

# TERMS & CONDITIONS OF TRADE

Please read carefully

These Terms and Conditions of trade apply to the following companies within the Jaybro Group:

- Architectural Formliners Australia Pty Ltd ACN 605 348 687
- Australian Construction Products Pty Limited ACN 091 618 781
- Cadia Group Pty Ltd ACN 165 578 156
- Delnorth Pty Ltd ACN 051 954 977
- Global Synthetics Pty Ltd ACN 120 519 520
- Jaybro Group Pty Ltd ACN 159 122 488
- Link Plus Pty Ltd ACN 619 371 158
- Plastic Solutions Australia Pty Ltd ACN 158 619 268
- Roadside Products Pty Ltd ACN 133 084 634

“we”, “our” or “us”

## 1. Credit

- 1.1. Upon completion of a Credit Account Application and Guarantee, we may, at our sole discretion, extend credit to you and set a credit limit.
- 1.2. We reserve the right to reduce or cancel your credit at any time.
- 1.3. You are not entitled to any credit until you receive written notice from us stating that the credit facility has been granted.
- 1.4. Once your credit limit has been reached, we have the right to refuse further credit at our sole discretion.
- 1.5. If at any time you exceed your credit limit, you are liable for the full outstanding amount. You hereby acknowledge that your liability is not restricted to the original credit limit.
- 1.6. If your account is inactive for a period of 2 years or more, we may withdraw any credit extended to you, close your account, and/or require you to complete a new Credit Account Application and Guarantee before extending further credit to you.

## 2. Entire agreement

- 2.1. Our Terms and Conditions, the original Credit Account Application and any Guarantees govern the entire relationship between us, the Customer and the Guarantors in connection with the provision of our Goods and/or Services. Unless signed by us, any other terms purportedly imposed or referred to in a Purchase Order or any other document will not apply and shall have no force or effect whatsoever.
- 2.2. The Customer and the Guarantors acknowledge that they have not relied on any representation, inducement, warranty or promise which is not set out in our Terms and Conditions, the original Credit Account Application and any Guarantees.
- 2.3. Any amendments made to our Terms and Conditions will not be effective or deemed accepted unless we confirm in writing that those amendments are accepted. Any Goods or Services provided to you prior to the date that we confirm acceptance in writing will be governed by these Terms and Conditions unamended.
- 2.4. If you request credit or Goods and/or Services for more than one company within the Jaybro Group, you acknowledge and agree that these Terms and Conditions operate as a separate and independent contract between you and each of those companies.

## 3. Purchase and supply

- 3.1. You agree to purchase, and we agree to supply, all Goods and Services subject to these Terms and Conditions.
- 3.2. You will be bound by our Terms and Conditions upon:
  - i. signing this document; and/or
  - ii. placing a Purchase Order for our Goods and/or Services.
- 3.3. All invoices in respect of Goods delivered shall be deemed to be accepted as a correct charge if, after fourteen days from the date of receipt of the invoice, you raise no objection to the invoice.
- 3.4. A deposit may be required at our sole discretion.

## 4. Updating Terms and Conditions

- 4.1. We may update our Terms and Conditions from time to time by giving you at least 30 days written notice. We will publish our updated Terms and Conditions on our website at [www.jaybro.com.au/jaybro-policies](http://www.jaybro.com.au/jaybro-policies) and notify you by email that there has been a change.
- 4.2. If no email address is given or an email is returned undeliverable, we will send you by ordinary mail either a copy of the updated Terms and Conditions or written notice of the change and a link to our website.
- 4.3. By placing a Purchase Order for our Goods and/or Services after we have notified you in accordance with this clause 4 that we have updated our Terms and Conditions, you confirm that you have read and accept such updated terms and conditions.

## 5. Electronic signatures

If you use an electronic signature, you hereby confirm that such signature is being applied to prove your intention to be bound by these Terms and Conditions and is used in accordance with section 9 of the Electronic Transactions Act 2000 (NSW) or any equivalent legislation governing the use of electronic signatures.

