

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 “Portcullis” means Portcullis Australia Pty Ltd ATF Portcullis Unit Trust T/A Portcullis Australia Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Portcullis Australia Pty Ltd ATF Portcullis Unit Trust T/A Portcullis Australia Pty Ltd.
- 1.3 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Portcullis to provide the Works as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Works” means all Works (including consultation, manufacturing and/or installation services) or Materials supplied by Portcullis to the Client at the Client’s request from time to time (where the context so permits the terms ‘Works’ or ‘Materials’ shall be interchangeable for the other).
- 1.5 “Confidential Information” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.6 “Cookies” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.7 “Price” means the Price payable (plus any GST where applicable) for the Works as agreed between Portcullis and the Client in accordance with clause 6 below.
- 1.8 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of any Works.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that:
- (a) the supply of Materials on credit shall not take effect until the Client has completed a credit application with Portcullis and it has been approved with a credit limit established for the account; and
 - (b) in the event that the supply of Materials request exceeds the Client’s credit limit and/or the account exceeds the payment terms, Portcullis reserves the right to refuse Delivery; and
 - (c) the supply of Materials for accepted orders may be subject to availability and if, for any reason, Materials are not or cease to be available, Portcullis reserves the right to vary the Price with alternative Materials as per clause 6.2, subject to prior confirmation and agreement of both parties; and
 - (d) Portcullis also reserves the right to halt all Works until such time as Portcullis and the Client agree to such changes. Portcullis shall not be liable to the Client for any loss or damage the Client suffers due to the Contractor exercising its rights under this clause.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Portcullis shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Portcullis in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Portcullis in respect of the Works.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Portcullis; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Authorised Representatives

- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to Portcullis as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Works or Materials on the Client’s behalf and/or to request any variation to the works on the Client’s behalf (such authority to continue until all requested works have been completed or the Client otherwise notifies Portcullis in writing that said person is no longer the Client’s duly authorised representative).
- 4.2 In the event that the Client’s duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client’s behalf then the Client must specifically and clearly advise Portcullis in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to Portcullis for all additional costs incurred by Portcullis (including Portcullis’ profit margin) in providing any Materials, Works, or variation/s requested by the Client’s duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).

5. Change in Control

- 5.1 The Client shall give Portcullis not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Portcullis as a result of the Client's failure to comply with this clause.

6. Price and Payment

- 6.1 At Portcullis' sole discretion the Price shall be either:
- (a) as indicated on invoices provided by Portcullis to the Client in respect of Works performed or Materials supplied; or
 - (b) the Price as at the date of delivery of the Works according to Portcullis' current price list; or
 - (c) Portcullis' quoted Price (subject to clause 6.2) which shall be binding upon Portcullis provided that the Client shall accept Portcullis' quotation in writing within thirty (30) days.
- 6.2 Portcullis reserves the right to change the Price:
- (a) if a variation to the Materials which are to be supplied is requested; or
 - (b) if a variation to the Works originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Works are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to site access, ready availability of Materials, variations in quantity or volume of Materials to be supplied, prerequisite work by a third party not being completed, inaccurate measurements, plans or specifications supplied by the Client, hard rock or other barriers below the surface, latent soil conditions, iron reinforcing rods in concrete, or hidden pipes and wiring, etc.) which are only discovered on commencement of the Works; or
 - (d) in the event of increases to Portcullis in the cost of labour or Materials which are beyond Portcullis' control; and/or
 - (e) in the event of fluctuations in foreign currency rates of exchange and/or international freight / insurance charges.
- 6.3 Variations will be charged for on the basis of Portcullis' quotation, and will be detailed in writing, and shown as variations on Portcullis' invoice. The Client shall be required to respond to any variation submitted by Portcullis within ten (10) working days. Failure to do so will entitle Portcullis to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 At Portcullis' sole discretion a thirty (30) percent non-refundable deposit may be required for all custom manufactured Materials.
- 6.5 Time for payment for the Works being of the essence, the Price will be payable by the Client on the date/s determined by Portcullis, which may be:
- (a) before delivery of the Works/Materials
 - (b) on completion of the Works; or
 - (c) by way of progress payments in accordance with Portcullis' specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Materials delivered to the site but not yet installed; or
 - (d) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Client by Portcullis.
- 6.6 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Portcullis.
- 6.7 Portcullis may in its discretion allocate any payment received from the Client towards any invoice that Portcullis determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Portcullis may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Portcullis, payment will be deemed to be allocated in such manner as preserves the maximum value of Portcullis' Purchase Money Security Interest (as defined in the PPSA) in the Materials.
- 6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Portcullis nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Portcullis an amount equal to any GST Portcullis must pay for any supply by Portcullis under this or any other contract for the sale of the Materials. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Works

