

# FVA Group Pty Ltd – Terms of Trade (“Terms”)

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## 1 Application of Terms

- 1.1 These Terms govern our supply of Goods to you, including supplies on a cash basis.
- 1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.
- 1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.
- 1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order. For the removal of doubt, our acceptance of any purchase order you give to us will be treated as our acknowledgement of your Order only and not our acceptance of any terms or conditions of yours.

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## 2 Quotations

- 2.1 Each quotation that we issue:
  - (a) is an estimate only;
  - (b) is not an offer or obligation to supply any Goods;
  - (c) is exclusive of GST, and other taxes and imposts;
  - (d) does not include the costs of packing or delivering Goods;
  - (e) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn by us before a Supply Contract is formed; andunless the quotation states otherwise.
- 2.2 Quotations provided orally are subject to written confirmation.
- 2.3 A quotation may include additional terms or conditions, which will supplement these Terms.

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## 3 Formation of contract

- 3.1 We are not obliged to supply any Goods until after a Supply Contract is formed.
- 3.2 A Supply Contract is formed, and you have accepted these Terms, when:
  - (a) you have placed an Order with us; and
  - (b) we have received any deposit we have required from you in respect of the Order before progressing it; andeither we have:
  - (c) accepted your Order in writing; or
  - (d) supplied you with any Goods following receipt of your Order.
- 3.3 If you revoke an Order:
  - (a) prior to the formation of a Supply Contract then:
    - (i) we will refund you any deposit you have paid in respect of that Order; and
    - (ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively
  - (b) after the formation of a Supply Contract then unless we are in breach of the Supply Contract:
    - (i) you must pay all our reasonable costs associated with fulfilment of your Order; and
    - (ii) we may apply any deposit you have paid towards those costs.

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## 4 Price

- 4.1 The price payable for the Goods for a particular Supply Contract will be:
  - (a) the price agreed in writing; or alternatively
  - (b) the price by our prevailing price list/rates as when you place your Order.
- 4.2 We may vary our price or rates by notice to you if you request:

- (a) the Goods be delivered outside Business Hours;
- (b) different Goods be supplied to the Supply Contract; or
- (c) that we delay provision of the Goods for thirty (30) days or more.

- 4.3 Where we vary the price or rates payable for the Goods or Services pursuant to clause 4.2, we will notify you of the new price/rates. Thereafter you may reject the new price/rates within seven (7) days and terminate the Supply Contract without any cost or penalty to you, otherwise you agree that the price/rates will apply to the contract.
- 4.4 We reserve the right to amend the price for the Goods based on foreign exchange fluctuations that relate to the costs of the Goods. In the event that we exercise this right, we will provide notice to you, and you will have 5 days to accept or reject the revised price.
- 4.5 If you accept an amendment to the price in accordance with clause 4.4 (**Accepted Price**) then the price under the relevant Supply Contract will be the Accepted Price. If you do not accept an amendment to the price in accordance with clause 4.4, then the parties will enter into negotiations in good faith to determine a new price with considerations for the relevant foreign exchange fluctuations raised by us. If the parties fail to reach an agreement on a new Price within 14 days or within any other timeframe as agreed between the parties in writing, then the Supply Contract will be deemed to have been terminated by you and the provisions of clause 3.3(b) apply.

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## 5 Cladding Products

- 5.1 You acknowledge and agree that cladding products are prone to variation and as such may exhibit variations in the shade, colour, surface, finish and markings between batches of product and / or between sales samples and actual product.
- 5.2 You agree that the Goods supplied may:
  - (a) fade or change colour over time;
  - (b) expand, contract, or distort as a result of natural exposure and variations in temperature;
  - (c) mark or stain if exposed to certain substances; or
  - (d) be damaged or disfigured by impacts or scratching, after risk in the Goods has passed to you.
- 5.3 You acknowledge and agree that all descriptive specifications, illustrations, drawings, data, dimensions, ratings, and weights stated in our fact sheet, price lists, or advertising materials, are approximations only and are intended to be used for information and identification purposes only. Except to the extent that clause 15 applies and to the extent permitted by law, the use of any information or particulars contemplated in this clause 5.3 does not form any part of the Supply Contract.
- 5.4 You acknowledge that the use, application or installation of any cladding products must first be approved by a qualified engineer.

