

# Our Town Fencing Terms and Conditions of Trade

Please read the following Terms of Trade carefully. If you do not understand these Terms of Trade, you should seek legal advice. A reference to the **supplier** means B.J.B. Industries Pty Ltd. A reference to the **customer** means you.

1. **DEFINITIONS**  
1.1 "Customer" means a person or entity whose order for the purchase of Goods is accepted by the Supplier.  
1.2 "Director" means where the Customer is a corporation, all Directors of that corporation and where the Customer is a trust that has a corporate trustee, all Directors of the trustee.  
1.3 "Goods" shall mean Goods supplied by the Supplier to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined).  
1.4 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer and includes all Directors of the Customer where the Customer is a corporation and where the Customer is a trust all trustees of the trust and all Directors of the trustee if there is a corporate trustee of the trust.  
1.5 "Price" shall mean the cost of the Goods and/or the Services as agreed between the Supplier and the Customer subject to clause "Price Agreement" of these Terms.  
1.6 "Promotional Material" means sample or other material supplied to the Customer by the Supplier at the cost of the Supplier and includes but is not limited to display boards, samples, folders and advertising brochures.  
1.7 "Services" shall mean all services supplied by the Supplier to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Services as defined supra).  
1.8 "Supplier" shall mean BJB Industries Pty Limited Has Our Town Fencing ABN 43 083 444 544 and includes its successors and assigns.  
1.9 "Terms" means these terms and conditions and where the context so permits shall include the agreement formed between the Supplier and the Customer and/or any other agreement or arrangement made between the Supplier and the Customer.  
1.10 "Gal" Any reference to Steel or Galvanized by the supplier shall be supplied using "The Galvanised Steel", If "Hot dipped Gal Steel" is require it will need to be specified on all paper work and priced accordingly.
2. **INTERPRETATION**  
2.1 The headings used in this agreement do not form part of these Terms and are for convenience only.  
2.2 Words importing the singular shall include the plural and vice versa, words importing a gender shall include other genders and references to a person shall be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency.
3. **GENERAL**  
3.1 These Terms replace any previous agreements or terms and conditions of sale.  
3.2 Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer's order deviating from or inconsistent with these Terms are expressly rejected by the Supplier. Any variations to these Terms not expressly agreed to in writing by the Supplier are expressly rejected by the Supplier.  
3.3 A quotation shall not constitute an offer to sell Goods to the Customer. No contract for the supply of Goods shall exist between the Supplier and the Customer unless the Customer's order for Goods has been accepted by the Supplier. The Supplier may accept or refuse any order for Goods in its absolute discretion and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment or deposit from the Customer.  
3.4 All telephone orders are to be immediately confirmed in writing by the Customer. In the event the confirmation varies from that recorded and processed by the Supplier, then the Supplier's records shall prevail.  
3.5 Once an order from a Customer has been accepted by the Supplier, the order cannot be cancelled by the Customer without the written consent of the Supplier.  
3.6 The Supplier may vary these Terms by notice in writing to the Customer. The Customer agrees that the purchase of any Goods after the date of a notice of variation will be deemed to be an acceptance of such varied Terms.  
3.7 Should there be any variation to any of the information supplied by the Customer to the Supplier concerning the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust) the Supplier may forthwith notify the Supplier in writing. These will not be deemed accepted by the supplier until the Supplier has confirmed the change in writing to the Customer.  
3.8 Any order received by the Supplier from the Customer for the supply of Goods and/or the Customer's acceptance of Services and/or Goods supplied by the Supplier shall constitute acceptance of these Terms.  
3.9 Upon acceptance of these Terms by the Customer the Terms are irrevocable and can only be varied in accordance with these Terms.  
3.10 The Supplier's agents or representatives are not authorised to make any representations, or statements on behalf of the Supplier and the Supplier shall not be liable for any unauthorised representations or statements made by the Supplier's agents or representatives.  
3.11 The Supplier's agents or representatives are not authorised to enter into any agreement on behalf of the Supplier or vary these Terms.  
3.12 In the event that the whole or any part or parts of any provisions in these Terms should be held to be void or unenforceable in whole or in part such provision or part thereof shall be treated as severed from these Terms but the validity and enforceability of the remainder of these Terms shall not be affected.  
