

GENERAL TERMS AND CONDITIONS OF SALE

1. Definitions

(a) The following words shall have where the context so permits the following meanings:

“**Australian Consumer Law**” has the meaning given to it in the Competition and Consumer Act 2010 (Cth).

“**Date of Cancellation**” means the date upon which the Supplier receives the notice of cancellation from the Purchaser under clause 5(a).

“**Date of Delivery**” means the date upon which the Goods are despatched from the Supplier’s premises to the Delivery Point.

“**Delivery Point**” means the address nominated by the Purchaser as the place for delivery of Goods mentioned in the Sales Order.

“**GST**” means any goods and services tax including the tax imposed under A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth) as amended and any regulations thereto or any such other Act and regulations of similar effect.

“**Goods**” means all materials, supplies, plant, equipment, machinery, stores, services and the like to be provided by the Supplier under this Agreement.

“**Guarantor**” means any person who has or will guarantee the obligations of the Purchaser to the Supplier.

“**Made to Order Goods**” means Goods described as Made to Order on a Sales Order / Order Confirmation.

“**Price**” means the purchase price of the Goods specified on a Sales Order / Order Confirmation.

“**Privacy Act**” means the *Privacy Act 1988 (Cth)*.

“**PPS Act**” means the *Personal Property Securities Act 2009 (Cth)*.

“**PPSA**” means the PPS Act and any other legislation and regulations in respect of it and the following words in the PPS Act clause of this document have the respective meanings given them in the PPS Act: collateral, financing change statement, financing statement, interested person, purchase money security interest, register, registration, security agreement, security interest, proceeds and verification statement.

“**Purchaser**” means the person, firm or corporation to whom the Sales Order is issued.

“**Sales Order / Order Confirmation**” means the agreement between the Supplier and the Purchaser incorporating the quotation, these General Terms and Conditions of Sale, and all documents applicable thereto.

“**Stipulated Period**” means the period of time specified on the Sales Order or quotation as the period for which the prices shall apply.

“**Stocked Goods**” means all Goods not described as Made to Order on a Sales Order / Order Confirmation.

“**Supplier**” means Urbanstone Pty Ltd A.B.N. 28 008 764 976 or any of its Related Bodies Corporate (as that term is defined in the Corporations Act 2001 (Cth)).

“**Third Party**” means any person, company or otherwise not being the Purchaser or the Supplier.

2. Quotations

(a) Quoted prices will remain valid for a period of 30 days from quotation date unless otherwise stated.

(b) After the 30 day period described in clause 2(a), the quoted prices are subject to alteration without notice to the Purchaser.

(c) A quotation is not binding on the Supplier and may be withdrawn without notice until accepted by the Supplier in writing.

(d) Unless otherwise expressly stated, prices quoted are ex works plus delivery and GST.

(e) Any reduction to the original quantity quoted on, may result in an increase to the quoted unit price.

3. Entire Agreement

(a) The Sales Order is the only document which will be recognised by the Supplier as authority for undertaking to supply the Goods. The Sales Order constitutes the entire agreement between the parties and supersedes all previous negotiations, communications, representations or warranties in respect of its subject matter.

(b) The Supplier reserves the right to decline, by written notice to the Purchaser, to fulfil any Sales Order in whole or in part, at any time prior to the delivery of the Goods or performance of the services, in which case the Supplier will be under no obligation in respect of the Sales Order.

(c) The Sales Order may only be varied by written agreement between the parties.

4. Variation to Specifications

The Purchaser may, prior to commencement of the manufacture of Made to Order Goods or delivery of Stocked Goods, either the subject of the Sales Order, by notice in writing to the Supplier, vary the colour or vary the specifications of the Goods to be supplied. The Supplier shall not depart from the colour or specifications of the Goods ordered until first directed in writing by the Purchaser. If any such direction causes a change in cost or time required for performance an equitable adjustment shall be made to the terms of the Sales Order; if however the Supplier, prior to receiving the written notice had commenced the manufacture of Made to Order Goods then the Purchaser is not entitled to vary the colour or vary the specifications of the Made to Order Goods the subject of the Sales Order and is obligated to pay for the Made to Order Goods as ordered.

