

1. INTRODUCTION
- 1.1 **Application of these Terms and Conditions**
The Customer agrees that prior to placing an order with the Supplier, the Customer has read and agreed to the terms and conditions as set out hereunder. For the purposes of this agreement, "Supplier" is G.J. DIX & SONS PTY LTD A.B.N. 29 071 654 558 and the "Customer" is the applicant named on the account with the Supplier or where no account exists then on the Work Authorisation provided by the Supplier to the Customer. In this Agreement "Goods" means goods and services. "Quote" means a signed and numbered quote issued by the Supplier.
2. QUOTE
- 2.1 **Acceptance by the Customer** — Where the Supplier has given the Customer a Quote:
 - (a) The Supplier need not supply the Customer until the Quote has been accepted by the Customer;
 - (b) The Customer shall accept the Quote by instructing (in writing) by way of an official purchase order making specific reference to the Supplier's Quote Number and issuing a copy of the purchase order to the Supplier.
 - (c) Acceptance by the Customer of the Quote will constitute acceptance by the Customer of these Terms and Conditions.
 - (d) Quotes are valid for thirty (30) days from date of issue, unless an extension has been authorised by the Supplier.
 - (e) The Supplier reserves the right to withdraw the Quote for whatever reason. In acceptance of the Quote, the Customer warrants that it has not relied on any representation by the Supplier and its employees and agents other than as supplied in writing in the Quote.
- 2.2 **Supplier may Revise Quote** — The Supplier may amend the Quote after a period of thirty (30) days from the date of the signed acceptance of the Work Authorisation to take into account any rise or fall in the cost of performing the Order and the Supplier shall notify the Customer of such amendment as soon as practicable thereafter. Upon the Supplier giving the Customer notification of such amendment the amended quote shall be deemed to be the Quote for the purposes of the Terms and Conditions.
- 2.3 **Variations to Initial Quote** — The Customer shall indemnify the Supplier from any additional cost incurred by the Supplier, should the Customer increase the scope of the goods and/or services to be provided by the Supplier.
- 2.4 **Indemnity**
 - (a) The Customer warrants, as a fundamental condition of this contract, that all drawings and specifications and other design information supplied by the Customer to the Supplier shall be accurate in all aspects and free of copyright.
 - (b) The Customer shall indemnify the Supplier from all costs incurred when Goods are manufactured exclusively to the Customer's specification. These Goods cannot be cancelled.
3. PRICES
- 3.1 List Prices are recommended prices only and there is no obligation for the Supplier to comply with these recommendations. All prices are exclusive of GST and subject to alteration without notice.
- 3.2 Any increase in the cost of supplying the Goods which is beyond the control of the Supplier and which occurs between the date of ordering and delivery shall be to the Customer's account.
- 3.3 Unless otherwise stated in the Supplier's Work Authorisation, the supplier reserves the right to alter its List Prices without notice and may vary the purchase price to reflect the addition in costs, taxes or duties incurred or to be incurred by the Supplier after that date of the Work Authorisation.
- 3.4 All List Prices are exclusive of GST and other government impost unless otherwise stated in writing and are subject to alteration without notice.
4. ORDERS
- 4.1 All orders are subject to acceptance.
- 4.2 We reserve the right to supply an order in full or only in part.
- 4.3 You may not cancel an order, nor delay delivery, following acceptance unless we agree in writing and payment of work completed up to that time is made.
5. DELIVERY
- 5.1 Delivery times and dates are estimates only and are not guaranteed. Where we or our suppliers or sub-contractors are delayed due to unforeseen circumstances or reasons beyond control, we may make part delivery, suspend delivery, or extend delivery time for the period of the delay.
- 5.2 Delivery is ex our nominated works unless otherwise specified. If you do not specify a method of delivery then we may decide the method but all carriers will be your agents only and delivery will be at your cost.
- 5.3 A claim for shortages in delivery must be in writing received by us within 14 days of despatch from our store.
- 5.4 Manufacture and delivery of Goods will be in accordance with the Customer's original order schedule. The Customer shall make all arrangements necessary to take delivery of the Goods consistent with the original delivery schedule. Should there be any delay or change to the original order schedule that is beyond the control of the Supplier, then payment for such Goods will fall due subject to the Supplier's standard payment terms, irrespective of whether the Goods have been delivered. The customer may incur storage charges on a daily basis as per clause 5.5 below.
