

DESIGN SHEETMETAL PTY LTD A.C.N.105 801 401 AND  
DESIGNER PANEL SYSTEMS PTY LTD A.C.N. 147 850 744  
Credit Application



Company Information

Type of business: (tick)  Company  Partnership  Sole Trader  Other  Trust

Full company name: \_\_\_\_\_

Registered and/or Trading name: \_\_\_\_\_

Nature of Business: \_\_\_\_\_ Date Business Commenced: \_\_\_\_\_

A.B.N. \_\_\_\_\_ A.C.N. \_\_\_\_\_

Trading Address: \_\_\_\_\_

\_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Email \_\_\_\_\_

First Director's Information

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

Residence: (tick)  Renting  Owning \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Date you became Director: \_\_\_\_\_ Email: \_\_\_\_\_

Second Director's Information

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

Residence: (tick)  Renting  Owning \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Date you became Director: \_\_\_\_\_ Email: \_\_\_\_\_

Third Director's Information

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_

Residence: (tick)  Renting  Owning \_\_\_\_\_ State \_\_\_\_\_ Postcode \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

**DESIGN SHEETMETAL PTY LTD A.C.N.105 801 401 AND  
DESIGNER PANEL SYSTEMS PTY LTD A.C.N. 147 850 744  
196 Colchester Road, Bayswater North VIC 3153**

DESIGN



SHEETMETAL

Date you became Director: \_\_\_\_\_ Email: \_\_\_\_\_

Amount of Credit Required: \$ \_\_\_\_\_

Accounts Information

Accounts Payable Name: \_\_\_\_\_ Accounts Payable Phone: ( ) \_\_\_\_\_

Account Payable Email: \_\_\_\_\_ Accounts Payable Fax: ( ) \_\_\_\_\_

Please email your remittance to \_\_\_\_\_

Credit References  
PLEASE SUPPLY THREE (3) CURRENT TRADE REFERENCES

1. Reference Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Contact Phone: ( ) \_\_\_\_\_

2. Reference Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Contact Phone: ( ) \_\_\_\_\_

3. Reference Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Contact Phone: ( ) \_\_\_\_\_

- Where an applicant is an incorporated company, a director's guarantee and indemnity must be signed and completed for credit to be extended by Design Sheet Metal Pty Ltd (ACN 105 801 401) or Designer Panel Systems Pty Ltd A.C.N. 147 850 744 (Design) to the Credit Applicant/Customer.
- To avoid any delays in processing of this application, please ensure that all relevant information is completed and the application form is signed by an Authorised Representative of the applicant and that the application is sent by email to Design.
- In accordance with s.18E(8)(c) of the *Privacy Act 1988*, the Credit Applicant acknowledges that Design has informed it that certain items of personal information about the Credit Applicant contained in/or relating to the Credit Applicant's Application for Credit and permitted to be kept on a credit information file might be disclosed to a credit reporting agency. Furthermore, the Credit Applicant agrees, in accordance with s.18H(3), s.18K(1)(b), s.18K(1)(c), s.18K(1)(h) and s.18N(1)(b) of the *Privacy Act 1988* that use by Design of the relevant information referred to in those sections may occur for the purpose of assessing the Credit Applicant's credit application.

Credit Application

I declare that all information provided to Design for the purposes of assessing the Credit Applicant's suitability for credit and acquisition of Design's goods and services is true and correct in every particular. I declare that I am authorised to apply for credit on behalf of the above Applicant. I/we as directors declare that I/we have read, understood and executed the terms and conditions attached (and guarantee where applicable).

NAME IN FULL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

POSITION: DIRECTOR/ \_\_\_\_\_

DATE: \_\_\_\_\_

NAME IN FULL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

POSITION: DIRECTOR/ \_\_\_\_\_

DATE: \_\_\_\_\_

NAME IN FULL: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

POSITION: DIRECTOR/ \_\_\_\_\_

DATE: \_\_\_\_\_

# DIRECTOR'S GUARANTEE AND INDEMNITY



DESIGN SHEETMETAL

Deed of Guarantee and Indemnity made this ..... day of ..... 20.....

**BETWEEN: DESIGN SHEETMETAL PTY LTD ACN 105 801 401 AND DESIGNER PANEL SYSTEMS PTY LTD ACN 147 850 744 (the "Company"); and** \_\_\_\_\_

## GUARANTOR 1:

(Signature)..... (Date) ...../...../.....

(Print Full Name) .....  
GUARANTOR

(Full Residential Address) OF .....

