These are the entire terms and conditions of all goods, merchandise and services (Goods) supplied by Gordon Brothers Industries Pty Ltd (ABN 54 160 126 456) (GBI) to any person, firm or company placing an order with GBI (Customer), or where GBI are used during the provision of a service to the Customer (Terms and Conditions). Except as otherwise expressly agreed upon in writing between a duly authorised officer of GBI and the Customer, these Terms and Conditions shall apply notwithstanding any provisions to the contrary which may appear on any form or other document issued by the Customer.

1. ORDERS

1.1. All orders placed with GBI shall only be accepted subject to these Terms and Conditions and such altered Terms and Conditions shall apply after notification by GBI to the Customer.

1.2. GBI reserves the right to accept or decline, in whole or in part, any order placed by the Customer.

1.3. If a Customer cancels or alters any order or part order at any time after GBI has received the order then without prejudice to any other rights or remedies it may possess GBI reserves the right to charge to the Customer the costs of any Goods or materials already acquired for the order together with the costs of any return labour and tooling expended to the date of such cancellation or alterations.

1.4. Goods and Services Tax (GST), Sales Tax or any other applicable tax or duty payable shall be paid or reimbursed by the Customer to GBI on demand and the Customer shall indemnify and keep indemnified GBI in respect of all taxes and duties including GST arising out of any sale of Goods or the subsequent use of Goods after the sale to the Customer.

2. PRICES

All the prices shall be those referred to in GBI’s price lists and/or arrangements current at the date of invoice and prices shall be subject to change without notice.

3. TERMS OF PAYMENT

3.1. Unless otherwise stated on the invoice all prices are strictly net. The granting of credit to a Customer shall be at the sole and absolute discretion of GBI and unless otherwise specified by GBI the Customer shall make payment of all amounts within 30 days of the date of invoice.

3.2. Customers shall not be entitled to withhold payment of any account by reason of any account query, dispute or set-off. The Customer agrees to pay GBI administration and handling fees in respect of any copies of documents required or other processing involved in the conduct of the account and such fees will be charged to the Customer’s account.

3.3. Without limiting GBI’s rights under clause 6.1 and 11, if the Customer fails to make payment in accordance with clauses 3.1 and 3.2, GBI shall be entitled to:

3.3.1. require the payment of cash upon delivery of any further Goods;

3.3.2. charge interest from the due date for payment at the rate of 5% per annum on all overdue unpaid amounts until payment is received, with such interest to be compounded weekly;

3.3.3. be indemnified and kept indemnified by the Customer for all other costs, expenses and charges incurred by GBI as a result of the failure to make payment including but not limited to any merchantable agents’ costs and legal costs and disbursements on a solicitor-client basis;

3.3.4. credit any payments received from the Customer first against any interest charges and other costs to which GBI is entitled under these Terms and all such charges shall be payable on demand; and

3.3.5. cease all further deliveries to the Customer and terminate the relevant order with the Customer.

3.4. Customers having overdue accounts will be precluded from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programmes until their accounts are no longer overdue.

4. DELIVERY

4.1. An estimate or time quoted for delivery is an estimate only and GBI shall endeavour to effect delivery at the time or times required by the Customer, but failure to do so shall not confer any right of cancellation or refusal of delivery on the Customer. To the maximum extent permitted by law, GBI shall not liable to the Customer for any loss or damage (including CONSEQUENTIAL LOSS) whatsoever and howsoever arising caused directly or indirectly by any delay or failure in delivery. Any delay in delivery by GBI does not relieve the Customer of its obligation to accept that delivery and any remaining delivery.

4.2. If the Customer requests special delivery services (e.g. express post or air freight) which are not part of GBI’s standard delivery services (as disclosed at time of ordering), then the charges for such special delivery services may be levied on the Customer.

4.3. GBI’s obligations to deliver shall be discharged on arrival of the Goods at the Customer’s nominated delivery destination, nominated transport company, nominated agent or the address appearing on the invoice. The Customer shall unloading the Goods upon delivery, provided that if the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, GBI shall be entitled to charge a fee for any delay experienced or arranged for the storage of the Goods at the risk and cost of the Customer including all transportation, storage and other consequential costs.

4.4. GBI may, at its sole and absolute discretion, make and invoice partial deliveries and each partial delivery shall be a separate sale pursuant to these Terms and Conditions.

5. INSPECTION

5.1. The Customer shall examine the Goods immediately after delivery and GBI shall not be liable for any delivery, shortage, defect or damage unless GBI receives details in writing within seven days of the date of delivery of the Goods.

6. PROPERTY AND RISK

6.1. Notwithstanding delivery of the Goods or their installation, property in any given Goods shall remain with GBI until the Customer has paid and discharged any and all other indebtedness to GBI on any account whatsoever, including all applicable GST and other taxes, levies and duties (Amount Owning). Any payment made by or on behalf of a Customer which is later avoided by the application of any statutory provision shall be deemed not to discharge the Customer’s Amount Owning and, in such an event the parties are to be restored to rights which each respectively would have had if the payment had not been made.

6.2. The risk in the Goods shall pass to the Customer upon delivery to the Customer or his agent in accordance with clause 4.3.

6.3. The Customer acknowledges that it is in possession of the Goods solely as a bailee for GBI until payment as defined in clause 3 has been made in full to GBI and until such payment has been made.

6.3.1. the Customer shall not use the Goods but shall keep them safe and in their original packaging and shall be fully responsible to GBI for any loss or damage to the Goods while in the Customer’s possession (howsoever caused following delivery).

