
Fortifire Pty Ltd T/A Fortifire – Terms & Conditions of Trade

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Fortifire to provide the Services 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 on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors, and permitted assigns.
- 1.2 **“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.
- 1.3 **“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.
- 1.4 **“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 using Fortifire’s 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 making enquiries via the website.**
- 1.5 **“Fortifire”** means Fortifire Pty Ltd (ABN 44 152 787 034) T/A Fortifire, its successors and assigns or any person acting on behalf of and with the authority of Fortifire Pty Ltd T/A Fortifire.
- 1.6 **“Goods”** means all Goods or Services (including but not limited to, any consultation, manufacturing and/or installation Services etc) supplied by Fortifire to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.7 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 **“Intended Use”** means any associated building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with the Services.
- 1.9 **“Non-Conforming Building Product”** means associated building products that are regarded as Non-Conforming for an Intended Use if, when associated with the Services:
- (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.10 **“Price”** means the Price payable (plus any GST where applicable) for the Goods as agreed between Fortifire and the Client in accordance with clause 5 below.

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 the Goods.
- 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 the supply of Goods on credit shall not take effect until the Client has completed a credit application with Fortifire and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, Fortifire reserves the right to refuse Delivery.
- 2.6 Any advice, recommendation, information, assistance, or service provided by Fortifire in relation to Goods or Services supplied is given in good faith to the Client, or the Client’s agent and is based on Fortifire’s own knowledge and experience and shall be accepted without liability on the part of Fortifire. Where such advice or recommendations are not acted upon then Fortifire shall require the Client or their agent to authorise commencement of the Services in writing. Fortifire shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 Unless otherwise agreed to, the Services shall be performed during Fortifire’s standard office hours of Monday – Friday 7:00am-4:30pm excluding Public Holidays.
- 2.8 In the event that Fortifire is required to provide the Services urgently, that may require Fortifire’s staff to work outside normal business hours (including but not limited to working, through lunch breaks, weekends and/or Public Holidays) then Fortifire reserves the right to charge the Client additional labour costs (penalty rates will apply), unless otherwise agreed between Fortifire and the Client.
- 2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic (Queensland) Transactions Act 2001 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 Fortifire 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 Fortifire 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 Fortifire in respect of the Services.
- 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 Fortifire; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

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- 3.3 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not). ("**Client Error**"). The Client must pay for all Goods it orders from Fortifire notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Goods. Fortifire is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.
- 4. Change in Control**
- 4.1 The Client shall give Fortifire 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 Fortifire as a result of the Client's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At Fortifire's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Fortifire to the Client; or
 - (b) the Price as at the date of Delivery of the Goods according to Fortifire's current price list; or
 - (c) Fortifire's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Fortifire reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
 - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, limitations to accessing the site, prerequisite work by any third party not being completed, delays in obtaining industry occupational licensing, safety considerations (including but not limited to, the discovery of asbestos), the failure of isolating valves requiring alternative means of isolation of water supplies, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring/cablings etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to Fortifire in the cost of labour or materials which are beyond Fortifire's control.
- 5.3 Variations will be charged for on the basis of Fortifire's quotation, and will be detailed in writing, and shown as variations on Fortifire's invoice. The Client shall be required to respond to any variation submitted by Fortifire within ten (10) working days. Failure to do so will entitle Fortifire 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.
- 5.4 At Fortifire's sole discretion, a non-refundable deposit may be required prior to the commencement of the Services.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by Fortifire, which may be:
- (a) on or before Delivery of the Goods;
 - (b) on completion of the Services;
 - (c) by way of progress payments in accordance with Fortifire's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed;
 - (d) the date which is fourteen (14) days following the date of any invoice given to the Client by Fortifire; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Fortifire.
- 5.6 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Fortifire.
- 5.7 Fortifire may in its discretion allocate any payment received from the Client towards any invoice that Fortifire determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Fortifire may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Fortifire, payment will be deemed to be allocated in such manner as preserves the maximum value of Fortifire's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.8 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 Fortifire nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify Fortifire in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Fortifire investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Fortifire placing the Client's account into default and subject to default interest in accordance with clause 17.1.
- 5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to Fortifire an amount equal to any GST Fortifire must pay for any supply by Fortifire under this or any other agreement for the sale of the Goods. 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.
- 6. Provision of the Services**
- 6.1 Subject to clause 6.2 it is Fortifire's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Fortifire claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Fortifire's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Fortifire that the site is ready.
- 6.3 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at Fortifire's address; or