(Witness Name) .....  
PRINT

(Date) ...../...../.....

(Address).....

(Signature).....

## GUARANTOR 3:

(Signature)..... (Date) ...../...../.....

(Print Full Name) .....  
GUARANTOR

(Full Residential Address) OF .....

(Witness Name) .....  
PRINT

(Date) ...../...../.....

(Address).....

(Signature).....

## GUARANTOR 2:

(Signature)..... (Date) ...../...../.....

(Print Full Name) .....  
GUARANTOR

(Full Residential Address) OF .....

(Witness Name) .....  
PRINT

(Date) ...../...../.....

(Address).....

(Signature).....

## GUARANTOR 4:

(Signature)..... (Date) ...../...../.....

(Print Full Name) .....  
GUARANTOR

(Full Residential Address) OF .....

(Witness Name) .....  
PRINT

(Date) ...../...../.....

(Address).....

(Signature).....

The parties agree and declare as follows:

### 1) GUARANTEE

#### a) Guaranteed Monies

In consideration of the "Company" agreeing, at the request of the "Guarantor" to provide or continue to provide credit and/or "Goods and Services" and services from time to time to or for the "Customer", the "Guarantor" unconditionally and irrevocably guarantees to the "Company" the due and punctual payment of:

- i) All monies due and payable or from time to time that become due and payable to the "Company" under or in connection with the provision of credit and/or "Goods and Services" and services;
- ii) All other monies which the "Customer" either jointly or severally with any other person now or from time to time is or becomes actually or contingently liable to pay to the "Company" under this Deed and any other agreement, security or negotiable or other instrument or as a result of any matter or thing; and
- iii) Any GST, tax, duty or levy that may be due and payable or from time to time that

become due and payable by the "Company" under or in connection with the provision of credit and/or "Goods and Services".

#### b) Result of Non Payment

- i) If the "Customer" defaults in the due and punctual payment of the Guaranteed Monies or in any part of them, the "Guarantor" shall pay those monies to or as directed by the "Company";
- ii) The "Guarantor" hereby charges their interest in any and all land registered in their name as security for payment of monies owing pursuant to this Guarantee and Indemnity to the "Company".

#### c) Demand

Any demand to be made upon the "Guarantor" or the "Customer" shall be deemed to be duly made if in writing and signed for on behalf of the "Company" by any duly authorised officer or legal representative of the "Company" from time to time.

#### d) Continuing Guarantee

This Deed is a continuing guarantee for the whole of the Guaranteed Monies and all other

money payable under this Deed, and shall not be considered as satisfied by any intermediate payment or satisfaction of all or any part of the Guaranteed Monies.

This Guarantee is only terminated once a termination notice is issued in writing by the "Company" to the "Guarantor".

**2) GUARANTOR'S OBLIGATIONS**

a) The "Guarantor's" obligations:

- i) Are principal obligations and not ancillary or collateral to any other obligation; and
- ii) May be enforced against the "Guarantor" without the "Company" being required to exhaust any remedy it may have against the "Customer" or to enforce any security it may hold with respect to the Guaranteed monies.

b) The liability of the "Guarantor" is absolute and unconditional and is not affected by anything which might operate to exonerate it from any of its obligations.

**3) SUSPENSION OF GUARANTOR'S RIGHTS**

a) Until the Guaranteed Monies and all other monies payable under this Deed have been irrevocably paid and discharged in full, the "Guarantor" may not:

- i) Share in any security or guarantee held or money received by the "Company" in respect of the Guaranteed Monies or stand in the place of the "Company" in respect of any such security or guarantee or right to receive money;
- ii) Take any measures to enforce a right or claim against the "Customer" in respect of any money paid to the "Company" under this Deed; or
- iii) Have or exercise any rights as surety in competition with the "Company".

**4) INDEMNITY**

a) For the consideration mentioned in Clause 1(a), the "Guarantor" unconditionally indemnifies the "Company" against any loss it may suffer as a result of:

- i) The Guaranteed Monies, in whole or part, are not recoverable from the "Customer" or having been recovered are repaid and restored;
- ii) The "Customer" fails to carry out its obligations under any agreement it has entered into with the "Company".

b) The "Guarantor" shall pay to the "Company" a sum equal to any loss in respect of which it indemnifies the "Company" under this clause, including any of the Guaranteed Monies (or any of the monies which, if recoverable would have formed part of the Guaranteed Monies) which are not or may not be recoverable.

c) This Guarantee is not affected by any event and is not altered in any way unless confirmed in writing by the "Customer".

