

ARCPANEL - GENERAL TERMS AND CONDITIONS OF SALE

Customer Name

("the Customer"): _____

Trading Name / Business Name: _____

1. DEFINITIONS AND INTERPRETATION

1.1. In this Agreement:

"Act" means the Security of Payments Act which is applicable to the State or Territory in which the goods are installed.

"Agreement" means these General Terms and Conditions of Sale.

"ARCPANEL" is the trading name of Architectural Panels Pty Ltd ABN 85 617 264 703

"Customer" means the person identified as the customer on the Quotation or on any written order form or request for quotation submitted to ARCPANEL.

"Goods" means any products and services identified on the Quotation or on any written order form or request for quotation submitted to ARCPANEL and identified on the Workshop Drawings.

"GST" means the GST as defined in the A New Tax System (Goods and Services Tax) Act 1999.

"PPS Act" means the Personal Property Securities Act 2009 and includes the Personal Property Securities Regulations 2010 and any amendments and re-enactments of the PPS Act or the Regulations.

"PPS Register" means the Personal Properties Security register established under the PPS Act 2009.

"Quote or Quotation" means a written quotation provided by ARCPANEL which details the Supply Rate of Goods for the Customer in respect of a particular project.

"Schedule of Rates" means the schedule of rates provided by ARCPANEL to the Customer in respect of a particular project or projects.

"Security Interest" has the meaning given to it under the PPS Act.

"Supply Rate" means the price per square metre of Goods, or the price for any goods or services listed on the Quotation and/or Purchase Order.

"Workshop Drawings" means the final workshop drawings prepared by ARCPANEL to manufacture the Goods including floor plans and elevation drawings, approved by the Customer in relation to the Goods.

1.2. In this Agreement:

- (i) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention;
- (ii) a word importing the singular includes the plural and vice versa and a word indicating a gender includes each of the other genders;
- (iii) a reference to a person includes a reference to an individual, the estate of an individual, a corporation, an authority,
- (iv) an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (v) a reference to a party includes the party's executors, administrators, successors and permitted assigns;
- (vi) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (vii) a reference to "dollar" or "\$" is to Australian currency; and
- (viii) "includes" in any form is not a word of limitation.

2. QUOTES

- 2.1. ARCPANEL may from time to time, issue Quotes for the supply of Goods. All Quotes issued by ARCPANEL to you are subject to these Terms.
- 2.2. A quotation may include additional terms or conditions, which will supplement these Terms.
- 2.3. Unless otherwise stated, any Quote will remain open for acceptance for the time stated on the Quote and where no time is stated, for 30 days, unless withdrawn by ARCPANEL earlier.
- 2.4. A Quote may be accepted by signing and returning the quote, by communicating your acceptance of the Quote over the phone, by email, or by continuing your order of any Goods. If you accept a Quote, you are also accepting all of these Terms without attachment.
- 2.5. ARCPANEL may in our absolute discretion, accept a purchase order from you in respect of the supply of Goods. These Terms apply to any such purchase order accepted to the exclusion of any terms stated on the purchase order.

3. ORDERS [ACCEPTANCE]

- 3.1. ARCPANEL may accept or reject any order submitted by the Customer.
- 3.2. The Customer's order is not binding on ARCPANEL until:
 - (i) ARCPANEL has provided the Customer a Quotation stating the Supply Rate in respect of the Goods; and
 - (ii) ARCPANEL receives the signed Quotation and confirms its acceptance of the order in writing to the Customer; and
 - (iii) ARCPANEL receives the signed Agreement; and
 - (iv) ARCPANEL approves the Customer's Credit Application (if credit is required); and
 - (v) ARCPANEL receives payment of deposit (if required); and
 - (vi) ARCPANEL receives the final Workshop Drawings in relation to the order which have been signed and approved by the Customer.
- 3.3. For Projects requiring multiple deliveries of Goods and separate Workshop Drawings for each stage of construction, this Agreement applies separately to each stage of construction and each separate set of Workshop Drawings.
- 3.4. The Customer may not cancel their order once ARCPANEL receives the signed and approved Workshop Drawings back from the Customer.
- 3.5. To the extent that a Customer's terms and conditions are supplied for the purchase of Goods from ARCPANEL, the Customer's terms and conditions shall be of no legal effect and shall not constitute part of the contract for supply and purchase of those Goods.
- 3.6. ARCPANEL reserve the right to refuse any order placed by acceptance of a Quote within 7 days of receipt of the acceptance, including but not limited to circumstances where ARCPANEL does not have the Goods you ordered in stock.
- 3.7. If ARCPANEL refuses any order placed by you after your acceptance of a Quote and you have pre-paid for the Goods at the time you accepted the Quote, ARCPANEL will offer you alternative Goods (which you may refuse at your absolute discretion) or ARCPANEL will cancel all or part of your order and refund the amount paid. If you are entitled to a refund pursuant to this clause, ARCPANEL will endeavour to credit your credit or debit card as soon as reasonably practicable but in any event no later than 30 days from the date of cancellation of your order.
- 3.8. If you are an individual, by signing and returning a Quote, or by communicating your acceptance of a Quote by any means (including in writing, by telephone, by email, or by your conduct) or by issuing a purchase order, you warrant that you are authorised to accept these Terms on behalf of the relevant entity. If you communicate your acceptance of a Quote by any means (including in writing, by telephone, by email, or by your conduct) or issue a purchase order as a director or trustee of a customer then in addition to that entity you agree to be personally liable to guarantee performance of this Agreement and the obligations of the contracting entity as if you are the contracting entity.

