

Terms of Service - Smartkits Australia

1. ACCEPTANCE

Parties: These Terms are between Smartkits Australia Pty Ltd (ABN 80 638 041 175), its successors and assignees (referred to as “**we**” and “**us**”) and you, the person, organisation or entity described in the Quote (referred to as “**you**”). These Terms apply to all Goods provided by us to you. **Acceptance:** You have requested the Goods set out in the Quote. You accept these Terms by: making part or full payment for the Goods; accepting the Quote online; signing and returning the Quote; or confirming in writing including by email that you accept the Quote. **You agree that these Terms form the agreement under which we will supply Goods to you.** Purchasing Goods from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms.

Our Contact details:

Smartkits Australia Pty Ltd (ABN 80 638 041 175)

1800 827 889

sales@smartkits.com.au

Office Hours (AEST): 8:00am-4:00pm

1. GOODS

1. These Terms cover the supply of Goods only. We are not responsible for the install of Goods at your premises.
2. Unless otherwise agreed between Parties in writing, we will not dispatch the Goods or provide any installation instructions/guides until we receive payment in full.
3. We may provide the Goods to you using our employees, contractors and third-party providers, and they are included in these Terms.
4. Third-parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by those third-parties. This includes but is not limited to any tradesperson that you engage to install the Goods on your behalf.
5. Any advice, recommendation, information, assistance or service provided by us is given and/or made in good faith and is believed to be appropriate and reliable and all liability arising from any of these matters is fully disclaimed to the maximum extent permitted by law.
6. We may at our sole discretion substitute materials within the kit that form part of the Goods that are an equal or greater value depending on availability and application. In all instances these substitutes will be compatible compliant and engineered for application.

2. PRICE, INVOICING AND PAYMENT

1. You agree to pay us the amounts set out in our Quote. All amounts are stated in Australian dollars.
2. Payment may be made by way of payment methods as set out in our Quote when purchasing our Goods.
3. In the event that we provide an invoice to you, you agree to pay our Invoices by the payment date set out on the Invoice.
4. If you do not pay by the payment date, we may cease to provide the Goods to you until we receive payment.
5. We may charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.
6. If invoices are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us at your expense. You acknowledge and agree that you are liable for and will pay all costs including debt collection, commission, solicitor's fees and any out-of-pocket expense, and that you will indemnify us for the full amount of our legal and debt recovery costs.
7. We reserve the right to report bad debts to independent credit data agencies.

3. CANCELLATION

1. Where the Goods are unavailable and we cannot substitute materials within the kit, we may cancel any Quote to which these Terms apply or cancel delivery of Goods at any time before the Goods are delivered. On cancellation, we shall repay to you any money paid by you in advance for the Goods. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
2. To the extent permitted by law, there will be no cancellations once manufacturing of the Goods has commenced.
3. We may agree, but are not bound to agree, to a request by you in writing these Terms before manufacturing of the Goods has commenced. In this event, we are entitled to retain part of any moneys already paid to us equal to any out-of-pocket expenses reasonably incurred by us up to the time of cancellation, including but not limited to , including but not limited to design and engineering fees, and administration fees of \$275 (plus GST). If this amount has not yet been paid by you, this amount will be payable by you within 7 days of receipt of an invoice for that amount.

4. DELIVERY

1. Delivery of the Goods is taken to occur at the time that:
 1. you (or your nominated carrier) takes possession of the Goods at our address; or
 2. we (or our nominated carrier) delivers the Goods to your nominated address even if you is not present at the address.
2. Unless otherwise agreed between Parties in writing, the cost of delivery is in addition to the Price.
3. We may deliver the Goods in separate instalments.

4. Any time or date given by us to you is an estimate only. You must still accept delivery of the Goods even if late and we will not be liable for any loss or damage incurred by you as a result of the delivery being late.
5. Unless notified otherwise by you, we will not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery.
6. We reserve the right to refuse delivery to specific locations. In this case, you may choose to have an item delivered using your own couriers, in which case all insurance for loss or damage to the order caused by the delivery will be your responsibility.

