Terms and conditions of trade for **Outback Sleepers Australia Pty Ltd** T/A (trading as) **Outback Sleepers Australia**
All quotations and contracts are subject to the following conditions:

1. Definitions

1.1 "Seller" shall mean Outback Sleepers Australia Pty Ltd T/A Outback Sleepers Australia, its successors and assigns or any person acting on behalf of and with the authority of Outback Sleepers Australia Pty Ltd T/A Outback Sleepers Australia.

1.2 "Customer" shall mean the customer (or any person acting on behalf of and with the authority of the customer) as described on any quotation, work authorisation or other form as provided by the Seller to the Customer.

1.3 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis.

1.4 "Goods" shall mean all Goods supplied by the Seller to the Customer including but not limited to concrete retaining wall sleepers (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.

1.5 "Services" shall mean all Services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).

1.6 "Price" shall mean the price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 4 of this contract.

2. The *Competition and Consumer Act 2010* ("CCA") and *Fair Trading Acts* ("FTA")

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

2.2 Where the Customer buys Goods as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

3. Acceptance

3.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.

3.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.

3.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Seller.

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

3.5 Goods are supplied by the Seller only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

3.6 The Customer acknowledges that except as provided by law this agreement does not entitle the Customer to demand to receive from the Seller any site inspection or service concerning the Goods supplied, delivered and installed (if applicable). If the Customer requires the Seller's Services in respect of site inspection or service concerning the Goods subject of this agreement, then the Customer should arrange with the Seller to enter into a specific agreement in respect of the same.

3.7 The Customer forfeits any right or claim against the Seller if any alteration to the Goods is carried out without the Seller's written consent.

4. Price and Payment

4.1 At the Seller's sole discretion the Price shall be either:
(a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or
(b) the Seller's quoted Price (subject to clauses 4.2 - 4.4) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within thirty (30) days. Quotations are subject to withdrawal, correction, or alteration at any time before acceptance of the Customer's order by the Seller unless stated otherwise.

4.2 All Prices are subject to change without notice and all orders are accepted by the Seller on the condition that they be invoiced at the Prices ruling at the date of dispatch. All Prices are strictly net unless otherwise stated.

4.3 All prices shown in published catalogues or price lists are recommended selling prices only and there is no obligation on the part of any reseller to maintain the same prices.

4.4 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation (including, but not limited to, variations as a result of changes in details, sizes, quantities, delivery instructions or any other matter or item on which the quotation was based).

4.5 The Seller provides their concrete retaining wall sleepers packaged on bearers for the convenience of the Customer. Any other packing requested by the Customer or deemed necessary by the Seller in the Seller's sole discretion acting reasonably, will be charged for in addition to the Price quoted.

4.6 At the Seller's sole discretion a deposit of 10% of the Price may need to be paid within three (3) days from the Customer providing instructions to the Seller for the supply of Goods and prior to the delivery of any Goods. To the extent permitted by law, that deposit is non-refundable and will be retained by the Seller.

4.7 At the Seller's sole discretion:
(a) payment for approved Customers shall be made by instalments in accordance with the Seller's payment schedule.

4.8 The company trading terms are strictly 30 days EOM. If payment is not received by 30 days EOM the purchaser will be automatically placed on credit hold.
Time for payment for the Goods shall be of the essence and may be stated on the invoice or any other form. If no time is stated then payment shall be due thirty (30) days following the date of the invoice for Customers approved by the Seller whether or not Goods have been delivered; and for other Customers prior to dispatch and delivery of the Goods.

4.9 Without limiting any right or remedy to which the Seller may be entitled, the Seller may in itself in its sole discretion charge interest on overdue invoices from the date on which payment became due until paid in full (including interest), calculated at 1.5% per month and compounded monthly at that rate. Where overdue interest is charged on outstanding balances, it may be invoiced on a weekly basis and be due and payable within the terms and conditions set out herein. Any payment made by the Customer will be credit first against any outstanding interest so accrued, the balance of payment, if any, will then be applied against overdue invoices.

4.10 The Seller reserves the right to offer certain approved Customers a discount for settlement of accounts by a specified date.

4.11 The Seller reserves the right to withdraw credit terms and at any time without notice apply or vary a credit limit.

4.12 Payment will be made by cash, or by Visa or Mastercard (plus a surcharge of up to one and a half percent (1.5%) of the Price), or by direct credit, or by any other method as agreed between the Customer and the Seller.

