

Terms and Conditions of Trade

1. Introduction

- 1.1. These Terms and Conditions of Trade comprise the terms of a legal agreement between person or entity listed in the Customer Quote (**Customer, you or your**) and Astellite Pty Ltd (ACN 626 147 608) (**Astellite, our, us or we**) in relation to the supply, delivery and installation of uPVC windows, doors, glass, flyscreens, hardware, accessories, and related products as more particularised in the relevant Customer Quote (the **Products**) (the **Agreement**). You acknowledge that you have read, understood and agreed to be bound by the terms of this Agreement.
- 1.2. This Agreement applies to all orders placed by the Customer with Astellite for the supply of Products. The placement of an order for Products on, or via, the Website, by email or over the telephone constitutes your acceptance of this Agreement. No terms or conditions set out in any invoice, quote or purchase order (or similar), issued by the Customer, will override this Agreement.

2. Term

This Agreement commences on the earlier of the date you accept our Customer Quote or the date we commence supply of the Products (**Commencement Date**) and will continue until terminated in accordance with the terms of this Agreement (**Term**).

3. Placement of orders

- 3.1. Any Customer Quotation prior to the parties entering into this Agreement are indicative only and are not binding on Astellite. Unless otherwise stipulated by us, a Customer Quotation shall remain valid for 14 days only from the date of issue of the quotation.
- 3.2. Customer Quote will not constitute a legally binding agreement (and Astellite will be under no obligation to supply the Products) until the Customer has accepted the Customer Quote (**Confirmed Order**). The Customer Quote is deemed to be accepted by the Customer when the Customer:
 - (a) signs and returns the Customer Quote to Astellite by email or post; and
 - (b) pays the Deposit to us for the Products.
- 3.3. No application to cancel or vary a Confirmed Order will be considered by Astellite unless made by the Customer in writing to Astellite. Astellite may, at our absolute discretion, consider an application by the Customer to cancel or vary any Confirmed Order. Astellite reserves the right to charge the Customer for any loss or expenditure incurred by Astellite in relation to any cancellation or alteration of the Confirmed Order (including, but not limited to, the cost of the materials used or purchased, transport costs and the cost of labour incurred).
- 3.4. When accepting the Customer Quote, you warrant and represent that you have not relied on any representation by Astellite, other than as supplied in writing in the Customer Quote.
- 3.5. To provide you with an accurate Customer Quote, the Customer must provide Astellite full and unobstructed access to the Site. Astellite will contact you to arrange a date and time to conduct our initial inspection.
- 3.6. All Customer Quotes are based on a standard installation and on the available information at the time of inspection and the Customer Quote (and corresponding Price) is subject to change if:
 - (a) the final on-Site measurements of the installation area (**Customer Confirmation Measure Approval Order**) differ from the measurements taken at the time of the initial inspection;
 - (b) structural issues or defects are discovered at the Site;
 - (c) the Customer requests changes to the Products or installation space or scope (including, but not limited to, size, colour, glazing, hardware, flyscreens and opening configurations);
 - (d) engineering or compliance requirements change; and
 - (e) additional works are required to safely and securely install the Products at the Customer location; or
 - (f) the manufacturer increases the cost for the Products.

- 3.7. All Customer quote drawings are shown as viewed from the inside of the dwelling. Measurements provided by the Customer are indicative and the final Customer Quote is subject to our on-Site measurements. Customers may choose between Plaster Groove (standard) or Reveal mounting in pre-primed pine.
- 3.8. The price outlined in the Customer Quote includes supply and delivery of the Products, removal of old units and installation and is exclusive of GST.

4. Cancellation

- 4.1. You may cancel a Confirmed Order any time before Astellite, or our suppliers have commenced manufacturing the Products subject of the Confirmed Order. If you cancel a Confirmed Order:
- (a) before the manufacturing process has commenced, you will be required to pay a cancellation fee, by way of liquidated damages, equal to 10% of the Price to cover preparation costs (less Deposit amount); or
 - (b) after the manufacturing process has commenced, you will be required to pay a cancellation fee, by way of liquidated damages, equal to the works completed at the time of cancellation and the cost of the materials orders (less Deposit amount),
(the **Cancellation Fee**).
- 4.2. The Customer must pay the Cancellation Fee within seven days of receiving a written demand for payment from Astellite or if the Deposit amount:
- (a) equals the Cancellation Fee, the entire Deposit will be forfeited; or
 - (b) is more than the Cancellation Fee, we will refund the Deposit amount (less Cancellation Fee) to you.