**5) INTEREST ON OVERDUE AMOUNTS**

a) The "Guarantor" shall, on demand by the "Company", pay interest on any of the Guaranteed Monies which are due and payable by it and unpaid (including interest payable under this clause).

b) Interest under Clause 5(a) above will accrue from day to day from the due date for payment up to the date of actual payment, before and (as a separate and independent obligation) after judgement, at the same rate and in the same currency as interest is liable to be paid on the relevant amount of the Guaranteed Monies.

**6) JOINT AND SEVERAL LIABILITY**

a) If two or more persons are the "Guarantor":

- i) References to the "Guarantor" are references to them separately and jointly;
- ii) The promises by them in this Deed bind all of them together as well as bind each of them separately;
- iii) The fact that one person is released from their obligations does not mean that any other person is also released.

**7) COSTS**

The "Guarantor" indemnifies the "Company" against, and shall pay the "Company" the amount of all losses, liabilities, costs and expenses (including but not limited to legal expenses on a full indemnity basis or solicitor and own client basis whichever is the higher) and all fees or other duties or charges levied by any Government agency in connection with;

- a) The enforcement or attempted enforcement or preservation of any rights under this Deed;
- b) Any amendment to, or any consent, approval, waiver, release or discharge of or under this Deed.

**8) LAW AND JURISDICTION**

This agreement is deemed to have been entered into in the State of Victoria. Any legal action arising out of, or in respect of the contract and/or the interpretation thereof shall be brought only in the State of Victoria. The parties further agree to issue any proceedings in the Brisbane registry of the appropriate Court having monetary jurisdiction over the matter.

**9) ASSIGNMENT**

The "Company" may assign or transfer any or all of its rights and or obligations under this Deed without the consent of the "Guarantor".

**10) EXECUTION**

This Deed is binding on the "Guarantor" whether or not it is executed by the "Company" or any other person or body corporate named as the "Guarantor".

**11) TERMINATION**

**GUARANTOR 1:**

.....

Full Name

.....

Signature

.....

Witness

**GUARANTOR 2:**

.....

Full Name

.....

Signature

.....

Witness

**GUARANTOR 3:**

.....

Full Name

.....

Signature

.....

Witness

**GUARANTOR 4:**

.....

Full Name

.....

Signature

.....

Witness

**GENERAL PROVISIONS**

**1. Applicability and Acceptance**

(a) By entering into this Agreement and/or purchasing Goods or Services from Design, the Buyer accepts and agrees to be bound by these Terms and Conditions.

(b) Design may make changes to these Terms and Conditions from time to time to accommodate changes in law, business practice or the introduction of new Goods and/or Services without notice to the Buyer or by general notice on the Website.

**2. Intellectual Property**

(a) All Intellectual Property rights provided by Design are, and remain the exclusive property of, Design. When using the Goods and/or Services, the Buyer must comply with the law including, without limitation, laws relating to Intellectual Property.

(b) Unless permitted by law or as otherwise expressly permitted in this Agreement, the Buyer must not authorise any third party to:

(i) reproduce, copy, download, store, publish, transmit, transfer, communicate, distribute, disseminate, sell, rent, lend or otherwise use the Goods and/or Services, or any part of the Goods and/or Services, in any form or by any means;

(ii) modify or make any alterations, additions, or amendments to any part of the Goods and/or Services;

(iii) make the Goods and/or Services available to any person other than the Buyer;

(iv) convert the Goods and/or Services into an electronic format other than the one in which it was supplied; or

(v) remove, alter, circumvent or tamper with any trademarks, copyright notices, copyright protection devices, disclaimers or other legal notices.

**3. Products and Samples**

(a) All descriptions, specifications, illustrations, drawings, data, dimensions and weights contained in catalogues, Price List or other advertising matter of Design are approximate only and are only intended by Design to be general description. Design reserves the right to produce goods with such minor modifications from its drawings and specifications as it sees fit. Design provides the Buyer with access to samples solely to enable the Buyer to assess the quality of the goods.

(b) Design will not be liable to the Buyer for any loss or damage suffered by the Buyer as a result of the Buyer relying upon any such specification, illustrations, drawings, data, dimensions, weights or the characteristics of any samples.

**4. Tools, Equipment, Patterns, Designs and Systems of Manufacture**

(a) Any tools, equipment, patterns designs and systems of manufacture acquired and used by Design in producing Goods and Services remain the property of Design and are not to be used without Design's authority.

