

1. Definitions

- 1.1 "Manufacturer" shall mean A & F Lorenzin Pty Ltd and its successors and assigns.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean goods supplied by the Manufacturer to the Client (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Manufacturer to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Manufacturer and the Client subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Manufacturer from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Manufacturer shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Manufacturer.
- 2.4 None of the Manufacturer's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Manufacturer in writing nor is the Manufacturer bound by any such unauthorised statements.
- 2.5 The Client undertakes to give the Manufacturer not less than fourteen (14) days prior written notice of any proposed change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice).

3. Goods

- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Manufacturer to the Client.

4. Price And Payment

- 4.1 At the Manufacturer's sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by the Manufacturer to the Client in respect of Goods supplied; or
 - (b) Manufacturer's quoted Price (subject to clause 4.2) which shall be binding upon the Manufacturer provided that the Client shall accept in writing the Manufacturer's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications must be agreed to in writing by the Manufacturer. Variations will be charged for on the basis of the Manufacturer's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 At the Manufacturer's sole discretion a deposit may be required. The deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods and shall become immediately due and payable.
- 4.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be due on delivery.
- 4.5 The Manufacturer may withhold delivery of the Goods until the Client has paid for them, in which event payment shall be made before the delivery date.
- 4.6 At the Manufacturer's sole discretion, payment for approved Clients shall be made by progress payments in accordance with the Manufacturer's delivery/payment schedule.
- 4.7 At the Manufacturer's sole discretion, payment for approved Client's shall be due fourteen (14) days following the date of the invoice.
- 4.8 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Manufacturer.
- 4.9 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Manufacturer.

5. Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Client's address. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
- 5.2 Delivery of the Goods to a carrier, either named by the Client or failing such naming to a carrier at the discretion of the Manufacturer for the purpose of transmission to the Client, is deemed to be a delivery of the Goods to the Client.
- 5.3 The Manufacturer may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract of sale.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that;
 - (a) such discrepancy in quantity shall not exceed 5%, and
 - (b) the Price shall be adjusted pro rata to the discrepancy.
- 5.6 The failure of the Manufacturer to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 The Manufacturer shall not be liable for any loss or damage whatever due to failure by the Manufacturer to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Manufacturer retains property in the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

7. Client's Disclaimer

- 7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Manufacturer and the Client acknowledges that he buys the Goods relying solely upon his own skill and judgement.

8. Defects / Returns

- 8.1 The Client shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Manufacturer of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Manufacturer an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage. For defective Goods the Manufacturer's liability is limited to either (at the Manufacturer's discretion) replacing the Goods or repairing the Goods.
- 8.2 Returns will only be accepted for replacement or repair, and if:
 - (a) the Client has complied with the provisions of clause 8.1;
 - (b) the Manufacturer has agreed in writing that the Client is entitled to reject the Goods to be returned;
 - (c) the Goods are returned at the Client's cost within seven (7) days of the delivery date;
 - (d) the Manufacturer will not be liable for Goods which have not been stored or used in a proper manner;
 - (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 8.3 The Manufacturer will not be liable for the costs arising from rehanging or refinishing replacement Goods, or without prior written consent for any costs arising from on site work or repairs to windows, doors and frames.

9. Warranty

Subject to the conditions of warranty set out in Clause 9.2 the Manufacturer warrants that if any defect in any workmanship of the Manufacturer becomes apparent and is reported to the Manufacturer within twelve (12) months of the date of delivery (time being of the essence) then the Manufacturer will either (at the Manufacturer's sole discretion) repair the defect or remedy the workmanship.

The conditions applicable to the warranty given by Clause 9.1 are:

- (a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
 - i) Failure on the part of the Client to properly maintain any Goods; or
 - ii) Failure on the part of the Client to follow any instructions or guidelines provided by the Manufacturer; or
 - iii) The use of any sealant not approved by the Manufacturer on the Goods;
 - iv) Any use of any Goods otherwise than for any application specified on a quote or order form; or
 - v) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
 - vi) Timber splitting, twisting or shrinkage due to natural causes; or
 - vii) Fair wear and tear, any accident or act of God.
 - (b) The warranty shall cease and the Manufacturer shall thereafter in no circumstances be liable under the terms of the warranty if:
 - (i) the workmanship is repaired, altered or overhauled without the Manufacturer's consent; or
 - (ii) entrance doors are not installed in weather protected openings; or
 - (iii) doors are not stored in a flat dry area; or
 - (iv) or two coats of primer are not applied to the top and bottom edges of doors prior to installation; or
 - (v) exterior paint is not used on exterior doors. (It is also recommended that darker colours should not be used on doors as they attract heat and may cause movement. Reflective colours are recommended and appropriate applications must be used in all areas.); or
 - (vi) doors are not sealed and protected on all faces and edges within seven (7) days of installation.
 - (c) In respect of all claims the Manufacturer shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.
- For Goods not manufactured by the Manufacturer, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Manufacturer shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods. In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Manufacturer as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Manufacturer shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