5. Site access and installation process

- 5.1. The Customer shall ensure that Astellite has clear and uninterrupted access to the Site and installation location until the Products have been fully and completely installed and Astellite has been paid in full. If access is unsafe or obstructed, installation of the Products will be postponed, and we may, at our absolute discretion, charge you a re-delivery and installation fee at our prevailing rates at the time.
- 5.2. The Customer shall indemnify Astellite from all Losses and Claims if the installation of the Products is delayed due to interrupted Site access.
- 5.3. The Customer must:
- (a) ensure the Customer or an authorised representative remain on the Site throughout the installation process;
 - (b) sign off that the Products have been properly installed by Astellite in accordance with the Customer Confirmation Measure Approval Order; and
 - (c) indemnify Astellite from any and all Claims and Losses in connection with any loss, damage or destruction to any property or personal injury or death to any person at the Site as a result of the Customer's failure to comply with clause 5.3(a).
- 5.4. If additional equipment is required to access the Site and/or installation location (such as scaffolding, ladders, crane or other lifting equipment), the Customer will be solely responsible for paying such costs.
- 5.5. Astellite do not remove or reinstall furniture, window dressings (curtains, blinds, shutters), or other fittings. We are not liable to you for installation delays caused by third-party suppliers of profiles, glass, or other materials. Plastering, filling, painting, and special architraves are excluded from the Customer Quote.

6. Delivery and installation of Product

- 6.1. If Astellite provide you with an estimated delivery and installation date, such delivery and installation times are estimates only and are not binding on Astellite.
- 6.2. The time for delivery and installation of the Products will not be regarded as being of the essence and are at all times subject to availability of the Products. If the delivery of the Products delayed for any reason (including, but not limited to, the unavailability of the Products, freight or courier delays or Force Majeure Event), and Astellite:

- (a) shall use reasonable endeavours to promptly notify the Customer of any delays in delivering and installing the Products; and
 - (b) will not be liable to the Customer for any Losses caused by any delays in delivery and installation.
- 6.3. Astellite will deliver and install all Products purchased by the Customer at the Site or such other location as agreed by the parties in writing from time to time. All associated costs of delivery to the Site (including the costs incurred by Astellite effecting transport insurance on behalf of the Customer) are payable by the Customer, and delivery will be at the Customer's risk.
- 6.4. On the scheduled delivery and installation date, you must provide:
 - (a) Astellite with unrestricted access to the Site and installation location (including, removing any furniture, fixtures, installations and other valuables from the installation location);
 - (b) safe working conditions;
 - (c) suitable on-Site or off-Site parking;
 - (d) clear working spaces; and
 - (e) a Site that is ready for the installation of the Products.
- 6.5. You acknowledge that Astellite are entitled to suspend or terminate the delivery and installation of the Products in the event you fail to:
 - (a) pay the Price in full; and/or
 - (b) comply with your obligations under clause 6.4.
- 6.6. If:
 - (a) Astellite is unable to effect delivery and installation of the Products at the Site for the reasons outlined in clauses 6.4 and 6.5; or
 - (b) you fail to request in writing that we reschedule the delivery and installation date more than 10 Business Days before the scheduled delivery and installation date,

Astellite may, at our absolute discretion, be entitled to charge the Customer additional fees at our prevailing rates at the time to re-effect delivery and installation of the Products, and Astellite will not be liable to the Customer or anyone else for any Losses caused to the Customer (or anyone else) by any delays or failure to effect delivery and/or installation.
- 6.7. The Customer will ensure that any person who takes delivery of the Products or grants us access to the Site is authorised by the Customer to do so. The Customer shall procure that its duly authorised representative shall be present at delivery and installation of the Products.
- 6.8. Products that contain standard-colour profiles are delivered to the Site on Business Days within three (3) months of final measurement or as otherwise agreed. Products that contain non-standard colours require supplier confirmation that non-standard colours can be produced, and lead times will vary and we shall advise you of the estimated delivery date.
- 6.9. Astellite do not store windows and doors beyond the agreed delivery date. The Customer will be charged a storage fee of \$100 per week (plus GST) if we are required to store windows and doors beyond the agreed delivery date (unless Astellite is the cause of the delay).