## 6. Information

- 6.1. You acknowledge and agree that:
  - i. you will provide us with immediate written notice upon a change of your corporate details, such as organisation name, ABN, principal place of business, directors or Trustees;
  - ii. you will provide all relevant information to enable us to supply the correct Goods or perform the Services in a timely and proper manner;
  - iii. you hereby warrant to us the accuracy and completeness of all such information;
  - iv. we will rely upon the accuracy and completeness of the information you provide; and
  - v. in the event of the supply of false, erroneous, inaccurate and/or misleading information by you or any representative:
    - a. such action shall constitute a breach of contract and may cause us loss or damage;
    - b. we may immediately reduce or cancel any credit extended and terminate this Agreement and any associated agreement; and
    - c. you shall be liable for any loss incurred or damage suffered by us including but not limited to, any costs, expenses, charges, commissions, outgoings or loss of profits arising from the supply of false, inaccurate and/or misleading information.
- 6.2. Where we manufacture or supply Goods or Services according to your specifications, we do not warrant the suitability or performance of those Goods or Services.
- 6.3. Where you require Goods to be subject to special testing or inspection, you shall pay all costs of and associated with such testing or inspection.
- 6.4. If we have made any representations or provided you with any specifications, advice, recommendation or information in connection with the Goods and Services, you acknowledge that you have conducted your own enquiries and formed your own opinion as to the correctness or appropriateness of such representations, specifications, advice, recommendation or information and the Goods and Services themselves.
- 6.5. Except as provided by clause 6.6, any representation, specifications, advice, recommendation and/or information given by us in relation to Goods and/or Services is given in good faith and is provided without any warranty as to accuracy, appropriateness or reliability. We do not accept any liability or responsibility for any loss suffered as a result of your reliance on such representation, specification, advice, recommendation or information.
- 6.6. Where we supply Goods that are designed or manufactured by us and in respect of which we have provided you with a separate document expressed to be a warranty, clause 6.5 operates to the extent that any representation, specifications, advice, recommendation and/or information is not contained within that document.
- 6.7. Any image or sample of Goods provided by us is merely to indicate the general nature of the product and we do not warrant that Goods supplied will correspond exactly with any image or sample or with any previous or future Goods supplied. Subject to any guarantees applicable under the Australian Consumer Law, small deviations or slight variations which do not substantially affect the use of the Goods will not entitle you to reject the Goods or to make any claim in respect of them.

## 7. Quotes, Purchase Orders and Price

- 7.1. Upon request, we may provide you with a Quote for the supply of Goods and/or Services.
- 7.2. Quotes are valid for 14 days unless otherwise indicated in writing.

- 7.3. You may order Goods or Services from us by either accepting a Quote or by placing a Purchase Order. Your acceptance of a Quote will be deemed to be the placing of a Purchase Order.
- 7.4. By placing a Purchase Order with us, you are offering to purchase our Goods and/or Services at the quoted price. We are not obliged to supply the Goods and/or Services until a Purchase Order is submitted by you and that Purchase Order is accepted by us.
- 7.5. We reserve the right to accept or reject your Purchase Order. Minimum order quantities for certain Goods may apply.
- 7.6. If we accept your Purchase Order, we will confirm the Purchase Order and a sales order number may be issued.
- 7.7. All Goods and Services are subject to availability.
- 7.8. All Goods and Services will be invoiced at the applicable price at the time we accept your Purchase Order and issue a Sales Order Number.
- 7.9. Subject to these terms and conditions, we reserve the right to alter our prices and we will notify you in the event that prices are altered.
- 7.10. Any information that we provide in respect of the Goods including information in any advertising or promotional material does not constitute an offer by us and is subject to the availability of the Goods.

## 8. Delivery and cancellation

- 8.1. You hereby acknowledge that you are additionally liable for the cost of any delivery, transportation, freight, demurrage, postage, packaging, crating, handling, taxes, duties, fees and charges applicable to the Goods and notified to you.
- 8.2. Unless agreed otherwise in writing prior to delivery, the unloading of Goods is your responsibility.
- 8.3. Once a Purchase Order is accepted by us, we may immediately incur costs and expenses associated with fulfilling that order. You hereby agree that if a Purchase Order is placed by you and subsequently cancelled, you are liable for any such costs and expenses, any loss suffered by us or any claim against us by a third party with respect to that Purchase Order. You hereby indemnify us (without set-off or deduction) for all amounts associated with such loss, costs, expenses or claim, including legal costs on an indemnity basis.
- 8.4. We may cancel any Purchase Order to which these terms and conditions apply or cancel delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving notice to you. Within 7 days of giving such notice, we shall refund any money paid by you for the Goods and/or Services. We shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 8.5. Delivery of the Goods is taken to occur at the time that:
  - i. your nominated carrier takes possession of the Goods; or
  - ii. we (or our nominated carrier) deliver/s the Goods to a site nominated by you, including a third-party address, even if you are not present at the site.
- 8.6. Upon delivery, you must inspect the Goods against the Purchase Order and any delivery docket and verify that the Goods being delivered are what has been ordered by you. You must notify us of any discrepancies or errors in the Goods delivered within 2 business days of delivery, after which those Goods will be deemed to have been delivered in compliance with the Purchaser Order and accepted by you.

## 9. Tax invoices and GST

- 9.1. You are liable to pay GST.
- 9.2. Where GST is payable on a Taxable Supply, we will provide you with a Tax Invoice and you must pay the GST.