3.13 The Supplier reserves the right to sub-contract the manufacture and/or supply of the Goods or any part thereof to a third party.  
3.14 The Customer agrees that a statement in writing signed by the Supplier's Credit Manager certifying that monies are payable by the Customer to the Supplier shall be prima facie evidence of the amounts so payable.  
3.15 These Terms apply to all transactions from which the Customer is supplied with Goods and/or services on credit. If any future contract between the Supplier and the Customer is inconsistent with these Terms, then these Terms will apply unless the subsequent contract refers to and specifically alters these Terms in writing.
- 3.16 The Supplier shall be entitled at any time to assign its rights under this Commercial Credit Application to its successors, nominated transferees or assigns, (including but not limited to, where applicable personal guarantees), and that these Terms shall not be in any way affected or discharged pursuant to such assignment.  
3.17 In circumstances where a fresh Credit Application is executed by the Customer but in the absence of the execution of a fresh Guarantee, the Supplier shall be entitled to rely upon any existing Guarantee so executed by the Supplier or its Guarantor as if it applied to the freshly executed Credit Application.  
3.18 The Customer warrants that the information provided on the Credit Application is true and correct and acknowledges that the Supplier will rely on the information so provided.
4. **GOODS**  
4.1 The Goods and/or Services are as described on the invoices, quotation, work authorisation or any other work commencement forms provided by the Supplier to the Customer.
5. **PRICING AGREEMENT**  
5.1 The price of Goods shall be indicated on invoices provided by the Supplier to the Customer in respect of Goods supplied.  
5.2 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 the taxes and duties are expressly included in any quotation given by the Supplier.  
5.3 Notwithstanding any prior acknowledgement by the Supplier of the price of Goods, the prices specified for Goods may be the Supplier's option to be subject to the Supplier's prices and charges in effect at the time of delivery.  
5.4 The Supplier shall be entitled to alter the price of Goods in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other government imposts.  
5.5 At the Supplier's 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 or after account customers will be charged to account at this time.  
5.6 While all care taken Quotes whether verbal or written are not any estimate and to be only used as guide for a maximum of 30 days actual pricing will be confirmed at time of placing order.  
5.7 An estimate only will be provided when the supplier is requested to provide costing based on quantities, off plan dimensions or other information furnished by or on behalf of the Customer. The Customer indemnifies the Supplier, its servants or agents from all claims for damages arising in any manner or on any terms as a result of any order or omission in any such quotation.  
5.8 Only the product(s) and fabrication (if any) specified in an estimate are covered by that estimate. Any alteration to goods, fittings, drawings, site conditions or any other variations required by the customer requires an amended written estimate which shall be in writing and signed by the customer and supplier. Standard pool fencing is 1200mm high. Certain styles may be used, if over 1200H, but these may require extra rails for compliance. When placing an order, the customer must specify "Pool Tubular" and check their local council for specific requirements. The Customer is responsible for ensuring all relevant orders are clearly marked with the type of spear required, Colour of Tek screws will be as close as possible to powder coated colour of panels.  
5.9 It is the customer full responsibility to fully check all quotes, order & invoices as supplier accepts no responsibility from material that is not listed on these or for material ordered from plans / bill of quantities etc
6. **ACCOUNT TERMS**  
6.1 When the Supplier has agreed to extend credit to the Customer for the purchase of Goods the Customer must pay for the Goods within twelve (12) days after the end of the calendar month that the Goods were delivered. Unless otherwise agreed in writing from the Supplier.  
6.2 Credit offered to the Customer for all Goods sold will be provided in the absolute discretion of the Supplier Any credit limit approved by the Supplier shall be notified in writing to the Customer.  
6.3 The Supplier will be entitled to set off against any money owing to the Customer with amounts owed to the Supplier by the Customer on any account whatsoever.  
6.4 Payment for Goods must be made by cash, or by bank cheque, or by direct credit, or by credit card, or by any other method as agreed by the Supplier. Payments will be applied to outstanding invoices of the Customer at the sole discretion of the Supplier. The Supplier reserves the right to change a credit card handling fee to its discretion and at times advised by the Australian bank at any time.  
