the Goods and Services are adequate to achieve the Customer's purpose and objectives.

Performance

17. Any performance standards, figures or representations as to quality given by The Pump House are estimates only. The Pump House is under no liability for damages for failure of any Goods and Services to attain such quality standards, figures or quality unless

specifically warranted in writing. Any such warranties are subject to recognised tolerances applicable to such standards, figures or quality.

Delivery

18. The Pump House will not be liable for any loss, damage or delay occasioned to the Customer, its customers or any other person, arising from:
 - (a) late Delivery or non-Delivery, or late utilisation of any Goods and Services; or
 - (b) any actions or Obligations conducted or incurred by the Customer in reliance on any expected Delivery date.
19. The Customer is responsible for making arrangements to receive Goods and Services Delivered in accordance with any Order failing which The Pump House may, without Obligation, Deliver in any other manner it considers reasonable in the circumstances.
20. If the Customer fails to accept Delivery of Goods and Services, the Customer will be liable for loss of or damage to the Goods and Services and for any costs or damages incurred by The Pump House on account of such failure to accept Delivery.
21. The Customer waives any claim for shortage of any Goods Delivered if a claim in respect of short Delivery has not been lodged with The Pump House within 48 hours from the date and time of Delivery.
22. Should the Customer fail to provide sufficient instructions to enable Delivery of Goods to the Customer, The Pump House may, without Obligation, arrange for suitable storage and insurance until such Goods are Dispatched. Charges for storage, insurance, transport and other incidental costs may be charged by The Pump House to the Customer.
23. Delivery of Goods and Services to a third party nominated by the Customer is deemed to be Delivery to the Customer.
24. The Pump House may deliver Goods and Services in separate instalments. Each separate instalment may be invoiced and paid in accordance with these Terms and Conditions.

Risk

25. The risk in, and all attached liability for damage to, Goods passes to the Customer at the point of Dispatch of the Goods even if The Pump House Delivers Goods itself or The Pump House's premises are the intended Delivery location. The Customer must make its own arrangements for insurance of the Goods on or before Dispatch.
26. If any Goods are damaged or destroyed following Dispatch but prior to ownership passing to the Customer, The Pump House is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms and Conditions by The Pump House will be sufficient evidence of The Pump House's Right to receive the insurance proceeds without the need for any person dealing with The Pump House to make further enquiries.

Loss or damage in transit

27. The Pump House is not responsible to the Customer or any person claiming through the Customer for any loss or damage to Goods in transit caused by any event of any kind by any person (whether or not The Pump House is legally responsible for the person who caused or contributed to that loss or damage).
28. The Pump House will endeavour to provide the Customer with such assistance as may be necessary to press claims on carriers as long as the Customer:
 - (a) has notified The Pump House and the carriers in writing immediately after loss or damage is discovered on receipt of Goods; and
 - (b) lodges a claim for compensation upon the carrier within three (3) days of the date of receipt of Goods.