5. YOUR OBLIGATIONS AND WARRANTIES

1. You warrant that:
 1. there are no legal restrictions preventing you from agreeing to these Terms;
 2. you will cooperate with us, and provide us with information that is reasonably necessary to enable us to supply the Goods as requested from time to time, in a timely manner;
 3. the information you provide to us is true, correct and complete;
 4. you will not infringe any third-party rights in working with us and receiving the Goods;
 5. you will follow any instructions provided by us to you, including but not limited to where we instruct that a qualified tradesman is required to install Goods;
 6. where we instruct that a qualified tradesperson is required to install Goods, you will not book your build or installation to be done until you are sure that all Goods have been delivered;
 7. where we instruct that a qualified tradesperson is required to install Goods, you will firstly comply with clause 10.2;
 8. where we instruct that a qualified tradesperson is required to install Goods, you will provide them with access to all the documents we provide in your 'Client Folder' for them to install the Goods; and
 9. you will not employ, canvass, solicit, entice, induce or attempt to employ our employees or contractors.

6. RISK

1. Risk of damage to or loss of the Goods passes to you on Delivery and you must insure the Goods on or before Delivery.
2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to you, we are entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
3. Where we are not obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery or where you request that we deliver the Goods to an unattended location, then such Goods shall be left at your sole risk.

7. TITLE

1. Regardless of location both Parties agree that ownership of the Goods shall not pass until:
 1. you have paid to us all amounts owing to us; and
 2. you have met all of your other obligations to the Seller.
2. Receipt by you 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.
3. It is further agreed that, until ownership of the Goods passes to you in accordance with clause 8.1:
 1. you are only a bailee of the Goods and must return the Goods to us on request;
 2. you hold the benefit of your insurance of the Goods on trust for us and must pay to us the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 3. you must not sell, dispose, or otherwise part with possession of the Goods. If you sell, dispose or part with possession of the Goods then you must hold the proceeds of any such act on trust for us and must pay or deliver the proceeds to us on demand;
 4. you should not convert or process the Goods or intermix them with other goods but if you do so then you hold the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to us as we so direct;
 5. you irrevocably authorise us to enter any premises where we believe the Goods are kept and recover possession of the Goods;
 6. we may recover possession of any Goods in transit whether or not delivery has occurred;
 7. you shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of us;
 8. we may commence proceedings to recover the price of the Goods sold notwithstanding that ownership of the Goods has not passed to you.

8. FITNESS FOR PURPOSE

1. You agree that we shall not be liable for any:
 1. representation, promise or undertaking regarding the fitness or otherwise of Goods supplied by us unless it is made in writing or implied by law; and
 2. failure by you to fix, install, erect, or maintain the Goods in accordance with any advice, recommendation, specification, information, assistance or service provided by us in relation to Goods sold or manufactured by us. The performance of steel products is dependent on the environment, product selection, handling, installation and maintenance.

9. DEFECTS, WARRANTIES, RETURNS

1. You must inspect the Goods immediately on delivery. If the Goods arrive clearly and significantly damaged, you should take photos or video showing the damage and notify us immediately.
2. You must notify us within 5 Business Days of delivery in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or Quote or the 'Material List with Pictures'. Should you fail to notify us within the specified period then the Goods shall be deemed to be in compliance with the Quote and the 'Material List with Pictures' and free from any defect whatsoever.
3. You must notify us of any other alleged defect/damage, shortage in quantity, or failure to comply with the description or Quote or the 'Material List with Pictures' in writing as soon as reasonably possible after any such defect becomes evident and prior to installation.
4. Upon such notification you must allow us the opportunity to inspect the Goods, make an assessment and rectify any issues.
5. Under applicable State, Territory and Commonwealth Law (including, without limitation the *Competition and Consumer Act 2010* (CCA)), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms (Non-Excluded Guarantees). We acknowledge that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.
6. Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, we make no warranties or other representations under these Terms including but not limited to the quality or suitability of the Goods. Our liability in respect of these warranties is limited to the fullest extent permitted by law.
7. If you are a consumer within the meaning of the CCA, our liability is limited to the extent permitted by section 64A of Schedule 2.
8. If we are required to replace the Goods under this clause or the CCA, but are unable to do so, we may refund any money you have paid for the Goods.
9. If you are not a consumer within the meaning of the CCA, our liability for any defect or damage in the Goods is:
 1. limited to the value of any express warranty or warranty card provided to you by us at our sole discretion;
 2. limited to any warranty to which we are entitled, if we did not manufacture the Goods;
 3. otherwise negated absolutely.
10. Subject to this clause 10, returns will only be accepted provided that:
 1. you have complied with the provisions of clause 10.1 and 10.2; and
 2. we have agreed that the Goods are defective; and
 3. you have completed a returns form (if applicable);
 4. the Goods are returned within a reasonable time at your cost (if that cost is not significant); and
 5. the Goods are returned in as close a condition to that in which they were delivered as is possible.