(b) Design may charge the Buyer for the use of any tool, equipment, pattern, design or system of manufacture used to fulfil the Buyer's order. If Design does so, such charge is deemed to be a charge for the one-off use of the tool, equipment, pattern, design or system of manufacture only and the Buyer does not acquire any on-going intellectual property rights.

(c) Design may hire out a tool or equipment to the Buyer. The charge for the hire and the term of the hire will be agreed between Design and the Buyer.

(d) Design will invoice the Buyer for the hire charge and any delivery charge after the tool or equipment has been delivered or collected by the Buyer. The Buyer must pay the amount invoiced within 30 days after the invoice date.

**5. Buyers Specifications or Materials and Special Building Products**

(a) If the Buyer requests Design to produce goods in accordance with the Buyer's own designs, specifications or drawings ("special building products") then provided the special building products are produced in accordance with those designs, specifications or drawings, Design will not be responsible for any failure of, unfitness of or damage caused by the special building products.

(b) If the Buyer requests Design to process the Buyer's materials then Design does not give any warranty that the materials supplied by the Buyer are suitable for such processing.

(c) Design will not be liable for any failure of, unfitness of or damage caused by the Buyer's materials at any time during or after processing by Design.

(d) The Buyer must bear any additional expense or the cost of any delay in relation to the processing which is caused by any defect in the Buyer's materials.

**PRICES AND CHARGES**

**6. Supply of Goods and/or Services**

(a) Design reserves the right to accept or decline, in whole or in part, any order for Goods and/or Services placed by the Buyer.

(b) The Agreement between Design and the Buyer for the supply of the Goods and/or Services commences on the date that Design agrees to supply the Goods and/or Services ordered by the Buyer. This will not necessarily be at the time the order is initially received by Design.

(c) All Goods and/or Services supplied by Design to the Buyer on credit during any calendar month will be paid in full by the Buyer on or before thirty (30) days from the date of invoice.

(d) The supply of Goods and/or Services is contingent upon the Buyer complying with this Agreement.

(e) The supply of Goods by Design is subject to availability of the Goods.

(f) Design agrees, having regard to the nature of the Services being provided, to perform the Services in a proper and professional manner and in accordance with industry practice.

(g) The Parties may, at any time, agree in writing for Design to provide additional services for the remainder of the term of this Agreement. The additional services will be provided to the Buyer pursuant to this Agreement.

(h) Any order cancellation must be in writing and is subject to Design's approval.

**7. Prices**

(a) The Buyer must pay the price set out in Design's Price List which is current at the time the goods are delivered by Design to the Buyer or collected by the Buyer or the services are provided by Design or such other price as is otherwise agreed in writing between Design and the Buyer.

(b) Unless explicitly stated, prices do not include an amount of GST. If a supply by Design to the Buyer is subject to GST, the Buyer must pay the applicable GST when Design gives the Buyer a tax invoice showing the applicable GST as a separate amount.

(c) Prices do not include delivery charges. Any delivery charge payable by the Buyer will be advised when the Buyer places its order. Any payable delivery charge will be shown as a separate amount on the invoice provided to the Buyer.

(d) If the Buyer fails to pay any amount to Design when due, whether in

accordance with an invoice or the terms of account Design may:

- (i) charge interest on the amount owing from the date it becomes due at 15% per annum;
- (ii) suspend further deliveries of Goods and/or Services to the Buyer until all amounts due, including any interest payable, have been satisfied; and
- (iii) terminate the Agreement with the Buyer in relation to goods which have not been delivered or collected.
- (e) The Buyer must pay Design any costs that Design incurs in recovering any amounts which the Buyer owes to Design.
- (f) The Buyer agrees to pay Design in full without set-off or counterclaim in respect of amounts which Design may owe the Buyer.
- (g) The Buyer must supply Design with a purchase order number at the time of placing the order. Design does not take any responsibility for the inclusion of the Buyer's purchase order number upon any documentation produced by Design. The Buyer is liable to pay the amount of an invoice, regardless of whether the Buyer's purchase order number is included on the invoice.
- (h) Design reserves the right to amend rates and/or prices and/or the price list from time to time without prior notice to the Buyer.