- 5.5 Delivery of the Goods made to the Customer at the Supplier's address will be on an agreed date and failure by the Customer to uplift completed Goods from the Supplier's address on this agreed date may incur storage charges estimated on a daily basis calculated by the order value x the interest rate as advised in clause 5.3 x the number of days.
- 5.6 Delivery of Goods to a third party and/or site nominated by the Customer is deemed to be delivery to the Customer for the purpose of this agreement.
- 5.7 Suspension of Delivery — The Supplier may suspend delivery or cease manufacture if the Customer at any time fails to make payment in accordance with these terms & conditions and/or exceeds credit facilities as established by the Supplier.
6. PAYMENT
- 6.1 **Time for Payment** — The Customer must upon receiving the Supplier's invoice, pay the Supplier the total amount set out in the invoice by the end of the month plus thirty (30) days.
- 6.2 **Export Sales** — Unless otherwise negotiated, export sales are subjected to the provision by the Customer of an irrevocable letter of credit at a bank acceptable to the Supplier in favour of the Supplier. The issuing bank is to be acting for the Supplier if so advised.
- 6.3 **Interest** — The Supplier may charge interest at a rate of two per centum (2%) above the commercial lending rate of the Westpac Banking Corporation calculated on a daily basis on amounts not paid within the time specified in clause 6.1 and 6.5.
- 6.4 **Deposit** — The Supplier may require a deposit from the Customer in specific circumstances and if a deposit is so requested by the Supplier the Customer acknowledges the Supplier is under no obligation to undertake any works as requested by the Customer, until the deposit is received by the Supplier in full and when all details pertaining to contract are finalised. In the event of default as to payment owing to the Supplier on the part of the Customer, the Supplier shall be entitled to forfeit the deposit and claim any Supplier's profit or margin contemplated by or allowed for in the contract in addition to any remedy available to the Supplier at law or in equity.
- 6.5 **Progress Payments** — The Supplier may require progress payments from the Customer in specific circumstances and if so, the Supplier reserves the right to halt any further work until such time as the outstanding payment is forthcoming. In addition penalty interest (as specified in 6.3) may be charged.
- 6.6 **Damages** — The Customer must pay to the Supplier any costs, expenses or losses incurred by the Supplier as a result of the Customer's failure to pay to the Supplier all sums outstanding as owed by the Customer to the Supplier including without limiting the generality of the forgoing any debt collection and legal costs incurred in enforcing payment on a Solicitor and own Customer basis.
- 6.7 **Cancellation** — The Customer shall reimburse the Supplier for any costs, expenses or losses incurred by the Supplier should the Customer cancel the accepted Work Authorisation. The time for payment for such cancellation shall be seven (7) days from the Supplier's invoice.
7. **RISK** — The risk in the Goods passes from us to the Customer or its agent or to a third party nominated by the Customer upon despatch from our premises, even if we are required to install, set up or perform any service in connection with the goods.
8. RETENTION OF TITLE
- 8.1 **Title** — Notwithstanding the delivery of the Goods or their installation, title in any particular Goods shall remain with the Supplier regardless of whether the Goods are on-sold by the Customer until the Customer has paid and discharged any and all monies owing pursuant to any invoice issued by the Supplier for the Goods, including all applicable GST and other taxes, levies and duties. Any payment made by or on behalf of the Customer which is later avoided by the application of any Statutory Provisions shall be deemed not to discharge the Supplier's title in the Goods nor the Customer's indebtedness to the Supplier and, in such an event, the parties are to be restored to the rights which each respectively would have had if the payment had not been made.
- 8.2 **Bailment** — The Customer acknowledges that it is in possession of the Goods solely as Bailee until payment of all invoices for the Goods is made pursuant to clause 6.1 and until that time:
 - (a) The Customer is not entitled to sell the Goods but only in the ordinary course of business;
 - (b) The Customer must not encumber or otherwise charge the Goods;
 - (c) The Customer shall be fully responsible for any loss or damage to the Goods whatsoever and howsoever caused following delivery or installation of the Goods to the Customer.
- 8.3 **Repossession** — The Customer hereby irrevocably grants to the Supplier the right, at its sole discretion, to remove or repossess any Goods from the Customer and sell or dispose of them, and the Supplier shall not be liable to the Customer or any person claiming through the Customer and the Supplier shall be entitled to retain the proceeds of any Goods sold and apply same towards the Customer's indebtedness to the Supplier. If the Customer commits an act of bankruptcy, enters into any form of administration or liquidation, makes any composition or arrangement with its creditors, ceases to carry on business or breaches any fundamental clause of this agreement, then the Supplier may, without prejudice to any other remedies it may have, repossess any Goods delivered to the Customer on any account which has not been paid in accordance with the terms and conditions herein and commence proceedings to recover the balance of any monies owing the Supplier by the Customer.