Defects, Warranties and Returns

29. The Customer must inspect Goods and Services on Delivery and must immediately upon Delivery notify The Pump House in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description, Order or quote or other grounds for rejection of the Goods and Services. Upon such notification the Customer must:
- specify all grounds relied upon by it in its rejection of the Goods and Services;
 - provide good quality evidence of the grounds for its rejection of the Goods and Services; and
 - allow The Pump House the opportunity to inspect the Goods and Services.
30. Under applicable State, Territory and Commonwealth law (including, without limitation, the ACL), certain Non-Excludable Conditions may be implied into these Terms and Conditions. Nothing in these Terms and Conditions purports to modify or exclude the Non-Excludable Conditions.
31. Except as expressly set out in these Terms and Conditions or in respect of the Non-Excluded Conditions, The Pump House makes no warranties or other representations under these Terms and Conditions or the Agreement generally including, without limitation, as to the quality, merchantability or suitability of any Goods and Services. The Pump House's liability in respect of any such warranties is limited to the fullest extent permitted by law.
32. If the Customer is a consumer within the meaning of the ACL, The Pump House's liability in relation to Goods and Services which are not used for personal, domestic or household purposes is limited to:
- either replacing or repairing Goods or reimbursing the Customer for the repair or replacement of the Goods (at the election of The Pump House)
 - either re-supplying Services or reimbursing the Customer for paying someone else to supply the Services (at the election of The Pump House);
- or is otherwise limited to the extent permitted by section 64A of Schedule 2 or to similar remedies under any applicable state or territory fair trading legislation.
33. If the Customer is not a consumer within the meaning of the ACL, The Pump House's liability for any defect or damage in any Goods and Services is:
- limited to the value of any express warranty provided to the Customer by The Pump House, at The Pump House's sole discretion;
 - limited to the extent of the benefit of any warranty to which The Pump House is entitled; or
 - otherwise negated absolutely.
34. Subject to these Terms and Conditions, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 29;
 - The Pump House has agreed that the Goods and Services are defective;
 - the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were Delivered as is possible.
35. Despite clauses 29 to 34 but subject to the ACL, The Pump House will not be liable for any defect or damage which may be caused or partly caused by or may arise as a result of:
- the Customer failing to properly maintain or store any Goods;
 - the Customer using Goods for any purpose other than that for which they were obviously suited;
 - the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a prudent operator or user;
 - any failure by the Customer to follow any instructions or guidelines provided by The Pump House; or
 - fair wear and tear, any accident, or act of God.
36. In the case of second hand Goods, unless the Customer is a consumer under the ACL the Customer acknowledges that:

- (a) it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults;
 - (b) to the extent permitted by law no warranty is given by The Pump House as to the quality or suitability of the Goods for any purpose and any implied warranty, statutory or otherwise, is expressly excluded;
 - (c) The Pump House has agreed to provide the Customer with the second hand Goods, and has calculated the Price of the second hand Goods, in reliance on this clause 36.
37. The Pump House may in its absolute discretion accept non-defective Goods for return in which case The Pump House may require the Customer to pay handling fees not exceeding twenty-five percent (25%) of the invoiced value of the returned Goods, plus any freight costs.
38. Despite anything contained in these Terms and Conditions, if The Pump House is required by a law to accept a return then The Pump House will only accept a return on, and to the extent only, of the conditions imposed by that law.
Except as provided in these Terms and Conditions and to the maximum extent permitted by law, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of Goods and Services for any purpose or as to design, application of Goods and Services, materials or workmanship or otherwise are expressly excluded.
39. The Pump House is not liable for any loss or damage, loss of income, loss of profits, loss of markets, loss of reputation, loss of buyers, loss of use, loss of opportunity, loss of business, loss of reputation or goodwill, loss of value or use of intellectual property or other proprietary Rights even if The Pump House had knowledge that such loss or damage might arise or for any other indirect, incidental, special or consequential loss or damage howsoever arising out of the manufacture, sale or supply of the Goods and Services or out of the Customer's relationship with The Pump House connected to the Agreement including, without limitation, The Pump House's breach of contract, negligence, wilful act or omission or other default including to the extent that such conduct or default is outside the "four corners" of the Agreement, or deviates from it or defeats its main object.

Rights in relation to Goods

40. While Goods remain the property of The Pump House (or of any other supplier on behalf of whom The Pump House is selling the Goods):
- (a) the Customer has no Right or claim to any interest in Goods to secure any liquidated or unliquidated debt or Obligation The Pump House owes to the Customer;
 - (b) the Customer cannot claim any charge or lien over any Goods;
 - (c) the Customer will not create any absolute or defeasible interest in Goods in relation to any third party except as may be authorised by The Pump House.
41. Where the Customer is in actual or constructive possession of Goods:
- (a) the Customer will not deliver the Goods nor any document of title to the Goods to any person except as directed by The Pump House; and
 - (b) it is in possession of the Goods as a bailee of those Goods and owes The Pump House the duties and liabilities of a bailee.
42. The Pump House and the Customer agree that:
- (a) the property in Goods does not pass to the Customer until The Pump House has been paid in full for Goods under all individual agreements for the sale or supply of Goods between The Pump House and the Customer;
 - (b) the Customer is a bailee of Goods until such time as property in the Goods passes to the Customer and that this bailment continues in relation to all Goods until the price of those Goods has been paid in full;
 - (c) pending payment in full for any Goods, the Customer:

- (i) must not supply any Goods to any person outside its ordinary or usual course of business;
 - (ii) must not allow any person to have or acquire any Security Interest in any Goods.
43. Despite clause 43(c), if the Customer supplies any Goods to any person before all moneys payable by the Customer have been paid to The Pump House, the Customer agrees that:
- (a) it holds the proceeds of re-supply of those Goods on trust for and as agent for The Pump House immediately when they are receivable or are received;
 - (b) it must either pay the amount of the proceeds of re-supply to The Pump House immediately when they are received or pay those proceeds into an account with a bank, financial institution or deposit-taking institution as trustee for The Pump House;
 - (c) if the Customer fails to pay for any Goods and Services within the period of Credit (if any) extended by The Pump House to the Customer, The Pump House may at any time and with reasonable force enter any site owned, possessed, occupied or controlled by the Customer and recover possession of the Goods and the Customer agrees that The Pump House has an irrevocable licence to do so.
44. The Pump House may recover possession of any Goods in transit whether or not Delivery has occurred.
45. The Pump House may commence proceedings to recover the Price of Goods sold notwithstanding that property in those Goods has not passed to the Customer.

PPSA

46. The Customer acknowledges and agrees that:
- (a) unless the Customer provides express prior notification to The Pump House to the contrary, all Goods supplied by The Pump House to the Customer are acquired in the course or furtherance of an enterprise by the Customer, and are commercial property as defined in s.10 of the PPSA.
 - (b) each Agreement with The Pump House constitutes a Security Agreement in writing and a PMSI for the purposes of the PPSA which will subsist in all Goods that have been supplied, and that will be supplied, by The Pump House to the Customer until those Goods have been paid for in full.
47. The Customer undertakes to:
- (c) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which The Pump House may reasonably require to:
 - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement or document referred to in clause 48(a)(i) or 48(a)(ii);
 - (d) indemnify, and upon demand reimburse, The Pump House for all expenses incurred in registering a Financing Statement or Financing Change Statement on the PPSR or releasing any Goods charged thereby;
 - (e) not register a Financing Change Statement in respect of a Security Interest without the prior written consent of The Pump House;
 - (f) not grant a Security Interest nor register, nor permit to be registered, a Financing Statement or a Financing Change Statement in relation to any Goods in favour of a third party without the prior written consent of The Pump House;
 - (g) immediately advise The Pump House of any material change in its business practices of on-supply of Goods which would result in a change in the nature of proceeds derived from such supply.

48. The Pump House and the Customer agree that sections 96 and 125 of the PPSA do not apply to the Security Agreement created by an Agreement.
49. The Customer waives its Rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
50. The Customer waives its Rights as a Grantor and/or a debtor under sections 142 and 143 of the PPSA.
51. Unless otherwise agreed in writing by The Pump House, the Customer waives its Right to receive a verification statement or other notice in accordance with section 157 of the PPSA.
52. The Customer must unconditionally ratify any actions taken by The Pump House under clauses 48 to 52.
53. The Customer acknowledges and agrees that if:
 - (a) title to Collateral has not passed to the Customer; and
 - (b) where The Pump House has seized such Collateral as contemplated by Division 2 of Part 4.3 of the PPSA (or has seized such Collateral in another manner);
 then:
 - (c) to the extent permissible under the PPSA, nothing in s.125 or in s.134(1) or in other sections of the PPSA is to be taken to prevent The Pump House from retaining such Collateral, without any obligation to take any further step in relation to disposal of the Collateral or any obligation to give notice to the Customer in connection with such Collateral. It is intended that if this clause is deemed to be unenforceable or illegal, then it be severed from these Terms and Conditions without affecting the validity of other provisions of these Terms and Conditions.
54. Subject to any express and permitted provisions to the contrary, nothing in these Terms and Conditions is intended to have the effect of contracting out of any other provisions of the PPSA.