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- (b) Fortifire (or Fortifire's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.4 At Fortifire's sole discretion, the cost of Delivery is in addition to the Price.
- 6.5 Fortifire may deliver the Goods/Services in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.6 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 6.7 Any time specified by Fortifire for Delivery of the Goods/Services is an estimate only and Fortifire will not be liable for any loss or damage incurred by the Client because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods/Services to be delivered at the time and place as was arranged between both parties. If Fortifire is unable to supply the Goods/Services as agreed solely due to any action or inaction of the Client, then Fortifire shall be entitled to charge a reasonable fee for redelivery and/or storage of the Goods.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, Fortifire is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Fortifire is sufficient evidence of Fortifire's rights to receive the insurance proceeds without the need for any person dealing with Fortifire to make further enquiries.
- 7.3 If the Client requests Fortifire to leave Goods outside Fortifire's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 7.4 Fortifire, at its sole discretion, may choose to maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.
- 7.5 Fortifire shall be entitled to rely on the accuracy of any plans, design specifications (including, but not limited to, existing structural and architectural drawings, fit-out architectural background and fire services consultant drawings etc) 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, Fortifire accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.6 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring/plumbing, or dangerous access to roofing and/or crawl spaces) that Fortifire, or employees of Fortifire, reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then Fortifire shall be entitled to delay installation of the Goods until Fortifire is satisfied that it is safe for the installation to proceed.
- 7.7 Fortifire shall upon installation ensure that all installed Goods meet current industry standards applicable, however Fortifire cannot guarantee that condition will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 7.8 In the event that Fortifire discovers asbestos/hazardous materials whilst undertaking any Services Fortifire shall immediately advise the Client of the same and shall be entitled to suspend the Services pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (howsoever arising) incurred by Fortifire as a result of the discovery of asbestos/hazardous materials and/or any suspension of Services in relation thereto.
- 7.9 The Client acknowledges and accepts that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in Fortifire's or manufacturer's 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 Fortifire;
 - (b) while Fortifire may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that Fortifire has given these in good faith, and are estimates industry prescribed estimates under optimal operating conditions;
 - (c) the presence of plant or tree root growth and/or other blockages and/or other latent conditions may indicate damaged pipe work or damage to other services and therefore where Fortifire is requested to merely clear such blockages, Fortifire can offer no guarantee against reoccurrence or further damage. In the event of collapse during the pipe clearing process, Fortifire will immediately advise the Client of the same and shall provide the Client with an estimate for the full repair of the damaged pipe work;
 - (d) during testing, water may cause water or mechanical damage during prescribed testing where system failure occurs. Fortifire shall not be held liable to the Client, the property owner or other third party for any damages, losses or costs, (including, but not limited to, down time, damage to the fire services(s) and other system(s) connected to or that form part of the hydrant service) resulting from such an event;
 - (e) Fortifire is only responsible for parts that are replaced by Fortifire and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Client agrees to indemnify Fortifire against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising;
 - (f) electronic systems, smoke, heat and like detectors installed to / at their premises:
 - (i) are for monitoring and detection purposes and should not be seen as a life saving device; and
 - (ii) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter.
 - (g) Goods supplied may:
 - (i) fade or change colour over time;
 - (ii) expand, contract or distort as a result of exposure to heat, cold, weather;
 - (iii) mark or stain if exposed to certain substances; and
 - (iv) be damaged or disfigured by impact or scratching.
- 7.10 The Client acknowledges and agrees that where software or data transmissions are part of the equipment:
- (a) Fortifire does not guarantee the performance or transmission speed or quality of any data;
 - (b) transmission of data may be unavailable from time to time due to scheduled maintenance and/or upgrades to websites, software applications, servers or networks by third parties; and

