

PLASCORP PTY LTD (ABN 34 096 078 527)
TERMS AND CONDITIONS OF SALE & SUPPLY

1. GENERAL

- 1.1 These Conditions constitute the entire agreement between Plascorp Pty Ltd (ACN 096 078 527) (ABN 34 096 078 527) and its successors, transferees or related companies (**Plascorp**) and the Customer for the supply of Goods. No other Conditions will apply unless stipulated in writing by Plascorp. These Conditions cannot be varied unless Plascorp and the Customer agree to vary them in writing.
- 1.2 Except as otherwise expressly agreed upon in writing by Plascorp, these Conditions shall apply to every sale of Goods or services by Plascorp to the Customer, notwithstanding any provisions to the contrary that may appear on an Order form or other documents issued by the Customer.
- 1.3 Plascorp may modify these Conditions at any time, and the modified Conditions shall apply to every Order placed by the Customer after Plascorp has provided notice of the modification to the Customer. The Conditions (as modified by Plascorp from time to time) are available on the Website.
- 1.4 If Plascorp expressly agrees in writing with a Customer to apply any Special Terms, these Conditions shall be construed as consistent with and in addition to any such Special Terms except where any Special Term specifically varies or overrides any provision of these Conditions. The Special Terms shall prevail to the extent of any inconsistency between these Conditions and the Special Terms.
- 1.5 In these Conditions and any applicable Special Terms:
- 1.5.1 **Australian Consumer Law** means the law set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* and any corresponding provisions of state or territory fair trading legislation or the *Australian Securities and Investments Commission Act 2001 (Cth)*;
- 1.5.2 **Conditions** means these Conditions together with any Special Terms;
- 1.5.3 **Credit Application Form** means Plascorp's standard form of application for credit by a Customer;
- 1.5.4 **Credit Customer** means a Customer who, having submitted a completed Credit Application Form to Plascorp, has been approved by Plascorp to establish a credit account with Plascorp with respect to the purchase of Goods and services from Plascorp pursuant these Conditions;
- 1.5.5 **Credit Terms** means any Special Terms applying to a Credit Customer which may be included in a Credit Application Form (as modified by Plascorp from time to time), an Order accepted by Plascorp and/or an invoice from Plascorp to the Customer;
- 1.5.6 **Customer** means any person who purchases Goods or services from Plascorp;
- 1.5.7 **Default Rate** means the penalty interest rate fixed by the Attorney-General under Section 2 of the *Penalty Interest Rates Act 1983 (Vic)* plus 4% (or such other interest rate determined by Plascorp from time to time);
- 1.5.8 **Goods** means Inventory and any goods sold and supplied by Plascorp to the Customer including Goods which are the subject of an Order, or part of those Goods where the context permits;
- 1.5.9 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999*;
- 1.5.10 **Incoterms** means the latest edition of the International Commercial Terms published by the International Chamber of Commerce from time to time.
- 1.5.11 **Inventory** has the meaning defined in section 10 of the PPSA;
- 1.5.12 **Non Excludable Rights** means rights under the Australian Consumer Law or other rights the Customer may have in relation to the supply of the Goods that cannot lawfully be excluded by Plascorp;
- 1.5.13 **Order** means a written purchase order for Goods placed by the Customer with Plascorp in accordance with these Conditions including any Order accepted by Plascorp in writing;
- 1.5.14 **PPSA** means *Personal Properties Securities Act 2009 (Cth)*;
- 1.5.15 **Special Terms** means any additional terms to these Conditions which Plascorp expressly agrees in writing with a Customer shall apply to the sale and supply of Goods and services by Plascorp including any Credit Terms and special terms included in an Order accepted by Plascorp;
- 1.5.16 **Website** means www.plascorp.com.au and such other websites as advertised by Plascorp from time to time; and
- 1.5.17 unless the context requires otherwise, terms which are defined under the GST Act and used in these Conditions have the same meanings given to them under the GST Act.

2. QUOTATIONS, ORDERS AND PRICING

- 2.1 By placing an Order, the Customer makes an offer to Plascorp to purchase Goods selected by the Customer on and subject to these Conditions. Plascorp may or may not accept the offer the subject of an Order at its discretion.
- 2.2 A contract for the supply of Goods is made when Plascorp communicates its acceptance of the Customer's offer contained in an Order, such acceptance which may be made by Plascorp notifying its acceptance to the Customer in writing, such notice which may include:
- 2.2.1 a tax invoice from Plascorp to the Customer with respect to the Order (**Invoice**);
- 2.2.2 confirmation of the details of the Order; and/or
- 2.2.3 an estimated delivery date for the Goods the subject of the Order (**Estimated Delivery Date**).
- 2.3 Unless earlier withdrawn or modified, any written quotation issued by Plascorp to the Customer for specific Goods or services requested by the Customer (**Quotation**) shall be valid for the period stated in the Quotation or, if no period is stated, for thirty (30) days from the date of the Quotation. Plascorp may withdraw or modify a Quotation at any time until Plascorp has accepted in writing any Order by the Customer for the Goods or services specified in that Quotation.
- 2.4 Any Quotation for Goods to be obtained by Plascorp for the Customer from a foreign supplier for which Plascorp will make payment in a currency other than Australian dollars is made on the basis of the applicable currency exchange rate prevailing at the time of the Quotation, and is subject to increase if the applicable currency exchange rate changes adversely after the date of Quotation and before Plascorp's remittance of payment to the relevant supplier. In the event of any such adverse change, the Customer shall be obligated to pay any additional amount resulting from this change.