5. Cancellation of Order

(a) The Purchaser may, prior to commencement of the manufacture of Made to Order Goods or delivery of Stocked Goods, either the subject of the Sales Order, by notice in writing to the Supplier, cancel part of the entire Sales Order.

(b) In the event of cancellation under 5(a), the Purchaser shall be required to pay to the Supplier its actual out-of-pocket expenses and any reasonable expenses incurred by the Supplier prior to the Date of Cancellation. However, the Price of Made to Order Goods manufactured prior to the Date of Cancellation must be paid by the Purchaser.

6. Price and GST

(a) Any reference in this clause to terms defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (“**Act**”) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

(b) All prices for Goods in a Sales Order are expressed in Australian Dollars and shall be determined by the Supplier as follows:-

(i) Pursuant to quoted prices payable per item or square metre rate or per Supplier’s price list, plus GST if the quoted price is not GST inclusive.

(ii) The Purchaser is liable for the amount of any GST payable in respect of the taxable supply made under a Sale Order. All Customs Duty, freight and other charges shall be paid by the Purchaser.

(c) The Parties agree that:

(i) If one of the parties is entitled to be reimbursed for an expense or outgoing incurred in connection with a Sales Order, the amount of the reimbursement will be net of any input tax credits which may be claimed by the party being reimbursed or the representative member of the GST Group in which that party is a member in relation to that expense or outgoing.

(ii) The supplier must issue:

A. a tax invoice to the recipient of any taxable supply in respect of that taxable supply; and

B. any relevant adjustment note to the recipient of a taxable supply in respect of any adjustment that arises from an adjustment event relating to that taxable supply; and

(d) Any review or adjustment of any consideration payable for a taxable supply must take into account that this clause requires an adjustment of that consideration and must take account of any adjustment to that consideration which has already been or is required to be determined, under the provisions of this clause.

7. Terms of Payment

(a) Unless otherwise agreed by the Supplier, the Goods under the Sales Order must be paid for in full prior to the Delivery Date. Tax invoices are issued on the date product is despatched.

(b) In respect of all Goods that are supplied to a Purchaser that has been given a 30 day credit account by the Supplier (**Account Customer**), the following provisions apply:

(i) The Supplier shall invoice the Purchaser for payment for each delivery made or for goods not ready for delivery but stored at the Supplier’s premises.

(ii) Payment to the Supplier must not be subject to the Purchaser receiving payment for the Goods supplied from a Third Party. No cash retentions are to be deducted from any payment made to the Supplier by the Purchaser. Credit card payments will attract surcharges. Such rates will be applied at the same rate that these costs are borne by Urbanstone Pty Ltd.

(iii) Payment is required to be made by the Purchaser by the 30th day from the end of the month in which the relevant Goods are invoiced. The Supplier reserves the right to charge the Purchaser interest at the rate of ONE (1) per centum per annum above the business overdraft reference rate charged by the Westpac Bank on amounts over \$100,000 on any amount that is due and payable by the Purchaser to the Supplier but unpaid. The Purchaser acknowledges that this interest rate is to be characterised as a charge consequent upon the Purchaser’s default and not a charge referable to the provision of credit.

(iv) Liquidated damages provisions do not apply to the supply of Goods by the Supplier, unless specified otherwise in a Sales Order or otherwise agreed in writing by both the Supplier and the Purchaser prior to placement of an order to which the liquidated damages may relate.

(c) The Supplier reserves the right to vary, at any time, the terms of the payment that apply in respect of any Account Customer if the credit worthiness of that Account Customer becomes, in the Supplier’s opinion, unacceptable to the Supplier. If the Supplier forms this opinion, it may require immediate payment by the Purchaser to be made in cash in full or by bank cheque or may require further guarantees, indemnities or other security to be provided by the Purchaser prior to agreeing to supply any Goods to that Account Customer.

(d) Any payment by the Purchaser to the Supplier must be made without any deduction, set off or counterclaim.