11. Notwithstanding clauses 10.8 to 10.9 but subject to the CCA, we shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 1. you failing to properly preserve or store any Goods;
 2. you using the Goods for any purpose other than for which they were intended;
 3. you continuing to use any Goods after any defect became apparent or should have become apparent to a reasonably prudent user;
 4. you failing to follow any instructions or guidelines provided by us including but not limited to the 'Client Folder' and the 'Material List with Pictures';
 5. any accident or act of God.
12. We will not accept the return of non-defective Goods.
13. To the extent permitted by law, Goods custom ordered to your specifications are not acceptable for credit or return.
14. Notwithstanding anything contained in this clause, if we are required by law to accept a return then we will only accept a return on the conditions imposed by that law.

10. OUR INTELLECTUAL PROPERTY

We own the Intellectual Property rights in: our pre-existing Intellectual Property, including but not limited to copyright which subsists in all creative and literary works incorporated into our pre-existing Intellectual Property; and intellectual Property that we create during the course of the Services, including but not limited to copyright which subsists in all creative and literary works in all Intellectual Property that we create during the course of the Services; unless we assign or transfer this to you. This Intellectual Property is protected by Australian and international laws.

1. Nothing in these Terms constitutes an assignment or transfer of our Intellectual Property rights, or a right to use our Intellectual Property, whether registered or unregistered, except as stated in these Terms or with our written permission.

You must not breach our Intellectual Property rights by, including but not limited to:

1. altering or modifying our Intellectual Property;
2. creating derivative works from the Intellectual Property; or
3. using our Intellectual Property for commercial purposes such as on-sale to third parties.

This clause will survive the termination of these Terms.

1. CONFIDENTIAL INFORMATION

1. We, including our employees and contractors, agree not to disclose your Confidential Information to any third-party (other than where necessary, to third-party suppliers, or as required by law); to use all reasonable endeavours to protect your Confidential Information from any unauthorised disclosure; and only

to use your Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.

2. These obligations do not apply to Confidential Information that:
 1. is authorised to be disclosed;
 2. is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms;
 3. is received from a third-party, except where there has been a breach of confidence; or
 4. must be disclosed by law or by a regulatory authority including under subpoena.
3. This clause will survive the termination of these Terms.

2. FEEDBACK AND DISPUTE RESOLUTION

1. Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Goods, please contact us.
2. If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
 1. The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
 2. If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complaining Party will ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the mediation in good faith, to seek to resolve the dispute and will be equally responsible for the costs of the mediator.
3. Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

3. TERM AND TERMINATION

1. If either Party commits a remediable breach of these Terms and does not remedy the breach at its cost within a reasonable time after receiving written notice of the breach from the other Party, then the Parties agree to engage in the dispute resolution process set out in clause 13.2 in the first instance. If the dispute is not resolved after following that process, then either Party may terminate these Terms at any time upon written notice to the other Party.
2. We may terminate these Terms immediately upon written notice to you, if :
 1. you commit a non-remediable breach of these Terms ;
 2. you fail to provide us with clear or timely instructions to enable us to provide the Services;

3. we, acting reasonably, consider that our working relationship has broken down including a loss of confidence and trust ;
 4. for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or ;
 5. you fail to pay an invoice by the due date
3. You may terminate these Terms immediately upon written notice to us if:
 1. we commit a non-remediable breach of these Terms; or
 2. you, acting reasonably, consider that our working relationship has broken down including a loss of confidence or trust.
 4. On termination of these Terms you agree that you are to pay for all Goods provided to you prior to termination.
 5. On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and/or Intellectual Property.
 6. On completion, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
 7. The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

4. **LIMITATION OF LIABILITY AND DISCLAIMERS**

1. **Delay:** Where the provision of Goods depends on your information or response, we have no liability for a failure to supply the Goods, where it is affected by your delay in response or supply of incomplete or incorrect information.
2. **Referrals:** We may provide you with contact details of third-party specialists. This is not a recommendation by us for you to seek their advice or to use their Goods. We make no representation or warranty about the third-party advice or provision of Goods, and we disclaim all responsibility and liability for the third-party advice or provision of Goods, or their failure to advise or provide Goods.
3. **Availability:** To the extent permitted by law, we exclude liability for:
 1. Orders being cancelled by us;
 2. the Goods being unavailable; and
 3. any Claims for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Goods or the late supply of Goods, even if we were expressly advised of the likelihood of such loss or damage.
4. **Disclaimers:** To the extent permitted by law we disclaim all responsibility and liability for:
 1. any items in the order that are unavailable;

2. any damage caused where you have failed to follow any instructions or guidelines provided by us to you including but not limited where we instruct that a qualified tradesperson is required;
 3. products or services you purchase from a third-party;
 4. products supplied by you or any other third party;
 5. any delays in delivery of the Goods (all delivery dates are estimates);
 6. any incorrect measurements provided by you;
5. This clause will survive the termination of these Terms.