Security and Charge

55. In consideration of The Pump House agreeing to supply the Goods and Services, the Customer charges (and grants a Security Interest over) all of its Rights, title and interest (whether joint or several) in any land, realty or other assets owned by the Customer either now or in the future and capable of being charged, to secure the performance by the Customer of its Obligations under an Agreement (including, without limitation, the payment of all moneys owed by the Customer to The Pump House from time to time).
56. The Customer indemnifies The Pump House from and against all The Pump House's costs and disbursements, including legal costs on a full indemnity basis, incurred in exercising The Pump House's Rights under clause 56.
57. The Customer irrevocably appoints The Pump House and each director of The Pump House as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of clause 56 including, without limitation, signing any document on the Customer's behalf.

Cancellation

58. The Pump House may cancel an Agreement or any Delivery of Goods and Services at any time before the Goods and Services are Delivered by giving written notice to the Customer. On giving such notice The Pump House will repay to the Customer any money paid by the Customer for Goods and Services not yet Delivered. The Pump House will not be liable for any loss or damage whatsoever arising from such cancellation.
59. Cancellation of Orders for Goods and Services made or provided to the Customer's Specifications will not be accepted once production of those Goods and Services has commenced.

- 60. Cancellation of Orders by the Customer will not be accepted once Dispatch has commenced.
- 61. In the event that the Customer cancels Delivery of any Goods and Services the Customer will be liable for any and all loss or damage incurred (whether direct or indirect) by The Pump House as a direct result of the cancellation (including, without limitation, any loss of profits).

Guarantee

- 62. In consideration of The Pump House, at the request of the Customer and of the Guarantor, entering into an Agreement the Guarantor unconditionally (and jointly and severally where there is more than one Guarantor):
 - (a) guarantees the Customer's Obligations to The Pump House pursuant to the Agreement; and
 - (b) indemnifies The Pump House against any loss, damage or liability The Pump House incurs arising from or connected with the Customer's Obligations to The Pump House pursuant to the Agreement.
- 63. Each of the Guarantor's Obligations arising from this guarantee and the Agreement:
 - (a) is a principal Obligation and will not be treated as ancillary or collateral to any other Right or Obligation however created or arising;
 - (b) may be enforced against the Guarantor without The Pump House first being required to exhaust any remedy it may have against the Customer or to enforce any security it may hold with respect to the Customer's Obligations;
 - (c) is a continuing guarantee and indemnity for the whole of the Customer's Obligations and is irrevocable and remains in full force and effect until discharged; and
 - (d) will not be considered as wholly or partially discharged by the performance at any time of any of the Customer's Obligations or by any settlement of account or by any other matter or thing whatsoever and will apply to the present and future scope of the Customer's Obligations.
- 64. The liability of the Guarantor is absolute and will not be affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Guarantor from the Guarantor's Obligations in whole or in part including:
 - (a) the grant to the Customer or any other person of any time, waiver or other indulgence or concession, or the discharge or release of any other security held by The Pump House in respect of the Customer's Obligations;
 - (b) any transaction or arrangement that may take place between The Pump House and the Customer, the Guarantor or any other person;
 - (c) the insolvency of the Customer;
 - (d) The Pump House exercising or refraining from exercising any other security or any of the Rights, powers or remedies conferred on it by law or by the Agreement or any other agreement with any person, or taking or failing to take any other security;
 - (e) the variation (including a variation which increases the Customer's Obligations), extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part of the Agreement, or any security now or in the future held by The Pump House from the Customer, the Guarantor or any other person;
 - (f) the Customer's Obligations or any part of them being or becoming wholly or partially illegal, void, voidable, or unenforceable;
 - (g) the failure by The Pump House to give notice to the Guarantor of any default by the Customer under the Agreement;
 - (h) any legal limitation, disability, incapacity or other circumstances related to the Customer;

- (i) the failure of any Guarantor to execute the Agreement containing this guarantee, or the granting of this guarantee by any Guarantor being or becoming void or voidable; or
 - (j) the expiry or termination of this Agreement.
65. This Guarantee extends to cover any Agreement between The Pump House and the Customer as amended, varied or replaced, either with or without the consent of the Guarantor.
66. If the Customer becomes insolvent, the Guarantor authorises The Pump House to prove for all moneys which the Customer or any other person will have paid under the Agreement and to retain and to carry into a suspense account and to appropriate at the discretion of The Pump House any dividends received in the insolvency of the Customer and all other moneys received in respect of the Customer's Obligations until The Pump House has been paid in full in respect of the Customer's Obligations.