- 7.1 Subject to clause 7.2 it is Portcullis' responsibility to ensure that the Works start as soon as it is reasonably possible.
- 7.2 The Works' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Portcullis claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Portcullis' control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Works; or
 - (c) notify Portcullis that the site is ready.
- 7.3 At Portcullis' sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 7.4 Portcullis may deliver the Works by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 Any time specified by Portcullis for delivery of the Works is an estimate only and Portcullis will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Works to be supplied at the time and place as was arranged between both parties. In the event that Portcullis is unable to supply the Works as agreed solely due to any action or inaction of the Client, then Portcullis shall be entitled to charge a reasonable fee for re-supplying the Works at a later time and date, and/or for storage of the Materials.

8. Dimensions, Plans and Specifications

- 8.1 Portcullis shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, Portcullis accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 8.2 All customary building industry tolerances shall apply to the dimensions and measurements of the Works unless Portcullis and the Client agree otherwise in writing.
- 8.3 Where the Client is to supply Portcullis with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. Portcullis shall not be liable whatsoever for any errors in the Works that are caused by incorrect or inaccurate data being supplied by the Client.
- 8.4 In the event the Client gives information relating to measurements and quantities of Materials required in completing the Works, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or Portcullis places an order based on these measurements and quantities. Portcullis accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.

9. Product Specifications

- 9.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Portcullis' fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by Portcullis;
 - (b) while Portcullis may have provided information or figures to the Client regarding the performance of the Materials, the Client acknowledges that Portcullis has given these in good faith, and are estimates based on industry prescribed estimates.
- 9.2 The Client shall be responsible for ensuring that the Materials ordered are suitable for their intended use.

10. Risk

- 10.1 If Portcullis retains ownership of the Materials under clause 14 then:
- (a) where Portcullis is supplying Materials only, all risk for the Materials shall immediately pass to the Client on delivery and the Client must insure the Materials on or before delivery. Delivery of the Materials shall be deemed to have taken place immediately at the time that either:
 - (i) the Client or the Client's nominated carrier takes possession of the Materials at Portcullis' address; or
 - (ii) the Materials are delivered by Portcullis or Portcullis' nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
 - (b) where Portcullis is to both supply and install Materials then Portcullis shall maintain a contract works insurance policy until the Works are completed. Upon completion of the Works all risk for the Works shall immediately pass to the Client.
- 10.2 Notwithstanding the provisions of clause 10.1 if the Client specifically requests Portcullis to leave Materials outside Portcullis' premises for collection or to deliver the Materials to an unattended location then such materials shall always be left at sole risk of the Client and it shall be the Client's responsibility to ensure the Materials are insured adequately or at all. In the event that such Materials are lost, damaged or destroyed then replacement of the Materials shall be at the Client's expense.
- 10.3 The Client warrants that any structures to which the Materials are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the Materials once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures or risk) that Portcullis reasonably form the opinion that the Client's premises is not safe for the Works to proceed then Portcullis shall be entitled to delay the provision of the Works (in accordance with clause 7.2) until Portcullis is satisfied that it is safe for the installation.
- 10.4 Portcullis may at its discretion notify the Client that it requires to store at the worksite Materials, fittings and appliances, or plant and tools required for the Works, in which event the Client shall supply Portcullis a safe area for storage and shall take all reasonable efforts to protect all items so stored from possible destruction, theft or damage. In the event that any such items are destroyed, stolen or damaged then the cost of repair or replacement shall be the Client's responsibility.
- 10.5 The Client acknowledges and agrees that in the event Portcullis requires access, in order to undertake the Works, to an adjoining or adjacent property or land to the nominated job site, that is not owned by the Client, then it is the Client's responsibility to gain permission from the land owner to use the above mentioned property throughout the process or delivering the Works. In the event the land owner denies access or use of the land or property, the Client shall be liable for all costs incurred by Portcullis in gaining permission to access and/or use the property through any legal process that may be deemed necessary.
- 10.6 Portcullis is not responsible for the removal of rubbish from or clean-up of the site/s. This is the responsibility of the Client or the Client's agent. Furthermore the Client acknowledges that in the event asbestos, synthetic mineral fibres or any other toxic substances are discovered at the site that it is their responsibility to ensure the safe removal of the same. The Client further agrees to indemnify Portcullis against any costs incurred by Portcullis as a consequence of such discovery. Under no circumstances will Portcullis handle the removal of asbestos product.
- 10.7 The Client acknowledges that Materials supplied may:
- (a) exhibit variations in shade tone, colour, texture, markings, veining, occlusions, size, grade, surface and finish;
 - (b) fade or change colour over time; and
 - (c) expand, contract or distort as a result of exposure to heat, cold, weather; and
 - (d) mark or stain if exposed to certain substances; and
 - (e) be damaged or disfigured by impact or scratching.
- 10.8 Portcullis shall not be liable whatsoever for any loss or damage to the Works (including, but not limited to, painted surfaces) that is caused by any other tradesmen.
- 10.9 The Client acknowledges and agrees that it is their responsibility to organise and be liable for all costs associated with protecting the Materials and/or Works and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event