7. Removal of existing units and on-Site alterations

- 7.1. We shall exercise reasonable care when removing old windows/doors and installing new Products at Site to minimise any damage to the Customer's property.
- 7.2. During our initial inspection or at any time during the installation works, we may discover hidden structural defects at the Site (such timber rot, termite damage, asbestos, water damage, structural movement or defective building works). If such unforeseen structural deficiencies are discovered on-Site, you must rectify these deficiencies or defects before we return to the Site to complete the installation of the Products. You must, at your own cost, engage the services of an independent contractor to perform the rectification works.
- 7.3. If alterations to the Products are required in order to install the Products as a result of the structural deficiencies or defects discovered during the inspection, we are entitled to charge additional fees to make such alterations. We will discuss the proposed alterations to the Products and the corresponding price with the Customer before the installation works begin. Approved alterations are charged at \$75 per hour per Personnel (plus GST) plus any material costs that might be incurred.

8. Risk and title

- 8.1. Risk of loss, theft, damage or destruction of the Products passes to the Customer on the date the Products are delivered to the Site or the date the Products are installed at the Site (whichever is earlier).
- 8.2. Title to, and in, the Products will not pass to the Customer until payment in full for the Products (and any other amounts owing by the Customer to Astellite under this Agreement) is received by Astellite in cleared funds.
- 8.3. If any of the Products (including glass) are damaged or destroyed following delivery but prior to ownership passing to the Customer, Astellite is entitled to receive all insurance proceeds payable for the Products. The production of this Agreement by Astellite to the Customer's insurer is sufficient evidence of Astellite's rights to receive the insurance proceeds.
- 8.4. Astellite will be entitled at any time until title in, and to, the Products passes to Customer in full, to demand return of the Products and Astellite will be entitled without notice to the Customer and without liability to the Customer (or any person claiming through the Customer) to:
 - (a) enter the Site or any other premises occupied by the Customer in order to search for, uninstall and remove the Products; and
 - (b) sell or dispose of them and to retain the proceeds of any Products sold and apply the proceeds of such sale towards discharging the Customer's indebtedness to Astellite.
- 8.5. The Customer hereby irrevocably grants to the Contractor the right, at its sole discretion, to remove or repossess any Products from the Customer and sell or dispose of them, and Astellite will not be liable to the Customer (or any person claiming through the Customer) and Astellite will (without liability to the Customer) be entitled to retain the proceeds of any Products sold and apply same towards the Customer's indebtedness to Astellite.
- 8.6. Any payment made by or on behalf of the Customer which is later voided by the application of any Relevant Laws or an Insolvency Event effecting the Customer will not:
 - (a) discharge Astellite's title in the Products; and
 - (b) reduce or discharge the Customer's indebtedness to Astellite, and the Customer will be required to make payment for the Products to discharge the debt owing to Astellite and the previous payment is treated as if it had never been made.
- 8.7. The Customer acknowledges that until title in, and to, the Products passes to the Customer, the Customer:
 - (a) holds the Products as bailee for Astellite ;
 - (b) if practicable to do so, will store the Products separately and in such a manner that the Products are clearly identified as property of Astellite ;
 - (c) not part with control of (including for the purposes of repair or maintenance), transfer, sublet, assign, sell or offer for sale or lend or otherwise encumber the Products or allow the creation of any mortgage, charge, lien or other security interest in respect of it (wholly or partly); and
 - (d) will be fully responsible for any Loss to the Products whatsoever and howsoever caused following delivery, completion or installation of the Products.
- 8.8. If an Insolvency Event occurs in respect of the Customer, Astellite may, at our absolute discretion and without prejudice to any other remedies we may have under this Agreement or under Relevant Laws, repossess any Products delivered to the Customer on any account which has not been paid in accordance with this Agreement and commence proceedings to recover the balance of any monies owing to Astellite by the Customer.