- 2.5 Any Quotation for the manufacture of Goods by Plascorp is made on the basis of costs prevailing at the time of the Quotation for materials, parts and equipment required to be purchased as component parts, transportation and labour, and is subject to change if these costs increase after the date of Quotation and before delivery. In the event of any such increase, Plascorp may include the amount of the increase in the price of the Goods and the Customer shall be obligated to pay the increased amount upon acceptance. Without limiting the generality of the term "cost of labour", it includes any increase resulting from or required by any statute, regulation, award or determination by which rates of pay are increased or by which hours of work are reduced for holidays, sick leave or any benefit or amenity is increased, any of which shall be deemed to be an increase in the cost of labour.
- 2.6 All sales of Goods and services are made at the price for those Goods either:
- 2.6.1 as stated in any Quotation given by Plascorp, where an Order for the Goods the subject of a Quotation is submitted to Plascorp within 30 days of the date of the Quotation; or
- 2.6.2 where no Quotation is provided by Plascorp or an Order is submitted more than 30 days after the date of the Quotation with respect to the Order, then:
- (a) as shown on Plascorp's price list(s) published on the Website at the time of the Order unless otherwise agreed between Plascorp and the Customer in writing; or
- (b) as specified in any Order which has been accepted by Plascorp in writing.
- (c) as otherwise advertised by Plascorp as at the date of the Order.
- 2.7 Plascorp reserves the right, at any time and from time to time, to alter the price for Goods published on the Website or otherwise advertised and without notice to any specific Customer.
- 2.8 Unless expressly stated to the contrary in a Quotation or an Invoice, all prices do not include transportation, freight, insurance, delivery or installation which will either:
- 2.8.1 be the responsibility of the Customer at its cost; or
- 2.8.2 be separately quoted and charged by Plascorp to the Customer if such services are required by the Customer and instructions for insurance cover will only be accepted, at the discretion of Plascorp, in writing at the time the Goods are ordered.
- 2.9 Unless expressly provided otherwise in writing by Plascorp, any price quoted by Plascorp for Goods and/or services does not include any tax on sale of or the provision of the Goods or services or any other applicable tax, and any such taxes will be added to the quoted price.
- 2.10 Any prices or charges referred to in these Conditions and/or in any Quotation are exclusive of Goods and Services Tax (GST) unless stated otherwise. The total price payable by the Customer for the Goods is subject to GST.
- 2.11 All amounts shown in a Quotation may, at Plascorp's discretion, be rounded up or down to the nearest multiple of \$1.00.

3. ESCALATION AND PRICE VARIATION

- 3.1 Quotations will be with prices subject to adjustment up or down with reference to the base prices of major raw materials/components involved for Plascorp to fulfil an Order.
- 3.2 In addition to its rights in clause 2 or any rights under an Order, Plascorp may increase or decrease the price of Goods and/or services after an Order is accepted where it incurs a bona fide increase or decrease in its costs (including any transaction or other taxes) of supplying the Goods and/or services
- 3.3 The Customer may terminate an Order contract for convenience (or part thereof) within 7 days of Plascorp providing a notice increasing the price in accordance with clause 3.1.

4. SPECIFICATIONS, MATERIALS OR SPECIAL ORDERS

- 4.1 All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, price lists or other advertising matter of Plascorp or elsewhere are approximations only. They are intended by Plascorp to be a general description for information and identification purposes and do not create a sale by description.
- 4.2 Plascorp shall not be bound to accept any change in product dimension, materials or finish, a reduction in the quantity ordered or other particulars of an order for Goods after Plascorp has ordered special materials or commenced tooling for manufacture.
- 4.3 Unless otherwise stated on a Quotation, Goods will be supplied by Plascorp within the tolerances in regard to quantity, weight, dimension and chemical composition as specified in the relevant order or, if not specified, as consistent with usual industry practice. Where the total mass or length of any item supplied includes a fraction of a tonne, the Customer must pay for that fraction on a pro rata basis.
- 4.4 Where Plascorp is required to order special material or qualities for which a supplier of Plascorp requests minimum order quantities, the Customer may be requested to accept an increase of the minimum quantity required to be ordered by Plascorp to fulfil the order and if so requested the Customer shall be obliged to accept and pay for such increase. The price for the additional product shall be determined according to the unit price for the products included in the order.
- 4.5 If Plascorp is required to process the Customer's Ordered Goods or materials then Plascorp does not give any warranty or assurance that materials supplied by the Customer are suitable for such processing. Subject to the rights of consumers as set out in clause 11, Plascorp accepts no responsibility and shall not in any way be liable to the Customer for any damage done or caused to such materials or goods, except the Customer is a consumer under the Australian Consumer Laws and such loss or damage arises from the negligence or wilful misconduct of Plascorp or any of its officers, employees or agents.
- 4.6 Notwithstanding any other provision of these Conditions, it is a term of the contract made between Plascorp and the Customer that Plascorp has discretion to refuse to supply Goods to the Customer (without liability to the Customer) where:
- 4.6.1 Goods are unavailable or insufficient for any reason whatsoever;
- 4.6.2 the Customer has failed to comply with terms on which Plascorp has agreed to provide credit to the Customer;
- 4.6.3 the Customer or a related corporation of it has breached a contract with Plascorp or a related corporation of it including these Conditions; or
- 4.6.4 Plascorp considers it necessary or desirable to do so for any reason at all.