Portcullis Australia Pty Ltd – Terms & Conditions of Trade

that the Materials and/or Works are destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Client.

- 10.10 Portcullis shall not be liable for any defect, deterioration and/or damage to the Materials:
- (a) if the Client does not follow Portcullis' recommendations including the use of additional protective powder coatings when the Materials are to be installed within 100km of the coast;
 - (b) where Materials are stored off site for extended periods of time as a result of any action/inaction by the Client;
 - (c) resulting from incorrect use and/or installation of the Materials by the Client or any other third party; and
 - (d) where welding, galvanising (or any other heat related process) has caused distortion or any other damage.
- 10.11 It is the responsibility of the Client to provide an adequate supply of electricity, toilet facilities, clean water and first aid equipment for the use of Portcullis and its employees.

11. Underground Locations

- 11.1 Unless otherwise agreed in writing between the Client and Portcullis it shall be the Client's responsibility to advise the precise location of all underground services on the site and clearly mark the same. The mains/services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, communication cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 11.2 If the Client requests Portcullis to engage a service locator then this shall be in addition to the Price and "Dial Before You Dig" must be consulted and any potential underground services marked on site.
- 11.3 Whilst Portcullis will take all care to avoid damage to any underground services the Client agrees to indemnify Portcullis in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 11.1.

12. Access

- 12.1 The Client shall ensure that Portcullis has clear, unobstructed and free access to the site at all times to enable them to undertake the Works; and
- (a) Portcullis shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas etc.) unless due to Portcullis' negligence; and
 - (b) provide clear room for installation, including access to the windows. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by Portcullis in this regard; and
 - (c) if the Works are interrupted by the failure of the Client to adhere to the work schedule agreed to between Portcullis and the Client, any additional costs will be invoiced to the Client as a variation in accordance with clause 6.2.
 - (d) fully disclose any information in writing, prior to the scheduled installation, which may affect Portcullis' installation procedures.

13. Compliance with Laws

- 13.1 The Client and Portcullis shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Works.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Works.
- 13.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

14. Title

- 14.1 Portcullis and the Client agree that ownership of the Materials shall not pass until:
- (a) the Client has paid Portcullis all amounts owing to Portcullis; and
 - (b) the Client has met all of its other obligations to Portcullis.
- 14.2 Receipt by Portcullis 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.
- 14.3 It is further agreed that until ownership of the Materials passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Materials and unless the Materials have become fixtures must return the Materials to Portcullis on request;
 - (b) the Client holds the benefit of the Client's insurance of the Materials on trust for Portcullis and must pay to Portcullis the proceeds of any insurance in the event of the Materials being lost, damaged or destroyed;
 - (c) the production of these terms and conditions by Portcullis shall be sufficient evidence of Portcullis' rights to receive the insurance proceeds direct from the insurer without the need for any person dealing with Portcullis to make further enquiries;
 - (d) the Client must not sell, dispose, or otherwise part with possession of the Materials other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Materials then the Client must hold the proceeds of any such act on trust for Portcullis and must pay or deliver the proceeds to Portcullis on demand;
 - (e) the Client should not convert or process the Materials or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of Portcullis and must sell, dispose of or return the resulting product to Portcullis as it so directs;
 - (f) unless the Materials have become fixtures the Client irrevocably authorises Portcullis to enter any premises where Portcullis believes the Materials are kept and recover possession of the Materials;
 - (g) Portcullis may recover possession of any Materials in transit whether or not delivery has occurred;
 - (h) the Client shall not charge or grant an encumbrance over the Materials nor grant nor otherwise give away any interest in the Materials while they remain the property of Portcullis;
 - (i) Portcullis may commence proceedings to recover the Price of the Materials sold notwithstanding that ownership of the Materials has not passed to the Client.