## 10. Payment

- 10.1. Where credit has not been extended to you, you must pay the Amount Due for the Goods and/or Services in full prior to collection or delivery.
- 10.2. Invoices are due and payable on the last calendar day of the month following the month of invoice (commonly known as “30 Days End of Month” terms).
- 10.3. We may notify you in writing of an extension of the time in which you are permitted to pay the Amount Due.
- 10.4. If any payments are not made on time or in full, we may in our absolute discretion do any or all of the following:
  - i. reduce or cancel your credit limit;
  - ii. reduce or cancel any of your current orders which remain unfulfilled;
  - iii. refuse to supply you with further Goods and/or Services;
  - iv. require you to pay the entire amount outstanding prior to further Goods and/or Services being delivered or supplied;
  - v. engage a mercantile agent and/or commence legal proceedings to recover the debt;
  - vi. notify the relevant credit reporting bodies; and/or
  - vii. terminate this Agreement in writing.
- 10.5. You are required to pay the Amount Due in full without deduction or set-off.

## 11. Payment methods

- 11.1. Payment must be made by Visa or Mastercard (plus surcharge) or electronic funds transfer (EFT).
- 11.2. Payments must be made without any deduction for fees or charges imposed by your bank and or any third parties.
- 11.3. Payments other than cash shall not be deemed to be made until that form of payment has been honoured or cleared.

## 12. Charge

- 12.1. To secure the due and punctual performance of your obligations under these Terms and Conditions, including but not limited to the payment of any money, you hereby charge in our favour all of your rights, title and interest (whether held jointly, solely or beneficially) in all real and personal property held or owned by you either now or in the future with payment of all moneys which are or may become due pursuant to these Terms and Conditions.
- 12.2. You authorise and consent to us lodging and maintaining a caveat on title or other security over all real or personal property held or owned by you (whether jointly, solely or beneficially) to give effect to this charge and hereby agree not to issue a lapsing notice to have the caveat removed until such time as all monies owing to us have been paid by you.
- 12.3. You hereby indemnify us from and against all losses, costs and disbursements including legal costs on an indemnity basis incurred in exercising or defending our rights under this clause and will reimburse us for all such costs and expenses incurred, including in lodging or removing such caveat or other security interest.

## 13. Dispute resolution

Apart from legal action initiated by us with respect to the recovery of a debt, if a dispute arises one party must give the other party written notice of the dispute and the parties must make a genuine attempt to identify the issues in dispute and resolve such issues within 7 days and in a co-operative manner prior to commencing legal or administrative proceedings.

## 14. Default

- 14.1. The failure to pay the Amount Due in full and by the due date is a breach of these Terms and Conditions. Upon such breach, all amounts payable by you to us become immediately due and payable. We may suspend, revoke or reduce credit extended to you, withhold the further supply of any Goods and Services, cancel any pending orders, enter onto your premises and recover our Goods, and report the breach to a credit reporting agency.