5. INDEMNITY

1. You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
 1. any information provided by you to us that was not accurate, up to date or complete or was misleading or a misrepresentation;
 2. your breach of these Terms;
 3. any misuse of the Services by you, your employees, contractors or agents; and
 4. your breach of any law or third party rights.
2. We are liable for and agree to indemnify, defend and hold harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
 1. any information provided to you by us that was not accurate, up to date or complete or was misleading or a representation;
 2. our breach of these Terms;
 3. any defect or omission in the Services from or by us, our employees, contractors or agents;
 4. our breach of any law or third party rights in connection with our provision of the Services to you.
3. The Parties agree to co-operate with each other (at their own expense) in the handling of disputes, complaints, investigations or litigation that arises as a result of these Terms .

6. GENERAL

1. **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
2. **Publicity:** You consent to us stating that we provided Services to you, including but not limited to taking photographs/videos of our work and mentioning you on our website, social media platforms and in our promotional material, unless you give us written notice that you withdraw your consent in this regard.
3. **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any

document or information and for any damage caused to your system or any files by a transfer.

4. **GST:** If and when applicable, GST payable on the Price for the Goods will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Price.
5. **Severance:** To the extent permitted by law, if any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
6. **Force Majeure:** Neither Party will be liable for any delay or failure to perform its obligations under these Terms if such delay is due to any circumstance beyond their reasonable control .
7. **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Quote. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
8. **Jurisdiction & Applicable Law:** These terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.
9. **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

7. DEFINITIONS

1. **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Queensland, Australia.
2. **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute, whether indirect, incidental, special, consequential and/or incidental, and whether involving a third-party or a Party to the Terms or otherwise.
3. **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and Goods, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not

such information is reduced to a tangible form or marked in writing as "confidential".

4. **Goods** are set out in the Quote.
5. **GST** means GST as defined in the *A New Tax System (Goods and Goods Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
6. **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
7. **Party** and **Parties** means a party or parties to these Terms.
8. **Prices** are set out in the Quote.
9. **Quote** means the quote sent to you or the online checkout/quote to which these Terms form part.

Terms means these terms and conditions.

1. ACCEPTANCE

Parties: These Terms are between Smartkits Australia Pty Ltd (ABN 80 638 041 175), its successors and assignees (referred to as "**we**" and "**us**") and you, the person, organisation or entity described in the Quote (referred to as "**you**"). These Terms apply to all Goods provided by us to you. **Acceptance:** You have requested the Goods set out in the Quote. You accept these Terms by: making part or full payment for the Goods; accepting the Quote online; signing and returning the Quote; or confirming in writing including by email that you accept the Quote. **You agree that these Terms form the agreement under which we will supply Goods to you.** Purchasing Goods from us indicates that you have had sufficient opportunity to read these Terms and contact us if needed, that you have read, accepted and will comply with these Terms.

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2. Unless otherwise agreed between Parties in writing, we will not dispatch the Goods or provide any installation instructions/guides until we receive payment in full.
3. We may provide the Goods to you using our employees, contractors and third-party providers, and they are included in these Terms.
4. Third-parties who are not our employees or our direct contractors will be your responsibility. We are not responsible for the products or services provided by those third-parties. This includes but is not limited to any tradesperson that you engage to install the Goods on your behalf.
5. Any advice, recommendation, information, assistance or service provided by us is given and/or made in good faith and is believed to be appropriate and reliable and all liability arising from any of these matters is fully disclaimed to the maximum extent permitted by law.
6. We may at our sole discretion substitute materials within the kit that form part of the Goods that are an equal or greater value depending on availability and application. In all instances these substitutes will be compatible compliant and engineered for application.

2. PRICE, INVOICING AND PAYMENT

1. You agree to pay us the amounts set out in our Quote. All amounts are stated in Australian dollars.
2. Payment may be made by way of payment methods as set out in our Quote when purchasing our Goods.
3. In the event that we provide an invoice to you, you agree to pay our Invoices by the payment date set out on the Invoice.
4. If you do not pay by the payment date, we may cease to provide the Goods to you until we receive payment.
5. We may charge interest at a rate equal to the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any amounts unpaid after the payment date.
6. If invoices are unpaid after the payment date, we have the right to engage debt collection services for the collection of unpaid and undisputed debts, and the right to commence legal proceedings for any outstanding amounts owed to us at your expense. You acknowledge and agree that you are liable for and will pay all costs including debt collection, commission, solicitor's fees and any out-of-pocket expense, and that you will indemnify us for the full amount of our legal and debt recovery costs.
7. We reserve the right to report bad debts to independent credit data agencies.