- 4.7 Subject to the rights of Customers set out in clause 11, unless the Goods have been supplied to the Customer by Plascorp under a Consumer Contract (as defined in the Australian Consumer Laws), the Customer agrees that it does not rely on the skill or judgement of Plascorp in relation to the suitability of any of the Goods for a particular purpose unless it has indicated that purpose in writing to Plascorp and Plascorp has acknowledged in writing that the Goods will be fit for the particular purpose

5. REPUDIATION OF ORDER

- 5.1 All Orders, once accepted by Plascorp, are final. No Order may be cancelled except with Plascorp's written consent and on terms which will indemnify Plascorp against all losses. The Customer acknowledges that the extent to which an Order can be modified or cancelled, if at all, will depend on the type of Good and the stage that the Order has reached in Plascorp's system.
- 5.2 If the Customer rejects or revokes acceptance of ordered Goods other than in accordance with these Conditions or fails to make payment for any part or all of any Order or repudiates part of all of an Order, Plascorp, in addition to any other available remedies, may require the Customer to pay all costs and expenses incurred by Plascorp in connection with the performance of the Order, plus Plascorp's anticipated loss of profit on the Order.

6. PAYMENT

- 6.1 Unless otherwise agreed in writing by Plascorp, payment for all Orders must be made in full by the Customer in immediately available funds, without deduction or set off:
- 6.1.1 where the Customer is a Credit Customer, within 30 days after the end of the calendar month in which the Goods the subject of an Order are delivered to the Customer; or
- 6.1.2 in the case where the Customer is not a Credit Customer, payment must be made upon delivery of an Invoice by Plascorp and prior to delivery of the Goods the subject of the Invoice.
- 6.2 If Plascorp delivers any Goods progressively, the Customer shall be obligated to make payment progressively for the Goods as they are delivered.
- 6.3 If the Customer fails to make any payment in full within the designated time period, then:
- 6.3.1 payment for any other Goods delivered to the Customer shall become immediately due; and
- 6.3.2 Plascorp shall be entitled to suspend delivery of any other Goods ordered by the Customer until Plascorp has received payment in full for all Goods previously delivered to the Customer.
- 6.4 The Customer undertakes that all details provided to Plascorp for the purpose of ordering or purchasing Goods or services are correct. Payment may be processed by an agent appointed by Plascorp.
- 6.5 If the Customer is in breach of any obligation under these Conditions, Plascorp shall be entitled to set off any amount or part that may be owing or becomes owing from Plascorp to the Customer under any obligation (in contract, tort or otherwise) between Plascorp and the Customer.
- 6.6 GST is payable in addition to any price for the Goods provided by Plascorp and must be paid at the same time as the relevant Invoice.
- 6.7 The granting of credit to the Customer shall be at the absolute discretion of Plascorp. If payment is not made strictly within the terms of these Conditions, Plascorp may charge interest may be charged from either date that Goods are available for dispatch, equipment is commissioned or date of invoice whichever occurs first and until all unpaid monies are received. Payment will be credited first against interest accrued. The rate of interest applicable shall be the Default Rate for the period that the relevant amount is overdue.

7. DEFAULT

- 7.1 If the Customer does not pay any amount payable pursuant to these Conditions (including but not limited to pursuant to an Invoice) by the due date:
- 7.1.1 interest will accrue on that amount at the Default Rate, calculated from the time such amount falls due until it is received in full, without prejudice to all or any of Plascorp's other rights and remedies; and
- 7.1.2 at Plascorp's request, the Customer must pay Plascorp the amount of any reasonable costs incurred by it in pursuing payment of the unpaid amount (such as the costs of debt collectors or solicitors retained by Plascorp).
- 7.2 If the Customer defaults in payment of any Invoice when due, the Customer shall indemnify Plascorp from and against all loss and damage in respect of any recovery action including without limitation all solicitors' fees (on an indemnity basis), commercial agents' commission, out of pocket expenses, bank fees, freight, insurance (collectively referred to as fees) and interest.
- 7.3 Each of the following shall constitute a default by the Customer under these Conditions:
- 7.3.1 failure to make any payment when due (whether to Plascorp or any third party);
- 7.3.2 bankruptcy, liquidation, dissolution, making of any assignment for the benefit of its creditor(s) or entering into any type of workout arrangement with any creditor(s);
- 7.3.3 death or incapacity;
- 7.3.4 the commencement of foreclosure or forfeiture proceedings by any creditor, including any governmental agency, against property owned by the Customer (whether by judicial proceeding, self-help, repossession or any other method);
- 7.3.5 the appointment of a receiver for any part of any the Customer's business or property;
- 7.3.6 any change in ownership of the Customer;
- 7.3.7 any adverse change in the financial condition of the Customer or any director or owner that has guaranteed the obligations of the Customer to Plascorp, that causes Plascorp to believe its prospect of payment is impaired, as may be applicable.
- 7.4 Upon the occurrence of any default by the Customer, Plascorp may immediately do one or more of the following:
- 7.4.1 suspend further deliveries, require payment in advance for all such deliveries or terminate these Conditions or any other agreement with the Customer by written notice to the Customer;
- 7.4.2 disallow any concessions otherwise claimable by the Customer;