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- 14.2. If you do not pay the Amount Due in full by the due date, then you must pay to us interest charged at the cash rate target set by the Reserve Bank of Australia as published from time to time, plus 5% per annum on the unpaid balance of the Amount Due calculated daily from the day after the due date until the date that payment of the Amount Due is made in full. You hereby agree and accept that this is a genuine pre-estimate of our loss.
- 14.3. You hereby agree to indemnify us from any cost, loss or damage incurred or suffered by us as a result of your failure to pay the Amount Due by the due date or any other breach by you of these Terms and Conditions including without limitation any costs, charges and expenses incurred by us in recovering the Amount Due including mercantile agency fees, commission and legal costs on an indemnity basis in bringing debt recovery proceedings or a claim for breach of these Terms and Conditions.
- 15. Retention of title**
- 15.1. Property in and beneficial ownership of all Goods supplied by Jaybro Group to you under these Terms and Conditions will remain with us and shall not pass to you until payment in full of all amounts you owe us including amounts payable in future.
- 15.2. We retain equitable and legal title in the Goods, and you take custody of our Goods and retain them on trust as our fiduciary agent and bailee until title has passed to you.
- 15.3. You must store our Goods safely and separately in a manner which clearly identifies such Goods as our property and must not remove, deface or obliterate any identifying mark, code or number on any of the Goods until title has passed to you.
- 15.4. If you sell or on-supply, or otherwise dispose of any Goods prior to paying us in full all amounts you owe us including amounts payable in future, or if any insurance claim is made in respect of the Goods, you hereby acknowledge that Jaybro Group is entitled to trace and receive the sale or insurance proceeds and that you are holding all proceeds of such sale or on-supply on trust for us as our fiduciary agent until your liability to us is fully and finally discharged. You must notify Jaybro Group of all insurance claims made by you in respect of the Goods. You must keep the proceeds of sale or insurance in a separate bank account on trust for Jaybro Group.
- 15.5. You must notify Jaybro Group of all premises at which you hold any Goods supplied under these Terms and Conditions. You must allow Jaybro Group to enter upon your premises to inspect the Goods in your possession upon reasonable notice from time to time.
- 15.6. If you are the subject of an Insolvency Event (as defined in clause 17.1), or you fail to pay any amount (whether in part or whole) payable in respect of any Goods by the time required for payment, or any agreement under which we supply Goods to you (including under these Terms and Conditions) is terminated, or becomes terminable at our option, you will, upon demand, immediately return the Goods to us and/or allow us, our employees or agents to enter at any reasonable time upon any premises where the Goods are located (or where we believe the Goods are located) and to take possession of those Goods not paid for and any other Goods to the value of the amount owing. Our permission to enter onto your premises for that purpose is irrevocable. We are not liable to you in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by you as a result of any action taken by us under this clause.
- 15.7. You hereby indemnify us from and against any liability to any third party in respect of any claims, actions, proceedings, demands, costs, damages and loss arising from us exercising our rights under this clause.
- 16. Risk in the Goods**
- 16.1. Risk in the Goods and all insurance responsibility for theft, loss, damage or otherwise in respect of the Goods passes to you immediately:
- upon collection,
  - upon delivery of the Goods to the agreed delivery address regardless of whether that address is unattended,
  - upon delivery to or collection by your nominated carrier, or
  - if you ask us to leave the Goods outside our premises for collection, from the time the Goods are left outside our premises.
- 16.2. Until property in and ownership of the Goods passes to you, you must keep the Goods in which risk has passed to you insured and produce to us, upon demand, evidence of such insurance. If you fail to insure the Goods, we may do so and the cost of such insurance shall be payable by you to us upon demand.
- 16.3. Upon the passing of risk, you are responsible to ensure the Goods are appropriately stored to minimise the risk of theft or damage by exposure to weather, vandalism or any other cause. If any of the Goods are stolen, lost, damaged or destroyed following the passing of risk to you but prior to ownership passing to you, we are entitled to receive all insurance proceeds payable for the Goods. You hold such insurance proceeds on trust for us. The production of a copy of these Terms and Conditions by us is sufficient evidence of our rights to receive the insurance proceeds.
- 17. Insolvency Event**
- 17.1. Any of the following events are taken to be an Insolvency Event:
- an application or order is made, a resolution is passed or proposed, or other steps are taken for the winding up, dissolution, official management or voluntary administration of a customer;
  - a customer enters into any arrangement, composition or assignment for the benefit of its creditors or any class of them;
  - a receiver, a receiver and manager, administrator or other officer is appointed to the customer or any part of its property;