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- (c) there are inherent hazards in electronic distribution (including, but not limited to electrical interference, surges or spikes, high traffic volume affecting speed, etc.) and as such Fortifire cannot warrant against delays or errors in transmitting data between the Client and any person or entity the Client conducts communications with including monitoring data, and you agree that Fortifire will not be liable for any losses which the Client suffers as a result of delays or errors in transmitting data or other communications and/or documents.
- 7.11 Where the Client updates or upgrades any software or hardware that may interface with Fortifire's alarm or monitoring applications without advising Fortifire, the Client shall indemnify Fortifire of any loss or damage the Client or the Client's property or possessions may incur as a result of the Client's failure to advise Fortifire of any such update or upgrade that may affect the effectiveness of the alarm or monitoring.

8. Client's Responsibilities

- 8.1 It is the intention of Fortifire and agreed by the Client that it is the responsibility of the Client to provide special access equipment/elevated work platform (EWP) (including, but not limited to, scaffolding or scissor lift) to enable the Services to be undertaken (where in Fortifire's opinion it is deemed necessary). It is also agreed that all scaffolding erected will comply with industry safety standards and that any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection and where necessary shall hold a current certificate of competency and/or be fully licensed. Where the Client requests Fortifire to make arrangements for such provision, the costs incurred shall be invoiced to the Client.
- 8.2 It shall be the Client's responsibility to:
- (a) remove any furniture, furnishings or personal goods from the vicinity of the Services and agrees that Fortifire shall not be liable for any damage caused to those items through the Client's failure to comply with this clause;
 - (b) provide documentation of all dispensations granted by authorities at time of occupancy or later;
 - (c) provide to Fortifire any building permit drawings or system drawings and access to onsite knowledge prior to the commencement of the Services;
 - (d) to ensure all electronically protected areas are free from obstacles which may impair the operation of the system;
 - (e) where applicable, provide Fortifire with the Water Authority Pressure and Flow letter depending on the Client's building surveyor's interpretation of AS2419.1;
 - (f) ensure the system equipment is tested and maintained to full operational condition;
 - (g) for all phone calls or data transmissions emanating from the system panel;
 - (h) ensure there is adequate legal parking within 8 metres (8m) of the booster connections and feed hydrant as traffic cannot drive over hoses spanning between the feed hydrant, pump appliance and booster connections. It would be in the Client's interest to check the locations of boosters and where the likely supply of water will be sourced from; and
 - (i) where appropriate, arrange traffic and/ pedestrian control. Where the Client requests Fortifire to make such arrangements, the Client shall provide Fortifire with at least seven (7) days' notice and the additional charge shall be made as a variation as per clause 5.2.
- 8.3 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.4 Where Fortifire requires that Goods, tools etc. required for the Services be stored at the site, the Client shall supply Fortifire a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Client's responsibility.

9. Access

- 9.1 The Client shall ensure that Fortifire has clear, free and continuous access to the work site at all times to enable them to undertake the Services. Fortifire 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) unless due to the negligence of Fortifire.
- 9.2 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks or lifting or other equipment as may be deemed necessary by Fortifire.

10. Underground Locations

- 10.1 Prior to Fortifire commencing the Services the Client must advise Fortifire of the precise location of all underground services on the site and clearly mark the same. The underground mains and 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, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site.
- 10.2 Whilst Fortifire will take all care to avoid damage to any underground services the Client agrees to indemnify Fortifire 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 10.1.