3. CANCELLATION

1. Where the Goods are unavailable and we cannot substitute materials within the kit, we may cancel any Quote to which these Terms apply or cancel delivery of Goods at any time before the Goods are delivered. On cancellation, we shall repay to you any money paid by you in advance for the Goods. We shall not be liable for any loss or damage whatsoever arising from such cancellation.

2. To the extent permitted by law, there will be no cancellations once manufacturing of the Goods has commenced.
3. We may agree, but are not bound to agree, to a request by you in writing these Terms before manufacturing of the Goods has commenced. In this event, we are entitled to retain part of any moneys already paid to us equal to any out-of-pocket expenses reasonably incurred by us up to the time of cancellation, including but not limited to , including but not limited to design and engineering fees, and administration fees of \$275 (plus GST). If this amount has not yet been paid by you, this amount will be payable by you within 7 days of receipt of an invoice for that amount.

4. DELIVERY

1. Delivery of the Goods is taken to occur at the time that:
 1. you (or your nominated carrier) takes possession of the Goods at our address; or
 2. we (or our nominated carrier) delivers the Goods to your nominated address even if you is not present at the address.
2. Unless otherwise agreed between Parties in writing, the cost of delivery is in addition to the Price.
3. We may deliver the Goods in separate instalments.
4. Any time or date given by us to you is an estimate only. You must still accept delivery of the Goods even if late and we will not be liable for any loss or damage incurred by you as a result of the delivery being late.
5. Unless notified otherwise by you, we will not be obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery.
6. We reserve the right to refuse delivery to specific locations. In this case, you may choose to have an item delivered using your own couriers, in which case all insurance for loss or damage to the order caused by the delivery will be your responsibility.

5. YOUR OBLIGATIONS AND WARRANTIES

1. You warrant that:
 1. there are no legal restrictions preventing you from agreeing to these Terms;
 2. you will cooperate with us, and provide us with information that is reasonably necessary to enable us to supply the Goods as requested from time to time, in a timely manner;
 3. the information you provide to us is true, correct and complete;
 4. you will not infringe any third-party rights in working with us and receiving the Goods;
 5. you will follow any instructions provided by us to you, including but not limited to where we instruct that a qualified tradesman is required to install Goods;
 6. where we instruct that a qualified tradesperson is required to install Goods, you will not book your build or installation to be done until you are sure that all Goods have been delivered;

7. where we instruct that a qualified tradesperson is required to install Goods, you will firstly comply with clause 10.2;
8. where we instruct that a qualified tradesperson is required to install Goods, you will provide them with access to all the documents we provide in your 'Client Folder' for them to install the Goods; and
9. you will not employ, canvass, solicit, entice, induce or attempt to employ our employees or contractors.

6. RISK

1. Risk of damage to or loss of the Goods passes to you on Delivery and you must insure the Goods on or before Delivery.
2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to you, we are entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.
3. Where we are not obliged to obtain a signed receipt or other acknowledgement from any person at the nominated place for delivery or where you request that we deliver the Goods to an unattended location, then such Goods shall be left at your sole risk.

7. TITLE

1. Regardless of location both Parties agree that ownership of the Goods shall not pass until:
 1. you have paid to us all amounts owing to us; and
 2. you have met all of your other obligations to the Seller.
2. Receipt by you 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.
3. It is further agreed that, until ownership of the Goods passes to you in accordance with clause 8.1:
 1. you are only a bailee of the Goods and must return the Goods to us on request;
 2. you hold the benefit of your insurance of the Goods on trust for us and must pay to us the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 3. you must not sell, dispose, or otherwise part with possession of the Goods. If you sell, dispose or part with possession of the Goods then you must hold the proceeds of any such act on trust for us and must pay or deliver the proceeds to us on demand;
 4. you should not convert or process the Goods or intermix them with other goods but if you do so then you hold the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to us as we so direct;
 5. you irrevocably authorise us to enter any premises where we believe the Goods are kept and recover possession of the Goods;

6. we may recover possession of any Goods in transit whether or not delivery has occurred;
7. you shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of us;
8. we may commence proceedings to recover the price of the Goods sold notwithstanding that ownership of the Goods has not passed to you.