- 7.4.3 enter any premises where the relevant Goods may be located to re-take possession of the Goods (the Customer acknowledges and agrees that it authorises Plascorp or any of its agents to do so, and that Plascorp or any of its agents will not be liable to the Customer in any way whatsoever for any loss, damage or claim by doing so);
 - 7.4.4 cancel any outstanding Orders from the Customer;
 - 7.4.5 refuse delivery of any ordered Goods; and/or
 - 7.4.6 stop delivery of any Goods in transit to the Customer at Plascorp's option, without prejudice to Plascorp's rights including rights to recover any loss consequent upon any such cancellation or suspension and recover any unpaid sum from the Customer by way of liquidated damages.
- 7.5 The Customer shall be responsible for all direct, incidental and consequential damages Plascorp may incur upon the occurrence of any default by the Customer or in collecting amounts due from the Customer, including without limitation reasonable court costs and legal expenses.

8. DELIVERY AND RISK

- 8.1 The Customer must specify in an Order whether:
- 8.1.1 the Goods are to be delivered to a particular address, in which case the Goods will be delivered to the Delivery Address by Plascorp and, unless otherwise agreed in writing, the Customer shall arrange and pay the cost of insurance and shipment of the Goods; or
 - 8.1.2 that the Customer will collect the Goods from Plascorp's premises at its cost.
- 8.2 Plascorp will use reasonable endeavours to have the Goods delivered or available for collection (as the case may be) by any Estimated Delivery Date contained in an Order but it does not accept any liability for failure to deliver for reasons beyond its control nor does it accept any liability for delays in delivery.
- 8.3 Risk in the Goods shall pass to the Customer upon delivery to the Customer in accordance with clause 8.1 above.
- 8.4 All delivery dates contained in a Quotation are estimates only and Plascorp has no obligation to meet such dates and will not be held responsible for any delay. In the event that any delay in delivery is caused by circumstances beyond Plascorp's reasonable control, Plascorp may suspend or delay delivery without consequence and without relieving the Customer of its obligations under these Conditions. While Plascorp will use reasonable endeavours to deliver the Goods by the Estimated Delivery Date, it will not be liable for any loss or damage (including indirect or consequential loss or damage) suffered by the Customer or any other person arising out of failure to meet an Estimated Delivery Date.
- 8.5 If delivery can not be made to the location specified due to the nature of the premises, insufficient access or for any reason not attributable to Plascorp, including the Customer's absence, the Customer will be liable for any additional delivery charges and costs including redelivery.
- 8.6 If the Customer is unable to accept delivery within 4 weeks of the delivery date contained in an Order, the Customer shall be liable to Plascorp for storage and insurance costs.

9. ACCEPTANCE OF GOODS AND RETURNS

- 9.1 The Customer shall examine any Goods supplied by Plascorp immediately upon arrival at the designated place of delivery. If any Goods are damaged (whether by transit or otherwise) or otherwise defective, the Customer shall notify Plascorp in writing of the particulars regarding the defects within forty-eight (48) hours after arrival of Goods at the place of delivery, and also shall immediately respond to any requests by Plascorp for additional information regarding the alleged defects
- 9.2 The Customer will be deemed to have accepted all Goods as being of the description, quality and quantity ordered and free of defect or any non-conformity unless it notifies Plascorp in writing of the particulars regarding any defects as required in clause 9.1 above.
- 9.3 Plascorp has no obligation to allow the Customer to return any Goods that conform to the terms of the Customer's Order as accepted by Plascorp. If Plascorp, in its sole discretion, allows the Customer to return such Goods, the Customer agrees to pay any applicable return freight cost and restocking fee.
- 9.4 Goods that are specially purchased, manufactured, machined or cut to size or to the Customer's drawings and/or specifications may not be returned.
- 9.5 Subject to these Conditions and any express written warranty provided by Plascorp, Plascorp is not under any obligation to accept Goods returned by the Customer unless such Goods are returned in original packaging and with all components and will do so only on terms to be agreed in writing in each individual case.
- 9.6 For Goods which Plascorp, in its absolute discretion, deems defective, any express written warranty provided by Plascorp will apply unless otherwise agreed in writing.
- 9.7 Plascorp will not accept the return of any Goods (whether they are deemed defective or otherwise) if the Customer has offered to sell the Goods to consumers or the Goods are returned in a damaged state.
- 9.8 If Plascorp does not accept the reason for the return of the Goods, Plascorp will return the Goods to the Customer with an explanation for the non-acceptance and the Invoice for the Goods will remain payable plus freight charges.