9. Payment

- 9.1. The Customer must pay Astellite the Price for the Products the timeframe specified in the Customer Quote (without any deductions or set offs). If no payment date is specified in the Customer Quote, you will pay us:
 - (a) a deposit equal to 50% of the Price (**Deposit**) immediately upon acceptance of the Customer Quote to us;
 - (b) 40% of the Price within 7 days of receipt of the Customer Confirmation Measure Approval Order; and
 - (c) 10% of the Price on or before the scheduled delivery and installation date.

- 9.2. The Prices (and all other fees charges and amounts owing to us under this Agreement) shall be payable in Australian Dollars and are exclusive of GST, which shall be payable in addition.
- 9.3. You acknowledge that Astellite is under no obligation to
- (a) manufacture or deliver any Products to you until the Deposit is received by Astellite in full; and
 - (b) deliver and install the Products until such time as the full Price has been paid to us. If we suspend delivery and installation of the Products because you have failed to pay the full Price, we may, at our absolute discretion, charge you a storage fee to hold the products in our warehouse at our prevailing rates at the time.
- 9.4. Payment may be made by electronic funds transfer to the account set out in the invoice. Astellite may, at our absolute discretion and without notice, change the payment methods that can be used to pay for the Products and Works at any time.
- 9.5. Under no circumstances will you adjust the Price payable by you under Customer Quote. If a price adjustment is justified in the circumstances, Astellite will, at its absolute discretion, adjust the Price payable by you.
- 9.6. If you fail to pay Astellite the Price under any Confirmed Order (or any other fees, charges and amount owing to us under this Agreement) by the due date, without limiting any other remedies available to Astellite under this Agreement or any Relevant Law, Astellite may, in our absolute discretion, do any or all of the following:
- (a) charge interest on all outstanding invoices, charged at an interest rate of 2.5 % per month (24% per annum); and/or
 - (b) suspend or defer the manufacturer, delivery or installation of the Products under any or all Confirmed Orders (without liability to you) until all outstanding invoices (including interest) are paid in full; and/or
 - (c) terminate this Agreement in accordance with clause 12 (without liability to you).
- 9.7. You will pay Astellite all costs and expenses incurred in recovering any outstanding invoices (including any interest), legal costs (on a full indemnity basis) or expenses paid by Astellite in relation to enforcement steps or mercantile or collections agents.

10. Disclaimer of warranties and liability

- 10.1. To the extent that the Customer acquires goods or services from Astellite as a consumer within the meaning of the Australian Consumer Law, if the Products the Customer purchased has a major failure or are defective, Astellite, at our absolute discretion, shall:
- (a) in the case of the supply of goods, repair, replace or re-supply the goods;
 - (b) in the case of the supply of services, supply the services again; or
 - (c) refund the cost of supply the goods and/or services.
- 10.2. Nothing in this clause 10 operates to exclude, restrict or modify the application of any condition, warranty or provision implied by law, the exercise of any right or remedy, or the imposition of any liability under the Australian Consumer Law or any other statute where to do so would:
- (d) contravene that statute; or
 - (e) cause any term of this Agreement to be void,
(Non-excludable Obligation).
- 10.3. We warrant that any Products manufactured by us are free from defects in design, materials and workmanship for a period of ten years from the date installation, and we warrant that the installation works were performed by us in a workmanlike manner for a period of seven years from the date installation (**Our Warranties**). Compliance certification is issued upon receipt of full payment and project completion.
- 10.4. Except in relation to Non-excludable Obligations and subject to Our Warranties and to the maximum extent permitted by Relevant Laws:
- (a) all representations, conditions, warranties, guarantees, rights, remedies, liabilities or other terms that may be implied or imposed by custom, under the general law or by statute are expressly excluded under this Agreement;
 - (b) Astellite will not be liable to the Customer or any third party for:
 - (i) Claims and Losses (including Consequential Loss); or
 - (ii) Loss of or damage to any property or any personal injury or death to the Customer or any third person,
arising out of, relating to or connected to the provision, delivery, installation or use of the