8. Default

- (a) If the Purchaser:
- (i) defaults in the due and punctual observance of all or any of their obligations or covenants under a Sales Order, including failure to pay for any Goods at the time that payment for those Goods falls due; or
 - (ii) being a person, dies or commits an act of bankruptcy or analogous event or circumstance; or
 - (iii) being a company, is unable to pay its debts when they fall due or takes or shall have taken against it any action for its winding up, placement under official management, administration or receivership or analogous event or circumstance, (collectively "Default"), then the Supplier without prejudice to any right or remedies open to it may:
 - (iv) terminate or suspend performance under a Sales Order with immediate effect by giving the Purchaser notice, whether or not any credit period relating to the supply of the Goods has expired;
 - (v) cancel the credit made available by the Supplier to the Purchaser;
 - (vi) retain any security given or monies paid by the Purchaser to the Supplier or available through the enforcement of any guarantee, security or bond and apply such moneys in reduction of any sum owed or owing by the Purchaser to the Supplier; or
 - (vii) where title to the Goods has not passed to the Purchaser, enter upon the Purchaser's premises or enter upon any premises to which the Purchaser has a right of access to take possession of and remove the Goods under this document or any other agreement between the Purchaser and the Supplier.
- (b) If a Sales Order is terminated by the Supplier by reason of a Default:
- (i) any right of the Purchaser to obtain property in the Goods shall cease;
 - (ii) the Purchaser must, at the Supplier's election:
 - A. pay to the Supplier as liquidated damages on account of loss of bargain the balance of the Price (if any) together with all costs and expenses incurred in connection with the termination; or
 - B. immediately return, at the Purchaser's cost, the Goods to the Supplier's premises free of any encumbrance, and if the Purchaser fails to return any Goods then the Supplier or the Supplier's servants or agents may take possession of the Goods, and the cost of taking possession shall be considered as part of the price of those Goods; and
 - (iii) the Supplier may retain all monies paid to it under a Sales Order.
- (c) The rights of the Supplier under a Sales Order, including the right to the return of or to repossess the Goods, is without prejudice to any other rights of the Supplier at law, in equity or by statute, including any right to recover damages for breach of contract by the Purchaser.

9. Completion of Goods

If the Goods are manufactured and completed by the Supplier and the Purchaser has over ordered or does not require the Goods or is not ready to take delivery of Goods, then the Purchaser remains obliged to pay for the Goods in full and for all costs incurred in or about the storage of the Goods by the Supplier. The Supplier reserves the right to require the Purchaser to take delivery of the Goods in the circumstances contemplated by this clause.

10. Warranty

- (a) The Supplier acknowledges that there are certain conditions and warranties implied or guaranteed by law (including under the Australian Consumer Law) in the Sales Order which cannot be excluded, restricted or modified by agreement ("non-excludable rights").
- (b) Subject to clause 10(a), the Supplier disclaims and expressly excludes all conditions and warranties expressed or implied, and all rights and remedies conferred on the Purchaser by any statute, law, equity, trade, custom or usage otherwise howsoever other than any non-excludable rights.
- (c) To the maximum extent permitted by law, the liability of the Supplier for any breach of a non-excludable rights is limited, at the Supplier's option, to the repair or replacement of the Goods or the refund of the price paid by the Purchaser. Without limitation, the liability of the Supplier for breach of a condition or warranty compulsorily implied into a Sales Order by the Australian Consumer Law shall be limited to the extent permitted by the Australian Consumer Law and the Supplier shall have no obligation beyond the obligations imposed by the Australian Consumer Law.
- (d) The Purchaser acknowledges that it relies solely upon its own skill and judgment and that the Supplier is not bound by nor responsible for any term, condition, representation or warranty other than a warranty given by the Supplier in writing, which shall be personal to the Purchaser and shall not be capable of assignment to any subsequent purchaser of the Goods.
- (e) Except as set out in this clause, the Supplier shall be under no liability for any damage, injury (to persons or property), death, direct or consequential or other loss or loss of revenue, profits, income, goodwill costs, business opportunities or anticipated savings, charges and expenses on the part of the Purchaser or any other person other than to repair or replace as specified in clause 10(c). The Supplier shall not be liable to the Purchaser if for any reason beyond the Supplier's control it is not able to deliver or supply any of the Goods.
- (f) Deterioration of the product caused by improper installation method or by the application of chemicals such as sealants, acids, salt solutions and other external elements is expressly excluded from any warranty given by the Supplier (if any). Recommended installation method is available on request or on the Supplier's website www.urbanstone.com.au.