10. TITLE AND PERSONAL PROPERTIES SECURITIES ACT 2009 (CTH) (PPSA)

- 10.1 Ownership of the Goods will remain with Plascorp until all Invoices, interest and fees owing by the Customer to Plascorp on any account whatsoever (**Amounts Owing**) have been paid in full.
- 10.2 Until the Amounts Owing have been paid in full, the Customer holds the Goods as trustee for Plascorp.
- 10.3 Until the Amounts Owing have been paid in full, the Customer has the right to sell the Goods, but only as trustee for Plascorp (and the Customer must not represent to any third parties that it is acting as Plascorp's agent) and the Customer must hold the proceeds it receives from any such sale as trustee for Plascorp.
- 10.4 If the Customer fails to comply with any of term of these Conditions then:
- 10.4.1 upon request, the Customer must return all Goods in its possession;
 - 10.4.2 Plascorp may enter the Customer's premises and seize possession of the Goods; and
 - 10.4.3 Plascorp may retain, sell or otherwise dispose of those Goods.

- 10.5 The Customer hereby acknowledges that these Conditions constitutes a security agreement for the purposes of the PPSA which creates a security interest in favour of Plascorp and in all Goods including services previously supplied by Plascorp to the Customer and all after acquired Goods including services supplied to the Customer by Plascorp to secure the payment by the Customer to Plascorp of all amounts owing by the Customer to Plascorp from time to time, including any future advances.
- 10.6 To better secure the payment by the Customer to Plascorp of all amounts owing by the Customer to Plascorp from time to time, the Customer hereby grants to Plascorp:
- 10.6.1 a security interest (by virtue of this clause 10) in all Goods and services previously supplied by Plascorp to the Customer; and
- 10.6.2 a Purchase Money Security Interest (**PMSI**).
- 10.7 The Customer agrees to do anything that Plascorp reasonably requires to ensure that Plascorp has at all times a continuously perfected security interest over all of the Customer's present and after-acquired property (including but not limited to the Goods).
- 10.8 The Customer consents to Plascorp effecting a registration on the PPSA register in relation to any security interest contemplated by these Conditions. The Customer waives the right to receive notice of a verification statement in relation to any registration on the PPSA register.
- 10.9 The Customer undertakes to:
- 10.9.1 promptly sign any further documents and/or provide any further information which Plascorp may reasonably require to register a financing statement in relation to a security interest or to register any other document required on the PPSA register;
- 10.9.2 indemnify, and upon demand reimburse, Plascorp for all expenses incurred in registering a financing statement on the PPSA register or releasing any Goods charged thereby;
- 10.9.3 not register a financing change statement in respect of a security interest without the prior written consent of Plascorp;
- 10.9.4 not permit to be registered, a financing statement in relation to the Goods in favour of a third party; and
- 10.9.5 immediately advise Plascorp of any material change in its business practices which would result in a change in the nature of proceeds derived from such sales.
- 10.10 If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these Conditions, the Customer agrees the following provisions of the PPSA will not apply:
- 10.10.1 section 95 (notice of removal of accession), to the extent that it requires Plascorp to give notice to the Customer;
- 10.10.2 section 96 (when a person with an interest in the whole may retain an accession);
- 10.10.3 section 117 (obligations secured by interests in personal property and land);
- 10.10.4 section 118 (enforcing security interests in accordance with land law decisions);
- 10.10.5 subsection 121(4) (enforcement of liquid assets – notice to grantor);
- 10.10.6 section 125 (obligation to dispose of or retain collateral);
- 10.10.7 section 130 (notice of disposal), to the extent that it requires Plascorp to give notice to the Customer;
- 10.10.8 paragraph 132(3)(d) (contents of statement of account after disposal);
- 10.10.9 subsection 132(4) (statement of account if no disposal);
- 10.10.10 section 135 (notice of retention);
- 10.10.11 section 142 (redemption of collateral); and
- 10.10.12 section 143 (reinstatement of security agreement)
- 10.11 The following terms used in this clause 10 have the respective meanings given to them in the PPSA: account, proceeds, PMSI, register, registration, security interest, security agreement and verification statement.