15. Personal Property Securities Act 2009 (“PPSA”)

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Materials and/or collateral (account) – being a monetary obligation of the Client to Portcullis for Works – that have previously been supplied and that will be supplied in the future by Portcullis to the Client.
- 15.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Portcullis may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Portcullis for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Materials charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Portcullis;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Materials and/or collateral (account) in favour of a third party without the prior written consent of Portcullis;
 - (e) immediately advise Portcullis of any material change in its business practices of selling the Materials which would result in a change in the nature of proceeds derived from such sales.
- 15.4 Portcullis and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 15.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by Portcullis, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client shall unconditionally ratify any actions taken by Portcullis under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of Portcullis agreeing to supply the Materials, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Client indemnifies Portcullis from and against all Portcullis’ costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Portcullis’ rights under this clause.
- 16.3 The Client irrevocably appoints Portcullis and each director of Portcullis as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client’s behalf.

17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 17.1 The Client must inspect all Materials on delivery (or the Works on completion) and must within seven (7) days of delivery notify Portcullis in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Materials/Works as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Portcullis to inspect the Materials or to review the Works provided.
- 17.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 17.3 Portcullis acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Portcullis makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Materials/Works. Portcullis’ liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, Portcullis’ liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If Portcullis is required to replace any Materials under this clause or the CCA, but is unable to do so, Portcullis may refund any money the Client has paid for the Materials.
- 17.7 If Portcullis is required to rectify, re-supply, or pay the cost of re-supplying the Works under this clause or the CCA, but is unable to do so, then Portcullis may refund any money the Client has paid for the Works but only to the extent that such refund shall take into account the value of Works and Materials which have been provided to the Client which were not defective.
- 17.8 If the Client is not a consumer within the meaning of the CCA, Portcullis’ liability for any defect or damage in the Materials is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Portcullis at Portcullis’ sole discretion;
 - (b) limited to any warranty to which Portcullis is entitled, if Portcullis did not manufacture the Materials;
 - (c) otherwise negated absolutely.
- 17.9 Subject to this clause 17, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) Portcullis has agreed that the Materials are defective; and
 - (c) the Materials are returned within a reasonable time at the Client’s cost (if that cost is not significant); and
 - (d) the Materials are returned in as close a condition to that in which they were delivered as is possible.

Portcullis Australia Pty Ltd – Terms & Conditions of Trade

- 17.10 Notwithstanding clauses 17.1 to 17.9 but subject to the CCA, Portcullis shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Client failing to properly maintain or store any Materials;
 - the Client using the Materials for any purpose other than that for which they were designed;
 - the Client continuing to use any Materials after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - interference with the Works by the Client or any third party without Portcullis' prior approval;
 - the Client failing to follow any instructions or guidelines provided by Portcullis;
 - fair wear and tear, any accident, or act of God.

- 17.11 Portcullis may in its absolute discretion accept non-defective Materials for return in which case Portcullis may require the Client to pay handling fees of up to fifteen percent (15%) of the value of the returned Materials plus any freight costs.

18. Intellectual Property

- 18.1 Where Portcullis has designed, drawn, written plans or a schedule of Works, or created any products for the Client, then the copyright in all such designs, drawings, documents, plans, schedules and products shall remain vested in Portcullis, and shall only be used by the Client at Portcullis' discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of Portcullis.
- 18.2 The Client warrants that all designs, specifications or instructions given to Portcullis will not cause Portcullis to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify Portcullis against any action taken by a third party against Portcullis in respect of any such infringement.
- 18.3 The Client agrees that Portcullis may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings, plans or products which Portcullis has created for the Client.