  - a third party attempts to levy execution against the customer's property or the Goods;
  - the customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business;
  - the customer is or is deemed to be unable to pay its debts as and when they fall due, or stops or suspends payment of its debts;
  - in the case of the customer being a natural person, the customer commits an act of bankruptcy;
  - we are of the view, acting reasonably, that any of the above will or are likely to occur.
- 17.2. If an Insolvency Event occurs, we may terminate any and all contracts between us and you, suspend, revoke or reduce credit extended to you, withhold further deliveries of any Goods, cancel any pending orders, enter onto our premises and recover our Goods, and refuse the further supply of any Goods. This clause does not limit or otherwise prejudice any other rights we may have.
- 17.3. You hereby indemnify us from and against all losses, costs and disbursements including legal costs on an indemnity basis or any liability to any third party incurred in exercising our rights under this clause.
- 18. Personal Property Securities Act 2009 (Cth) ("PPSA")**
- 18.1. In this clause, *italicised* expressions have the meaning given to them in the PPSA.
- 18.2. You hereby:
- acknowledge and agree that by virtue of these Terms and Conditions, Jaybro Group has a *security interest* in the Goods and their *proceeds*;
  - acknowledge and agree that Jaybro Group may do anything it considers necessary, including but not limited to registering on the PPSR any *security interest* in the Goods which it has and including registration as a *purchase money security interest (PMSI)* in order to perfect our *security interest* as a first priority interest under the PPSA. You agree to do all things including signing any document which Jaybro Group reasonably requires to assist Jaybro Group to effect the matters set out above.
- 18.3. The parties acknowledge and agree for the purposes of satisfying section 20(1)(iii) of the PPSA that the description of the Goods the subject of the *security interest* created under this *security agreement* includes their description as set out in these Terms and Conditions and/or any order acceptance, invoice or other document issued by us in relation to Goods and the description of the Goods in any such document is expressly incorporated into these Terms and Conditions.
- 18.4. You agree not to cause (directly or indirectly) the registration of a *financing change statement* in respect of the Goods without Jaybro Group's prior written consent.
- 18.5. You and Jaybro Group each agree, that pursuant to section 115 of the PPSA the following provisions of the PPSA are contracted out of insofar as they require Jaybro Group to give any notice or statement or allow any period of time or grant any opportunity to remedy to you: section 95 (notice of removal of accession); section 96 (when person with an interest in the whole may retain accession); section 118 (enforcing security interests in accordance with land law decisions); section 121(4) (notice under section 120(2)); section 125 (obligation to dispose of or retain collateral); section 129 (disposal by purchase); section 130 (notice of disposal); section 132(3)(d) (contents of statement of account after disposal); section 132(4) (statement of account if no disposal); section 135 (notice of retention); section 142 (redemption of collateral); and section 143 (reinstatement of security agreement).
- 18.6. For the purposes of section 157(3)(b) of the PPSA, you waive your right to receive notice of any *verification statement*, *financing statement* or a *financing change statement* in relation to any registration on the PPSR.
- 18.7. Solely to preserve their confidentiality, to the extent allowed under section 275 of the PPSA, the parties agree that no party will, or is entitled to, disclose information if requested by a third party under section 275(1) of the PPSA.
- 18.8. You agree that any rights of Jaybro Group under this document are in addition to and not in substitution for its rights under the PPSA.
- 18.9. You must not without Jaybro Group's written consent specify an order of application of payments made to Jaybro Group different to that set out in section 14 of the PPSA or different to any other order specified by Jaybro Group at any time.
- 18.10. You undertake to give Jaybro Group not less than 14 days prior notice of any proposed change in your name or any other change in your details (including, but not limited to, changes in your address, email, phone or facsimile number and trading name).
- 18.11. You agree that you will not enter into any agreement or arrangement which permits any other person to register any Security Interest in respect of the Goods, the proceeds of sale of the Goods, or any amounts owed in respect of the Goods without Jaybro Group's prior written consent.
- 19. Exchanges and returns**
- 19.1. Goods are not supplied on a sale or return basis.
- 19.2. Subject to these Terms and Conditions, Goods may be exchanged or returned for credit if returned within 7 days of delivery or collection and accompanied by the original invoice.
- 19.3. Any Goods that are exchanged or returned must be unused and in their original packaging, undamaged and unopened.
- 19.4. We will not exchange or provide credit for any Goods until we have received the Goods returned and have provided you with written confirmation of receipt.