11. EXCLUSIONS & LIMITATION OF LIABILITY

- 11.1 Subject to clause 11.2 and any express written warranty provided by Plascorp, Plascorp does not make any guarantee, condition or warranty as to materials, workmanship or performance of the Goods.
- 11.2 With the exception of Non Excludable Rights and any express written warranty provided by Plascorp, and notwithstanding any other provision of these Conditions, the liability of Plascorp to the Customer, whether arising under or in connection with these Conditions or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), or on any other basis in law or equity is hereby limited and excluded as follows:
- 11.2.1 Plascorp shall not have any liability whatsoever to the Customer for any loss or claim of any kind in connection with these Conditions or any Goods obtained under them; and
- 11.2.2 the total aggregate liability of Plascorp is at all times limited to the amount equal to the purchase price of the Goods.
- 11.3 If any Non Excludable Terms apply, then to the extent to which Plascorp is entitled to do so, its liability under those Non Excludable Terms will be limited at its option to:
- 11.3.1 the replacement of the Goods or the supply of equivalent products; or
- 11.3.2 the repair of the Goods; or
- 11.3.3 the payment of the cost of replacing the Goods; or
- 11.3.4 the payment of the cost of having the Goods repaired.
- 11.4 Plascorp will be under no liability to the Customer or any third party (including any end-user) in any circumstances for any indirect, special or consequential loss, injury or damage, including but not limited to loss of revenue, loss of production, loss of product, loss of contract or loss of profit howsoever arising and whether in an action in contract, tort, in equity, under statute, or on any other basis.
- 11.5 Any advice, recommendation, information or representation provided by Plascorp as to the quality or performance of the Goods or their suitability for a particular use, purpose or otherwise in relation to the Goods is given in good faith but without any liability or responsibility on the part of Plascorp. The Customer acknowledges that it has not relied upon or been induced by any representation by Plascorp.

12. LIMITED WARRANTY

- 12.1 Unless otherwise agreed in writing, Plascorp shall manufacture and supply the Goods in accordance with its own specifications and standards and using parts and manufacturing processes and techniques solely at its own discretion.
- 12.2 To the extent it is within the control of Plascorp, Plascorp shall pass on to the Customer any third party manufacturer's warranty for Goods supplied by Plascorp.
- 12.3 The Customer shall immediately notify Plascorp in writing upon discovery of any suspected defect in any Goods and the Customer shall not undertake any alterations, repairs or remedial work to any Goods supplied by Plascorp without first obtaining Plascorp's written consent to do so.
- 12.4 Except as expressly provided in this clause 12 or required by applicable law or as made in the Website or other product promotional material current at the time of the sale of relevant Goods or as otherwise expressly provided in writing to the Customer by Plascorp at the time of accepting an Order, **Plascorp makes no warranties, express or implied, about any Goods or services, including, without limitation, any implied warranty of merchantability or fitness for any particular purpose.**
- 12.5 The Customer expressly acknowledges and agrees that:
- 12.5.1 Plascorp is not liable for any advice given by Plascorp's agents or employees regarding the suitability or fitness for any purpose of Goods supplied by Plascorp; and
- 12.5.2 the Customer bears full and sole responsibility for the selection of any Goods to be supplied and any services to be performed by Plascorp to achieve the Customer's purposes.

13. SELLER'S USE OF OTHER SUPPLIERS

The Customer acknowledges that, in fulfilling any Order for the sale of Goods, Plascorp in its sole discretion may:

- 13.1 manufacture part or all of the specified Goods;
- 13.2 purchase part or all of the Goods from a third party, including another supplier; and/or
- 13.3 order the manufacture of part or all of the Goods from a third party, including another manufacturer.

14. INDEMNITY

The Customer indemnifies Plascorp and its employees, agents and assigns, regardless of any negligence on the part Plascorp, on a full indemnity basis, from and against any costs, liability, damage, loss, expense or demand arising directly or indirectly from:

- 14.1 a breach of these Conditions by the Customer; and/or
- 14.2 any false, misleading or deceptive representation or statement made by the Customer in respect of the Goods to any person.

15. CHANGE OF OWNERSHIP

The Customer agrees to notify Plascorp in writing of any changes of ownership of the Customer within 7 days from the date of such change and indemnifies Plascorp against any loss or damage incurred by it as a result of the Customer's failure to notify Plascorp of any change.

16. SAFETY AND USE

The Customer agrees that:

- 16.1 the Customer has received adequate information regarding the Goods to ensure their safe use, handling, assembly, installation and storage, which may include Plascorp's user guides or manuals applicable to the Goods;
- 16.2 all Goods must be properly used in accordance with all applicable laws and instructions provided in any applicable user guides or manuals;
- 16.3 the purchase and/or use of all Goods sold by Plascorp places the responsibility of use on the user of the Goods and Plascorp accepts no responsibility for inappropriate use; and
- 16.4 all Goods are used entirely at the user's own risk and to the maximum extent permitted by law, Plascorp accepts no liability for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from any party's use (or misuse) of any of the Goods.

17. INTELLECTUAL PROPERTY

- 17.1 Plascorp retains all rights, title and interest subsisting in any design(s), documentation, diagrams, plans, drawings, illustrations, specifications, literature, user or product guides and other information and materials supplied to the Customer with respect to the Goods (**Product Materials**).
- 17.2 The Customer:
- 17.2.1 acknowledges that all intellectual property rights attached to the Goods, Product Materials and these Conditions are and will remain the sole exclusive property of Plascorp.
- 17.2.2 shall not transfer any Product Materials to any third party without Plascorp's prior written consent.
- 17.2.3 shall not use, reproduce or disseminate any information contained in Product Materials to any third party without Plascorp's prior written consent except as required for the purpose of placing an Order with Plascorp for the Goods to which such Product Materials relate.
- 17.2.4 shall return all Product Materials to Plascorp upon the earlier to occur of receipt of the Goods to which they relate, Plascorp's written request or upon a Customer who was a Credit Customer ceasing to be a Credit Customer for any reason.