6.5 If the Customer does not pay the Supplier by the due date, the Customer shall pay interest on the amount due, charged on a daily basis at 18% per annum from the date of the invoice until the actual date of payment. If the Customer has a credit account with the Supplier, the Supplier may debit the Customer for any interest that accrues at such other times that it chooses.

- 6.6 The Supplier and the Supplier agree that the administration fee is a reasonable liquidated cost of administering an abnormal payment and the Supplier may debit the Customer at such other times that it chooses for such administration fees.  
6.7 The Customer shall pay any legal costs (on a solicitor/client indemnity basis), stamp duties and other expenses payable on these terms and conditions or any credit application, guarantee or other security documents signed by the Customer together with all collection costs including legal fees (on a solicitor/client indemnity basis) and dishonoured cheque fees incurred by the Supplier in connection with the purchase of Goods by the Supplier.  
6.8 The Supplier may withdraw the Customer's credit facilities at any time or vary the Customer's credit limit, without notice to the Customer or any guarantor of the Customer.  
6.9 The Customer shall not set off against the Price amounts due from the Supplier.  
6.10 In the event that:  
a) the Supplier retains possession or control of the Goods; and  
b) payment of the Price is due to the Supplier; and  
c) the Supplier has made a demand in writing to the Customer for payment of the Price and the Supplier has not received the Price for the Goods, then whether prior to or after the Goods has passed to the Customer or has remained with the Supplier, the Supplier may exercise the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.  
6.11 The Customer expressly acknowledges that the absolute discretion of the Supplier, the Customer may be required to execute an authority to the Customer's Bank authorising a direct debit from the Customer's Bank account, to the Supplier for all sums due on a monthly basis. The authority will be irrevocable without the expressed written consent of the Supplier.  
6.12 If an order is not collected or delivered within 25 days of the Customer being notified of its availability of being available then the Customer will be invoiced and become liable for payment of such invoice.  
6.13 The Customer agrees to provide financial information as is reasonably required by the Supplier from time to time, for the assessment of current and future credit limits only. The Supplier and the Customer further agree that such information shall be treated as strictly confidential and will not be disclosed to any third party(ies) without the express written permission of the Customer.
7. **INTELLECTUAL PROPERTY**  
7.1 Where the Supplier has designed or drawn Goods for the Customer, then the copyright in those designs and drawings shall remain vested in the Supplier, and shall only be used by the Customer at the Supplier's discretion.  
7.2 Where the Customer has supplied drawings, designs or concepts for Goods to be supplied by the Supplier, the Customer warrants that all designs or instructions provided to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order.
8. **DELIVERY**  
8.1 Deliveries shall be made during normal working hours. Deliveries required outside normal working hours will be delivered upon the request of the Customer, and all charges will be the sole responsibility of the Customer.  
8.2 The Customer at all times is responsible to ensure suitable access to site. The Customer further indemnifies and saves harmless the Supplier, and/or its servants or agents against any loss or damage, in the event the Supplier fails to provide suitable access to site for delivery, and/or whilst on site working.  
8.3 Goods will be delivered, or deemed to be delivered, when they are delivered to the delivery place nominated by the Customer. If no such address is nominated then delivery will be deemed to occur at the time when the Goods are ready for collection at the Supplier's premises.  
8.4 The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates, as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer.  
8.5 The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within 14 days of a request by the Supplier for such information.  
8.6 The Customer authorises the Supplier to deliver products to the place nominated by the Customer and to leave the Good at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.  
8.7 The Supplier shall not be obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgment shall be conclusive evidence of the Customer's acceptance of the Goods delivered.  
8.8 Any notified times for delivery are estimates only and the Supplier shall be liable to the Customer for any failure to deliver or for delay in delivery of Goods accepted by strike, lockout or other industrial dispute, shortage of stock, shortage of labour, lack of skilled labour, delays in transit, fire, flood, hostilely, civil commotion or any other cause whatsoever whether or not beyond the control of the Supplier.  
8.9 The Customer shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.  
8.10 The Supplier reserves the right to deliver Goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment or deliver any instalment on time shall not be a repudiation of the contract and will not entitle the Customer to determine the contract in whole or in part.  