4.13 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

4.14 All Prepaid orders must be paid in full prior to delivery or before/on the scheduled pick-up date.

5. Delivery of Goods

5.1 At the Seller's sole discretion delivery of the Goods shall take place when:
(a) the Customer takes possession of the Goods at the Seller's address; or
(b) subject to clause 5.2 below, the Goods are delivered at the Customer's nominated address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
(c) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.

5.2 The Seller's delivery is kerb side delivery only. Should the Customer require Goods to be delivered elsewhere, the Seller accepts no responsibility for any damage to the Goods or any other property, or injury to any person, in consequence of the Goods being delivered elsewhere at the Customer's request. Delivery is at the Seller's sole discretion and may be refused where it is not considered safe in the Seller's sole discretion.

5.3 A delivery charge per order, charged at the rate applicable at the time of delivery, will be applied on all Goods which are delivered to a Customer's premises, or as directed by a Customer (other than a kerb side delivery). This amount will be shown as a separate item on all tax invoices rendered by the Seller to the Customer.

5.4 If the Customer orders incorrectly (for example, concerning the type of Goods; quantity or size of the Goods; the date of delivery; or the area at which the Goods are to be delivered is inaccessible (deemed by delivery driver) and thereby prevents the Goods from being delivered on the day of delivery as requested by the Customer or advised by the Seller to the Customer), the Customer is liable for the original delivery charge, a return delivery charge (to the Seller's premises) and a re-delivery charge.

5.5 Where the Customer requests the Seller to arrange delivery of the Goods by carrier on their behalf then all risk for the Goods passes to the Customer immediately on dispatch from the Seller's premises.

5.6 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

5.7 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.

5.8 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

5.9 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.

5.10 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.

5.11 Delivery times quoted by the Seller are estimates only and are subject to the provision of full information concerning delivery from the Customer, equipment availability and access to the delivery location to enable the delivery to be provided. The Seller reserves its right to extend or amend delivery times and dates at the Seller's sole discretion.

6. Risk

6.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery with the exception that, if delivery of the Goods is delayed for any reason beyond the control of the Seller and the Seller agrees to store the Goods on its premises pending delivery or collection, then those Goods shall be stored at the Customer's risk and the Seller shall be entitled to charge a reasonable fee for the storage.

6.2 If any of the Goods are damaged following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's right to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

6.3 It is the Customer's responsibility to effect and pay for any insurance cover on the Goods.

7. Title

7.1 The Seller and the Customer agree that ownership of the Goods shall not pass until:
(a) the Customer has paid the Seller all amounts owing for the Goods; and
(b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.

7.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.

7.3 It is further agreed that:
(a) the Seller may by its employees and agents enter upon and into land and/or premises owned, occupied or used by the Customer, or any premises where the Goods are situated at any time without notice, to inspect the Goods;
(b) where practicable the Goods shall be kept separate and identifiable as property of the Seller until the Seller has received payment and all other obligations of the Customer are met;
(c) until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease;
(d) if the Customer fails to return the Goods to the Seller then the Seller or the Seller's agent may (as the invitee of the Customer) enter upon and into land and/or premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods (including where the Goods have been made fixtures on to land). The Customer hereby provides an indemnity in favour of the Seller, concerning any claim or liability for damage to the Customer's or third party property caused by such repossession of the Goods;
(e) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made;
(f) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Seller for the Goods, on trust for the Seller;
(g) to the extent (if any) that legal title to the Goods has passed to the Customer by operation of law, then the Seller has a specific lien over the Goods until the Goods are paid for in full;
(h) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller;
(i) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer;
(j) the Customer is not entitled to make any deduction from the price of the Goods for any set-off or counter-claim against the Seller; and
(k) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.

8. Security and Charge

8.1 Despite anything to the contrary contained herein or any other rights which the Seller may have:
(a) the Customer and/or the Guarantor (if any) acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;
(b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor (if any) shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and client basis;
(c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 9.1.

9. Customer's Disclaimer

9.1 The Customer hereby disclaims any right to rescind, or cancel any contract with the Seller or to sue for damages or to claim restitution arising out of any inadvertent misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.

10. Defects

10.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote.

10.2 The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way.

10.3 If the Seller determines in its sole discretion that the Goods are defective, then (subject to clause 11.4) the Seller will repair or replace the defective Goods within seven (7) days of completing its investigation or as otherwise agreed between the Seller and the Customer.

10.4 The Customer will give the Seller reasonable access to the Goods during ordinary working hours to undertake any work required upon the Goods.

10.5 If the Customer fails to comply with these provisions the Goods shall be presumed to be free from any defect or damage.

10.6 For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the CCA or the FTA of the relevant state or territory of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.