4. WORKSHOP DRAWINGS [SPECIFICATIONS]

- 4.1. Subject to other conditions of this Agreement, ARCPANEL may prepare the Workshop Drawings.
- 4.2. The Customer must provide ARCPANEL with a complete set of drawings, preferably Good for Construction issue, and information which must be in the opinion of ARCPANEL sufficiently detailed to enable ARCPANEL to prepare the Workshop Drawings including but not limited to:
 - (i) architectural, engineering and other detailing drawings in ACAD 2014 or later format in DWG format.
- 4.3. The standard lead time for preparation of Workshop Drawings is 2 weeks from:
 - (i) ARCPANEL receipt of signed quote and/or purchase order; and
 - (ii) the receipt by ARCPANEL of the information referred to in clause 4.2
- 4.4. ARCPANEL will prepare Workshop Drawings for one stage or roof of a project at a time.
- 4.5. Until the Customer approves the Workshop Drawings and ARCPANEL receives them, ARCPANEL has no obligation to produce any Goods.
- 4.6. The Customer takes the entire risk and responsibility in respect of any Goods to the extent they have been produced in accordance with the drawings provided to ARCPANEL by the Customer.
- 4.7. ARCPANEL accepts no responsibility for any Workshop Drawings or other specifications, except that ARCPANEL will use reasonable endeavours to accurately reflect in the Workshop Drawings the information provided to ARCPANEL by the Customer.
- 4.8. Any changes made by the Customer after preparation of Workshop Drawings has commenced, or after approval has been received from the Customer, will incur additional charges at the appropriate hourly rate specified in the Schedule of Rates.
- 4.9. If ARCPANEL has prepared Workshop Drawings for an agreed area of Goods and the Customer orders less than that agreed area the Customer must pay ARCPANEL the full value of all work in progress and completed at the full rate listed on the quotation or on the Schedule of Rates, as if it was fully supplied.
- 4.10. All drawings, specifications, descriptive matter or advertising issued by ARCPANEL and any descriptions, illustrations or particulars of goods such as colours, weights, dimensions, performance or other attributes provided by ARCPANEL are approximates only and do not form part of any contract as between us. Any deviation or error in these matters do not vitiate any contract between ARCPANEL or give rise to any claim in relation to those matters.
- 4.11. To the maximum extent permitted by law and subject to the terms of any manufacturer's warranty provided to you, ARCPANEL does not warrant or guarantee the quality or workmanship or fitness for purpose of any Goods.
- 4.12. Where specifications, drawings or other particulars are provided by you, our price is based upon estimates of quantities required. If any adjustment in quantities is required, the price stated in any Quote or purchase order is adjusted on the unit rate basis as stated in the Quote or if that Quote expires at such price as ARCPANEL shall reasonably determine having regard to the usual price at that time.

5. YOUR OBLIGATION

- 5.1. You must ensure that all information provided to ARCPANEL is true, accurate and not misleading.
- 5.2. You must act reasonably and take reasonable care to protect your own interests, including managing all safety risks associated with the operation of the Goods, properly reading and following any instruction or training manuals, following any reasonable direction ARCPANEL may give and appropriately directing your own employees, servants and agents in relation to these things.

6. VARIATION TO ORDER

- 6.1. ARCPANEL may not unreasonably refuse any variation request from the Customer.
- 6.2. ARCPANEL is not required to agree to a variation request if it is not capable of performing the variation with its current production processes, materials and production schedule.
- 6.3. ARCPANEL will provide the Customer with a written variation indicating the terms, including any price or rate adjustments, additional time required for manufacturing and other items that may apply to the variation.
- 6.4. The Customer must sign and return the Variation before ARCPANEL will undertake the work required to fulfil the variation.
- 6.5. By signing the Variation, the Customer agrees to pay ARCPANEL any additional amount specified in the variation.
- 6.6. Amounts and prices stated on any Quote are those at the date of the Quote. If you require any changes to the Quote which affect the cost or rates for insurance, freight, cartage or shipping expenses, duties, exchange rates, sorting and stacking costs, costs of materials or any other amounts used to calculate the price or amounts stated on the Quote, or if those inputs increase in cost before acceptance or during the currency of our contract, any increase in those amounts are on your account and will increase the price accordingly. ARCPANEL will notify you of any price increase and seek your acceptance of any price increase before continuing with your order and dispatching any Goods.