11. Variations in Colour, Texture & Finish

Every reasonable endeavour is made by the Supplier to match colour, texture and finish to samples of the Goods ordered, however, variations may occur. The Supplier does not accept any claim for liability relating to any variations of the Goods as colour and shade variations are an inherent part of the manufactured product.

12. Delivery

- (a) All Goods shall be delivered by the Supplier to the Delivery Point and if the Supplier, or its servant or agents, obtain from any person at the Delivery Point a receipt or signed delivery docket for the Goods, then the Supplier shall be conclusively deemed to have delivered the Goods in accordance with the Sales Order. If the Delivery Point shall be unattended or if delivery cannot otherwise be effected by the Supplier, the Supplier may, at its option, leave the Goods at the Delivery Point or store the Goods at the Supplier's discretion. If the Goods are stored by the Supplier, the Goods are stored at the Purchaser's sole risk and the Purchaser shall pay or indemnify the Supplier for all costs and expenses incurred in or about the storage of those Goods and the Supplier shall be at liberty to re-deliver them to the Purchaser from the place of storage at the Purchaser's expense.
- (b) It is the Purchaser's responsibility to ensure that the premises located at the Delivery Point is easily accessible and is safe and secure. If the premises located at the Delivery Point is not easily accessible or safe and extra costs are incurred by the Supplier in unloading the Goods, then the extra costs will be charged to and be payable by the Purchaser to the Supplier.

13. Time of Delivery

- (a) Any time quoted for delivery is an estimate only and the Supplier shall not be liable for any loss or damage howsoever arising as a result of or consequence or any failure to deliver or delay in delivery arising from any circumstances whatsoever, UNLESS the failure or delay in delivery of the Goods is due to the Supplier's own negligence or wilful default and the Purchaser notifies the Supplier in writing of such loss or damage within TWO (2) days from the Date of Delivery.
- (b) The Purchaser shall not be relieved of any obligation to accept or pay for Goods by reason of any delay in delivery.
- (c) If the Supplier determines that it is or may be unable to deliver within a reasonable time or at all the Sales Order may be cancelled by the Supplier. In the event of cancellation, the Purchaser shall not have any claim, and irrevocably and unconditionally waives any claim it may have against the Supplier for any liability damage, loss, cost or expense whatsoever.
- (d) It is the responsibility of the Purchaser to ensure delivery is not affected by lack of credit facility with the Supplier.

14. Short or Wrongful Delivery

The Purchaser must notify the Supplier in writing within TWO (2) days after delivery of the Goods of any short or wrongful delivery of the Goods and any claim not so notified within that time shall be deemed to be absolutely and unconditionally waived by the Purchaser.

15. Examination of Goods

- (a) The Purchaser will be responsible for immediate examination of the Goods at the Supplier's premises and at the Delivery Point and the Supplier shall, expect as may otherwise be provided by law, not to be liable for any claim for which it would otherwise be liable in respect of damaged or defective Goods UNLESS particulars of such claims are notified to the Supplier in writing within TWO (2) days after delivery by the Supplier at the Delivery Point.
- (b) The Goods in question should be set aside for inspection by a nominated representative of the Supplier.

16. Sub Contractors

The Supplier takes no responsibility for the workmanship or the quality of work performed by sub contractors engaged by the Purchaser, whether recommended by the Supplier or not.