8.11 The Supplier shall not be liable to the Customer for any loss or damage attributable to failure by the Supplier to deliver the Goods.  
8.12 The failure of the Supplier to deliver shall not entitle either party to treat this contract as repudiated.
9. **PROPERTY AND RISK**  
9.1 The Goods shall be at the sole risk of the Customer as soon as they are dispatched from the Supplier's premises.  
9.2 The Supplier may mark or label the Goods to identify the Goods in any manner which the Supplier considers appropriate.  
9.3 Property in and title to the Goods will not pass to the Customer until the Price and all other amounts owed to the Supplier by the Customer have been paid for in full and until then:  
a) the Customer may hold the Goods as trustee and agent for the Supplier;  
b) the Goods must be stored separately and in a manner enabling them to be identified as Goods of the Supplier;  
c) the Customer may sell the Goods in the ordinary course of its business as trustee and agent of the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and  
d) the Supplier may require the Customer to return the Goods to the Supplier or its authorised representative on demand and the Supplier may enter upon the premises of the Customer or any other premises occupied or controlled by the Customer to inspect or repossess the Goods.  
9.4 The Customer shall insure the Goods against theft or any damage until such Goods have been paid for until they are sold by the Customer, whichever occurs first and the Supplier will be entitled to call for details of the insurance policy. If the Customer does not insure the Goods or fails to supply details of its insurance policy the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the Goods supplied to the Customer.  
9.5 If any of the Goods are damaged or destroyed prior to property in and title to the Goods passing to the Customer, the Customer hereby assigns to the Supplier all insurance proceeds payable to the Customer for the loss or damage of the Goods. The Customer shall at the time that it makes any claim on an insurer in connection with the loss or damage to the Goods notify that insurer of the assignment of rights pursuant to this clause.
10. **RETURN OF GOODS**  
10.1 The Customer acknowledges and agrees that any Promotional Material provided to the Customer by the Supplier remains the property of the Supplier at all times and the Customer must return the Promotional Material to the Supplier immediately on demand.  
10.2 Subject to clause "Property & Risk" unless agreed in writing by the Supplier, the Supplier will not accept any return of Goods.  
10.3 Goods accepted for return by the Supplier will attract a charge to the Customer to cover restocking and repackaging charges. The amount of this charge will be determined by the Supplier number and will be not less than 20% of the price of the Goods. Such charge shall be deducted from the amount or credit allowed. The original Invoice number and a copy of the original invoice must accompany all Goods returned to the Supplier.
11. **CLAIMS FROM CUSTOMERS**  
11.1 These Terms shall not exclude, or limit the application of any provisions of any statute including any implied condition or warranty the exclusion of which would contravene any statutory duties (including the Trade Practices Act 1974) or cause any part of this clause to be void or unenforceable. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.  
11.2 Unless the Goods supplied by the Supplier are of a kind ordinarily accepted for domestic household or personal use or consumption, the Supplier's liability under clause 1, of "Claims from Customers" for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one of the following:  
a) In the case of Goods:  
i) the replacement of the Goods or the supply of equivalent Goods;  
ii) the repair of the Goods; or  
iii) the payment of the cost of providing replacement Goods or of acquiring equivalent Goods;  
b) the payment of the cost of having the Goods repaired.  
b) In the case of Services:  
i) The supplying of the Services again; or  
ii) The payment of the cost of having the Services supplied again.
- 11.3 Subject to clause 1, of "Claims from Customers" the Supplier shall not be liable for any direct or indirect loss whatsoever including but not limited to the consequential loss, loss of profits, loss of opportunity, loss of use and/or the labour cost to install or remove.  
11.4 The Supplier shall not be liable for any claim in connection with Goods which have not been stored in a proper manner by the Customer or used in a proper manner.  
11.5 The customer shall notify the supplier in writing prior to the return of any goods. Such notice shall fully specify the goods and the reason for the return. Unless otherwise agreed by the parties, the supplier shall have the right to inspect the goods prior to their return. The return of any goods shall not imply any acceptance by the supplier of the customer's claim. In the event of damage to the goods in transit, the customer is required to give to the supplier a written request for replacement together with the delivery docket endorsed to the effect that the goods were damaged prior to unloading. The customer shall indemnify the supplier for any claims by any third party arising in any manner or at any time in relation to any contract and/or any arrangement made between the supplier and the customer.  