7. DELIVERY AND MANUFACTURING LEAD TIMES

- 7.1. The standard lead time for supply of ARCPANEL Systems varies depending on the type of Goods, typically 3 to 6 weeks (straight panels), 6 to 8 weeks (curved panels), 10 to 12 weeks (Firetek and Aquatek panels) from return to ARCPANEL of Customer's final approved Workshop Drawings but may vary, subject to raw material supply lead times, current work in progress and production planning schedules.
- 7.2. Subject to Clause 15, ARCPANEL and the Customer will agree an appropriate delivery date or schedule for Goods at either the time of quote acceptance or workshop drawings approval.
- 7.3. The Customer is not relieved of any obligation to accept or pay for the Goods by reason of any delay in delivery.
- 7.4. At least 10 business days before the requested delivery date, the Customer is to confirm a delivery time, which must be between the hours of 10am to 5pm Monday or 7am to 5pm Tuesday to Friday. Saturday deliveries will incur additional charges unless specified on the quote.
- 7.5. ARCPANEL will deliver the Goods to the address nominated by the Customer and use reasonable endeavours to do so within 1 hour of the time mutually agreed.
- 7.6. Quoted Delivery charges are based on all deliveries being made in combined loads, that is, full semi-trailer loads, unless otherwise specified on the quotation.
 - (i) ARCPANEL will use its discretion in loading the trucks to achieve maximum capacity which may result in a delivery containing panels for more than one level of a building at a time.
 - (ii) If deliveries are required on a level-by-level basis, on smaller vehicles, or any other configuration then additional charges will apply.
 - (iii) Transport prices are subject to fluctuations in accordance with fuel levies applicable at the time of delivery.
- 7.7. If the Customer delays a previously agreed delivery date or delivery address, it must notify ARCPANEL in writing of this request with a minimum notice period of 5 business days. Any changes or cancellations outside of this time will incur charges from the transport provider which will be passed on to the Customer.
- 7.8. Any changes to deliveries previously agreed for despatch within 10 days of month's end then moved into the following month may be invoiced to the customer as if they had been despatched on the previously agreed date.
- 7.9. ARCPANEL will use its best endeavours to re-schedule a delivery to a new time requested by the Customer but is restricted by the availability of transport subcontractors and cannot guarantee a time frame for the new delivery date.