8. FITNESS FOR PURPOSE

1. You agree that we shall not be liable for any:
 1. representation, promise or undertaking regarding the fitness or otherwise of Goods supplied by us unless it is made in writing or implied by law; and
 2. failure by you to fix, install, erect, or maintain the Goods in accordance with any advice, recommendation, specification, information, assistance or service provided by us in relation to Goods sold or manufactured by us. The performance of steel products is dependent on the environment, product selection, handling, installation and maintenance.

9. DEFECTS, WARRANTIES, RETURNS

1. You must inspect the Goods immediately on delivery. If the Goods arrive clearly and significantly damaged, you should take photos or video showing the damage and notify us immediately.
2. You must notify us within 5 Business Days of delivery in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or Quote or the 'Material List with Pictures'. Should you fail to notify us within the specified period then the Goods shall be deemed to be in compliance with the Quote and the 'Material List with Pictures' and free from any defect whatsoever.
3. You must notify us of any other alleged defect/damage, shortage in quantity, or failure to comply with the description or Quote or the 'Material List with Pictures' in writing as soon as reasonably possible after any such defect becomes evident and prior to installation.
4. Upon such notification you must allow us the opportunity to inspect the Goods, make an assessment and rectify any issues.
5. Under applicable State, Territory and Commonwealth Law (including, without limitation the *Competition and Consumer Act 2010* (CCA)), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these Terms (Non-Excluded Guarantees). We acknowledge that nothing in these Terms purports to modify or exclude the Non-Excluded Guarantees.
6. Except as expressly set out in these Terms or in respect of the Non-Excluded Guarantees, we make no warranties or other representations under these Terms including but not limited to the quality or suitability of the Goods. Our liability in respect of these warranties is limited to the fullest extent permitted by law.
7. If you are a consumer within the meaning of the CCA, our liability is limited to the extent permitted by section 64A of Schedule 2.

8. If we are required to replace the Goods under this clause or the CCA, but are unable to do so, we may refund any money you have paid for the Goods.
9. If you are not a consumer within the meaning of the CCA, our liability for any defect or damage in the Goods is:
 1. limited to the value of any express warranty or warranty card provided to you by us at our sole discretion;
 2. limited to any warranty to which we are entitled, if we did not manufacture the Goods;
 3. otherwise negated absolutely.
10. Subject to this clause 10, returns will only be accepted provided that:
 1. you have complied with the provisions of clause 10.1 and 10.2; and
 2. we have agreed that the Goods are defective; and
 3. you have completed a returns form (if applicable);
 4. the Goods are returned within a reasonable time at your cost (if that cost is not significant); and
 5. the Goods are returned in as close a condition to that in which they were delivered as is possible.
11. Notwithstanding clauses 10.8 to 10.9 but subject to the CCA, we shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 1. you failing to properly preserve or store any Goods;
 2. you using the Goods for any purpose other than for which they were intended;
 3. you continuing to use any Goods after any defect became apparent or should have become apparent to a reasonably prudent user;
 4. you failing to follow any instructions or guidelines provided by us including but not limited to the 'Client Folder' and the 'Material List with Pictures';
 5. any accident or act of God.
12. We will not accept the return of non-defective Goods.
13. To the extent permitted by law, Goods custom ordered to your specifications are not acceptable for credit or return.
14. Notwithstanding anything contained in this clause, if we are required by law to accept a return then we will only accept a return on the conditions imposed by that law.

10. OUR INTELLECTUAL PROPERTY

We own the Intellectual Property rights in: our pre-existing Intellectual Property, including but not limited to copyright which subsists in all creative and literary works incorporated into our pre-existing Intellectual Property; and intellectual Property that we create during the course of the Services, including but not limited to copyright which subsists in all creative and literary works in all Intellectual Property that we create during the course of the Services; unless we assign or transfer this to you. This Intellectual Property is protected by Australian and international laws.

1. Nothing in these Terms constitutes an assignment or transfer of our Intellectual Property rights, or a right to use our Intellectual Property, whether registered or unregistered, except as stated in these Terms or with our written permission.

You must not breach our Intellectual Property rights by, including but not limited to:

1. altering or modifying our Intellectual Property;
2. creating derivative works from the Intellectual Property; or
3. using our Intellectual Property for commercial purposes such as on-sale to third parties.

This clause will survive the termination of these Terms.