Confidentiality and Intellectual Property

67. The Customer must keep strictly confidential all financial, technological, strategic and other business information of The Pump House which has been divulged to or become known by the Customer in the course of its dealings with The Pump House and which is not generally known outside The Pump House's and the Customer's respective organisations. The Customer must only use such confidential information for the purpose for which it was disclosed, and only disclose the confidential information to those in its organisation who need to know in connection with the purpose for which it was disclosed. No disclosure may be made to anyone else without the written consent of The Pump House (with the exception of disclosure required by law, in which case prior notice of the disclosure must be given to The Pump House).
68. The Pump House retains ownership in all Intellectual Property created by The Pump House in providing the Goods and Services. Provided that the Customer pays all amounts due to The Pump House under the Agreement, The Pump House grants the Customer an irrevocable and royalty-free non-exclusive license to the extent only to use such relevant Intellectual Property for the purpose of obtaining the benefit of the Goods and Services only (but not to further exploit the Intellectual Property).

Construction Work

69. The Customer acknowledges and agrees that where any Goods and Services supplied by the Pump House to the Customer relate to Construction Work, each invoice or other payment claim rendered by The Pump House to the Customer will be a payment claim made under the *Building and Construction Industry Payments Act 2004 (Qld)*.
70. Where The Pump House is required to provide Goods and/or Services (whether or not it constitutes Construction Work) at a site in the possession or under the control of the Customer (**Site**), the Customer must give The Pump House (including its employees, contractors and agents) access to and possession of sufficient of the Site for at least as long as is necessary to enable The Pump House to properly carry out and complete the provide Goods and/or Services.
71. Where the Customer believes that there are any defects or omissions in the Goods and/or Services carried out by The Pump House at the Site, then The Pump House will inspect the Goods and/or Services and, if necessary, endeavour to make good any such defects or omissions in those Goods and/or Services within a reasonable time, provided that:
- (a) the Customer first provides written notice to The Pump House detailing the alleged defects or omissions;



- (b) The Pump House is given reasonable access to the Site for both initial inspection and, where required, for carrying out any necessary make good works.

Notices

72. Any formal notice by one party to the other required by these Terms and Conditions or an Agreement must be in writing, and sent to the address for a party with which it normally deals (or to such other address for service of notices that a party has advised to the other). Notices are taken to be received:
- (a) if hand delivered, at the time of delivery;
 - (b) if posted, on the 3rd day after posting within Australia or the 5th day after posting for international mail;
 - (c) in the case of email or facsimile transmission, at the time of successful transmission.

General

73. The failure by The Pump House to enforce any provision of these Terms and Conditions will not be treated as a waiver of that provision, nor will it affect The Pump House's Right to subsequently enforce that provision. If any provision of these Terms and Conditions is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired thereby.
74. These Terms and Conditions and the Agreement will be governed by the laws of the State of Queensland, Australia, and are subject to the exclusive jurisdiction of the courts in that State.
75. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by The Pump House nor to withhold payment of any invoice because part of that invoice is in dispute.
76. The Pump House may assign, license or sub-contract all or any part of its Rights and Obligations without the Customer's consent.
77. Neither party will be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of that party.
78. The Customer warrants that it has the power to enter into the Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that the Agreement creates binding and valid legal Obligations on it.
79. Neither these Terms and Conditions nor an Agreement based on them will be interpreted, construed or applied adversely to The Pump House by reason of their having been drafted by or on behalf of The Pump House.