10.7 Refer to OSG's Labour Compensation policy for all labour rectification works

11. Returns and Credits

11.1 Returns and credits will only be accepted provided that:
(a) the Customer has complied with the provisions of clause 11.1;
(b) the Seller has agreed in writing to accept the return of the Goods;
(c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date;
(d) the Goods have been stored and used in a proper manner; and
(e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
(f) All Refunds will only be paid back under the same payment method used to make initial payment.
(g) All Refunds can only be completed in person (if paid via EFTPOS)
(h) Proof of purchase is to be provided (Original OSA Receipt / EFTPOS Receipt)
(i) Customer Name, Address & Phone Number is required

11.2 The Seller may (at their sole discretion and by prior arrangement) accept the return of Goods to the Seller at the Customer's cost for credit but this will incur a restocking fee of twenty percent (20%) of the original invoice value of the returned Goods.

11.3 The Seller may inspect Goods upon return and may deem if the Goods are first or second grade, which will determine the amount of credit provided to the Customer.

11.4 Non-stocklist items or Goods made to the Customer's specifications are under no circumstances acceptable for credit or return.

12. Warranty

12.1 The Seller provides the Customer with a 20-year warranty for concrete retaining wall sleepers manufactured by the Seller, on the terms set out in the document titled 'Warranty Outback Sleepers Australia – Concrete Retaining Wall Sleepers (when used in Australia)' ("Warranty").

12.2 That Warranty is published on the Seller's website (located at www.outbacksleepers.com.au) and is available upon request from the Seller.

13. Intellectual Property

13.1 Where the Seller has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Seller, and:
(a) shall only be used by the Customer at the Seller's discretion; and
(b) cannot be re-used by the Customer unless the Seller agrees to that re-use in writing.

13.2 The Customer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

13.3 The Customer agrees that the Seller may use any documents, designs, drawings or Goods created by the Seller for the purposes of advertising, marketing, or entry into any competition.

14. Default and Consequences of Default

14.1 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Seller.

14.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and client basis and the Seller's collection agency costs.

14.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.

14.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars ($20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars ($200.00)) shall be levied for administration fees which sum shall become immediately due and payable.

14.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
(b) the Customer 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
(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

15. Cancellation or Variation

15.1 The Seller 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 notice to the Customer. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.

15.3 Any attempted cancellation by the Customer of orders for Goods made to the Customer's specifications or non-stocklist items will not be accepted, once production has commenced.

15.4 The Seller may otherwise cancel any contract between the Seller and the Customer for any reason, by the Seller giving notice to the Customer. If the Seller so cancels, the Seller may apply or set off any money held or owing to the Customer for the purposes of reasonably making good any breach of the contract by the Customer. Should the amount held or owing to the Customer be insufficient to cover such costs to rectify the breach of contract by the Customer, the excess amount will be recoverable from the Customer as a debt. Cancellation of any such contract will not affect any rights or obligations accrued or intended to survive cancellation and will not constitute a waiver of any of the Seller's rights against the Customer. For the sake of clarity, if a contract between the Seller and the Customer is cancelled, the Customer must pay the Seller for the proportion and value of the Goods subject to preliminaries, manufactured or partially manufactured for the purpose of supply to the Customer.

15.5 Any order from the Customer concerning Goods to be supplied by the Seller to the Customer may be varied only if such variation is accepted by the Seller in writing and any variation or cancelation by the Customer (whether or not it has been agreed to by the Seller) may only occur on the basis that the Seller will be indemnified by the Customer against any consequential loss or damage.

16. Privacy Act 1988

16.1 The Customer and/or the Guarantor/s (in this clause, referred to as the Customer) agree that the Seller may obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Seller.

16.2 The Customer agrees that the Seller may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
(a) to assess an application by the Customer; and/or
(b) to notify other credit providers of a default by the Customer; and/or
(c) to exchange information with other credit providers as to the status of a Customer's credit account, where the Customer is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Customer.
The Customer understands that the information exchanged can included anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988*.

16.3 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (pursuant to the Privacy Act 1988).

16.4 The Customer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Customer and Seller or required by law from time to time):
(a) the provision of Goods; and/or
(b) the marketing of Goods by the Seller, its agents or distributors; and/or
(c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
(e) enabling the daily operation of the Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.

16.5 The Seller may give information about the Customer to a credit reporting agency for the following purposes:
(a) to obtain a consumer credit report about the Customer;
(b) to allow a credit reporting agency to create or maintain a credit information file containing information about the Customer.