11.6 No cancellation of any supplier, special manufactured items, powder coated goods and/or non-stocked items will be permitted once the order has been received by the supplier. Other manufactured items may be considered for return, providing they are in original packaging and condition, at the sole discretion of the supplier. A 20% restocking fee will apply to all returned goods
- 11.7 The liability of the supplier shall be limited to the sale price of the goods supplied. No liability will be accepted for any punitive damages. Without limiting its meaning this clause shall apply to any claims for losses, costs, expenses or other damages arising in any manner or at time, whether directly or indirectly, from the goods and their supply. This shall include claims by third parties. The supplier shall not be liable for any consequential loss or other damages caused by the maintenance, use or operation of the goods by the customer or by the failure of the goods due to any cause whatsoever.  
11.8 It is the responsibility of the Customer to carefully inspect the goods immediately they are delivered. Credit Claims will only be recognised if made in the first instance by phone within 72 HOURS of receipt, and also in writing within 7 days of delivery. Claims outside this period will be at the absolute discretion of the Supplier, and its decision final and binding on the Customer. All goods returned must be in original condition and packaging and complete in every detail. Goods will only be accepted if the freight is prepaid by the Customer.  
11.9 If the Supplier retains property in the Goods nevertheless, all risk for the Goods passes to the Customer on delivery.  
11.10 If any of the Goods are damaged or destroyed prior to property in them passing to the Customer, the Supplier is entitled, without prejudice to any of its other rights or remedies under these Conditions of Sale (including the right to receive payment of the balance of the Price for the Goods), to produce all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The resolution of these terms and conditions by the Supplier is sufficient evidence of the Customer's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.  
11.11 The Supplier may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.  
11.12 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.
12. **FIT FOR PURPOSE**  
12.1 The Customer agrees that it does not rely on the skill or judgment of the Supplier in relation to the suitability of any Goods for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever. The product supplied to the customer is only warranted for domestic purposes. No warranty applies to commercial use.  
12.2 **GST**  
12.3 In this clause the expressions "GST", "Input tax credit", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.  
12.4 With the exception of any amount payable under this clause "Price Agreement", unless otherwise expressly stated all amounts stated to be payable by Customer under these Terms are exclusive of GST.  
12.5 If GST is imposed on any supply made under or in accordance with these Terms, the recipient of the taxable supply must pay the Supplier an additional amount equal to the GST payable on or for taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply subject to the provision of a tax invoice
14. **DEFAULT BY CUSTOMER**  
14.1 In the event of:  
a) any default or failure by the Customer in making due and punctual payment to the Supplier of any moneys owing by the Customer;  
b) an administrator, liquidator or provisional liquidator is appointed in respect of the Customer;  
c) a receiver and manager, administrator or controller is appointed in respect of any assets or groups of assets of the Customer;  
d) the Customer goes into bankruptcy or is wound up;  
e) the Customer becomes, admin in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due, or  
f) there is a breach by the Customer of any of these Terms,  
g) the Customer offers for the Goods for sale through the internet on eBay or any like website.  
14.2 the Customer without the written approval of the Supplier shall be prohibited from:  
a) all monies payable by the Customer to the Supplier shall become immediately due and payable notwithstanding the due date of payment shall not have expired, and the Supplier may without prejudice to any other rights it may have do any or all of the following:  
(1) withdraw any credit facilities which may have been extended to the Customer;  
(2) withhold any further deliveries of Goods;  
(3) in respect of Goods already delivered onto the Customer's premises enter onto those premises and recover and resell the Goods;  
(4) recover from the Customer the cost of material or Goods acquired for the purposes of future deliveries; and/or  
(5) cause to supply Goods to the Customer.