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- 7.10. A maximum 1 hour offloading time is allowed in the delivery price. Any additional time will be charged to the Customer at the rate per hour or part thereof, as specified in the Schedule of Rates.
- 7.11. Proof of delivery is acknowledged by the Customer or the Customer's agent signing the delivery docket.
- 7.12. The Customer is responsible for all unloading, lifting and hoisting of Goods.
- 7.13. No manual offloading of trucks is allowed due to Workplace Health and Safety restrictions.
- 7.14. The Customer must provide suitable equipment to unload the Goods, and if the Customer is unable to unload the Goods, ARCPANEL will return them to the depot for redelivery at a later time at additional cost of the Customer.
- 7.15. The Customer is entirely responsible for any damage to the Goods or any other property during or after unloading of the Goods. ARCPANEL will provide a copy of its materials handling specification to the Customer upon request.
- 7.16. If ARCPANEL arranges delivery of the Goods and you pay ARCPANEL a freight charge for delivering the Goods to you, the Goods will be delivered by post or carrier to your nominated address. ARCPANEL will notify you once the Goods have been dispatched. You must have someone on site to accept delivery of the Goods and unload the Goods if required.
- 7.17. Any dates specified by ARCPANEL for delivery of the Goods are approximate only. If no dates are so specified, delivery will be within a reasonable time. may deliver the Goods in batches or in instalments.
- 7.18. You have no right of action for damages or otherwise against ARCPANEL and release ARCPANEL from any claim for loss or damage occurring by reason of any failure or delay in delivery.
- 7.19. ARCPANEL has no onsite storage facility for finished goods, finished goods are required to be dispatched within 5 days of the specified delivery date. If the delivery date is not acceptable, please contact us immediately to make alternative arrangements. ARCPANEL shall be entitled to charge any addition fees for additional handling or storage of goods which may be incurred, additional storage and handling is at the risk and cost of the Customer.
- 8. STORAGE**
- 8.1. If the Customer delays the first scheduled delivery date, ARCPANEL must hold the Goods without additional charge to the Customer for 3 business days.
- 8.2. After the expiry of that period ARCPANEL may charge the Customer a storage fee at the rate specified in the Schedule of Rates per square meter of Goods stored per day.
- 8.3. ARCPANEL may charge these storage costs until the Goods are delivered in full to the Customer.
- 8.4. The Customer is obliged to pay ARCPANEL for storage charges invoiced in accordance with this clause.
- 8.5. The full Supply Rate of Goods may be invoiced if they are stored for more than 10 business days after the first scheduled delivery date.
- 8.6. If you fail to take delivery of any of goods or to provide any instructions to enable the Goods to be delivered, without prejudice to any other rights, ARCPANEL may store or arrange for the storage of the Goods pending delivery but as it relates to the timing of payment for the goods under these Terms, delivery shall be deemed to have taken place at the date ARCPANEL store or arrange storage of the Goods.
- 8.7. Any costs or expenses incurred in relation to storage, including related insurance, of Goods pending delivery are payable by you.
- 9. TITLE AND RISK [RISK AND INSURANCE]**
- 9.1. Risk of loss, damage or deterioration to the Goods passes to the Customer immediately upon the earlier of:
- (i) the ARCPANEL delivery agent arriving with the Goods at the nominated delivery address; and
- (ii) the expiry of 10 business days after any scheduled delivery date which has been delayed at the request of the Customer.
- 9.2. ARCPANEL has all legal and equitable title in the Goods until payment in full is received and if the Customer is in possession of the Goods it holds them solely as bailee for ARCPANEL.
- 9.3. The Customer acknowledges and agrees that ARCPANEL may apply to register a Security interest in the goods at any time before or after delivery of the Goods.
- 9.4. If the Customer defaults in the performance of any obligation owed to ARCPANEL under these Terms and Condition of Sale or any other agreement with ARCPANEL to supply Goods to the Customer, ARCPANEL may enforce its security interest in any Goods by exercising all or any of its rights under these terms or the PPS Act.
- 9.5. The Customer waives its rights to receive notice from ARCPANEL of a registration event under section 157(1) of the PPS Act.
- 9.6. ARCPANEL reserves the following rights in relation to all Goods provided by ARCPANEL until all amounts owing by you to ARCPANEL in respect of those Goods are paid in full:
- (i) ownership of the Goods,
- (ii) to enter your premises (or the premises where the goods are located) without liability for trespass or any resulting damage to retake possession of the Goods, and
- (iii) to keep or resell any of the Goods so repossessed.
- 9.7. In respect of the resale of the Goods pursuant to this clause, ARCPANEL will apply the net proceeds of sale firstly towards the payment of the unpaid invoice with respect to those Goods, then towards any other unpaid invoices and if there is any surplus, the surplus will be paid to you. If there is a deficiency, ARCPANEL may recover the amount of that deficiency from you as a debt.
- 9.8. If you engage or pay a third party to deliver the Goods to you, risk of damage to or loss of the Goods the subject of an order passes to you immediately upon dispatch from us, that is, whilst on transit for delivery to you or where ARCPANEL are storing the goods for you pursuant to clause 7 at the date ARCPANEL store or arrange storage of the goods for you.
- 9.9. If you pay ARCPANEL a freight charge for delivering the Goods to you, risk of damage to or loss of the Goods the subject of an order passes to you immediately upon delivery at the nominated site.
- 9.10. Any property of yours (being property other than the Goods ARCPANEL are providing as part of an order) in our possession, custody or control for whatever purpose remain at your risk as regards loss and damage and you agree to effect appropriate insurances against such loss and damage.
- 9.11. You shall be liable for and must maintain at your own cost a policy of insurance with a reputable insurer to cover all such risks as may reasonably arise including public liability for all Goods which are in your possession. In relation to public liability such insurance shall be for an amount not less than \$20,000,000.
- 9.12. You shall note ARCPANEL as an interested party under the insurance policies.
- 9.13. If you do not reside in Australia, you are responsible for importing the Goods and for the payment of any import duties or taxes of any kind.
- 10. PPS ACT 2009 (PPSA)**
- 10.1. Where a Credit Account has been approved, the Customer grants and ARCPANEL may register on the Personal Property Securities Register, a security interest in all and any sale of Goods under this agreement, including but not limited to intellectual property and after-acquired property.