- 10.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

- 11. Building Work Contractor's Act 1995**
- 11.1 At the Manufacturers sole discretion, if there any disputes or claims for unpaid Goods and/or Services then the provisions of the Building Work Contractors Act 1995 may apply
- 11.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building Work Contractors Act 1995 of South Australia, except to the extent permitted by the Act where applicable.
- 12. Default & Consequences Of Default**
- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Manufacturer from and against all the Manufacturer's costs and disbursements including on a solicitor and own client basis and in addition all of the Manufacturer's nominees costs of collection.
- 12.3 Without prejudice to any other remedies the Manufacturer may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Manufacturer may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Manufacturer will not be liable to the Client for any loss or damage the Client suffers because the Manufacturer exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
- (a) any money payable to the Manufacturer becomes overdue, or in the Manufacturer's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client,
- then without prejudice to the Manufacturer's other remedies at law:
- (i) the Manufacturer shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Manufacturer shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.
- 13. Title**
- 13.1 It is the intention of the Manufacturer and agreed by the Client that property in the Goods shall not pass until:
- (a) The Client has paid all amounts owing for the particular Goods, and
- (b) The Client has met all other obligations due by the Client to the Manufacturer in respect of all contracts between the Manufacturer and the Client, and that where practicable the Goods shall be kept separate until the Manufacturer shall have received payment and all other obligations of the Client are met.
- 13.2 Receipt by the Manufacturer of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Manufacturer's ownership of rights in respect of the Goods shall continue.
- 13.3 It is further agreed that:
- (a) Until such time as ownership of the Goods shall pass from the Manufacturer to the Client the Manufacturer may give notice in writing to the Client to return the Goods or any of them to the Manufacturer. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease.
- (b) The Manufacturer shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (c) If the Client fails to return the Goods to the Manufacturer then the Manufacturer or the Manufacturer's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods.
- (d) The Client is only a bailee of the Goods and until such time as the Manufacturer has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Manufacturer.
- (e) The Client shall not deal with the money of the Manufacturer in any way which may be adverse to the Manufacturer.
- (f) The Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Manufacturer.
- (g) The Manufacturer may require payment of the Price or the balance of the Price due together with any other amounts due from the Client to the Manufacturer arising out of these terms and conditions, and the Manufacturer may take any lawful steps to require payment of the amounts due and the Price.
- (h) The Manufacturer can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client.
- (i) Until such time that ownership in the Goods passes to the Client, if the Goods are so converted, the parties agree that the Manufacturer will be the owner of the end products.
- 14. Security And Charge**
- 14.1 Despite anything to the contrary contained herein or any other rights which the Manufacturer may have howsoever:
- (a) Where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Manufacturer or the Manufacturer's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Manufacturer (or the Manufacturer's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Manufacturer elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Manufacturer from and against all the Manufacturer's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Client and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Manufacturer or the Manufacturer's nominee as the Client's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Manufacturer and/or the Manufacturer's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Client and/or the Guarantor in any land, realty or asset in favour of the Manufacturer and in the Client's and/or Guarantor's name as may be necessary to secure the said Client's and/or Guarantor's obligations and indebtedness to the Manufacturer and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Manufacturer's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.
- 15. Cancellation**
- The Manufacturer may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Manufacturer shall not be liable for any loss or damage whatever arising from such cancellation.
- At the Manufacturers sole discretion the Client may cancel delivery of Goods. In the event that the Client cancels delivery of Goods the Client shall be liable for any costs incurred by the Manufacturer up to the time of cancellation.
- 16. Privacy Act 1988**
- 16.1 The Client and/or the Guarantor/s agree for the Manufacturer to obtain from a credit-reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Manufacturer.
- 16.2 The Client and/or the Guarantor/s agree that the Manufacturer may exchange information about Client and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- (a) To assess an application by Client;
- (b) To notify other credit providers of a default by the Client;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and
- (d) To assess the credit worthiness of Client and/or Guarantor/s.
- 16.3 The Client consents to the Manufacturer being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Client agrees that Personal Data provided may be used and retained by the Manufacturer for the following purposes and for other purposes as shall be agreed between the Client and Manufacturer or required by law from time to time:
- (a) provision of Services & Goods;
- (b) marketing of Services and/or Goods by the Manufacturer, its agents or distributors in relation to the Services and Goods;
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services/Goods;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services and Goods.
- 16.5 The Manufacturer may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 17. General**
- 17.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 All Goods supplied by the Manufacturer are subject to the laws of South Australia and the Manufacturer takes no responsibility for changes in the law which affect the Goods supplied.
- 17.3 The Manufacturer shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Manufacturer of these terms and conditions.
- 17.4 In the event of any breach of this contract by the Manufacturer the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Manufacturer exceed the Price of the Goods.
- 17.5 The Manufacturer reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Manufacturer notifies the Client of such change.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.