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## 6 Delivery and risk

- 6.1 We will use reasonable endeavours to deliver the Goods at the time and place agreed for delivery. You will make arrangements necessary to take delivery of the Goods.
- 6.2 You acknowledge and agree that:
  - (a) unless the Supply Contract expressly states otherwise, time in respect of delivery is not of the essence; and
  - (b) any timeframe or date for delivery is an estimate only and is not a contractual commitment.
- 6.3 Risk of loss, damage, or deterioration to the Goods passes to you, and delivery is deemed to occur, at the time:
  - (a) you or any third party on your behalf collect the Goods from us;
  - (b) we or our nominated carrier deliver the Goods to the delivery location stated in your Order (or to such other location as agreed in writing); or
  - (c) your nominated carrier takes possession of the Goods.
- 6.4 You agree to sign our delivery docket or consignment note or that of our nominated carrier as confirmation that you have

received the Goods, and if appropriate, certify that you have received the Goods in apparent good order and condition in the quantity or volume you have ordered.

- 6.5 It is your responsibility to provide suitable, practical, and safe means of access and agrees to the place agreed for delivery. If the site is deemed unsuitable or unsafe (at the delivery driver's sole discretion), then the delivery driver may:
- (a) refuse to deliver the Goods and return the Goods to the point of despatch (in which case an additional delivery fee will apply to any subsequent delivery attempt); or
  - (b) deliver the Goods to the location nearest to the agreed place for delivery where delivery can be safely effected.
- 6.6 If you authorise us to deliver the Goods to an unattended location or to leave them outside the agreed place for delivery, we may deliver the Goods as requested at your risk.
- 6.7 If delivery or collection of the Goods is deferred:
- (a) at your request; or
  - (b) due to you being unable or unwilling to accept delivery of the Goods (other than as a result of the Goods delivered not being in accordance with the Supply Contract);
- in circumstances where:
- (c) we are ready to deliver the Goods and a delivery date has not been agreed; or
  - (d) the Goods are due to be delivered or collected on an agreed delivery date,
- then you will pay to us:
- (e) reasonable daily storage charges (which will continue to accrue until such time as the Goods are delivered or collected); and
  - (f) any costs associated with us or our nominated carrier attempting to re-deliver the Goods (where we or our nominated carrier has previously attempted to deliver the Goods).
- 6.8 You acknowledge and agree that we may deliver the Goods in one or more lots and may invoice you for pro rata progress in respect thereof.
- 6.9 You acknowledge and agree that we may charge you for the costs of unloading Goods at the place of delivery (including the provision of labour, materials and equipment, compliance with any restrictions on access to the place of delivery and insurance cover).
- 6.10 Unless otherwise agreed in writing, you acknowledge and agree:
- (a) that you are responsible for unloading the Goods; and
  - (b) where you are responsible for unloading Goods, you must ensure that all Goods are unloaded in a safe, professional and workmanlike manner.

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## 7 Pallets

- 7.1 Any Pallets used to deliver the Goods remain our property and we reserve the right to charge a deposit (**Pallett Deposit**) as security for the performance of your obligations under this clause 7.
- 7.2 You must return all Pallets to us in good order and condition, and at your cost, within twenty-eight (28) days of delivery. If you comply with this clause 7.2, we will refund your Pallett Deposit as soon as practicable other than where your Pallett Deposit may be securing your obligations under another Supply Contract.
- 7.3 If you do not comply with clause 7.2:
- (a) we may retain the Pallett Deposit (or any part of it as we may determine in our reasonable discretion) as our absolute property; and
  - (b) for the avoidance of doubt, clause 18 applies to the extent the Pallett Deposit may not be sufficient to satisfy our losses in connection with your breach of clause 7.2.

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## 8 Offloading Goods

- 8.1 The parties acknowledge and agree that an allowance of 30 minutes will be given for you to unload Goods from the time

of arrival of the Goods at the place of delivery. Any additional time required by you to unload the Goods may incur additional delivery charges payable by you at the rate of \$50 per 20 minutes.