- Products, our website and this Agreement, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring.
- 10.5. To the maximum extent permitted by Relevant Laws, Our Warranties do not apply and Astellite will not be liable to the Customer or anyone else in the following circumstances:
- (a) if you fail or neglect to confirm that the Products have been properly installed by Astellite in accordance with the Customer Quote;
 - (b) normal wear and tear to the Products;
 - (c) any failure or defect in the Products caused by the Customer;
 - (d) any failure or defect abnormal or improper use of the Products;
 - (e) any failure or defect the Products arising from any use which is contrary to Relevant Laws;
 - (f) the suitability of the Products for any particular purpose or use under specific conditions which were not made known or communicated to Astellite;
 - (g) any failure or defect that would not have occurred if the Customer had taken reasonable steps to prevent the failure from occurring;
 - (h) any failure that occurs for a reason or reasons that were specifically drawn to the Customer's attention;
 - (i) any failure or defect that ought reasonably to have been revealed to the Customer by an examination of the Products at the time the Products were installed at the Site;
 - (j) where the Products have been altered, repaired or modified by anyone other than Astellite or our Personnel;
 - (k) where the Products have been subjected to unusual or non-recommended use, misuse, neglect, accident, damage in transit, sabotage, vandalism, abuse or unusual or natural hazard or abnormal environmental conditions, Force Majeure Event or failure to operate, store and/or maintain the Products in accordance with instructions for use;
 - (l) where the Products have been installed improperly by you or anyone on your behalf (other than Astellite or our authorised Personnel);
 - (m) any failure of, or caused by, materials or workmanship which were not supplied by Astellite or where the Products have been interoperated with third party materials, goods or services;
 - (n) any failure arising from any negligent act or omission of any person other than Astellite or our authorised Personnel; or
 - (o) any failure of the Products to be reasonably fit for a disclosed purpose where the Customer did not rely on, or where it was unreasonable for the Customer to rely on, the skill or judgment of Astellite.
- 10.6. Images, weights, colours, heights and other measurements displayed on, or via, the Website or in final measurements or drawings are approximate only and may vary slightly from those Products delivered and installed at the Site. We cannot warrant or guarantee that the weight, colour, height or other measurements of the Products are accurate.
- 10.7. The Non-excludable Obligations and Our Warranties do not apply, and you are not entitled to remedy in following circumstances:
- (a) insignificant minor imperfections or superficial blemishes;
 - (b) insignificant minor variations in dimension, colour, size or finish;
 - (c) minor colour variations, optical distortions, roller wave and minor inclusions in respect of any glass supplied with the Products; or
 - (d) cosmetic adjustments made to the Products during installation.
- 10.8. We are not liable to you for any manufacturing warranties provided by third parties suppliers in respect of the Products and Astellite shall, to the extent of our ability, pass on the benefits of any manufacturing warranty provided by third party supplier to the Customer.
- 10.9. Under no circumstances will Astellite's aggregate liability, whether based upon warranty, contract, statute, tort (including negligence) or otherwise, exceed the Price paid by the Customer to Astellite under the relevant Confirmed Order (that is the subject of the Claim) in the preceding one month of the Claim.
- 10.10. To the maximum extent permitted by Relevant Laws, the Customer agrees to defend, indemnify and hold Astellite, our Affiliates and our Personnel (collectively, the **Indemnified**) harmless from and against any and all Claims and Losses (including legal costs on a full indemnity basis) that may be brought against the Indemnified or which the Indemnified may pay, sustain or incur as a direct or indirect result of or arising out of:
- (a) any breach or non-performance by the Customer or of any your obligations under this Agreement or any Customer Quote;

- (b) any act or omission (whether negligent, dishonest, fraudulent or otherwise) of the Customer or third party acting on your behalf; or
- (c) Loss of or damage to any property belonging to the Customer or any third party, or any personal injury or death arising out of or in connection with this Agreement or or any Confirmed Order.

11.Permits

It is the responsibility of the Customer to ensure that all necessary permits, permissions or authorisations are obtained for the Products to be installed at the Site, and Astellite is not liable to the Customer or any third party for any Loss or delay caused by the failure of the Customer to obtain all permits, permissions or authorisations required.