17. Risk

All Goods delivered by the Supplier to the Purchaser shall be at the Purchaser's sole risk. The Supplier will not be liable for, and the Purchaser irrevocably and unconditionally waives any claim it may have against the Supplier in respect of, any damage or loss whatsoever arising out of or in connection with the carriage of the Goods, unless such damage or loss is as a direct result of the Supplier's negligence or wilful default.

18. Title

- (a) Legal and beneficial title in and to the Goods shall remain with the Supplier until the Purchaser has paid in full:
- (i) the Price due and payable in respect of the supply of any Goods by the Supplier to the Purchaser; and
 - (ii) all amounts due and owing on any account by the Purchaser to the Supplier.
- (b) Until the Goods are paid for in full, the relationship between the parties shall be fiduciary, the Purchaser shall hold the relevant Goods as bailee of the Goods, the Purchaser is required to store the Goods separately and mark them so as to be identified as being or being made from or with any Goods which are the property of the Supplier.
- (c) Should the Goods (or any part of them) be incorporated into a new product or products ("new product"), the incorporation of Goods, in whatever proportions, shall be deemed to have been effected on behalf of the Supplier and the new product shall be the property of the Supplier, to the maximum extent permitted by the PPSA. The right of the Purchaser to incorporate the Goods in a new product shall automatically cease if a receiver or a manager is appointed over any of the Purchaser's assets or if a winding up order is made against or resolution is passed for the winding up of the Purchaser or the Purchaser is placed under official management or administration the Purchaser becomes insolvent or bankrupt or commits an act of bankruptcy or the Purchaser assigns the Goods or any part of the Goods for the benefit of a creditor or if the Supplier at any time revokes such rights by notice to the Purchaser.
- (d) The Purchaser must not at any time prior to title passing to the Purchaser, attach or affix the Goods upon any property without the Supplier's prior written consent or otherwise in accordance with this document. Even though the Goods may be fixed or attached to any land, the Purchaser and the Supplier record their intention that as between themselves, the Goods are intended to be treated as personal property and the Supplier can remove them in accordance with its rights under this document.

- (e) Until such time as the Goods have been paid for by the Purchaser, the Purchaser shall have no right to sell or otherwise dispose of the Goods or any new product incorporating the Goods until the Price in respect of those Goods has been paid in full to the Supplier, unless:
 - (i) the Goods or the new product incorporating the Goods are sold in the ordinary course of the Purchaser's business; and
 - (ii) that part of the proceeds of sale of the Goods and the new product incorporating the Goods as represents the price of the relevant Goods shall be paid forthwith to the Supplier and until such part of the proceeds are so paid, they shall be held by the Purchaser in trust for the Supplier.
- (f) The rights of the Purchaser under clause 18(d) shall automatically cease if a receiver or receiver and manager is appointed over any of the Purchaser's assets or if a winding up order is made against or resolution is passed for the winding up of the Purchaser or the Purchaser is placed under official management or administration the Purchaser becomes insolvent or bankrupt or commits an act of bankruptcy or the Purchaser assigns the Goods or any part of the Goods for the benefit of a creditor or if the Supplier at any time revokes the power of sale by notice to the Purchaser.
- (g) On determination of the Purchaser's rights under clause 18(d) above, the Supplier shall become entitled to the possession of the Goods and the new product incorporating the Goods. The Purchaser is required to place the Goods and the new product at the disposal of the Supplier who shall be entitled to enter upon the premises of the Purchaser and remove the Goods and the new product.
- (h) This clause does not limit the rights of the Purchaser following a Default under clause 7 or at law. The Supplier reserves the right to waive this clause and seek payment in full for Goods which are manufactured to order.