- 8.2 Any additional time required to unpack or unload the Goods following the expiry of time contemplated in clause **Error! Reference source not found.** is payable by you at our reasonable rates of delivery having regard to the circumstances of any required extension of time. Any special equipment and any demurrage is payable by you.

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## 9 Repacking fee

- 9.1 If we agree to vary a Supply Contract at your request, you acknowledge and agree that we may charge a repacking fee of \$250.

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## 10 Payment terms

- 10.1 Unless you have a Credit Facility with us which is not in default, and any event for all Custom Orders:
- (a) deposits we have requested must be paid before we commence providing Goods and Services; and
  - (b) you must pay for all Goods before they are despatched (in cash or cleared funds).
- 10.2 Payment may be made by cash, cheque, electronic funds transfer, Visa, or Mastercard credit cards. We reserve the right to change the payment methods that we accept at any time.
- 10.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 10.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.
- 10.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.

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## 11 Claims

- 11.1 Clauses 11.2 to 11.4 only apply if the Supply Contract is not a Consumer Contract and not a Small Business Contract.
- 11.2 You must, within seven (7) days of the date of delivery:
- (a) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the Supply Contract (including any Claim for shortfall, incorrect supply, or damage to the Goods); and
  - (b) at our request, provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.
- 11.3 You must notify us 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.
- 11.4 If you fail to notify us in accordance with clause 11.2 and clause 11.3, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the Supply Contract.

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## 12 Returns

- 12.1 We will accept the return of any Goods if:
- (a) the Goods supplied do not conform with the Supply Contract;
  - (b) the Goods are defective; or
  - (c) we are required by law to accept the return of the Goods.
- 12.2 At our discretion, we may accept the return of Goods if you change your mind if:
- (a) you agree to:
    - (i) pay the lesser of a handling and administration charge of 30% of the purchase price of the returned Goods or \$250; and
    - (ii) reimburse us for all costs we incur in connection with the return of those Goods (except for Goods we have incorrectly supplied or we agree are defective);
  - (b) the Goods are in substantially the same condition to the condition in which they were delivered; and

- (c) the Goods were not specifically produced or procured at your request.
- 12.3 You indemnify and release us from any damage that occurs to any Goods in return transit. You should ensure that any returned Goods are insured against such damage.

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### 13 Retention of title

- 13.1 Until such time as you have made payment in full (in cash or cleared funds) for any Goods we have supplied:
- (a) title in the Goods does not pass to you and we retain the legal and equitable title in the Goods;
  - (b) you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;
  - (c) you undertake to not mix the Goods with similar goods;
  - (d) unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and
  - (e) you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.
- 13.2 While title in the Goods remains with us, you permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.
- 13.3 Where we exercise our right of entry pursuant to clause 13.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our officers, employees, and agents.
- 13.4 Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.
- 13.5 For the removal of doubt, our interest under this clause 13 constitutes a purchase money security interest for the purposes of the PPS Act.

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### 14 Security interest

- 14.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:
- (a) register a financing change statement in respect of a security interest in our favour; or
  - (b) create, or purport to create, any security interest in the Goods (or any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of any third party.
- 14.2 You:
- (a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and
  - (b) agree that, to the extent permitted by the PPS Act:
    - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
    - (ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 14.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.
- 14.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

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### 15 Description of Goods

If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and

must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

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### 16 Intellectual Property Rights

- 16.1 All right, title, and interest in the Intellectual Property Rights in and to all Goods and Working Documents are, and will at all times remain, our property.
- 16.2 All improvements, derivatives, and modifications to the Intellectual Property Rights contemplated by clause 16.1 (the **Improvements**) vest in us immediately on creation.
- 16.3 You acknowledge and agree that you will not alter, remove, deface, or otherwise tamper with any confidentiality, copyright, trade mark, or other propriety notices appearing on the Goods.
- 16.4 You acknowledge and agree that you have no rights to use our Intellectual Property Rights under these Terms, except as expressly set out herein, unless otherwise agreed in writing.