- 19.5. If Goods are exchanged or returned under this clause 19, we may charge a re-stocking fee of up to 30% of the original sale value of the Goods. You must also bear all costs associated with the exchange or return including any delivery, freight and insurance charges we incur. You acknowledge and agree that any re-stocking fee charged to you reflects a genuine pre-estimate of the losses we will suffer as a result of the exchange or return.
- 19.6. To the extent permissible under the Australian Consumer Law, you will not be entitled to exchange or return Goods which we have customised or specially ordered for you.
- 20. Indemnity**
- 20.1. You hereby indemnify and release us and our directors, contractors and agents against any loss, claim, demand, suit, action or proceeding brought against us or them arising from any breach by you of these Terms and Conditions or in connection with the supply to you of Goods and/or Services.
- 20.2. The indemnity and release in clause 20.1 does not apply to the extent that any loss, claim, demand, suit, action or proceeding was caused or contributed to by any negligent act or omission by us.
- 20.3. To the fullest extent permissible by law, Part 4 of the Civil Liability Act 2002 (NSW) and any equivalent statutory provisions in any other state or territory or of the Commonwealth are excluded in relation to each party's rights, obligations and liabilities under this Agreement regardless of whether the foregoing arise from a claim in contract, tort or otherwise.
- 21. Privacy**
- 21.1. These terms should be read in conjunction with our Privacy Policy available at [www.jaybro.com.au/privacy](http://www.jaybro.com.au/privacy).
- 21.2. You agree for us to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to credit provided or to be provided by us.
- 21.3. You agree that we may exchange information about you with your trade referees or entities named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess your application; and/or
  - to notify other credit providers of a default by you; and/or
  - to exchange information with other credit providers as to the status of your credit account, where you are in default with other credit providers; and/or
  - to assess your creditworthiness.
- 21.4. You acknowledge that the information exchanged can include anything about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).
- 21.5. You hereby consent to us being given a consumer credit report for the purposes outlined in section 18K(1) of the Privacy Act 1988 (Cth).
- 21.6. You agree that personal credit information provided may be used and retained by us for the following purposes (and for other purposes as shall be agreed between you and us or permitted by law from time to time):
- provision of Goods and/or Services;
  - marketing of Goods and Services by us, our agents or distributors;
  - analysing, verifying and/or checking your credit, payments and/or status in relation to the provision of Goods and/or Services;
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by you;
  - enabling the daily operation and management of your account and/or the collection of the amounts outstanding in your account in relation to the Goods or Services.
- 21.7. We may give information about you to a credit reporting agency for the following purposes:
- to obtain a consumer credit report;
  - to allow the credit reporting agency to create or maintain a credit information file containing information about you.
- 21.8. The information given to the credit reporting agency may include:
- personal particulars (if applicable, your name, sex, address, previous addresses, date of birth, name of employer and driver's license number);
  - details concerning your application for credit or commercial credit and the amount of credit requested;
  - advice that we are a current credit provider to you;
  - advice of any overdue accounts, loan payments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - that your overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - information that, in our opinion, you have committed a serious credit infringement or shown an intention not to comply with your credit obligations; and
  - that credit provided to you by us has been paid or otherwise discharged.
- 22. Intellectual Property**
- 22.1. You warrant that all designs, specifications or instructions given to us will not cause us to infringe any copyright, patent, registered design or trademark in fulfilling your Purchase Order and you agree to indemnify us against any action taken by a third party against us in respect of any such infringement.
- 22.2. You agree that we may (at no cost) use for the purpose of marketing any documents, designs, drawings or Goods which we created for you.
- 22.3. You hereby agree not to do any of the following, nor assist anyone else to do any of the following, and you agree to take active steps to ensure that all employees, agents and contractors do not do any of the following:
- copy, memorise, reproduce, misappropriate or reverse engineer the whole or any part of the Goods;
  - challenge, contest or oppose any of our intellectual property rights;
  - use any name or logo associated with the Goods other than as we authorise you; or
  - divulge our confidential information to any person or use it for your own benefit except as we have expressly authorised or as required by law.
- 23. Exclusions and liability**
- 23.1. These Terms and Conditions shall not exclude or limit the application of any provisions of any statute including any implied condition or warranty the exclusion of which would contravene any statute (including the Australian Consumer Law) or cause any part of this clause 23.1 to be void or unenforceable. To the fullest extent permitted by law, all conditions, guarantees, warranties and undertakings in respect of the Goods and Services are expressly excluded.