19. Default and Consequences of Default

- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Portcullis' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes Portcullis any money the Client shall indemnify Portcullis from and against all costs and disbursements incurred by Portcullis in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Portcullis' contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies Portcullis may have under this Contract, if a Client has made payment to Portcullis, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Portcullis under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.4 Without prejudice to Portcullis' other remedies at law Portcullis shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Portcullis shall, whether or not due for payment, become immediately payable if:
- any money payable to Portcullis becomes overdue, or in Portcullis' opinion the Client will be unable to make a payment when it falls due;
 - the Client has exceeded any applicable credit limit provided by Portcullis;
 - the Client becomes insolvent or bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Cancellation

- 20.1 Without prejudice to any other remedies Portcullis may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Portcullis may suspend or terminate the supply of Works to the Client. Portcullis will not be liable to the Client for any loss or damage the Client suffers because Portcullis has exercised its rights under this clause.
- 20.2 Portcullis may cancel any contract to which these terms and conditions apply or cancel delivery of Works at any time before the Works are commenced by giving written notice to the Client. On giving such notice Portcullis shall repay to the Client any sums paid in respect of the Price, less any amounts owing by the Client to Portcullis for Works already performed. Portcullis shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 In the event that the Client cancels the delivery of Works the Client shall be liable for any and all loss incurred (whether direct or indirect) by Portcullis as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 20.4 Cancellation of orders for products made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Privacy Policy

- 21.1 All emails, documents, images or other recorded information held or used by Portcullis is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. Portcullis acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). Portcullis acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Portcullis that may result in serious harm to the Client, Portcullis will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

Portcullis Australia Pty Ltd – Terms & Conditions of Trade

- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to Portcullis in respect of Cookies where transactions for purchases/orders transpire directly from Portcullis' website. Portcullis agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Portcullis when Portcullis sends an email to the Client, so Portcullis may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via Portcullis' website.
- 21.3 The Client agrees for Portcullis to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by Portcullis.
- 21.4 The Client agrees that Portcullis may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 21.5 The Client consents to Portcullis being given a consumer credit report to collect overdue payment on commercial credit.
- 21.6 The Client agrees that personal credit information provided may be used and retained by Portcullis for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Works; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Works; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Works.
- 21.7 Portcullis may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 21.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that Portcullis is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and Portcullis has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of Portcullis, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 21.9 The Client shall have the right to request (by e-mail) from Portcullis:
- (a) a copy of the Personal Information about the Client retained by Portcullis and the right to request that Portcullis correct any incorrect Personal Information; and
 - (b) that Portcullis does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 21.10 Portcullis will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 21.11 The Client can make a privacy complaint by contacting Portcullis via e-mail. Portcullis will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 22. Unpaid Seller's Rights**
- 22.1 Where the Client has left any item with Portcullis for repair, modification, exchange or for Portcullis to perform any other service in relation to the item and Portcullis has not received or been tendered the whole of any monies owing to it by the Client, Portcullis shall have, until all monies owing to Portcullis are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2 The lien of Portcullis shall continue despite the commencement of proceedings, or judgment for any monies owing to Portcullis having been obtained against the Client.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

24. Trusts

- 24.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Portcullis may have notice of the Trust, the Client covenants with Portcullis as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of Portcullis (Portcullis will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

25. Building and Construction Industry Security of Payments Act 1999

- 25.1 At Portcullis' sole discretion, if there are any disputes or claims for unpaid Materials and/or Works then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 25.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

26. General

- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales in which Portcullis has its principal place of business, and are subject to the jurisdiction of the Penrith courts in that state.
- 26.3 Subject to clause 17, Portcullis shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Portcullis of these terms and conditions (alternatively Portcullis' liability shall be limited to damages which under no circumstances shall exceed the Price of the Works).
- 26.4 Portcullis may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 26.5 The Client cannot licence or assign without the written approval of Portcullis.
- 26.6 Portcullis may elect to subcontract out any part of the Works but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Portcullis' sub-contractors without the authority of Portcullis.
- 26.7 The Client agrees that Portcullis may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Portcullis to provide Works to the Client.
- 26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.