#### **8. Freight**

- (a) The method of transport used in the delivery of goods to the Buyer will be at Design's option unless the Buyer requests a particular method of transport.
- (b) Design may either:
  - (i) make the goods ordered by the Buyer available for collection at Design's premises;
  - (ii) deliver the goods ordered by the Buyer to the Buyer's premises or a site nominated by the Buyer, or
  - (iii) arrange for a contractor to deliver the goods ordered by the Buyer to the Buyer's premises or to the site nominated by the Buyer.
- (c) Goods ordered by the Buyer for collection will not be held at Design premises after the collection date. The collection date will be agreed by the Buyer and Design at the time the Buyer places its order. Design reserves the right to deliver the goods to the Buyer's premises or site nominated by the Buyer with all delivery costs incurred by Design or its contractor to be borne by the Buyer.
- (d) Where additional delivery costs are incurred by Design as a result of delay, for example, but without limitation, because the goods are not unloaded within 1 hour of delivery, because of unexpected labour costs or because of the nature of the particular goods ordered by the Buyer, those costs must

be borne by the Buyer. The Buyer must also bear the cost of obtaining any permit or licence required or other additional costs for the transportation of goods, for example, but not limitation, goods in excess of unregulated lengths.

- (e) Any dates and times for delivery which Design advises to the Buyer are estimates only. Design will not be liable to the Buyer for any loss or damage (including consequential loss) caused directly or indirectly by any delay or failure to deliver goods ordered by the Buyer. The Buyer will not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.
- (f) Design will have the right to extend the estimated delivery or collection date for such period as is reasonably necessary. If it is necessary for Design to make such an extension, the Buyer must accept and pay for the goods notwithstanding the delay in their delivery or collection.
- (g) Design reserves the right to supply by instalment and each instalment shall be deemed to have been sold under a separate agreement.
- (h) The Buyer must notify Design within 2 days of delivery or collection if the Buyer believes that the goods supplied do not accord with those ordered by the Buyer. The Buyer must also notify Design within 7 days of receiving an invoice if the invoice contains any disputed charge(s).
- (i) Failure to notify Design within these time periods will be deemed an acceptance by the Buyer of the goods or the charges and the Buyer must pay the full price for the goods supplied.
- (j) In the event the Buyer's premises or the Buyer's nominated site address is unattended when Design or a contractor delivers the goods, the signature of the person who delivers the goods on the delivery dockets shall be prima facie evidence that the goods were delivered.

#### **9. Title**

Until each invoice is paid in full, ownership of all Goods supplied remains with Design.

#### **10. Risk**

- (a) The risk of the Goods passes to the Buyer on delivery, and delivery to the carrier constitutes delivery. Design accepts no responsibility for the Goods once they have been delivered.
- (b) The Buyer acknowledges that it is responsible to ensure that all Goods sold are insured from point of delivery.
- (c) The Buyer acknowledges that it is responsible to ensure that all Goods comply with the applicable various state regulations prior to resale.

### **CREDIT ACCOUNT**

#### **11. Credit Terms**

- (a) Payment of all credit accounts shall be made on or before thirty (30) days from the date of the invoice.
- (b) When making a payment:
  - (i) the Buyer must forward the remittance advice to Design to ensure the payment is allocated to the Buyer's account in the correct manner;
  - (ii) if the Buyer's payment does not reflect the statement amount, a brief note must be included regarding any variations; and
  - (iii) opening orders for all new accounts must be paid in full at the time of order. This condition may only be varied at the discretion of Design.
- (c) Design may at any time, without notice, terminate or suspend the Buyer's right to purchase Goods and/or Services from Design on credit and shall not be liable for any damages, costs, penalties or charges incurred by the Buyer as a result of the non-supply of the Goods and/or Services by Design.
- (d) Design reserves its rights to suspend (automatically and without notice to the Buyer), all accounts unpaid at thirty-seven (37) days from date of invoice.
- (e) Suspended accounts may attract a default account keeping fee of two percent (2%) per month or \$25.00 per invoice, whichever is the greater amount, until the account is returned to the agreed trading terms. The Buyer agrees that this is a fair and reasonable charge and is directly relevant to the likely damage that Design might suffer as a result of non-payment by the Buyer. Interest will be calculated on all outstanding amounts from the date of issue of the outstanding invoice.
- (f) All invoices shall immediately become due and payable in the event of default on payment by the Buyer of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.
- (g) Account payments made by a Visa / Master Credit Card will be charged a processing fee of 2%.