19. PPSA

- (a) The Purchaser agrees that this document creates an interest by way of security in the Goods and in any proceeds derived from or relating to the Goods, to the extent provided for in the PPSA. The Supplier must ensure that any proceeds are and remain identifiable or traceable in respect of the particular Goods from which they are derived or to which they relate.
- (b) Nothing in this document may be construed as an agreement or consent by the Supplier to:
 - (i) subordinate any security interest granted in favour of the Supplier in favour of any person; or
 - (ii) defer or postpone the date of attachment of any security interest granted in favour of the Supplier.
- (c) The Purchaser consents to the Supplier affecting and maintaining a registration on the register (in any manner the Supplier considers appropriate) in relation to any security interest contemplated or constituted by this document in the Goods and the proceeds arising in respect of any dealing in the Goods.
- (d) The Purchaser agrees to sign any documents and provide all assistance and information to the Supplier required to facilitate the registration and maintenance of any security interest. Without limitation, the Supplier may at any time register a financing statement or financing change statement in respect of a security interest (including any purchase money security interest).
- (e) The Supplier waives the right to receive notice of a verification statement in relation to any registration on the register of a security interest in respect of the Goods.
- (f) The Purchaser undertakes to:
 - (i) not, without the written consent of the Supplier, create or cause to be created a security interest over, or in respect of its rights in, the Goods, other than a security interest arising under this document and other than a security interest granted by the Purchaser in all of its assets in favour of a bank or similar financial institution;
 - (ii) do anything (in each case, including executing any new document or providing any information) that is required by the Supplier:
 - A. to ensure that the security interest is enforceable against third parties, and is otherwise effective;
 - B. so that the Supplier acquires and maintains one or more perfected security interests of the highest priority available in respect of the Goods and any proceeds;
 - C. to register a financing statement or financing change statement; and
 - D. to ensure that the Supplier's security position, and rights and obligations, are not adversely affected by the PPSA; and
 - (iii) immediately notify the Supplier if any other person attempts to enforce a security interest in the Goods;
 - (iv) not change its details recorded in a financing statement without giving the Supplier 10 business days' notice.
- (g) If Chapter 4 of the PPS Act would otherwise apply to the enforcement of a security interest arising under or in connection with the Goods and to the extent permitted by the PPS Act, the Purchaser and the Supplier agree:
 - (i) section 115(1) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Purchaser will have no rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 128, section 129; section 130; section 132(3)(d); section 132(4); section 134(1); section 135; section 142 and section 143; and
 - (ii) section 115(7) of the PPS Act allows for the contracting out of provisions of the PPS Act, the following provisions of the PPS Act will not apply and the Purchaser will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
- (h) The Supplier and the Purchaser shall not disclose information and documents supplied by either of them to the other in connection with a Sales Order which are confidential and are not in the public domain, except as required by law.
- (i) Unless otherwise agreed and to the extent permitted by the PPSA, the Purchaser and the Supplier agree not to disclose information of the kind referred to in section 275(1) of the PPS Act to an interested person, or any other person requested by an interested person. The Purchaser waives any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- (j) For the purposes of section 20(2) of the PPS Act, the collateral is the Goods provided by the Supplier to the Purchaser from time to time. This agreement is a security agreement for the purposes of the PPSA.
- (k) The Supplier may apply amounts received in connection with this document to satisfy obligations secured by a security interest contemplated or constituted by this agreement in any way the Supplier determines in its absolute discretion (including so as to preserve any purchase money security interest).
- (l) The Purchaser agrees to notify the Supplier in writing of any change to the Purchaser's details set out in this agreement, within 5 days from the date of such change.

20. Pallets

Pallets are supplied free of charge, remain the property of Urbanstone Pty Ltd and are returnable in Western Australia only.

21. Advice

- (a) Any advice, recommendation, information, assistance or service provided by the Supplier in relation to the Goods, including use and application of the Goods, is given in good faith.
- (b) No liability or responsibility is accepted by the Supplier for any damage, loss (direct or indirect) or any consequential loss suffered by the Purchaser as a result of reliance upon the advice, recommendation, information, assistance or service for delivery to the Purchaser.

22. Indirect Loss

Notwithstanding any other provision of this Sales Order to the contrary, the Supplier shall not be liable for any loss or damage to the Purchaser arising from or caused or contributed by the negligence of the Supplier, its servants or agents, nor shall the Supplier be liable for special, incidental, indirect or consequential loss or damage suffered by the Purchaser as the result of a breach by the Supplier of its obligations or otherwise including but not limited to economic or consequential loss, loss of profits or revenue costs arising from such breach.