15. **CAVEATABLE INTEREST**  
15.1 In the event of Default of the agreed trading terms by the Customer, then the Customer by its Director(s) or Proprietor(s) / Partner(s) / Individual(s), nominated on page 1 of this Application hereby charge all their Right, Title, Interest (if any) to any all party(ies) now named / partly owned, or may in the future become owned / partly owned, solely or jointly by the said Customer / Director(s) / Proprietor(s) / Partner(s) / Individual(s) on page 1 of this Application in favour of the Supplier, to better secure the monies outstanding, with the due and punctual observance and performance of all of the obligations of the Customer hereunder. On such Customer acknowledges that the Supplier may at its discretion, register a charge on such property in respect of the interest conferred on it under this clause. In the event that the Supplier is required to exercise its right under this clause, against the Customer, then the Customer grants to the Supplier the right to appoint a Receiver and sell the property(ies).
16. **TRUST AND TRUSTEE**  
16.1 Where the Customer is a trustee:  
a) The Customer agrees to produce a stamped copy of the trust deed (with all amendments) and accounts of the trust if and when requested by the Supplier.  
b) The Customer warrants that it has full power and authority to enter into this Agreement on behalf of the trust and that it shall be bound by these Terms both personally and in its capacity as trustee irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into any credit agreement with the Supplier.  
c) The Customer warrants that the trust has agreed to indemnify the trustee in respect of all liability incurred by the trustee pursuant to this agreement.  
d) The trustee of the trust acknowledges that it has entered into this agreement in its capacity as trustee of the trust and also in its own capacity.
17. **COVENANTS BY THE CUSTOMER**  
17.1 Fixed and Floating Charge  
a) In consideration of the Supplier selling to the Customer Goods on credit, the Customer as beneficial owner does hereby charge all and every undertaking and all of its assets of whatsoever nature and whatsoever estate both present and future with the payment to the Supplier of all moneys now or hereafter to become owing or payable to the Supplier by the Customer.  
b) The charge hereby created ("the Charge") shall operate as:  
(1) a fixed charge as regards to freight and leasehold property, uncalled capital, engines, machinery, plant, stock, books of account, debts, vouchers and other documents relating in any way to the business transactions of the Customer and all securities negotiable or otherwise, shares and documents evidencing title to or right to possession of any property and whether or not deposited with the Supplier by the Customer and the property mentioned in any such documents;  
(2) as a floating charge in respect of all other assets hereby charged.  
c) The Customer shall immediately upon demand made on it by the Supplier execute in favour of the Supplier a deed of fixed and floating charge containing such covenants as the Supplier may reasonably require including without limitation the provisions of the Supplier's standard form of deed of fixed and floating charge.
- 17.2 **MORTGAGE**  
a) The Customer shall immediately upon demand being made upon it by the Supplier execute in favour of the Supplier as mortgagee, a mortgage payable in demand in registrable form over all or any part of the freehold or leasehold land of the Customer referred to in clause "Mortgage" hereof ("the Mortgage") containing such covenants as the Supplier may require including without limitation the covenants contained in Memorandum 244/7323 presently held in the New South Wales Land Titles Office in respect of real property situated in New South Wales and in the case of real property in other jurisdictions, the provisions of the Supplier's standard form of mortgage.  
b) The Supplier shall be entitled to lodge a caveat in respect of the agreement to grant a mortgage contained in clause "Covenants by the Customer" or the Mortgage or in respect of all or any of the real property of the Customer charged to the Supplier under clause 1, of "Fixed & Floating Charge". The Customer shall not object to the lodgement of the said caveat or take any steps to have any such caveat removed from the Land Titles Office register.
- 17.3 **FUTURE ASSURANCES**  
At the cost of the Customer, the Customer shall from time to time at the written request of the Supplier execute any deed, dealing, assurance or other document which the Supplier shall in its absolute discretion require the Customer to execute to give effect to all such other acts, matters and things as the Supplier shall consider reasonable for the purpose of preserving, perfecting or protecting the Charge and the Mortgage or more effectively securing the powers, remedies, rights, declarations and authorities of the Supplier under the Charge and/or the Mortgage.