#### **12. Credit History**

- (a) The Buyer hereby gives Design authority to make enquiries as to the credit and financial responsibilities of the Buyer and/or, if the Buyer is a company, the Buyer's Directors and/or Shareholders in order to suitably qualify the Buyer's capacity to incur debt and repay any amounts to Design. These enquiries shall include but not be limited to obtaining reports from credit reporting agencies and references from current and/or past providers of credit to the Buyer.
- (b) In accordance with section 18E(8)(c) of the *Privacy Act 1988* (Cth), the Buyer acknowledges that Design has informed

Initials \_\_\_\_\_

the Buyer that certain items of personal information about the Buyer contained in/or relating to the Buyer's Application for Credit, and permitted to be kept on a credit information file, might be disclosed to a credit reporting agency. Furthermore, the Buyer agrees, in accordance with s18H(3), s18K(1)(b), s.18K(1)(c), s18K(1)(h) and s18N(1)(b) of the *Privacy Act 1988* (Cth) that use by Design of the relevant information referred to in those sections may occur for the purpose of assessing the Buyer's credit application.

#### SECURITIES AND CHARGES

##### 13. Holding Rights (Lien)

- (a) Design reserves the following rights in relation to the Goods and/or Services until all amounts owed by the Buyer to Design are fully paid:
- (b) Ownership of the Goods remains with Design.
- (c) The Buyer authorises an authorised agent or representative of Design to enter the Buyer's premises (or the premises of any associated Company of the Buyer) where the goods are located, without liability for trespass or any resulting damage, and retake possession of the Goods and the Buyer agrees that Design has an irrevocable licence to do so.
- (d) The Buyer authorises Design to keep or resell any Goods repossessed pursuant to Clause 13 of this Agreement.
- (e) If the Goods are resold by the Buyer, the Buyer shall hold such part of the proceeds of any such sale as represents the Invoice Price of the Goods sold in a separate identifiable account as the beneficial property of Design and shall pay such amount to Design upon demand.
- (f) Notwithstanding the above, Design shall be entitled to maintain an action against the Buyer for the Invoice Price of the Goods.
- (g) In connection with the Goods, while they remain the property of Design, the Buyer agrees that:
  - (i) the Buyer has no right or claim to any interest in the Goods to secure any liquidated or un-liquidated debt or obligation that Design may owe the Buyer;
  - (ii) the Buyer cannot claim any lien over the Goods;
  - (iii) the Buyer warrants and undertakes that the Buyer will not create any absolute or defensible interest in the Goods in relation to any third party except as may be authorized by Design in writing; and
  - (iv) where the Buyer is in actual or constructive possession of the Goods:
- (A) the Buyer will not deliver them or any document of title to the Goods to any person except as directed by Design; and

- (B) the Buyer is in possession of the Goods as a bailee of the Goods and owes Design the duties and liabilities of a bailee.
- (h) Pending payment in full for the Goods, the Buyer:
  - (i) must not supply any of the Goods to any person outside of its ordinary or usual course of business;
  - (ii) must not allow any person to have or acquire any security interest in the Goods;
  - (iii) must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorized to conduct the business of insurance in the place where the Buyer carries on business.
- (i) Despite the above provision contained in Clause Error! Reference source not found. of this Agreement, if the Buyer supplies any of the Goods to any person before all moneys payable by the Buyer has been paid to Design (and have not been claimed or clawed back by any person standing in the place of or representing the Buyer), the Buyer agrees that:
  - (i) It holds the proceeds of re-supply of the Goods on trust for and as agent for Design immediately when they are receivable or received;
  - (ii) the Buyer must either pay the amount of the proceeds of re-supply to Design immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit taking institution as trustee for Design.

##### 14. Charge - Caveat

- (a) As security for payment to Design of all moneys payable by the Buyer and for the Buyer's obligations generally under this Agreement, the Buyer charge in favour of Design the whole of the Buyer's undertaking, property and assets (including without limitation all of the Buyer's interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired.
- (b) the Buyer irrevocably appoint each officer as the Buyer's attorney to do all things necessary to create and register each such charge.
- (c) Upon demand by Design, the Buyer agrees to immediately execute a mortgage or other instrument in terms satisfactory to Design to further secure payments of the money payable by the Buyer.
- (d) If the Buyer falls within a reasonable time of such demand to execute such mortgage or other instrument, then the Buyer acknowledges that Design may execute such mortgage or other instrument as the Buyer's attorney pursuant to the appointment of Design as the Buyer's attorney set out in this Agreement.