- 17.3 The Customer represents and warrants that, with respect to any Goods manufactured in accordance with the Customer's drawings and/or specifications or instructions, those drawings and/or specifications or instructions do not or will not cause Plascorp to infringe any patent, copyright, trademark, trade secret rights or other intellectual property right of any third party, and the Customer agrees to indemnify Plascorp against any liability and third infringement claims in this regard.
- 17.4 The Customer must not disclose Plascorp's Confidential Information unless the Customer receives the prior written consent of Plascorp, such information enters the public domain (other than as a result of a breach by the Customer) or its use or disclosure is required by law. **Confidential Information** means and includes all information (in any form, whether written, electronic or otherwise) including any proprietary information, data, trade secrets, ideas and knowhow (including systems, processes, techniques and algorithms) relating to the Goods, belonging or relating to Plascorp that is not generally available to the public at the time of disclosure, which the Customer knows, or ought reasonably to be expected to know, is confidential to Plascorp or which by its nature or by the circumstances of its disclosure, is or can reasonably be expected or regarded as, confidential to Plascorp.

18. GUARANTEE

- 18.1 The provisions of this clause 18 apply if a guarantor (**Guarantor**) is specified in a Credit Application Form and the certificate of guarantee contained in the Credit Application Form (or any other form of guarantee) has been signed by the Guarantor and provided to Plascorp.
- 18.2 The Guarantor unconditionally and irrevocably guarantees to Plascorp (the **Guarantee**):
- 18.2.1 the due and punctual performance by the Customer of all the Customer's obligations under these Conditions (including the Credit Terms);
- 18.2.2 the due and punctual payment by the Customer to Plascorp of all moneys due and payable or from time to time to become due and payable by the Customer to Plascorp pursuant to these Conditions including but not limited to pursuant to any accepted Order from the Customer; and
- 18.2.3 any costs and damages which may become due and payable by the Customer to Plascorp on any default, repudiation or otherwise of the Conditions or an Order.
- 18.3 As a separate and independent obligation, the Guarantor hereby unconditionally indemnifies Plascorp and agrees to keep Plascorp always indemnified:
- 18.3.1 against any loss, damage or claim which Plascorp may suffer arising out of or in relation to:
- (a) the non-performance or non-observance by the Customer of its obligations under these Conditions; and/or
- (b) because any moneys due and payable or from time to time become due and payable by the Customer under, pursuant to or in furtherance of these Conditions (including but not limited to pursuant to any accepted Order from the Customer) are not recoverable for any reason (including but not limited to legal limitation, disability, immunity or incapacity) or having been recovered are repaid for any reason; and
- 18.3.2 against all costs charges or expenses which Plascorp may incur as a consequence of the non-performance or non-observance by the Customer of its obligations under, or provisions of, these Conditions, and the Guarantor shall upon demand pay to Plascorp the amount of any loss, damage or costs which is the subject of the guarantee and indemnity contained in this clause 18.
- 18.4 Plascorp is not required to commence proceedings or enforce any other right against the Customer before claiming against the Guarantor under the Guarantee, and a signed statement by Plascorp and a written demand on the Guarantor shall be conclusive evidence of any amount of indebtedness the subject of the Guarantee.
- 18.5 The Guarantor agrees to the operation of clause 19 below.
- 18.6 The Guarantor's obligations are principal obligations and may be enforced against the Guarantor without Plascorp being required to exhaust any remedy it may have against the Customer.

19. PRIVACY

The Customer and any Guarantor acknowledge and agree that:

- 19.1 some or all of the information concerning the Customer and Guarantor referred to in this clause 19 may be "Personal Information" within the meaning given to that term in the *Privacy Act 1988* (Cth);
- 19.2 they authorise Plascorp to investigate and to obtain and exchange information regarding the Customer and the guarantor, including information regarding the Customer's creditworthiness, as deemed necessary by Plascorp from time to time and, in this regard, Plascorp may obtain from time to time reports as to the Customer and Guarantor's creditworthiness from any credit reporting agency;
- 19.3 Plascorp may contact trade referees, other providers of credit to the Customer and other persons at any time for the purpose of ascertaining or monitoring the Customer's creditworthiness;
- 19.4 Plascorp may receive information concerning the Customer and Guarantor from any of the persons described in clauses 19.1 and 19.3 herein, and disclose information concerning the Customer and Guarantor to any of those persons for the purpose of ascertaining or monitoring the Customer and Guarantor's creditworthiness; and
- 19.5 if the Customer or Guarantor defaults in their payment obligations to Plascorp, Plascorp may disclose all or any information relating to the Customer's account to a collection agency for the purpose of recovering outstanding monies.

20. CREDIT

- 20.1 In addition to any Credit Terms, this clause 20 applies to the establishment, operation and use of any Credit Customer's credit account with Plascorp.
- 20.2 The Customer warrants that the information provided in the Credit Application Form is accurate, correct and complete and is supplied for the purposes of obtaining credit from Plascorp.
- 20.3 The person/s signing the Credit Application Form warrants that he/she is duly authorised by the Customer to apply for credit and execute Credit Application Form on its behalf.
- 20.4 The Customer agrees that it is not entitled to any credit facilities until it receives notice in writing from Plascorp stating that credit facilities have been given and containing any Special Terms which such credit facilities are given. Until the Customer receives such notice, any Goods and/or services that are supplied by Plascorp to the Customer will be governed by these Conditions on the basis that the Customer is not a Credit Customer.