- 17.4 **POWER OF ATTORNEY**  
The Customer hereby irrevocably appoints the Supplier and every authorised officer of the Supplier jointly and each of them severally the attorney of the Customer for the purpose of doing either in the Customer's name or in the name of the attorney and in either case as the Customer's act and deed all such acts, matters and things as the attorney from time to time considers necessary or expedient for the purpose of carrying into effect all the powers and authorities herein contained and without limiting the power and authority:  
a) do any act including the execution of the Charge and/or the Mortgage and the execution of such documents as may be necessary to register the Charge and/or the Mortgage in the Customer's name as mortgagee pursuant to this application;  
b) to execute and deliver on behalf of the Customer a lease of the said freehold or leasehold land of the Customer or any part thereof for a term not exceeding the term of the Mortgage as the Supplier may think fit;  
c) to bring, proceed with, defend or compromise any legal proceedings on behalf of the Customer in connection with the said land and/or property the subject of the Mortgage and to execute and appeal from any judgment or judgments in connection therewith.

## 18. RETENTION OF TITLE

- 18.1 Until all invoices are paid in full, and all monies received or cleared, ownership of the goods remain with the Supplier, but the risk passes to the Customer on delivery. Delivery shall occur if the Supplier is or Agent(s), delivery, on delivery, and/or if the Customer or its Agent(s) takes delivery, at that point of delivery. Until the Supplier is paid in full, the relationship of the Customer to the Supplier shall be fiduciary in respect of the goods and the Customer shall hold the goods as bailee only for the Supplier. The Customer shall store the goods separately from its own until ownership has manifested in the Customer. Should the goods be on sold to a third party before payment, or if the event of the Appointment of an Administrator, Controller, Managing Controller Receiver or Receiver Manager, or entry and/or informal/Formal Debt of Arrangement under the Bankruptcy Act 1966 by the Customer, then the Customer hereby assigns to the Supplier its right of recovery of payment from the third party. The moneys(ies) resulting from the sale of the goods are to be specifically assigned and placed in a separate account on trust for the Supplier, until payment in full is made to the Supplier for the cost of the goods only, to guarantee clear passage of ownership to the third party innocent purchaser.  
18.2 In the event the Customer is in Default of the agreed trading terms, then the Customer without reservation grants right of entry to deliver to any or all properties under the Customer's control, and the goods are reasonably expected to be stored. The Customer indemnifies and save harmless the Supplier, its servants or agents in relation to loss or damage as a result of the retaining of possession of said goods. Further in the event the Supplier exercises its right of relating possession of the said goods, the Customer grants power of sale to the Supplier to resell the said goods and the Customer acknowledges that any shortfall owing after the said goods are resold will be the responsibility of the Customer.  
18.3 In the event that title to the goods passes to the Customer and the Customer is indebted to the Supplier then the Customer hereby grants to the supplier a security interest by way of lien and shall have the same right of access to the Customer's property to enforce such security interest as set out in clause 2 of "Retention Title" as if it had not passed.
19. **ACKNOWLEDGEMENT**  
19.1 Each of the Customer and the Directors hereby acknowledge, affirm and agree that:  
a) this application has been provided to the Supplier to enable each of the Customer and the Directors to take it away and read it so that they may fully understand and comprehend the terms conditions and provisions contained herein;  
b) they have read, fully understood and comprehended the terms, conditions and provisions contained in this application;  
c) they have been advised by the Supplier prior to the execution of this application that a copy of this application form containing the terms of this application has been provided to the Customer and each Director to enable them to obtain independent legal advice and they have taken such advice as to us has seemed appropriate;  
d) they have full power and authority to enter into this Agreement;  
e) this Agreement is signed and delivered as a Deed.  
f) the Supplier will rely on all information given to the Supplier by the Customer and the Directors and this information is true and correct.  
19.2 The Supplier 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 supplier notifies the Customer of such change.
20. **ACCEPTANCE**  
20.1 Any instructions received by the Supplier from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Supplier shall constitute acceptance of the terms and conditions contained herein.  
20.2 Where more than one Customer has entered into this agreement, the Customer's shall be jointly and severally liable for all payments of the Price.  
20.3 Upon acceptance of these terms and conditions by the Customer 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 Managing Director of the Supplier.  
20.4 None of the Supplier's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the Managing Director of the Supplier in writing nor is the Supplier bound by any such unauthorised statements.  
20.5 The Customer undertakes to give the Supplier not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). These changes will only be deemed accepted by the Supplier once the Supplier has confirmed acceptance of these changes in writing to the Customer.