23. Waiver

A waiver by the Supplier of the breach of any provision of the Sales Order shall not constitute a waiver of any other breach of such provision or any other provisions.

24. Instalments

- (a) The Supplier reserves the right to deliver by instalment. Failure of the Supplier to deliver any instalments shall not entitle the Purchaser to cancel the balance of the Sales Order.
- (b) In the event of the Purchaser making default in respect of any instalment, the Supplier may elect to treat the default as a breach of contract relating to each other instalment.

25. Returns

Returns will be accepted at the discretion of the Supplier. No returns will be accepted for any Goods which are classified as reject or discontinued lines or without the prior approval from the Supplier. Credit for Goods returned (which are accepted by the Supplier) will be subject to cartage costs plus a reduction of 20% of the invoice value to cover handling and restocking expenses. No returns will be accepted on opened pallets or on any item especially obtained, imported, made to order or especially packaged with mixed products.

26. Inspection

- (a) Any inspection or test agreed upon prior to the acceptance of the Goods by the Purchaser, must unless otherwise agreed, be carried out by the Purchaser or its designated agent at the Supplier's works.
- (b) If any specialised inspection is required or special test prescribed by the Purchaser, the cost shall be to the Purchaser's account. In the case of such inspection, and without limiting any other provision of this document, the Suppliers accepts no responsibility for any defects in the Goods which are identified once the Goods in question have left the Supplier's site.

27. Sub-Contracting

The Supplier reserves the right to sub contract the production or supply of the whole or any part of the Goods or of any materials or services to be supplied.

28. Laws, Regulations, Permits etc.

The Purchaser shall obtain all permits, licences and give all notices required to be given and shall pay all fees, deposits and taxes required to be paid under all laws (Federal, State or Municipal) in any way affecting or applicable to the acquisition, manufacture and/or supply of the goods.

29. Severance

If any provision of the Sales Order shall be determined to be void by any court of competent jurisdiction, then such a determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.

30. Force Majeure

- (a) If the Supplier is rendered unable, wholly or in part, by force majeure or carry out its obligation under a Sales Order, then the Supplier shall give to the Purchaser written notice of the force majeure with reasonably full particulars thereof whereupon:
- (i) the obligations of the Supplier so far as it is affected by the force majeure shall be suspended during not longer than the continuance of the force majeure; and
 - (ii) and period or periods of time referred to in the Purchase Order within which a particular obligation or responsibility or duty is to be performed shall be extended by a period of time equal to that during which the force majeure continues.
- (b) The Supplier shall use reasonable diligence to remedy the force majeure.
- (c) The term "force majeure" in this clause 30 shall mean any cause which is not within the reasonable control of the Supplier and without limiting the generality of the foregoing, shall in so far as the same is not within such control, include any one or more Act of God, strike, lockout or other labour difficulty, act of the public enemy, war, blockade, revolution, riot, insurrection, civil commotion, lightning, storm, flood, earthquake, explosion, action, demand, order, restraint, restriction, requirements, prevention, frustration or hindrance by or any government or any government department or authority or other duly constituted authority or statutory corporation or local government authority, embargoes and unavailability of essential equipment and raw materials.

31. Future Dealing

Unless otherwise agreed by the Purchaser and the Supplier, the terms and conditions specified in this document shall be incorporated by implication and conduct into all future agreements by the Supplier, to supply Goods, with the Purchaser.

32. Collection Cost

The Purchaser agrees to indemnify the Supplier for all legal costs, charges, expenses and disbursements incurred in the collection or attempted collection of monies due, or the enforcement or attempted enforcement of any rights, under or in respect of a Sales Order.

33. Quantity Estimates

No responsibility will be taken by the Supplier for over or under estimates to quantities. Additional quantities manufactured or delivered will be treated as a further order of Goods.