##### 15. Personal Properties Securities Act 2009 (Cth) ("PPSA")

- (a) The Buyer acknowledges that this Agreement will constitute a security agreement which creates a security interest in favour of Design over all present and after acquired Goods supplied by Design to the Buyer to secure the payment of the Goods and/or Services or any other amount owing under this Agreement from time to time including further advances.
- (b) The Buyer acknowledges that by accepting this Agreement and by virtue of the retention of title clause as provided for in Clause 9 of this Agreement, the security interest is a purchase money security interest ("PMSI") as defined under Section 14 of the PPSA for all present, after acquired Goods including any commingled Goods.
- (c) The security interest will continue to apply as an interest in the Collateral for the purposes of PPSA with priority over registered or unregistered security interest.
- (d) Design may register the security interest as PMSI on the Personal Property Securities Register ("PPSR") under the PPSA without providing further notice to the Buyer.
- (e) The Buyer agrees Design is not required to disclose information pertaining to Design's security interest to an interested party unless required to do so pursuant to the PPSA or under general law.
- (f) The Buyer agrees and undertakes:
  - (i) to sign any documents and/or provide further information reasonably required by Design to register financing statement or financing change statement on the PPSR;
  - (ii) to indemnify Design for all expenses and/or costs incurred by Design in registering a financing statement or financing change statement on PPSR including the costs of amending, maintaining, releasing and enforcing any security interest in the Goods;
  - (iii) not to register and/or make a demand to alter a financing statement in the collateral without prior written consent of Design;
  - (iv) to provide Design with seven (7) days written notice of any change or proposed change to the Buyer's company name, address, contact details, or other changes in the Buyer's details registered on the PPSR;
  - (v) to waive any rights of enforcement under Section 115 of the PPSA for collateral not used predominantly for personal, domestic or household purposes;
  - (vi) to waive any rights to receive verification statement in respect of any financial statement or financing charge statement under Section 157 of the PPSA.

## WARRANTY

### 16. Warranty & Replacement

- (a) Subject to law, Design's obligations to the Buyer in respect of a breach of any term, warranty or condition of these terms and conditions of sale (whether implied by statute or otherwise) shall, at Design's option be limited to:
- (i) In the case of goods, the repair of the goods, the replacement of the goods or paying for the cost of repair or replacement of the goods; and
- (ii) In the case of services, the resupply of services or paying for the cost of resupplying services.
- (b) Design's obligations in the event of Clause 16 (a) applying do not include:
- (i) the cost of removal of defective goods whether installed or otherwise;
- (ii) the cost of installation of replacement for defective goods; or
- (iii) defects in goods caused by improper installation or maintenance of goods or related components or normal wear and tear and damage.
- (c) Subject to law, Design will not be liable to the Buyer or any other person under any circumstances for any direct, incidental or consequential loss or damage (including loss or damage caused by negligence or wilful acts or default of Design, its employees or agents) whatsoever arising from a breach of any of these terms and conditions or any other statutory implied warranty, terms or condition in relation to the Goods and/or Services.
- (d) Subject to law, Design will not be liable for any costs, claims, damages or demands arising from personal injury, loss or damage to goods whatsoever occurring to Buyer or its employees or agents by reason of:
- (i) the Goods and/or Services, their design, production or processing;
- (ii) the loading and the delivery of the goods or any failure to deliver or delay in delivering the building products;
- (iii) any act or omission of Design, its servants and agents;
- (iv) any statement or representation made by an employee or agent of Design; or
- (v) any tool or equipment hired out by Design to the Buyer.
- (e) Design will not be responsible for the consequences of any technical advice given by its employees in relation to the design, specifications, installations or use of goods.
- (f) Any claim by the Buyer in respect of defective or damaged goods or defective services must be made in writing within 14 days of delivery or collection of those goods or provision of those services.
- (g) Limitation of Liability and Indemnity