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### 17 Default

- 17.1 Clauses 17.2 to 17.4 apply if you fail to pay sums to us when they fall due.
- 17.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 6% above the cash rate last published by the Reserve Bank of Australia, per annum.
- 17.3 We may suspend or cease the supply of any further Goods to you (including any Goods currently being manufactured).
- 17.4 We may require pre-payment in full for any Goods which have not yet been supplied.

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### 18 Indemnity

- 18.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:
- (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
  - (b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
  - (c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.
- 18.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.
- 18.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

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### 19 Limitation of liability

- 19.1 No party is liable to the other party for any Consequential Loss, including under clause 18, however caused arising out of or in connection with any Supply Contract of which these Terms form part.
- 19.2 While we will take reasonable endeavours to meet any estimated delivery date or estimated time for Goods, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.
- 19.3 If the Supply Contract is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:
- (a) (in the case of a supply of Goods):

- (i) us repairing or replacing the Goods; or
- (ii) us paying you the cost of having the Goods repaired or replaced.
- (b) (in the case of a supply of Services):
  - (i) us supplying the Services again; or
  - (ii) us paying you the cost of having equivalent Services supplied.

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## 20 Termination

A party may, with immediate effect, terminate any Supply Contract of which these Terms form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
  - (i) has committed an act of bankruptcy; or
  - (ii) has been made bankrupt;
- (g) comprises a corporation which:
  - (i) enters into voluntary administration;
  - (ii) is subject to a deed of company arrangement; or
  - (iii) is subject to the appointment of liquidators or provisional liquidators.

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## 21 Trustees

21.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:

- (a) you enter into the Supply Contract in both your capacity as trustee and in your personal capacity;
- (b) you have the right to be reasonably indemnified out of trust assets;
- (c) you have the power under the trust deed to enter into the Supply Contract; and
- (d) you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on terms substantially the same as those governing your Credit Facility (where applicable).

21.2 You must give us a true and complete copy of the trust deed upon request.

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## 22 Force majeure

22.1 If a party is wholly or partly unable to carry out any obligation under a Supply Contract (other than a payment obligation) because of a Force Majeure Event and the affected party:

- (a) gives the non-affected party prompt notice of that Force Majeure Event including particulars of the event relied upon and so far as known the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- (b) uses all reasonable diligence to remove or remedy that Force Majeure Event as quickly as possible,

that obligation is suspended to the extent that it is affected by the continuation of the Force Majeure Event.

22.2 Despite clause 22.1, the non-affected party may terminate the Supply Contract immediately by giving notice to the affected party if the suspension of the affected party's obligation continues under clause 22.1 for more than one month.

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## 23 Variation

We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

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## 24 Assignment

A party may only assign its rights under the Supply Contract with the written consent of the other party.

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## 25 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any additional terms or conditions contained in our quotation applicable to the supply of Goods;
- (b) any terms governing your Credit Facility; and
- (c) these Terms.

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## 26 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

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## 27 Governing law and jurisdiction

27.1 Our relationship is governed by and must be construed according to the law applying in the State of New South Wales.

27.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales with respect to any proceedings that may be brought at any time relating to our relationship.

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## 28 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

28.1 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.

28.2 **Business Hours** means between 08:00am to 4:00pm on a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Goods are, or are to be, supplied.

28.3 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a Supply Contract.

28.4 **Consequential Loss** includes any:

- (a) consequential loss;
- (b) loss of anticipated or actual profits or revenue;
- (c) loss of production or use;
- (d) financial or holding costs;
- (e) loss or failure to realise any anticipated savings;
- (f) loss or denial of business or commercial opportunity;
- (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
- (h) loss or corruption of data;
- (i) downtime costs or wasted overheads; or
- (j) special, punitive, or exemplary damages.

28.5 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.

28.6 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Goods and associated charges.