6.3.2. the Customer shall store the Goods separately from its own Goods and those of any other party and in a manner which clearly identifies the Goods, whether as separate challets or as components, as the property of GBI; and

6.3.3. shall maintain records of all Goods owned by GBI identifying them as GBI property, of the persons to whom the Goods are sold or disposed of and of the payments made by such persons for such Goods. The Customer shall allow GBI to inspect these records and the Goods themselves on request.

6.4. The Customer hereby irrevocably grants to GBI, its agents and servants, an unrestricted right and licence, without notice to enter premises occupied by the Customer to identify and remove any of the Goods the property of GBI in accordance with the Terms and Conditions without in any way being a trespasser or a person claiming through the Customer. GBI shall have the right to sell or dispose of any such Goods removed or otherwise in its sole discretion and shall not be liable for any loss occasioned thereby.

6.5. If the Goods are affixed to other materials, the totality thereof shall be the property of GBI and exclusive property of GBI until payment as defined in clause 3 has been made in full to GBI unless the other materials or part thereof are or is the property of a party or parties other than the Customer in which case the totality thereof shall be deemed to be owned as tenants-in-common with such other party or parties in shares corresponding to the respective amounts paid or payable by the Customer in respect of such other party or parties.

6.6. The Customer shall at liberty to agree to sell the Goods (independently or affixed to other materials) subject to the condition that until payment has been made in accordance with clause 3, the Customer shall sell as an agent and bailee for GBI and that the entire proceeds from the sale thereof shall be held in a separate account on trust for GBI.

6.7. The right to on-sell, deal or otherwise dispose of the Goods in the normal course of trade may be revoked at any time by GBI and shall automatically cease if any of the circumstances in clause 11 apply.

7. SECURITY INTEREST

7.1. If a term used in this clause has a particular meaning in the Personal Property Securities Act 2009 (Cth) (PPSA) it has the same meaning in this clause.

7.2. In respect of any Security Interest created by or contemplated under these Terms and Conditions, the Customer agrees that:

7.2.1. it grants a security interest in and purchase money security interest in the Goods supplied to it for the purposes of the PPSA, as security for all Amounts Owning, which is a continuing security despite any settlement of account or other matter or thing until a final discharge is given to GBI (which may be forthwith given).

7.2.2. it will execute such further documents and take steps required by GBI to register a financing statement or financing charge statement in relation to the Goods on the Personal Property Securities Register, or otherwise perfect GBI's interest in the
supplying equivalent Goods; or payment of the cost of replacing the Goods, repairing the Goods or supplying equivalent Goods (subject to the Customer’s obligation to mitigate its loss and any betterment); or reimbursement of some or all amounts paid by the Customer in respect of the Goods.

9.6. Unless the claim is by a consumer within the Australian Consumer Law and that law requires a longer period in respect of such a claim, any claim by the Customer in respect of defective Goods or damaged Goods must be made in writing within seven days of the delivery of the Goods, unless a longer period is expressly agreed to by GBI in writing.

9.7. This clause 9 shall survive termination of any contract between the GBI and the Customer for any reason.

10. FORCE MAJEURE

GBI shall not be liable for any failure or delay in supply or delivery of the Goods where such failure or delay is wholly or partly due to any cause or circumstance whatsoever outside the reasonable control of GBI including, without limitation, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storm or tempest, health, vandalism, riot, civil commotion or accident of any kind.

11. TERMINATION

If the Customer fails to comply with any of these Terms and Conditions or being a natural person or persons commit any kind of bankruptcy, or being a corporation passes a resolution for winding-up or liquidation (other than for the purposes of reorganisation or reconstruction) or administration or enters into any composition or arrangement with creditors or if a receiver or manager or administrator or controller is appointed for any property or assets of the Customer or becomes liable to be wound-up by reason of insolvency or if any petition is presented for its winding-up, or if a liquidator or administrator is appointed, GBI may, without prejudice to any other right or remedy it may possess at law, terminate the contract between it and the Customer, immediately recover possession of any Goods not already paid for in accordance with these Terms and Conditions and recover from the Customer on an indemnity basis all loss and damage resulting from the termination.

12. RETURNS

Other than in respect of GBI’s obligations pursuant to clause 9 hereof GBI shall not be liable to accept any returned Goods but may in its absolute discretion accept the return of Goods, provided that such Goods shall only be accepted for return with the prior written approval of a duly authorised representative of GBI. Goods returned for credit pursuant to this clause will be subject to a handling and administration charge equivalent to 20% of the invoiced value of the returned Goods. Return freight and other expenses will be paid for by the Customer and no returns of special Goods will be accepted. Any returned Goods must be accompanied with the relevant invoice numbers.

13. SEVERANCE

If any provision in these Terms and Conditions is or becomes void or unenforceable, it may be severed without any effect on the validity or enforceability of the remaining Terms and Conditions and GBI’s rights, remedies or recourses will not in any way be prejudiced or adversely affected by such severance.

14. GOVERNING LAW

All orders to which these Terms and Conditions apply shall be construed according to the laws of Victoria, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria in connection with matters concerning these Terms and Conditions or the transactions contemplated by them.

15. SERVICE OF DOCUMENTS

15.1. The Customer agrees that service of any notices or Court documents may be effected by forwarding same by prepaid post, facsimile or email to the last known address, number or email address (as the case may be) of the Customer.

15.2. The Customer must send all notices by pre-paid post to GBI’s office at 2/2 Michael Street, Brunswick VIC 3056. No notice will be taken to have been given until it is received at and acknowledged by that office.

16. STATEMENT OF DEBT

A Certificate signed by a director, secretary, financial controller or credit manager of GBI shall be prima facie evidence of the Amount Owning of the Customer to GBI at that time.