11. Compliance with Laws

- 11.1 The Client and Fortifire shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods/Services (including but not limited to, the Electrical Safety Act, Fire & Emergency Act 1990 and the Queensland Building Fire Safety Regulation 2008 etc).
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 11.3 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code of Australia (NCC), section 74AA (products associated with building works and/or the intended use) and section 74AE (Chain of Responsibility) of the QBCC Act 1991 in respect of all workmanship and building products to be supplied during the course of the Services; and
 - (b) that Services will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.
- 11.4 Where the Client has supplied products for Fortifire to complete the Services, the Client acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in Fortifire's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then Fortifire shall be entitled, without prejudice, to halt the Works until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 5.2.

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- 11.5 The Client agrees that the site will comply with any occupational health and safety (OHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 11.6 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations. All of the cabling work will comply with all relevant Australian and New Zealand Wiring standards.
- Modern Slavery*
- 11.7 For the purposes of this clause:
- (a) “**Act**” means the *Modern Slavery Act 2018 (cth)*
 - (b) “**Modern Slavery**”, “**Modern Slavery Statement**” and “**Reporting Entity**” have the meanings given by the Act.
- 11.8 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 11.9 Whether the Client is a Reporting Entity or not, the Client shall:
- (a) use reasonable endeavours to identify, assess and address risks of modern slavery practices in its operations and supply chains;
 - (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
 - (c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
 - (d) provide to Fortifire a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
 - (e) within seven (7) days of Fortifire’s request (or such longer period as Fortifire agrees), provide to Fortifire any information or assistance reasonable requested by Fortifire;
 - (i) concerning the Client’s compliance with the Act;
 - (ii) concerning the Client’s operations and supply chains;
 - (iii) to enable Fortifire to prepare a Modern Slavery Statement or otherwise comply with the Act; or
 - (iv) to enable Fortifire to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 11.10 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and Fortifire will be able to terminate the Contract for any breach by the Client.
- 11.11 The Client warrants that any information supplied to Fortifire is true and accurate and may be relied upon for the purposes of the Act.
- 11.12 The Client shall indemnify Fortifire against any loss or liability suffered by Fortifire as a result of the Client’s breach of this clause 11.

12. Title

- 12.1 Fortifire and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid Fortifire all amounts owing to Fortifire; and
 - (b) the Client has met all of its other obligations to Fortifire.
- 12.2 Receipt by Fortifire 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.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to Fortifire on request;
 - (b) the Client holds the benefit of the Client’s insurance of the Goods on trust for Fortifire and must pay to Fortifire the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for Fortifire and must pay or deliver the proceeds to Fortifire on demand;
 - (d) the Client should not convert or process the Goods 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 Fortifire and must sell, dispose of or return the resulting product to Fortifire as it so directs;
 - (e) the Client irrevocably authorises Fortifire to enter any premises where Fortifire believes the Goods are kept and recover possession of the Goods;
 - (f) Fortifire may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client 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 Fortifire;
 - (h) Fortifire may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 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 Goods that have previously been supplied and that will be supplied in the future by Fortifire to the Client, and the proceeds from such Goods.
- 13.3 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 Fortifire 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 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Fortifire 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 Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Fortifire;

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- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Fortifire;
 - (e) immediately advise Fortifire of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 13.4 Fortifire 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.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by Fortifire, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by Fortifire under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of Fortifire agreeing to supply the Goods, 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, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering Fortifire's security interest over the Client on the PPSA, 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).
- 14.2 The Client indemnifies Fortifire from and against all Fortifire's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Fortifire's rights under this clause.
- 14.3 The Client irrevocably appoints Fortifire and each director of Fortifire as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