- 10.2. The Customer warrants that all purchases under the commercial credit account are for commercial purposes only and, accordingly, the provisions of the National Credit Code will not apply.
- 10.3. The Customer and ARCPANEL agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on, ARCPANEL. The Customer waives its right to receive a copy of any Financing Statement of Financing
- Change Statement registered by ARCPANEL in respect of the Security interest created by these terms and conditions.
- 10.4. The Customer agrees to execute any documents, provide all relevant information and co-operate fully with ARCPANEL to ensure that ARCPANEL has a perfected security interest in the personal property charged and, if applicable, a Purchase Money Security Interest (PMSI). The Customer waives its right to receive notice of a verification statement in relation to any registration by ARCPANEL on the register. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires ARCPANEL to give a notice to the Customer, section 96 (when a person with an interest in the whole may retain an accession); subsection 121 (4) (enforcement of liquid assets- notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires ARCPANEL to give a notice to the Customer; paragraph 132 (3) (d) (contents of statement of account after disposal); subsection 134 (1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
- 10.5. ARCPANEL agrees with the Customer not to disclose information of the kind mentioned in subsection 275 (1) of the PPSA except in circumstances required by paragraphs 275 (7) (b)- (e).
- 10.6. The Customer agrees to notify ARCPANEL of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship 7 days prior to any such change taking effect. The Customer agrees that, until all monies owing to ARCPANEL are paid in full, it shall not sell or grant any security interest in the Collateral. The Customer will not register a financing change statement in respect of the security interest without the ARCPANEL's prior written consent. The Customer agrees that ARCPANEL may, at its absolute discretion, apply any amounts received from the Customer towards amounts owing to ARCPANEL in such order as ARCPANEL may determine. Notices or documents required or permitted to be given to ARCPANEL for the purposes of the PPSA must be given in accordance with the PPSA. All outstanding amounts may, at ARCPANEL's discretion, become immediately due and payable. The Customer agrees to reimburse, upon demand, ARCPANEL for all costs and/or expenses incurred or payable by ARCPANEL in relation to registering or maintaining any financing agreement, releasing in whole or in part ARCPANEL's security interest or any other document in respect of any security interest. In these terms the following words have the respective meanings given to them in the PPSA: commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.
- 10.7. ARCPANEL reserves the right to vary these General Terms and Conditions of Sale.
- 11. INSTALLATION**
- 11.1. ARCPANEL accepts no responsibility or liability in relation to installation of the Goods.
- 12. PRICE**
- 12.1. On receipt of a Customer's purchase order or request for quotation, ARCPANEL may provide the Customer with a Quotation which will detail the estimated area and Supply Rate of Goods.
- 12.2. The price of Goods is:
- (i) the Supply Rate set out in a Quotation for the specified Goods, delivery and any other items included in the quotation for the particular project, as manufactured in accordance with the Workshop Drawings; or
- (ii) if there is no current Quotation for the Goods, the price effective at the time of delivery as indicated on the invoice.
- 12.3. Where delivery is included in the Quotation the price of delivery is subject to change due to monthly fluctuations in fuel levy which is not within the control of ARCPANEL.
- 12.4. Subject to Clause 10.3 and other terms of this Agreement, and after the Customer accepts the Quotation in writing, ARCPANEL will honour the Supply Rate for Goods stated on the quotation for a period of 3 months from issue date. After this time ARCPANEL may amend the Supply Rate by giving written notice to the Customer.
- 12.5. Unless stated otherwise, prices are exclusive of GST, other taxes, duties, charges (including bank fees) which shall be paid by the Customer.
- 12.6. Unless otherwise stated, all amounts and prices provided in a Quote or otherwise are exclusive of GST. Where the service provided is subject to GST, it will be added and charged to you.
- 12.7. Any discount provided by ARCPANEL (at its sole discretion) will only be available if the Customer is not in breach of any part of these Terms and Conditions.
- 13. INVOICING [ACCOUNTS]**
- 13.1. All invoices are Payment Claims under the Building and Construction Industry Payments (Security of Payment) Act applicable in the State or Territory of Australia in which the Goods will be installed.
- 13.2. ARCPANEL may issue an invoice to claim payment for the whole or any part of the Goods on or after any of the following times:
- (i) on the date of despatch of the whole or any part of the Goods from ARCPANEL's factory; or
- (ii) on receipt of order and/or signed quotation; or
- (iii) in accordance with clause 4.8; or
- (iv) in accordance with clause 14.5 applies; or
- (v) where clause 14.11 applies, 21 days before the scheduled date for the final delivery; or
- (vi) in accordance with clause 8.5.
- 13.3. An invoice issued by ARCPANEL may include a claim for payment for:
- (i) the whole or any part of the Goods delivered by ARCPANEL and/or ordered by the Customer calculated in accordance with clause 12;
- (ii) without limiting 13.3.1, where there is a fixed lump sum price for a project, the percentage of total price of the Goods which have been despatched between the date of invoice, less any previous invoiced amount; and
- (iii) any other amount to which ARCPANEL is entitled under this Agreement.
- 14. PAYMENTS AND DEFAULT**
- 14.1. Time for payment of invoices is of the essence.
- 14.2. ARCPANEL accepts payment by direct deposit or credit card.
- 14.3. Credit card payments will incur a surcharge.
- 14.4. The Customer must pay on or before the due date as stated on the invoice. If payment in full is not received within the terms of the credit account, the Customer shall in addition be liable to pay:
- (i) Interest any overdue amount at the rate of five percent (5 %) per calendar month for each day the amount remains outstanding; and
- (ii) All expenses (including any amount charged to ARCPANEL by a debt collection agency or legal expenses) incurred in recovering or attempting to recover an overdue amount. These amounts and expenses include but are limited to legal fees, charges, disbursements or commissions on collections.
- 14.5. ARCPANEL may require the Customer to pay a deposit with order and may require payment in full before delivery, in one or more instalments.
- 14.6. If the Customer does not pay any such amount when due and payable ARCPANEL may defer delivery of the Goods until it has received payment.
- 14.7. The Customer must not deduct or withhold any amount from payments due to ARCPANEL.
- (i) Only payment of the entire invoiced amount shall be deemed discharge of the invoice.