- 8.4 **Inconsistency** — If there is any inconsistency between the Supplier's rights under this clause 8 and the Supplier's rights under Chapter 4 of the Personal Property Securities Act 2009 (Cth) (PPSA), this clause prevails.
9. WARRANTY
- 9.1 The warranty period for the Goods shall be as per the manufacturer's specifications or the Supplier's specifications, as the case may be, which is usually twelve (12) months from the date of purchase unless otherwise stipulated.
- 9.2 The Supplier will repair or replace any and all material parts found to be defective within the warranty period without charge, provided the Goods have been installed and used in accordance with the manufacturer's and/or Supplier's instructions. No allowance will be made on any Goods for labour, freight or consequential damages, only the cost of the defective Goods.
- 9.3 Work and/or service carried out on the Goods by anyone other than the Supplier and/or their nominated agents shall make the warranty null and void unless the Customer obtains prior approval in writing from the Supplier before any remedial work is carried out.

- 9.4 The Supplier reserves the right to make null and void the warranty should the Goods be modified, altered, damaged or put to any undue stress other than in the way the Goods were designed to perform.
- 9.5 In respect of all claims the Supplier shall not be liable to compensate the Customer for any delay in either replacing or repairing the workmanship / Goods or in properly assessing the Customer's claim.
10. DESIGN UPDATES — The Supplier reserves the right to make changes and improvements to the Goods without incurring any obligations whatsoever to install or make changes and improvements to Goods already supplied.
11. INSPECTION ON DELIVERY — The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Supplier in writing of:
 (a) any alleged shortage in quantity of Goods, incorrectly priced Goods or failure to comply with the description of Goods ordered and;
 (b) any Goods found to be defective. The Customer shall afford the Supplier an opportunity to inspect such Goods within a reasonable time following delivery.
 If the Customer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with these terms and conditions.
12. RESTOCKING
- 12.1 Subject to prior written approval from the Supplier a restocking charge of 15% will be applied on unused Goods sent back for credit or exchange. Freight of unused Goods shall be the Customer's responsibility.
- 12.2 Customised product or special orders are not returnable.
13. MERCHANDISING EQUIPMENT — The Supplier's merchandising equipment shall remain the Supplier's property at all times. The Customer shall indemnify the Supplier from any damage (normal wear and tear excluded) or loss to the merchandising equipment while on loan to the Customer.
14. LIABILITY
- 14.1 **Non-excludable Rights** — The parties acknowledge that, under applicable State and Commonwealth law, certain conditions and warranties may be implied in these Terms and Conditions and there are rights and remedies conferred on the Customer in relation to the provision of the Goods or of services which cannot be excluded, restricted or modified by the Agreement ("Non-excludable Rights").
- 14.2 **Disclaimer of Liability** — The Supplier disclaims all conditions and warranties expressed or implied, and all rights and remedies conferred on the Customer, by statute, the common law, equity, trade, custom or usage or otherwise and all those conditions and warranties and all those rights and remedies are excluded other than any Non-excludable Rights. To the extent permitted by law, the liability of the Supplier for a breach of a Non-Excludable Right is limited, at the Supplier's option, to the supplying of the Goods and/ or any services again or payment of the cost of having the Goods and/or services supplied again.
- 14.3 **Indirect Losses** — Notwithstanding any other provision of these Terms and Conditions, the Supplier is in no circumstances whatever (the cause) liable in contract, tort including without limitation, negligence or breach of statutory duty or otherwise to compensate the Customer for:
- any increased costs or expenses;
 - any loss of profit, revenue, business, contracts or anticipated savings;
 - any loss or expense resulting from a claim by a third party; or
 - any special, indirect or consequential loss or damage of any nature whatsoever caused by the Supplier's failure to complete or delay in completing the Order or to deliver the Goods.
- 14.4 **Force Majeure** — The Supplier will have no liability to the Customer in relation to any loss, damage or expense caused by the Supplier's failure to complete the Order or to deliver the Goods as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lockout, breakdown, war, the inability of the Supplier's normal suppliers to supply necessary material or any other matter beyond the Supplier's control.
15. SECURITY AND CHARGE — The Customer hereby charges all property, both equitable and legal, present or future of the Customer in respect of any monies that may be owing by the Customer to the Supplier under these terms and conditions or otherwise and hereby authorises the Supplier or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property assets of the Customer with the Australian Securities and Investments Commission.