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- 23.2. Unless the Goods or Services supplied are of a kind ordinarily acquired for domestic, household or personal use or consumption, our liability for any defects or any breach of any condition, guarantee, warranty or undertaking is limited to the repair or resupply of the subject Goods or Services or the value of the repair or resupply of those Goods or Services.
- 23.3. To the fullest extent permitted by law but subject to our obligations under clause 23.2, our maximum liability in connection with any claim, regardless of whether it arises in contract, tort, equity, by force of statute or otherwise, is limited to 30% of the value of the Goods and/or Services the subject of that claim.
- 23.4. Notwithstanding anything in this Agreement but subject to our obligations under clause 23.2, all liability, guarantees and/or warranties are expressly excluded if:
- a claim in respect of such liability, guarantee or warranty does not directly relate to a defect in the Goods or workmanship of any Services;
  - the Goods have received maltreatment or inattention, have been incorrectly or improperly installed, used, packaged, stored, transported or have been modified or interfered with by you or a third party; or
  - products not manufactured or approved by us have been used or commingled with the Goods.
- 23.5. You agree that use of the Goods and Services is at your risk. To the fullest extent allowed by law, our liability for breach of any term implied into these Terms and Conditions is excluded.
- 23.6. To the fullest extent permissible at law but subject to our obligations under clause 23.2, we are not liable for any direct, indirect, punitive, incidental, special, consequential damages or any damages whatsoever including, without limitation, damages for loss of use, data or profits, arising out of or in any way connected with the provision of (or failure to provide) Goods or Services whether based on terms and conditions of trade, negligence, strict liability or otherwise, even if we have been advised of the possibility of damages.
- 23.7. Our website may be periodically suspended for maintenance, upgrades or due to a system failure. We do not accept responsibility for any loss arising out of any delays or errors in transmitting data.
- 24. Warranty as Trustee**
- 24.1. If you are entering into these Terms and Conditions as the Trustee of a trust (either corporate or personal), then you warrant and represent to us that:
- The Trustee will be liable to us personally / directly as well as in its capacity as Trustee;
  - all of the powers and discretions conferred on the Trustee by the trust deed are capable of being validly exercised by the Trustee and have not been varied or revoked and the relevant trust is a valid and subsisting trust;
  - The Trustee is the sole trustee of the trust and has full and unfettered power under the trust deed to enter into these Terms and Conditions and that these Terms and Conditions are entered into as part of the due and proper administration of the trust for the benefit of the beneficiaries of the trust;
  - That you will immediately advise us of any change of Trustee; and
  - no restrictions on the Trustee's right of indemnity out of, or lien over, the trust's assets exist or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.
- 25. Termination**
- 25.1. We may terminate this agreement on 5 Business Days' notice in writing.
- 25.2. You may terminate this agreement on 10 Business Days' notice in writing if we commit a breach of this agreement and do not satisfactorily rectify the breach within 5 Business Days of receiving written notice of the breach.
- 26. Jurisdiction & governing law**
- 26.1. These Terms and Conditions are governed by the laws of the state or territory in Australia in which the Goods and/or Services are provided.
- 26.2. Each party submits to the jurisdiction of the courts in the state or territory in Australia in which the Goods and/or Services are provided in connection with matters concerning this document.
- 27. Variable Message Sign / Electronic Road Sign Trailers – Special terms and conditions**
- 27.1. These special terms and conditions apply only to the sale of variable message sign (VMS) trailers / electronic road sign (ERS) trailers ("Trailers"). By placing a Purchase Order for Trailers, you acknowledge and accept these special terms and conditions.
- 27.2. Trailers are roadworthy trailers which require registration with the relevant state authority prior to your collection.
- 27.3. Unless otherwise agreed in writing, you authorise us to register the Trailers in your name and irrevocably appoint us to act as your attorney for that purpose.
- 27.4. Notwithstanding the registration of the Trailers in your name, title in the Trailers will not pass to you and clauses 15, 16.1, 16.2, 16.3, 18 and 20 of this Agreement will continue to operate. In addition to the obligation at clause 16.2 of this Agreement, we may also require you to note our interest in the Trailers on any insurance policy.
- 27.5. You are responsible for the collection of the Trailers from our designated collection point. After the successful registration of the Trailer, we will notify you of the time and place that the Trailer can be collected.
- 27.6. You must arrange to collect the Trailers within 7 days from the date that we notify you of the time and place for collection. If you do not collect the Trailers within this time, we may, at our absolute discretion, charge you a daily storage fee on a per-trailer basis which we may recover as a debt.
- 27.7. You must ensure that at all times the Trailers are kept in a roadworthy condition and are towed and operated in compliance with all applicable laws and regulations.
- 27.8. You will be responsible for and must pay all maintenance, insurance and other costs associated with your use of the Trailers, including any fines or infringement notices.
- 27.9. Any request for cancellation of a Purchase Order for Trailers will be at our absolute discretion and subject to clause 8.3 of this Agreement.
- 27.10. Excepted as required by law, Trailers cannot be returned for a credit or refund once they have been collected.
- 28. Hired Goods – Special terms and conditions**
- 28.1. These special terms and conditions apply only to goods that we hire out from time-to-time including props, braces, dispensing frames (spreader bars) and any associated components ("Hired Goods"). If you hire any Hired Goods from us, you acknowledge and accept these special terms and conditions.
- 28.2. We agree to hire out for a fee the Hired Goods to you on an "as is" basis and you are entitled to use of the Hired Goods during the hire period and any extension to the hire period that is agreed to in writing. Minimum hire periods may apply.
- 28.3. Before we supply the Hired Goods, we may at our absolute discretion require you to pay a bond that is refundable after the return of the Hired Goods, subject to these special terms and conditions ("Bond").
- 28.4. Unless otherwise agreed in writing, you are responsible for arranging the collection, return and transportation of the Hired Goods to and from the premises specified by us for collection and return.
- 28.5. If we agree to deliver and/or collect the Hired Goods to and/or from a site specified by you, you must pay the costs associated with delivery and/or collection. You will be responsible for unloading and reloading the Hired Goods on their delivery and/or collection respectively.