12.Termination

- 12.1. Either party may terminate this Agreement or any Confirmed Order by giving the other party at least 14 days' written notice of termination, provided if either party terminates in this manner while a Confirmed Order is in effect, the terms of this Agreement shall apply until the expiration or completion of the existing Confirmed Order. If you terminate this Agreement or any Confirmed Order in accordance with this clause, you will pay a Cancellation Fee in accordance with clause 4.1.
- 12.2. Astellite may terminate this Agreement or any Confirmed Order immediately by notice in writing if:
 - (a) you are in breach of any term of this Agreement or any Confirmed Order and such breach is not remedied within 14 days after receiving notice requiring you to do so;
 - (b) you are in breach of any term of this Agreement or any Confirmed Order and such breach is not capable of remedy; or
 - (c) an Insolvency Event occurs in respect of you.
- 12.3. On termination of this Agreement for any reason the Customer must immediately pay all outstanding Prices and any other amount owing to Astellite under this Agreement and any Confirmed Order (including interest); and
- 12.4. Termination or expiration of an individual Confirmed Order shall not affect the continuation of this Agreement or any other individual Confirmed Order then in force.

13.Dispute resolution

- 13.1. The parties must, before resorting to court proceedings (except interlocutory or interim relief), refer any dispute under or relating to this Agreement or any Confirmed Order initially to a nominated representative of each party to endeavour to resolve the dispute within 20 days.
- 13.2. If the dispute is not resolved within this period, then either party may initiate court proceedings.
- 13.3. Notwithstanding the existence of a dispute, each party must continue to perform its obligations.

14.Intellectual property

- 14.1. Astellite owns rights, title and interest in any drawings, quotations, specifications, brochures, designs, logos, photographs and Website content created or developed by Astellite.
- 14.2. Unless the Customer otherwise notifies us in writing prior to installation, Astellite may photograph or video completed installations for quality assurance, warranty records and marketing, promotional or portfolio purposes.
- 14.3. Photographs will not contain images of the Customer or identify the Customer by name, and we will not any disclose any personal information of the Customer without consent.

15.Force Majeure Event

Astellite will have no liability to the Customer or to anyone else under this Agreement if we are prevented from or delayed in performing our obligations under this Agreement, or from carrying on our business, by acts, events, omissions or accidents beyond control including, but not limited to, acts of God, failure of a utility service or transport or telecommunications network, riots, civil commotion, computer hacking, war, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or earthquake, epidemic, pandemic, mandatory government shut-down or lockdown, any disaster or adverse weather, governmental actions, default or non-performance of hosting or

data centre providers or other suppliers or sub-contractors, labour disputes, or any other failure, act or omission in our supply chain (collectively, **Force Majeure Event**).

16. Information provided on this Website

- 16.1. The purpose of this Website is to provide you with information about our Products. The information and material contained on this Website does not constitute legal, building, construction, financial, taxation or other advice. Any reliance on, and use of, the information and material contained on this website is at your own risk.
- 16.2. We do not warrant the accuracy or completeness of the information and material provided on, or via, the Website and we are under no obligation to update this information or material nor notify you of any changes unless required by Relevant Laws. We assume no responsibility or liability for any inaccuracies, errors or omissions in the information or materials contained on, or via, the website.
- 16.3. The Website, any information or material displayed on, or via, the Website about our Products are provided to you 'as is' and 'as available' without warranty conditions or guarantees as to their accuracy, completeness, timeliness, reliability, currency or fitness for purpose.

17. General

- 17.1. A waiver of any right under this Agreement and any Confirmed Order is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 17.2. If any provision (or part of a provision) of this Agreement and any Confirmed Order is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.3. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, then the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 17.4. This Agreement, each Confirmed Order, and all documents referred to therein, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 17.5. You will not, without the prior written consent of Astellite (which will not be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of our rights or obligations under this Agreement.
- 17.6. Nothing in this Agreement and any Confirmed Order is to be construed as constituting a partnership, employment relationship, joint venture, or any other form of association between the parties in which one party may be liable for the acts or omissions of any other party.
- 17.7. Provisions of this Agreement which are either expressed to survive its expiry or termination, or from their nature or context it is contemplated that they are to survive, will remain in full force and effect notwithstanding such termination. Without limitation, the parties agree that clauses 4, 8, 9, 10, 12, 13, 14, 15 and 17 will survive the termination of this Agreement. Further, any indemnity or obligation of confidence under this Agreement is independent and survives termination of this Agreement.
- 17.8. The laws of the state of Victoria, Australia govern this Agreement and each Confirmed Order. The parties agree to submit to the exclusive jurisdiction of the courts of Victoria, Australia.