1. CONFIDENTIAL INFORMATION

1. We, including our employees and contractors, agree not to disclose your Confidential Information to any third-party (other than where necessary, to third-party suppliers, or as required by law); to use all reasonable endeavours to protect your Confidential Information from any unauthorised disclosure; and only to use your Confidential Information for the purpose for which it was disclosed by you, and not for any other purpose.
2. These obligations do not apply to Confidential Information that:
 1. is authorised to be disclosed;
 2. is in the public domain and/or is no longer confidential, except as a result of a breach of these Terms;
 3. is received from a third-party, except where there has been a breach of confidence; or
 4. must be disclosed by law or by a regulatory authority including under subpoena.
3. This clause will survive the termination of these Terms.

2. FEEDBACK AND DISPUTE RESOLUTION

1. Your feedback is important to us. We seek to resolve your concerns quickly and effectively. If you have any feedback or questions about the Goods, please contact us.
2. If there is a dispute between the Parties in relation to these Terms, the Parties agree to the following dispute resolution procedure:
 1. The complainant must tell the respondent in writing, the nature of the dispute, what outcome the complainant wants and what action the complainant thinks will settle the dispute. The Parties agree to meet in good faith to seek to resolve the dispute by agreement between them at an initial meeting.
 2. If the Parties cannot agree how to resolve the dispute at that initial meeting, any Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, the complaining Party will ask the Law Society of Queensland to appoint a mediator. The mediator will decide the time and place for mediation. The Parties must attend the

mediation in good faith, to seek to resolve the dispute and will be equally responsible for the costs of the mediator.

3. Any attempts made by the Parties to resolve a dispute pursuant to this clause are without prejudice to other rights or entitlements of the Parties under these Terms, by law or in equity.

3. **TERM AND TERMINATION**

1. If either Party commits a remediable breach of these Terms and does not remedy the breach at its cost within a reasonable time after receiving written notice of the breach from the other Party, then the Parties agree to engage in the dispute resolution process set out in clause 13.2 in the first instance. If the dispute is not resolved after following that process, then either Party may terminate these Terms at any time upon written notice to the other Party.
2. We may terminate these Terms immediately upon written notice to you, if :
 1. you commit a non-remediable breach of these Terms ;
 2. you fail to provide us with clear or timely instructions to enable us to provide the Services;
 3. we, acting reasonably, consider that our working relationship has broken down including a loss of confidence and trust ;
 4. for any other reason outside our control which has the effect of compromising our ability to perform the Services within the required timeframe; or ;
 5. you fail to pay an invoice by the due date
3. You may terminate these Terms immediately upon written notice to us if:
 1. we commit a non-remediable breach of these Terms; or
 2. you, acting reasonably, consider that our working relationship has broken down including a loss of confidence or trust.
4. On termination of these Terms you agree that you are to pay for all Goods provided to you prior to termination.
5. On termination of these Terms, we agree to promptly return (where possible), or delete or destroy (where not possible to return), your Confidential Information and Intellectual Property, and/or documents containing or relating to your Confidential Information and/or Intellectual Property.
6. On completion, we will retain your documents (including copies) as required by law or regulatory requirements. Your express or implied agreement to these Terms constitutes your authority for us to retain or destroy documents in accordance with the statutory periods, or on termination of these Terms.
7. The accrued rights, obligations and remedies of the Parties are not affected by the termination of these Terms.

4. **LIMITATION OF LIABILITY AND DISCLAIMERS**

1. **Delay:** Where the provision of Goods depends on your information or response, we have no liability for a failure to supply the Goods, where it is affected by your delay in response or supply of incomplete or incorrect information.
2. **Referrals:** We may provide you with contact details of third-party specialists. This is not a recommendation by us for you to seek their advice or to use their Goods.

We make no representation or warranty about the third-party advice or provision of Goods, and we disclaim all responsibility and liability for the third-party advice or provision of Goods, or their failure to advise or provide Goods.

3. **Availability:** To the extent permitted by law, we exclude liability for:
 1. Orders being cancelled by us;
 2. the Goods being unavailable; and
 3. any Claims for loss of profits, revenue, production, opportunity, access to markets, goodwill, reputation or any loss or damage relating to business interruption or otherwise, suffered by you or made against you, arising out of or in connection with your inability to access or use the Goods or the late supply of Goods, even if we were expressly advised of the likelihood of such loss or damage.
4. **Disclaimers:** To the extent permitted by law we disclaim all responsibility and liability for:
 1. any items in the order that are unavailable;
 2. any damage caused where you have failed to follow any instructions or guidelines provided by us to you including but not limited where we instruct that a qualified tradesperson is required;
 3. products or services you purchase from a third-party;
 4. products supplied by you or any other third party;
 5. any delays in delivery of the Goods (all delivery dates are estimates);
 6. any incorrect measurements provided by you;
5. This clause will survive the termination of these Terms.