- 28.6. The hire period commences on the earliest of the date:
- agreed for commencing hire of the Hired Goods;
  - you or your representative take possession of the Hired Goods; or
  - we deliver the Hired Goods to you regardless of whether you or your representative are present to accept delivery.
- 28.7. The hire period ends on the date that:
- the Hired Goods are returned and accepted by us; or
  - we collect the Hired Goods from you.
- 28.8. Within 24 hours of the hire period commencing, you must inspect the Hired Goods and advise us in writing if any Hired Goods are damaged, missing or not in good working order. If you do not notify us within this time, the Hired Goods will be taken to be undamaged, in good condition and not missing any component.
- 28.9. During the hire period, you must ensure that:
- the Hired Goods are used in accordance with their safe, proper and lawful operation and are not misused or mistreated;
  - all personnel using, handling, erecting or dismantling the Hired Goods (as the case may be) are suitably trained, instructed and/or supervised in the safe and proper use, handling, erection and dismantling of the Hired Goods in accordance with all laws and regulations;
  - if transporting the Hired Goods, the Hired Goods are suitably protected and secured for transportation and transported in compliance with all laws and regulations;
  - in the case of any weight-bearing Hired Goods, that they do not bear weight that exceeds their rating;
  - the Hired Goods are used with our Goods only and not used by anyone else without our prior written consent; and
  - if the Hired Goods are damaged or components are lost, no attempts are made to repair or replace them and you immediately inform us of such damage or loss.
- 28.10. During the hire period, you are responsible for securing and storing the Hired Goods. If during this time any Hired Goods are damaged, lost or stolen, we will charge you a repair or replacement fee for the damaged, lost or stolen Hired Goods which is recoverable from you as a debt.
- 28.11. At the end of the hire period, you must ensure that the Hired Goods are clean and in the same condition as they were provided to you (excluding fair wear and tear as determined by us). If the Hired Goods are not returned clean, you may be charged a cleaning fee which is recoverable either as a debt from you or deductible from any Bond paid. Props and braces must be stacked and sorted in the same manner provided to you.
- 28.12. If the Hired Goods are returned damaged or missing any component, or in the event that the Hired Goods are lost or stolen, we may retain from any Bond received an amount equal to the repair or replacement cost to us of the damaged, missing, lost or stolen Hired Goods and refund you any balance. If the repair or replacement cost exceeds the amount of the Bond received, we may recover such excess from you as a debt.
- 28.13. If the Hired Goods are returned by you or collected by us before the date agreed for their return, you will not be entitled to any credit or refund of any fee paid for the hire. If the Hired Goods are not returned within 7 days of the date agreed for their return, we may at our absolute discretion deem the Hired Goods as being lost or stolen.
- 28.14. The repair and/or replacement cost for any damaged, lost or stolen Hired Goods will be equal to the cost to us of repairing or replacing those Hired Goods at that time of repair or replacement including any GST and delivery fees less any part of the Bond that has been paid and retained.
- 28.15. In no circumstances will the Hired Goods be treated as fixtures. Your rights in the Hired Goods are that of a bailee only. At all times, we retain title in the Hired Goods. Clauses 15 and 19 of this Agreement do not apply to the Hired Goods.
- 28.16. You must not sublet, offer for sale, sell, charge, mortgage, pledge or create any security interest in the Hired Goods or otherwise deal with the Hired Goods in a manner that is in breach of or inconsistent with these special terms and conditions.
- 29. General**
- 29.1. Our records are conclusive about the Amount Due, except in the case of manifest error.
- 29.2. You may not assign any of your rights under these terms without our written authorisation.
- 29.3. A waiver by us of any rights arising due to any breach, default or omission is only effective if it is in writing and shall not be deemed to be a waiver of any other unspecified rights.
- 29.4. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.5. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic or other force majeure event beyond the reasonable control of either party.
- 29.6. You warrant that you have the authority to enter into this agreement and have obtained all necessary internal authorisations to allow you to do so.
- 30. Interpretation**
- 30.1. Headings do not affect interpretation.
- 30.2. All references to the singular includes the plural and vice versa.
- 30.3. Person includes a firm or body corporate, an incorporated body, association or authority.
- 30.4. A reference to a person includes its executors, administrators, successors and permitted assigns.
- 30.5. Where two or more persons are a party, they are bound jointly and severally.
- 31. Definitions**
- In these Terms and Conditions:
- "Agreement" means the contract formed by your Credit Application, our acceptance and these Terms and Conditions.
  - "Amount Due" means either:
    - the amount stated on any invoice issued to you;
    - the sum of all such invoices;
    - the price; or
    - quoted price, whichever is higher.
  - "Customer" includes a company, partnership, sole trader or trustee.
  - "Goods" means any goods we are to supply or have supplied to you and includes Hired Goods.
  - "GST" has the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
  - "Guarantor" means the persons named in any corresponding Guarantee and Indemnity.
  - "Jaybro Group" means Architectural Formliners Australia Pty Ltd, Australian Construction Products Pty Limited, Cadia Group Pty Ltd, Delnorth Pty Ltd, Global Synthetics Pty Ltd, Jaybro Group Pty Ltd, Link Plus Pty Ltd, Plastic Solutions Australia Pty Ltd and Roadside Products Pty Ltd whether together or separately.
  - "PPSR" refers to the Personal Property Securities Register established under the PPSA.
  - "Purchase Order" means a verbal or written request by you to order Goods or Services from us in accordance with our usual course of business and includes orders placed on our website.
  - "Quote" means a verbal or written estimate of the amount to be charged by us.
  - "Rates" means the unit rate shown on the face of the Quote or otherwise used to calculate the prices in the quotation and/or Purchase Order.
  - "Services" means any services we are to supply or have supplied to you.
  - "Supplier" means any third-party supplier of the Goods to us.
  - "Tax Invoice" and "Taxable Supply" have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999.
  - "Terms and Conditions" means these Terms and Conditions and any amendments to these Terms and Conditions made by us from time to time.
  - "You" means the applicant specified in the "Business Details" or "Customer Account Details" section of the application for credit and otherwise the person seeking Goods and/or Services from us.