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- (ii) Interest will be charged on any unpaid amount in accordance with Clause 14.4.
- 14.8. Where the Customer fails to make payment in full or otherwise breaches any term of this Agreement, ARCPANEL may without prejudice to any of its other rights and remedies and at its absolute discretion:
- withhold or delay delivery or further delivery of any Goods ordered by the Customer;
 - take all possible action to recover outstanding payments under the Act; and
 - terminate this Agreement and retain any monies paid by the Customer.
- 14.9. If the Customer supplies any of the goods to any other person before all moneys payable by the Customer have been paid to ARCPANEL, the Customer agrees that:
- it holds the proceeds of re-supply of the goods on trust for and as agent for ARCPANEL immediately when they are receivable or are received;
 - it must either pay the amount of the proceeds of re-supply to ARCPANEL immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for ARCPANEL;
 - it will supply ARCPANEL with the names of all persons receiving such Goods.
- 14.10. ARCPANEL may without prejudice to any of its other rights and remedies exercise its rights under clause 14.8 above if:
- the Customer exceeds any credit limit provided by ARCPANEL;
 - the Customer becomes, or in ARCPANEL' opinion is in jeopardy of becoming subject to any form of insolvency administration; or
 - ARCPANEL has reasonable doubts about the Customer's ability to make payment in full in accordance with this Agreement.
- 14.11. ARCPANEL may require payment of all amounts outstanding before the scheduled final delivery of Goods for any project, including any amount invoiced in advance in respect of that final delivery.
- 14.12. Nothing in this Agreement shall be taken as releasing the Customer from its obligation to pay for Goods once the Customer has approved the Workshop Drawings in relation to those Goods.
- 14.13. ARCPANEL may retain any documents or Goods held on your behalf pending payment of any outstanding account.
- 14.14. ARCPANEL may suspend or cease the supply of any further Goods to you.
- 14.15. ARCPANEL may require pre-payment in full for any Goods which have not yet been supplied.
- 14.16. Unless you have a Credit Facility with ARCPANEL which is not in default:
- deposits ARCPANEL have requested must be paid before ARCPANEL commence supplying the Goods; and
 - you must pay for all Goods before they are despatched (in cash or cleared funds).
- 15. WARRANTIES**
- 15.1. All conditions, warranties and liabilities, including implied warranties of quality, fitness for purpose, correspondence with sample or description or merchantability of Goods, are excluded to the extent permitted by law.
- 15.2. The Customer accepts all risk and responsibility for the Goods being fit for purpose, of particular quality, safety or suitability and agrees that no representation has been made by ARCPANEL or relied upon by the Customer in respect of the same.
- 15.3. Subject to the following clause 15.4 this Agreement does not exclude, restrict or modify:
- 15.4. the application to this Agreement of an applicable provision of either:
- Pt V Div 2 and Div 2A of the Trade Practices Act 1974; or
 - any other Act or Ordinance of a State or Territory or of the Commonwealth of Australia or law of any foreign jurisdiction in which Goods are supplied or services rendered, in each case the exclusion, restriction or modification of which may be void or unenforceable; (**the non-excludable provisions**);
- 15.5. the exercise of a right conferred by a non-excludable provision;
- 15.6. the liability of ARCPANEL:
- for a breach of a condition of warranty implied by a non-excludable provision; or
 - to indemnify or compensate the Customer or other persons arising under a non-excludable provision.
- 15.7. To the extent permitted by law, the liability of ARCPANEL in respect of a non-excludable provision or otherwise under this Agreement is limited, at the option of ARCPANEL, to:
- 15.7.1. in the case of Goods:
- replacement or supply of equivalent Goods;
 - repair of the Goods;
 - payment of the cost of replacing the Goods or of acquiring Goods; or
 - payment of the cost of having the Goods repaired;
- 15.7.2. in the cases of services:
- supply the services again; or
 - payment of the cost to supply the services again.
- 15.8. Where Goods or any component thereof are manufactured by a third-party manufacturer, the Customer agrees that any warranty provided by the third party manufacturer is the Customer's sole and exclusive warranty in relation to those Goods or components and ARCPANEL gives no warranty in respect of those Goods or components.
- (i) ARCPANEL agrees to assign to the Customer on request the benefit of any warranty or entitlement in respect of the Goods or components that the manufacturer has granted to ARCPANEL under any contract or by implication or operation of law to the extent the benefit of any warranty or entitlement is assignable.
- 15.9. At our discretion, ARCPANEL may provide a manufacturer's warranty on certain terms in relation to the Goods.
- 15.10. In the absence of any written warranty, ARCPANEL do not provide any warranties in relation to the Goods.
- 15.11. Any warranty or condition which would otherwise be implied in any agreement between ARCPANEL or in these Terms (including, but not limited to, merchantability, suitability or fitness for purpose, quality, design, assembly, installation, operation or otherwise) is expressly denied and is excluded to the maximum extent permitted by law.
- 16. LIABILITY AND CLAIMS [SHORTAGE] & [RETURNS]**
- 16.1. The Customer is not entitled to make any claim against ARCPANEL in respect of the Goods unless it makes the claim in writing to ARCPANEL within 7 days of delivery of the Goods.
- 16.2. ARCPANEL may repair, replace or provide a credit for the value of any damaged item at the discretion of ARCPANEL.
- 16.3. The Customer's remedy for breach of this Agreement by ARCPANEL excludes any right to terminate the Agreement.
- 16.4. The total liability of ARCPANEL under this Agreement (whether based on contract, tort, statute or otherwise) is limited to the amount actually paid by the Customer for Goods supplied by ARCPANEL.
- 16.5. The Customer indemnifies ARCPANEL against any damage, loss, costs or expenses (including legal expenses on an indemnity basis) directly or indirectly suffered by ARCPANEL arising from or in connection with any breach by the Customer of any term of this Agreement.
- 16.6. You must notify ARCPANEL in writing of any Claim for non-delivery within seven (7) days of the date of the invoice which relates to the Goods the subject of your Claim.
- 16.7. If you fail to notify ARCPANEL in accordance with subclause 7.2 and 7.3, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the contract for supply.
- 16.8. You hereby release and indemnify ARCPANEL and agree to forever keep ARCPANEL indemnified from any and all cost, damage, liability, expense or loss, including indirect, consequential and special losses, that ARCPANEL may incur in relation to you or any third party, where the cost, damage, liability, expense or loss is caused by or contributed to by the Goods, any defect of fault in workmanship or design or their use or for any other reason whatsoever.