16. PERSONAL PROPERTY SECURITIES ACT
- 16.1 The Customer acknowledges and grants the Supplier a security interest (and where appropriate a Purchase Money Security Interest) in all Goods supplied to the Customer by the Supplier and any of their proceeds, including all Goods previously supplied and any of their proceeds, and this security interest secures all moneys owing to the Supplier by the Customer.
- 16.2 The Customer waives its rights to receive a Verification Statement confirming registration of a Financing Statement relating to the Security Interest granted by the Customer to the Company.
- 16.3 The Customer agrees that in enforcing this agreement nothing in sections 130 to 143 of the PPSA will apply.
- 16.4 Under the PPSA the Customer waives its rights to:
- (a) Receive a notice of intention to seize collateral under section 95;
 - (b) Object to Secured Party purchasing the collateral under section 129;
 - (c) Receive a disposal notice under section 130;
 - (d) Receive a statement of account under section 130(4) or section 132(30)(d);
 - (e) Receive notice of retention of collateral under section 142;
 - (f) Redeem the collateral under section 142; and
 - (g) Reinstatement the security agreement under section 143.
- 16.5 The Customer will do everything reasonably required of it by the Company to enable the Company to correctly register and maintain its security interest(s). This includes notifying the Company immediately in writing if the Customer changes any of its details that are required to register a financing arrangement under the PPSA.
- 16.6 Any payment made to the Company by the Customer may be applied by the Company in any manner the Company thinks fit.
- 16.7 In this clause a word that is defined in the PPSA has the meaning it has under the Act.
17. COPYRIGHT
- 17.1 Subject to clause 16.2, the Supplier retains the copyright in all of the Supplier's documents (including plans, illustrations, drawings and specifications furnished to you for the purposes of the contract) and neither they nor their contents may be used without our express consent for any purpose other than that for which they were furnished. You may not use, reproduce or communicate the contents of such material to any third party unless authorised by us in writing to do so. This clause survives the termination of the contract.
- 17.2 If the Customer is receiving from the Supplier goods or services involving the manufacture, repair, redesign or upgrade of spare parts, the Customer represents and warrants that the Customer either owns the intellectual property relating to those parts or has the consent of the owner for the Supplier to provide the Customer with those goods or services. The Customer also undertake to hold the Supplier harmless and reimburse the Supplier for any loss or damage the Supplier suffer if the provision of those goods or services results in a claim being made against the Supplier by a third party alleging that their intellectual property rights have been infringed.
18. PRIVACY
- 17.3 The Customer hereby authorises the Supplier to collect, retain, record, use and disclose personal information about the Customer, in accordance with the Privacy Act 1988, to persons and/or legal entities who are a Solicitor or any other professional consultant engaged by the Supplier, a Debt Collector, Credit Reference Organisation and/or any other individual or organisation which maintains credit references and/or default listings.
- 17.4 The Customer also authorises the Supplier to make enquiries with respect to the Customer's credit worthiness; to exchange information with other Credit Providers in respect to previous defaults of the Customer and to notify other Credit Providers of a default by the Customer.
18. GENERAL MATTERS
- 18.1 **Severability** - Any provision in these Terms and Conditions which is invalid or unenforceable in any jurisdiction must be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable. If that provision cannot be read down then it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms and Conditions or affecting the validity or enforceability of that provision in any other jurisdiction.
- 18.2 **Set Off** — The Supplier is entitled to deduct from any amounts due to the Customer any amount due from the Customer.
- 18.3 **Implied terms** — Except as required by mandatory operation of law (or as otherwise expressly provided) all implied conditions are excluded.
- 18.4 **Acknowledgement** — No failure by you to acknowledge these terms of trade, and no supply of goods in such circumstances, implies that these terms have not been incorporated into, or have been waived in respect of, the contract for the supply of the goods.
- 18.5 **Assignment** — You may not assign the contract without our prior written approval
- 18.6 **Failure to adhere to these terms of the agreement** — may result in credit being withdrawn.
- 18.7 **Governing Law and Jurisdiction** - The laws in force in South Australia govern a contract for supply of goods and services and the Customer submits to the jurisdiction of the courts of South Australia.

The Buyer agrees that they have read and understood these Warranties and Terms and Conditions of Sale

Signed for and on behalf of the Customer

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 (Signature) (Print Name) (Position within the company)