34. Security

If the Purchaser is the owner of real property capable of being charged, the Purchaser, for the purpose of securing its obligations and liabilities to the Supplier, and in consideration of the Supplier supplying the Goods to the Purchaser, hereby charges and mortgages all its legal and equitable interest of whatsoever nature held in any real property both present and future in favour of the Supplier and the Purchaser hereby consents to the Supplier lodging a caveat or caveats in respect of such interest.

35. Conditions of Sale

- (a) All contracts and agreements entered between the Supplier and the Purchaser are subject to the "General Terms and Conditions of Sale" appearing herein and as amended from time to time and shall prevail where inconsistencies may exist with conditions on the Sales Order or the Purchaser's conditions.
- (b) Terms and conditions submitted by the Purchaser with any purchase order do not form part of the Sale Order or any other contract between the Purchaser and the Supplier, unless expressly agreed in writing by the Supplier. To the extent that any other term and condition is sought to be incorporated into a Sales Order, that term and condition is of no effect.

36. Privacy Disclosure and Consent

- (a) The Purchaser agrees that the Supplier is authorised to and may:
- (i) obtain from a credit-reporting agency a credit report containing personal credit information about the Purchaser in relation to credit provided by the Supplier; and
 - (ii) give information about the Purchaser to a credit reporting agency for the following purposes:
 - A. to obtain a consumer credit report about the Purchaser;
 - B. to allow the credit reporting agency to create or maintain a credit information file containing information about the Purchaser; or
 - C. any other purpose permitted by law.
- (b) The Purchaser agrees that the Supplier may disclose or exchange information about the Purchaser with or to:
- (i) any person named in a consumer credit report issued by a reporting agency; or
 - (ii) any trade referee that the Purchaser has given to the Supplier, for the following purposes:
 - (iii) to assess an application by the Purchaser for the supply of Goods by the Supplier;
 - (iv) to assess the status of the Purchaser's credit account with other persons; and
 - (v) to assess the credit worthiness of the Purchaser.
- (c) The Purchaser consents to the Supplier being given a consumer credit report to collect an overdue monies for the purposes s.18K(1)(h) of the Privacy Act.
- (d) The Purchaser agrees that personal information of or relating to the Purchaser may be used, disclosed and retained by the Supplier for the following purposes and for other purposes as shall be agreed between the Purchaser and Supplier or are required or permitted by law from time to time:
- (i) the provision of the Goods;
 - (ii) marketing of Goods by the Supplier, its agents or distributors in relation to the Goods;
 - (iii) analysing, verifying or checking the Purchaser's credit, payment and status in relation to provision of Goods;
 - (iv) processing of any payment instructions, direct debit facilities or credit facilities requested by the Purchaser; and
 - (v) enabling the daily operation of Purchaser's account or the collection of amounts outstanding in the Purchaser's account in relation to the Goods.

37. Governing Law

These "General Terms and Conditions of Sale" shall be governed and construed according to the laws for the time being in force in the State of Western Australia and the parties respectively hereby submit to the jurisdiction of the Courts thereof and all Courts competent to hear appeals therefrom.

38. Further assurances

The Purchaser must do everything necessary to give full effect to this document.

39. General Interpretation

In this document, unless inconsistent with the context:

- (a) where a party comprises of more than one entity then any agreement, warranty, representation or obligation binds those entities jointly and severally.
- (b) a word which denotes the singular denotes the plural and vice versa and a word which denotes any gender denotes any other gender;
- (c) the provisions and obligations of this Agreement are independent of each other and if any of them is or becomes illegal or unenforceable the other provisions and obligations remain in full force and effect;
- (d) a reference to any party includes its or their successors in title or personal representatives as the case may be;
- (e) if any party is a trustee of a trust then any agreement, warranty, representation or obligation binds such party both in its capacity as trustee and in its own right
- (f) a reference to any statute or statutory provision includes any consolidated, modification, substitution or replacement of the statute or statutory provisions and any regulations or by-laws issued under the statute.

40. Notices

All notices, other documents and communications required or permitted to be given to the Supplier shall be in writing and be addressed to:

Urbanstone Pty Ltd
PO Box 3853
Success WA 6964
Telephone: (08) 9417 2444
Facsimile: (08) 9417 7060