- 16.9. This indemnity applies to Goods ARCPANEL has supplied, that are on loan to you, or are in your possession for demonstration or training purposes.
- 16.10. Under no circumstances will ARCPANEL be liable for any incidental, indirect, special, exemplary or consequential loss or damage, loss of use, profit, revenue, goodwill or data, however caused.
- 16.11. Details of any Goods as recorded by ARCPANEL upon dispatch will be conclusive evidence of the quantity received by you on delivery unless you provide conclusive evidence proving the contrary within 48 hours of delivery (where you pay ARCPANEL a freight charge for delivery of the Goods) or at the time of collection of Goods (where Goods are collected by you, or you engage or pay a third party to deliver the Goods to you).
- 16.12. You waive any claims in respect of any shortages for any Goods delivered unless a notice of a claimed short delivery is provided to ARCPANEL within 48 hours of delivery (where delivery is arranged by us)
- 16.13. ARCPANEL is not under any obligation to accept the return of any Goods or to provide refunds however, ARCPANEL may do so only on terms satisfactory to us.
- 16.14. To the extent permitted by law, and notwithstanding Clause 17 entitled "Release and Indemnity", our liability to you in respect of any cost, damage, liability, expense or loss (including those caused or contributed to by our negligence or breach of any condition or warranty) is limited to, at our absolute discretion:
- replacement of the Goods or the supply of equivalent Goods;
 - repair of the Goods supplied;
 - repay the purchase price to the extent payment has been received from you; or
 - payment of the cost of replacing, repairing or acquiring equivalent Goods.
- 17. FORCE MAJEURE**
- 17.1. ARCPANEL is not liable for any failure or delay in performance of its obligations or for any loss or damage suffered by the Customer as a consequence of any cause whatsoever, direct or indirect, beyond the reasonable control of ARCPANEL.
- 17.2. Each of us will be released from our respective obligations under these Terms and any accepted Quotes (except as to payment and indemnity) in the event of national emergency, war, prohibitive governmental regulations or where any other cause beyond the reasonable control of either you or us, including strike, riot, lockout or trade disputes for a period of 7 days or more renders provision of the goods the subject of an accepted Quote or order impossible.
- 18. TERMINATION**
- 18.1. ARCPANEL may terminate this Agreement immediately by written notice to the Customer if:
- effective control, by any means, of the Customer is transferred to a person who does not have that control at the date of this Agreement;
 - the Customer attempts to assign this Agreement in breach of clause 21.3.
- 18.2. ARCPANEL may terminate any order at any time without cause and in our absolute discretion.
- 18.3. You may only terminate any order with our consent and on terms which indemnify ARCPANEL from all costs and losses in respect of the order sought to be cancelled and pay such amounts within 14 days of the cancellation.
- 18.4. Subject to these Terms, on termination, the part of the price paid (if paid in advance) will be refunded to you within 14 days of the cancellation of the relevant order, less the costs and losses associated with that order.
- 19. CONFIDENTIALITY**
- 19.1. Any information communicated to the Customer or any other person before the execution of this Agreement, or otherwise under this Agreement, must be treated by the recipient as confidential and valuable to ARCPANEL and not be disclosed either directly or indirectly to any other person. These confidentiality obligations survive the termination of this Agreement.
- 19.2. Clause 19.1 does not apply if:
- the recipient of the information has the written consent of the other party to disclose the information; or
 - the recipient can demonstrate that the information was known to it before disclosure; or
 - the information is subsequently otherwise legally acquired by the recipient from a third party not in breach of any confidentiality obligation to the party which originally communicated the information; or
 - the information is or comes into public domain or is or becomes generally known in the industry otherwise than by breach of this Agreement; or
 - the information must necessarily be disclosed by the receiving party to its contract counterparties for the purpose of allowing them to make use of the Goods; or
 - it is reasonably necessary for the recipient of the information to disclose the information to its officers, directors and employees to enable those officers, directors and employees to perform their obligations in connection with the installation of the Goods where those obligations are not inconsistent with the terms of this Agreement; or the information is required by government instrumentalities.
 - If the Customer breaches any of its obligations under Clause 18 then the Customer without more: is deemed to consent to the granting of injunctive relief by any court having jurisdiction over the enforcement of this Agreement restraining its breach of this clause and restraining it from disclosing any of the confidential information; and
 - indemnifies and will keep indemnified and hold harmless ARCPANEL from any and all loss or damage sustained by ARCPANEL by virtue of the Customer's breach of clause 19.1, including but not limited to the cost involved of obtaining injunctive relief against the Customer.
- 20. TECHNOLOGY AND MODIFICATIONS [INTELLECTUAL PROP]**
- 20.1. In this Agreement "**Manufacturer's Rights**" means all trademarks, copyrights, patents, registered designs and other industrial and intellectual rights, and includes but is not limited to unpatented production methods and technical and confidential information embodied in or used in connection with the Goods or communicated under this Agreement.
- 20.2. All technology, information and know-how that ARCPANEL provides to the Customer in connection with the Goods remains the absolute property of ARCPANEL, and the Customer may not use it in any way except for the purpose of installation of the Goods.
- 20.3. The Customer must not make any modification to the Goods without the written consent of ARCPANEL.
- 20.4. Customer must assign to ARCPANEL all inventions made by it either alone or jointly with others in the course of using any information provided by ARCPANEL, or any modifications made to the Goods by it. The Customer must execute and deliver to ARCPANEL any deeds of assignment, transfers, notices and other instruments required by ARCPANEL to confirm its title to all such inventions or modifications, and any intellectual property rights as may be brought into existence by those inventions or modifications.
- 20.5. The Customer acknowledges that Manufacturer's Rights are and remain the sole property of ARCPANEL, and the Customer may not in any way question, dispute or infringe them.
- 20.6. In this clause, "intellectual property" means all methodologies, processes, inventions, discoveries, works and novel designs whether or not registrable including any invention or or developments or improvements to equipment, methods or techniques, and any content on our Goods.