- 20.5 In the event of Plascorp granting credit facilities to the Credit Customer then:
- 20.5.1 all accounts are to be settled in full within the Credit Terms and all credit facilities may only continue if payment is maintained in accordance with the Credit Terms and these Conditions;
 - 20.5.2 should the Credit Customer default in making any payment in accordance with the Credit Terms and these Conditions, then all monies owing to Plascorp shall immediately become due and payable and Plascorp shall be entitled to charge interest at the Default Rate per calendar month on all overdue amounts from the date due for payment until the date of actual payment;
 - 20.5.3 any reasonable expense and/or costs or disbursements incurred by Plascorp in recovering any outstanding monies including debt collection agency fees and legal costs shall be paid by the Customer;
 - 20.5.4 Plascorp may, at any time, without cause, vary, suspend, limit or withdraw any credit granted to the Customer;
 - 20.5.5 it is expressly understood and agreed that the credit arrangement may be terminated at any time by Plascorp and, in that event, all monies owing by the Customer to Plascorp will become immediately due and payable; and
 - 20.5.6 Plascorp may at any stage during the continuance of the credit arrangement impose as a condition precedent to the grant of further credit that the Customer give such security or additional security or information as Plascorp shall in its discretion think fit and in a form acceptable to Plascorp and Plascorp shall be entitled to withhold supply of Goods or further credit until such security or additional security is obtained.

21. PERMISSIBLE VARIATIONS

- 21.1 Goods supplied by Plascorp shall be subject to standard manufacturing variations, tolerances and classifications. In respect of steel reinforcing Goods, they shall be subject to the standard manufacturing variations, tolerances and classifications as set out in Australian Standards AS/NZS 4671 (**AS/NZS 4671**) and generally, the mass of steel reinforcing Goods supplied will be within the tolerances permitted by AS/NZS4671.
- 21.2 Unless otherwise stipulated in a Quotation or Order:
 - 21.2.1 Invoicing for steel reinforcing Goods will be done on a theoretical weight basis in accordance with AS/NZ 4671; and
 - 21.2.2 rolling margin will be included in the weight/mass of steel reinforcing Goods for the purposes of these Conditions and, as such, steel reinforcing Goods will be invoiced at net theoretical weight (on the basis of per metre as defined in AS/NZS 4671) plus an allowance for rolling margin determined in accordance with the tolerance limits as defined in AS/NZ 4671 **as amended from time to time (AS Margin Limit)**. The length used in the calculation of mass for steel reinforcing Goods will be as defined in Australian Standards AS1100 part 501.
- 21.3 Unless the Quotation states that the price is a lump sum, the price in the Quotation is based on estimated quantities of Goods and services as applicable and, unless the price is a lump sum, the Customer is liable to pay for the actual quantity of Goods and the quantum of the services necessary for Plascorp to perform its obligations under an Order. Other than with a lump sum price, any adjustment in the actual price compared to the quoted price will reflect the increase or decrease of the steel reinforcing Goods and/or services actually supplied or provided.
- 21.4 Should any shortage variation in weight/quantity in excess of the AS Margin Limit be established in the steel reinforcing Goods upon delivery by Plascorp, the Customer has the right to raise a claim within 7 days of the date of delivery.
- 21.5 In order to substantiate a claim for weight variation, the Customer must inform Plascorp in writing of the details of the claim together with a copy of the relevant rail or road consignment note and the Customer must submit to Plascorp a weight certificate issued or confirmed by a surveyor of international standard that shows the details of the materials received and the calculation on the basis of weighing the goods on a calibrated weigh-bridge.
- 21.6 If the weight/quantity variation of the material delivered is not greater than the Australian Standards Margin Limit then Plascorp shall not consider a weight/quantity claim and the steel reinforcing Goods shall be deemed to have been accepted by the Customer as being of correct weight/quantity.

22. GENERAL

- 22.1 These Conditions are governed by and construed in accordance with the laws of the state of Victoria, Australia.
- 22.2 Should any part of these Conditions be held to be void or unlawful, such part is to be read and enforced as if the void or unlawful part had been deleted.
- 22.3 No Order between Plascorp and the Customer may be assigned by the Customer without Plascorp's written consent, which may be given or withheld in Plascorp's absolute discretion.
- 22.4 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.
- 22.5 Where the Customer is a trustee of a trust, the Customer warrants that it is the only trustee of the trust and will remain trustee of the trust, it is not aware of any action having been taken to remove it as trustee of the trust, it has the power under the trust deed to enter into and observe its obligations under these Conditions and the assets of the trust shall be available to meet payment of any monies due and owing to Plascorp.
- 22.6 These Conditions form an agreement between Plascorp and each Customer who places an Order with Plascorp and/or who purchases Goods or services from Plascorp and are binding on these parties. These Conditions will prevail over any subsequent document issued by the Customer.