5. INDEMNITY

1. You are liable for and agree to indemnify, defend and hold us harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
 1. any information provided by you to us that was not accurate, up to date or complete or was misleading or a misrepresentation;
 2. your breach of these Terms;
 3. any misuse of the Services by you, your employees, contractors or agents; and
 4. your breach of any law or third party rights.
2. We are liable for and agree to indemnify, defend and hold harmless for and against any and all Claims, liabilities, suits, actions and expenses, including costs of litigation and reasonable legal costs, resulting directly or indirectly from:
 1. any information provided to you by us that was not accurate, up to date or complete or was misleading or a representation;
 2. our breach of these Terms;
 3. any defect or omission in the Services from or by us, our employees, contractors or agents;
 4. our breach of any law or third party rights in connection with our provision of the Services to you.

3. The Parties agree to co-operate with each other (at their own expense) in the handling of disputes, complaints, investigations or litigation that arises as a result of these Terms .

6. GENERAL

1. **Privacy:** We agree to comply with the legal requirements of the Australian Privacy Principles as set out in the *Privacy Act 1988* (Cth) and any other applicable legislation or privacy guidelines.
2. **Publicity:** You consent to us stating that we provided Services to you, including but not limited to taking photographs/videos of our work and mentioning you on our website, social media platforms and in our promotional material, unless you give us written notice that you withdraw your consent in this regard.
3. **Email:** You acknowledge that we are able to send electronic mail to you and receive electronic mail from you. You release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document or information after transmission, for any delay or non-delivery of any document or information and for any damage caused to your system or any files by a transfer.
4. **GST:** If and when applicable, GST payable on the Price for the Goods will be set out on our invoices. You agree to pay the GST amount at the same time as you pay the Price.
5. **Severance:** To the extent permitted by law, if any provision (or part of it) under these Terms is held to be unenforceable or invalid in any jurisdiction, then it will be interpreted as narrowly as necessary to allow it to be enforceable or valid. If a provision (or part of it) under these Terms cannot be interpreted as narrowly as necessary to allow it to be enforceable or valid, then the provision (or part of it) must be severed from these Terms and the remaining provisions (and remaining part of the provision) of these Terms are valid and enforceable.
6. **Force Majeure:** Neither Party will be liable for any delay or failure to perform its obligations under these Terms if such delay is due to any circumstance beyond their reasonable control .
7. **Notices:** Any notice required or permitted to be given by either Party to the other under these Terms will be in writing addressed to the relevant address in the Quote. Any notice may be sent by standard post or email, and notices will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
8. **Jurisdiction & Applicable Law:** These terms are governed by the laws of Queensland and the Commonwealth of Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Queensland.
9. **Entire Agreement:** These Terms and any document expressly referred to in them represent the entire agreement between the Parties and supersede any prior agreement, understanding or arrangement between the Parties, whether oral or in writing.

7. DEFINITIONS

1. **Business Day** means a day which is not a Saturday, Sunday or bank or public holiday in Queensland, Australia.
2. **Claim/Claims** includes a claim, notice, demand, right, entitlement, action, proceeding, litigation, prosecution, arbitration, investigation, judgment, award, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute, whether indirect, incidental, special, consequential and/or incidental, and whether involving a third-party or a Party to the Terms or otherwise.
3. **Confidential Information** includes confidential information about you, your credit card or payment details, and the business, structure, programs, processes, methods, operating procedures, activities, products and Goods, trade secrets, know how, financial, accounting, marketing and technical information, customer and supplier lists (including prospective customer and supplier information), ideas, concepts, technology, and other information of either Party whether or not such information is reduced to a tangible form or marked in writing as "confidential".
4. **Goods** are set out in the Quote.
5. **GST** means GST as defined in the *A New Tax System (Goods and Goods Tax) Act 1999* (Cth) as amended from time to time or any replacement or other relevant legislation and regulations.
6. **Intellectual Property** includes any and all present and future rights to intellectual and industrial property throughout the world, and includes all copyright and analogous rights, all rights in relation to inventions (including patent rights), patents, improvements, registered and unregistered trademarks, designs, any corresponding property rights under the laws of any jurisdiction, discoveries, circuit layouts, trade names, trade secrets, secret processes, know-how, concepts, ideas, information, processes, data or formulae, business names, company names or internet domain names, and any Confidential Information.
7. **Party** and **Parties** means a party or parties to these Terms.
8. **Prices** are set out in the Quote.
9. **Quote** means the quote sent to you or the online checkout/quote to which these Terms form part.

Terms means these terms and conditions.