ARCPANEL - GENERAL TERMS AND CONDITIONS OF SALE

20.7. All rights ARCPANEL may hold in any intellectual property associated with Goods sold or delivered or content on our Website remains our property, whether under licence from another or otherwise.

21. GENERAL

- 21.1. This Agreement may only be varied by a written agreement signed by or on behalf of each party.
- 21.2. To the extent permitted by law, in relation to its subject matter, this Agreement supersedes all prior agreements of the parties, and embodies the entire understanding of the parties and constitutes the entire terms agreed by the parties.
- 21.3. The Customer may not assign the whole or any part of this Agreement without the prior written consent of ARCPANEL which ARCPANEL may withhold in its absolute discretion.
- 21.4. If there is any inconsistency between this Agreement and any other document, including the Customer's order, the terms of this Agreement shall prevail.
- 21.5. ARCPANEL may amend any error or omission in any Schedule of Rates, quote, price list or offer issued by it without liability to ARCPANEL.
- 21.6. Delay or failure by ARCPANEL to exercise or enforce any right or partial right, power or remedy provided by law or under this Agreement does not constitute a waiver of that or any other right, power or remedy. No waiver by ARCPANEL of a breach of a term of this Agreement operates as a waiver of any other breach of that term or of a breach of any other term of this Agreement.
- 21.7. No right under our Terms will be waived except as expressly agreed in writing and signed by us. ARCPANEL will not waive a right if ARCPANEL grants an extension or forbearance to you.
- 21.8. A waiver by ARCPANEL of any matter does not prejudice our rights in respect of any subsequent or other matter. Any non-exercise or partial exercise of, or any delay in exercising any right or remedy does not constitute a waiver of that right or remedy.
- 21.9. These Terms may only be amended in writing signed by each of us.
- 21.10. A communication, notice, waiver or consent given by a party under this Agreement is only effective and, where appropriate, binding if it is given or confirmed in writing by the party.
- 21.11. If any provision of this Agreement is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement or the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Agreement.
- 21.12. A provision of this Agreement must not be interpreted to the disadvantage of a party merely because that party or its representative drafted that provision.
- 21.13. This Agreement is governed by and must be construed in accordance with the law applying in Queensland.
- 21.14. Each party irrevocably:
- (i) submits to the exclusive jurisdiction of the courts of Queensland and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
 - (ii) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.
- 21.15. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 21.16. The documents comprising this Agreement may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Agreement, and all together constitutes one agreement.
- 21.17. Notices and other documents under or in connection with this Agreement may be served in the following manner:
- 21.17.1. addressed to (for either party) the address or fax number for the party identified in this Agreement or (for the Customer) the address on the Customer's order or other correspondence (or as otherwise notified in writing by either party to the other party from time to time);
- 21.17.2. must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 21.14; and
- 21.17.3. is taken to be received by the addressee:
- (i) in the case of prepaid post sent to an address, on the third day after the date of posting;
 - (ii) in the case of fax, at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iii) in the case of delivery by hand, on delivery.
- 21.18. All notices required or permitted to be given under our Terms must be in writing and given by personal service, pre-paid postage, facsimile transmission or e-mail transmission at the addresses of the parties as stated in communications between us from time to time.

22. INFORMATION

- 22.1. To the maximum extent permissible by law you waive all rights under the Privacy Act 1988 (Cth) and consent to the collection, storage and provision of information by ARCPANEL to third parties in accordance with our Privacy Policy. Such information may be used in respect to our attendances relating to the goods ARCPANEL provides to you and for our own statistical or marketing purposes, among other uses.
- 22.2. Further, you expressly consent to ARCPANEL using any personal information or any other information ARCPANEL holds on you for the purposes of investigating our creditworthiness including but not limited to conducting a credit check on you.
- 22.3. For further information, please refer to our Privacy Policy which can be accessed at www.arcp-panel.com.au
- 22.4. . You acknowledge that you have read and understood and consent to the collection, storage and provision of information in accordance with our Privacy Policy.

23. INDEPENDENT LEGAL ADVICE

- 23.1. You acknowledge that you have had adequate opportunity to obtain independent legal advice as to the meaning and effect of our Terms before they were accepted.

24. ENTIRE AGREEMENT

- 24.1. These Terms and any additional terms specified on any accepted Quote supersede all previous agreements between us and embody the entire agreement in relation to any accepted Quote or any other arrangement between us (except any other arrangement is governed by specific terms identified in a separate signed agreement between us in relation to that other arrangement).
- 24.2. Any previous correspondence, negotiations or representations between us do not bind either ARCPANEL or you and neither ARCPANEL nor you can rely on them.

25. DELEGATION

- 25.1. ARCPANEL may delegate or sub-contract the performance of any obligation in our absolute discretion.

26. NO ASSIGNMENT

- 26.1. You may not assign the benefits or obligations under any agreement with ARCPANEL to any entity without our consent, which may be withheld in our absolute discretion.

27. SEVERANCE

- 27.1. If (but for this clause) a provision of these Terms would be illegal, void, unenforceable or contravene any law, these Terms are to be varied so as to give effect to the intention of the Terms or severed without affecting the enforceability of the other provisions and failing that, the offending provision is to be interpreted as if the provision was omitted.

28. DISPUTES AND ARBITRATION

- 28.1. All questions, disputes or differences which arise between ARCPANEL with respect to these Terms or its subject matter are to be referred to a single arbitrator in accordance with the provisions of the Commercial Arbitration Act 2013 (QLD) or any re-enactment or statutory modification of that law for the time being in force.

29. SCHEDULE OF RATES

DRAFTING RATES: \$150 per hour or part thereof:

- (i) Amendments or additional work requested by Customer after second revision of workshop drawings
- (ii) Amendments or additional work requested by Customer after workshop drawing sign off
- (iii) Cancellation of any work commenced after order is accepted

STORAGE RATES: \$5 per week, per square metre or part thereof, Minimum Charge = \$250/week.

- (i) Storage charged for deliveries delayed by the customer for more than 3 days – Refer Important Note Below.

MANUFACTURE RATES: Full Supply Rate per square metre as quoted and/or Purchase Order for all work in progress or completed

- (i) Cancellation of order after Workshop drawing sign off