18. Definitions and interpretations

18.1. Definitions

- (a) **Affiliate** means in relation to any party, a person which, directly or indirectly, (i) is Controlled by that party; or (ii) Controls that party; or (iii) is Controlled by a person referred to in (ii) above, and for this purpose **Control** means the power of a person to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes.
- (b) **Agreement** has the meaning in clause 1.1 and includes: (i) the Customer Quote; (ii) our tax invoices; and (iv) all other documents referred therein.
- (c) **Astellite, our, us** or **we** have the meaning in clause 1.1, where the context permits, our Personnel and Affiliates.
- (d) **Business Days** means each day excluding Saturdays, Sundays and public holidays in Victoria.

- (e) **Cancellation Fee** has the meaning in clause 4.1.
- (f) **Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise.
- (g) **Commencement Date** has the meaning in clause 2.
- (h) **Confirmed Order** has the meaning in clause 3.2.
- (i) **Consequential Loss** means the following, however arising and even if it is reasonably contemplated by the parties at the Commencement Date as a likely result of breach of the agreement: (i) direct, indirect, consequential, incidental, special, remote or unforeseeable loss, damage, cost or expense; (ii) loss of revenue, profit, income, bargain, opportunity, use, production, customers, business, contract, goodwill, or anticipated savings, loss caused by business interruption, or the cost of obtaining new financing or maintaining existing financing, loss of or corruption to data, loss of use of data, loss of enjoyment and non-economic loss; (iii) costs or expenses incurred to prevent or reduce loss or damage which otherwise may be incurred or suffered by a third party; (iv) loss or damage to any Works, personal or real property, or for any personal injury or death, loss of enjoyment and amenities of life or disfigurement or loss of expectation of life; (v) loss or damage of the nature set out above in clauses (i) to (iv) (inclusive) that is incurred or suffered by or to a third party.
- (j) **Customer, you or your** has the meaning in clause 1.1 (and includes any person acting on behalf of the Customer) and where the context permits, your Personnel and Affiliates.
- (k) **Customer Quote** means a written quote provided by Astellite to the Customer to manufacture, supply, deliver and install the Products at the Site (and related products and services).
- (l) **Deposit** has the meaning in clause 9.1(a).
- (m) **Force Majeure Event** has the meaning in clause 15.
- (n) **Insolvency Event** means a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or any event that has a substantially similar effect to the above events.
- (o) **Loss** means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs including Consequential Loss.
- (p) **Our Warranties** has the meaning in clause 10.3.
- (q) **Price** means the price charged by Astellite to the Customer for the manufacture, supply, delivery and installation of the Products as specified in the relevant Customer Quote.
- (r) **Personnel** means any officer, employee, agent, contractor, sub-contractor or consultant of a party.
- (s) **Products** has the meaning in clause 1.1.
- (t) **Relevant Laws** means any relevant rules of common law, principles of equity, international, federal, state and local laws, statutes, rules, regulations, proclamations, ordinances and by-laws and other subordinate legislation, rulings, or legal requirements and privacy laws, anywhere in the world.
- (u) **Site** means the place or location nominated by the Customer where the Products will be delivered and installed by Astellite.
- (v) **Term** has the meaning in clause 2.
- (w) **Website** means the website located at www.astellite.com.au and any other website notified by us from time to time.

18.2. Interpretation

In this Agreement, unless the contrary intention appears:

- (a) words or expressions used in this Agreement, which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), have the same meaning in this Agreement;
- (b) headings are for ease of reference and do not affect the meaning of this Agreement;
- (c) the singular includes the plural and vice versa and a gender includes another gender;
- (d) other grammatical forms of defined words have corresponding meanings;
- (e) a reference to this Agreement includes any schedule or annexure;
- (f) a reference to this Agreement or any other document includes a reference to it as novated, altered or replaced;
- (g) a reference to A\$, \$A, dollar or \$ is a reference to Australian currency;
- (h) a reference to anything is a reference to the whole and each part of it;

- (i) a reference to a party includes a reference to that party's executors, administrators, successors and permitted assigns;
- (j) words importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (l) an agreement, obligation, representation or warranty in favour of two or more persons is in favour of them jointly and severally;
- (m) an agreement, obligation, representation or warranty made by two or more persons binds them jointly and severally; and
- (n) including (in any form) or such as when introducing a list of items does not limit the meaning of the word to which the list relates to those items or to items of a similar kind.