16.6 The information given to a credit reporting agency by the Seller may include:
(a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
(b) details concerning the Customer's application for credit or commercial credit and the amount requested;
(c) advice that the Seller is a current credit provider to the Customer;
(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
(e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
(f) information that, in the opinion of the Seller, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
(g) advice that cheques drawn by the Customer for one hundred dollars ($100) or more, have been dishonoured more than once;
(h) that credit provided to the Customer by the Seller has been paid or otherwise discharged.

17. Steel

17.1 The Seller only recommends steel to be a minimum size of 120 UB 65 or 125 x 65 Channel for the Seller's concrete retaining wall sleepers, as per the Seller's engineer's specifications.

17.2 If smaller steel is used, the Seller will not be liable for any consequential rectification required.

17.3 The Seller's sleeper sizing is a nominal size.

18. Limitation of Liability

18.1 Save and except as provided in the Seller's Warranty, the Seller does not warrant the fitness of the Goods to perform any particular job or function. The Customer acknowledges and agrees that they have relied solely on their own judgment and expertise in this regard prior to agreeing to these terms and conditions and/or accepting delivery of the Goods.

18.2 The Customer acknowledges that in entering into an agreement with the Seller, the Customer will be relying upon their own experience, skill and judgment to evaluate any conclusion or recommendation made by the Seller in the course of providing the Goods and the Customer will satisfy themself as to the suitability of any such conclusion or recommendation to meet the Customer's requirements.

18.3 The Customer acknowledges that the Seller's liability under any statutory right or condition or warranty implied by any state FTA or the CCA is to the extent permitted by law limited at the option of the Seller and at the Seller's sole discretion, to either the supply of the Services again or the payment of the reasonable cost of having the Services supplied again.

18.4 The Customer acknowledges that the Seller is not liable in respect of any damage to the Customer's property (except where the damage arises from the Seller's gross negligence or wilful damage), and the Customer provides the Seller with a corresponding indemnity.

18.5 The Seller shall not be responsible for any incorrect information or misrepresentation made by the Customer or any third party on behalf of the Customer and specifically disclaims any liability in respect of digging around or near services or high risk activities associated with the Goods. The Customer has and assumes all such liability and responsibility.

18.6 Any claim for liquidated damages by the Customer against the Seller is specifically excluded and the Customer provides a corresponding indemnity to the Seller. The Seller is not liable for any personal injury, incidental damages, consequential or indirect loss arising out of the supply of the Goods. To the extent permitted by law, the Customer indemnifies the Seller in respect of all claims, expenses and liabilities whatsoever which may be made against the Seller in respect of the Goods, except insofar as such claim arises from the Seller's gross negligence.

19. Indemnity

19.1 The Customer must comply with all instructions of the Seller in relation to the construction, fitting, installation and use of the Goods.

19.2 Notwithstanding such compliance and unless otherwise provided herein, the Customer will indemnify and keep the Seller indemnified against all claims, expenses and liabilities of whatever nature and howsoever arising including, without limiting the generality of the foregoing, claims concerning death, personal injury, damage to property, and/or consequential loss (including but not limited to loss of profit), which may be made against the Seller or which the Seller may sustain, pay or incur arising out of the manufacture, sale or use of the Goods unless the same is directly and solely attributable to gross negligence of the Seller.

20. General

20.1 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.

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia and are subject to the jurisdiction of the courts of South Australia.

20.3 The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including but not limited to loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.

20.4 In the event of any breach of these terms and conditions by the Seller the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.

20.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

20.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

21.7 The Customer agrees that the Seller may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. The Customer shall be under no obligation to accept such changes except where the Seller supplies further Goods to the Customer and the Customer accepts such Goods.

20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

20.9 The failure by the Seller to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

20.10 A party to these terms and conditions may only assign, charge or deal with their rights or obligations under these terms and conditions with and to the extent provided by, the written consent of the other party which will not be unreasonably withheld.

20.11 Notices must be in writing and in English, may be given by an authorised representative of the sender and may be given by leaving it at the address last notified by a party to the other party, by sending it by prepaid mail to the address last notified, by sending it to the email address last notified, or by sending it by facsimile to the facsimile number last notified. Notice is deemed to be received when left at the notified address; if sent by prepaid mail, on the third business day after posting; and if sent by facsimile or email, at the time and on the day shown in a transmission report.

20.12 The Customer acknowledges that they have been given the opportunity to obtain professional advice in relation to these terms and conditions and further acknowledges that they understand the within obligations and effects prior to entering into these terms and conditions.

20.13 Actual product colours and textures may vary from images shown due to different device screen settings or lighting in the photographed location. Product finishes may vary slightly over manufacturing period