- 28.7 **Custom Order** means Goods that have been specifically customised by us to meet your specified requirements as set out in an Order.
- 28.8 **Customer** means the person or other entity acquiring Goods from us (or on whose behalf Goods are acquired).
- 28.9 **Force Majeure Event** means any act of God, acts, decrees, or regulations of government authorities, casualty, fire, explosion, storm, flood, frost or snow, earthquake, embargo, industrial action, strike, lockout, civil commotion, riot, insurrection, war, epidemic or pandemic, damage to or destruction of facilities, equipment or mechanical breakdown, failure of a third-party supplier or service provider, or any other occurrence which is not in the reasonable control of the affected party.
- 28.10 **Goods** means all goods supplied by us, as described on our quotation, invoice, or any other form issued by us.
- 28.11 **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.
- 28.12 **Order** means a written or oral order placed by you requesting that we supply Goods.
- 28.13 **Pallets** means any pallets, drums, bearers, and any other containers supplied in connection with the Goods.
- 28.14 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.
- 28.15 **Services** means all services performed by us, as described on our quotation, invoice, purchase order, or any other form issued by us.
- 28.16 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.
- 28.17 **Supplier, we, us** means FVA Group Pty Ltd (ACN 632 824 698).
- 28.18 **Supply Contract** means a contract for the supply of Goods, which includes our quotation (if any), an Order, and these Terms.
- 28.19 **Working Documents** means all plans, designs, specifications, and schedules created by us in the course of or in relation to any contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations, and adaptations of such plans, designs, specifications, and schedules (whether currently existing or created in the future).

## 29 Interpretation

In these Terms, unless the context otherwise requires:

- 29.1 A time is a reference to the time zone of Sydney, Australia unless otherwise specified.
- 29.2 \$, dollar, or AUD is a reference to the lawful currency of Australia.
- 29.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.
- 29.4 A right includes a benefit, remedy, authority, discretion, or power.
- 29.5 The singular includes the plural and vice versa, and a gender includes other genders.
- 29.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.
- 29.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.
- 29.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".
- 29.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.

## 30 New Zealand Specific Clauses

- 30.1 If the Buyer is resident in New Zealand or operating in New Zealand, the following terms and conditions will apply in addition to the above clauses.
- 30.2 Where there is any inconsistency or contradiction between these terms and conditions and the above clauses, these terms and conditions will take precedence:
- Consumer** has the meaning given in section 2 of the New Zealand Consumer Law. If the Goods are not of a kind ordinarily acquired for personal, domestic, or household use or consumption, or are being acquired for the purpose of resupplying them in trade, consuming them in the course of a process of production or manufacture, or repairing or treating in trade other goods or fixtures on land, then the New Zealand Consumer Law will not apply.
  - Failure of a Substantial Character** in respect of goods has the meaning defined in section 21 of New Zealand Consumer Law.
  - GST** means goods and services tax in terms of the GST Act, at the rate prevailing from time to time.
  - GST Act** means the Goods and Services Tax Act 1985 (NZ).
  - New Zealand Consumer Law** means the Consumer Guarantees Act 1993 (NZ).
  - PPSA** means the Personal Properties Securities Act 1999 (NZ).
- 30.3 If any supply of Goods under these terms and conditions to the Buyer is a supply to a Consumer then the following applies:
- If the Buyer is acquiring the Goods in trade, the parties agree that the provisions of the New Zealand Consumer Law are excluded and will not apply to the supply of the Goods, and that such exclusion is fair and reasonable.
  - If the Buyer is not acquiring the Goods in trade, the Goods come with the applicable guarantees under the New Zealand Consumer Law and the Buyer will be entitled to the applicable rights and remedies provided under the New Zealand Consumer Law.
  - No other warranties either express or implied by law are made with respect to the Goods.
- 30.4 You hereby waive all rights pursuant to and agree to contract out of the following provisions of the PPSA:
- section 114 (1)(a) (debtor's rights to receive notice of sale of collateral by secured party);
  - section 113 and section 134 (debtor's rights to reinstate a security agreement after default);
  - section 116 (right to receive a statement of account);
  - section 120(2) and section 121 (requirement that secured party give notice to the debtor if it proposes to take collateral in satisfaction of any obligation and a debtor's right to object); and
  - section 125, section 126, section 127, section 129, and section 131 (relating to removal of an accession).
- 30.5 You agree to waive your rights to receive anything from us under section 148 of the PPSA (requirement that secured party notify debtor of registration of financing statement) and agrees not to make any request of the Seller under that section).
- 30.6 You hereby consent to us perfecting our interest in any Goods provided by you to us by registration under the PPSA and you hereby agree to do anything reasonably requested by the us to enable us to do so.