21. **ENVIRONMENTAL REQUIREMENTS**  
The Customer confirms and acknowledges it has made all inquiries in relation to all responsibilities conferred upon the Customer, by all relevant legislation, relating to storage of and disposal of any or all products supplied by the Supplier.
22. **BUYER'S DISCLAIMER**  
The Customer 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 Supplier and the Customer acknowledges that he / she buys the Goods relying solely on his own skill and judgment and that the Supplier shall not be bound to nor responsible for any term, condition, representation or warranty other than the warranty given by the Manufacturer which warranty shall be personal to the Customer and shall not be transferable to any subsequent Customer.
23. **LIEN AND STORAGE IN TRANSIT**  
Where the Supplier has not received or been tendered the whole of the price, or the payment has been dishonoured, the Supplier shall have:  
a) a lien on the goods;  
b) a right to retain them for the price while the Supplier is in possession of them;  
c) the right of stopping the goods in transit whether or not delivery has been made or ownership has passed; and  
d) a right of resale.  
e) the foregoing right of stoppage, provided that the lien of the Supplier shall continue despite the commencement of proceedings or judgments for the price having been obtained.
24. **TITLE**  
24.1 It is the intention of the supplier and agreed by the Customer that property in the Goods shall not pass until:  
a) The Customer has paid all amounts owing for the particular Goods, and  
b) The Customer has met all other obligations due by the Customer to the Supplier in respect of all contracts between the Supplier and the Customer, and that the Goods shall be kept separate until the Supplier shall have received payment and all other obligations of the Customer are met.  
24.2 It is further agreed without derogation of the Suppliers rights contained in Clause "Retention of Title" hereof that:  
a) Until such time as ownership of the Goods shall pass from the Supplier to the Customer the Supplier may give notice in writing to the Customer to return the Goods or any of them to the Supplier. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease.  
b) If the Customer fails to return the Goods to the Supplier then the Supplier or the Supplier's agent may enter upon into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods, without being responsible for any damage thereby caused.  
c) The Customer is only a bailee of the Goods and until such time as the Supplier has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Supplier.  
d) The Customer shall not deal with the money of the Supplier in any way which may be adverse to the Supplier.  
e) Receipt by the Supplier 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 Supplier's ownership of rights in respect of the Goods shall continue.  
f) The Customer shall not charge the Goods in any way nor grant or otherwise give any interest in the Goods while they remain the property of the Supplier.  
g) The Supplier may require payment of the Price or the balance of the Price due together with any other amounts due from the Customer to the Supplier arising out of these terms and conditions, and the Supplier may take any lawful steps to require payment of the amounts due and the Price.  
h) The Supplier can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer.  
i) Until such time the Customer has the Supplier's authority to convert the Goods into other products and if the goods are so converted, the parties agree that the Supplier will be the owner of the end products.
25. **ASSIGNMENT AND NOVATION**  
The Supplier may at any time assign, novate or otherwise dispose of or deal with the rights and obligations under these Terms by notice in writing to the Customer. The Customer agrees that any order for the purchase of Goods supplied by the Customer to the Supplier after the date of a notice of assignment will be deemed to be an acceptance of such assignment.  
26. **LAWS TO GOVERN PROVISIONS OF AGREEMENT**  
The terms and the supply of the Goods by the Supplier to the Customer shall be governed by and construed in accordance with the laws of New South Wales) and the Customer hereby agrees to submit to the non-exclusive jurisdiction of the Courts of New South Wales
27. **NOTICES**  
Notices to be given by the Customer to the Supplier may be delivered personally or sent to the Supplier at its current business address nominated on page 1 of this agreement. Notices to be given to the Customer by the Supplier may be delivered personally, or sent to the Customer's last known address provided by the Customer to the Supplier and unless the contrary is proved shall be taken as delivered on the second business day following posting. Invoices, Notices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.  
28. **WARRANTIES**  
All products are covered by the Suppliers' Warranty, full details of which are contained on the Suppliers Web Site at [www.ourtownwarranty.com.au](http://www.ourtownwarranty.com.au). By placement of an order the customer acknowledges to have read and understood the terms of any such Warranty and will be bound by such terms unless a written variation or release is provided by the Supplier to the contrary.