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

- 15.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Fortifire 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 Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow Fortifire to inspect the Goods.
- 15.2 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**).
- 15.3 Fortifire acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Fortifire makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Fortifire's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, Fortifire's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If Fortifire is required to replace the Goods under this clause or the CCA, but is unable to do so, Fortifire may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, Fortifire's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by Fortifire at Fortifire's sole discretion;
 - (b) limited to any warranty to which Fortifire is entitled, if Fortifire did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) Fortifire has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, Fortifire shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by Fortifire;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 Fortifire may in its absolute discretion accept non-defective Goods for return in which case Fortifire may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 15.11 Notwithstanding anything contained in this clause if Fortifire is required by a law to accept a return, then Fortifire will only accept a return on the conditions imposed by that law.
- 15.12 Subject to clause 15.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

16. Intellectual Property

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

17. Default and Consequences of Default

- 17.1 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 Fortifire's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes Fortifire any money, the Client shall indemnify Fortifire from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, Fortifire's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 17.3 Further to any other rights or remedies Fortifire may have under this Contract, if a Client has made payment to Fortifire, 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 Fortifire under this clause 17 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.
- 17.4 Without prejudice to Fortifire's other remedies at law Fortifire shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Fortifire shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Fortifire becomes overdue, or in Fortifire's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by Fortifire;
 - (c) the Client becomes insolvent, 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

- 18.1 Without prejudice to any other remedies Fortifire may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions Fortifire may suspend or terminate the supply of Goods to the Client. Fortifire will not be liable to the Client for any loss or damage the Client suffers because Fortifire has exercised its rights under this clause.
- 18.2 Fortifire may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Fortifire shall repay to the Client any money paid by the Client for the Goods. Fortifire shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 If the Client cancels Delivery of Goods, the Client shall be liable for all losses incurred (whether direct or indirect) by Fortifire as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

19. Privacy Policy

- 19.1 All emails, documents, images, or other recorded information held or used by Fortifire is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. Fortifire 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"). Fortifire acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by Fortifire that may result in serious harm to the Client, Fortifire 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.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Fortifire in respect of Cookies where the Client utilises Fortifire's website to make enquiries. Fortifire 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 Fortifire when Fortifire sends an email to the Client, so Fortifire may collect and review that information ("collectively Personal Information")
- If the Client consents to Fortifire's use of Cookies on Fortifire's website and later wishes to withdraw that consent, the Client may manage and control Fortifire's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.3 The Client agrees that Fortifire 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

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- (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.
- 19.4 The Client consents to Fortifire being given a consumer credit report to collect overdue payment on commercial credit.
- 19.5 The Client agrees that personal credit information provided may be used and retained by Fortifire for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; 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 Goods.
- 19.6 Fortifire 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.
- 19.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
 - (b) name of the credit provider and that Fortifire 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 (provided Fortifire is a member of an approved OAIC External Disputes Resolution Scheme), 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 Fortifire has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Fortifire, 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).
- 19.8 The Client shall have the right to request (by e-mail) from Fortifire:
- (a) a copy of the Personal Information about the Client retained by Fortifire and the right to request that Fortifire correct any incorrect Personal Information; and
 - (b) that Fortifire does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 19.9 Fortifire will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.10 The Client can make a privacy complaint by contacting Fortifire via e-mail. Fortifire will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 20. Building Industry Fairness (Security of Payment) Act 2017**
- 20.1 At Fortifire's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.
- 20.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.
- 21. Service of Notices**
- 21.1 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.
- 21.2 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.
- 22. Trusts**
- 22.1 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 Fortifire may have notice of the Trust, the Client covenants with Fortifire 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 Fortifire (Fortifire 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.

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23. General

- 23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 23.2 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.
- 23.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the Townsville Courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).
- 23.4 Subject to clause 15, Fortifire 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 Fortifire of these terms and conditions (alternatively Fortifire's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.5 Fortifire may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.6 The Client cannot licence or assign without the written approval of Fortifire.
- 23.7 Fortifire may elect to subcontract out any part of the Services 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 Fortifire's sub-contractors without the authority of Fortifire.
- 23.8 The Client agrees that Fortifire 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 Fortifire to provide Goods to the Client.
- 23.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 23.10 Both parties warrant that they have the power to enter 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.
- 23.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.