### 16.2 Release and Indemnity

- (a) The Buyer agrees to release and hold harmless, indemnify and defend Design and Design's Indemnified Officers against any Claim or Liability from or in relation to:
- (i) the misuse of any Goods by the Buyer or anyone whom the Buyer allowed to access the Goods, whether deliberately or otherwise;
- (ii) the Buyer's breach of any law or infringement of any third party rights including Intellectual Property rights;
- (iii) the Buyer's action, inaction, delay or breach of the Buyer's obligations under this Agreement or the Buyer's breach of any warranties under this Agreement.
- (b) The Buyer agrees to release and hold harmless Design and Design's Indemnified Officers against any Claim or Liability arising from or in relation to:
- (i) any Consequential Loss of any kind;
- (ii) third parties, including delivery service providers;
- (iii) Design's reasonable actions in cancelling or delaying any transaction for any reason;
- (iv) actions taken in relation to this Agreement in accordance with Design's obligations at law or any order issued by a court of law or relevant government authority, whether directly or indirectly arising in connection with the Goods and/or Services, even if Design knew or should have known about the possibility of such Claim or Liability.
- (c) The Buyer indemnify Design for any reasonable legal expenses Design incurs as a result of the Buyer's breach of this Agreement, including expenses for enforcing payment, on a solicitor and own-client basis.
- (d) In the event the Buyer, its servant, agent or employee enters Design's property in order to order or collect goods, does so at their own risk. Design will not be liable for any damage caused by any acts of omissions whatsoever and the Buyer indemnifies Design against all claims, demands or suits made by any person attending the premises of Design with or on behalf of the Buyer, its servant, agent or employee.
- (e) In the event Design or a contractor enters the Buyer's premises to deliver or repossess goods or provide services, the Buyer must provide full and safe access to the premises. The Buyer will be liable for, and must indemnify Design against, the costs of any loss, damage to property and injury to any person which occurs directly or indirectly as a result of the Buyer's failure to ensure full and safe access to the Buyer's premises.

### 16.3 Limitation of liability

- (a) To the fullest extent allowable at law:

- (i) Design is not liable for any contingent, direct/indirect or punitive damages or loss arising or any Consequential Loss, in relation to the Services or the ownership or use of the Goods, whatsoever. The Buyer acknowledge this express limit or liability and agrees to limit any claim accordingly;
- (ii) Design will not be held liable for any loss or damage incurred due to a Force Majeure, which means any cause outside the parties' reasonable control, including but not limited to an act of God, government or quasi government, act or regulation, riot, act of terrorism, war, flood, fire, Industrial disputes and epidemics or any risks to health or safety;
- (b) Despite any other provision to the contrary, the Buyer agrees that Design's total liability and the total liability of their Indemnified Officers in connection with this Agreement whether under contract or tort, will not in any circumstances exceed a sum equal to the greater of:
- (i) \$100; or
- (ii) the price of the Goods in dispute.

## MISCELLANEOUS

### 17. Default

The Buyer must pay Design any costs, charges and expenses (including legal fees and costs on a full indemnity basis as a liquidated debt) incurred by Design in connection with the entry into this Agreement, the exercise or attempted exercise of any power, right or remedy under these Terms and Conditions and/or the failure of the Buyer to comply with these Terms and Conditions.

### 18. Jurisdiction

- (a) This Agreement is deemed to have been entered into in the State of Victoria, Australia. Any legal action arising out of, or in respect of this Agreement and/or its interpretation must be brought only in the State of Victoria or another jurisdiction if it is deemed appropriate by Design.
- (b) The Parties further agree to issue any proceedings in the Central Melbourne registry of the appropriate court having monetary jurisdiction over the matter or another jurisdiction if it is deemed appropriate by Design.

### 19. Amendment

The terms contained in these Terms and Conditions are binding, and cannot be altered except by clear, written acceptance of the alteration by Design and the Buyer.

### 20. Severability

If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it will not affect the validity or enforceability of any other provision or part provision of this Agreement.



**21. Waiver**

Any delay or failure to enforce any rights in relation to a breach of this Agreement by the other party will not be construed as a waiver of those rights.

**22. Definitions**

**22.1 Definitions**

In this Agreement unless the context otherwise requires:

- (a) **Agreement** means this Agreement between the Parties, incorporating these Terms and Conditions and Design's Internet Sales Policy.
- (b) **Claim** means a claim notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a party to this Agreement or third party.
- (c) **Consequential Loss** includes, without limitation, data loss, loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of production, loss of use, loss of goodwill, and all other pure economic loss, and disappointment, distress, stress, and inconvenience.
- (d) **Design** means Design Sheetmetal Pty Ltd A.C.N. 105 801 401 and Designer Panel Systems Pty Ltd A.C.N.147 850 744 and its subsidiaries as defined in the *Corporations Act 2001* (Cth).
- (e) **Force Majeure Event** means an unforeseen event beyond the control of the affected party, including an act of god, war, terrorism, riot, vandalism, hacking, industrial action, or law or actions of any government or governmental agency.
- (f) **Goods** means the building products requested by the Buyer in its order and includes building products produced by Design which the Buyer requests Design to produce according to a design, drawing or specification provided to Design by the Buyer and goods and material which the Buyer requests Design to process, purchase or supply.
- (g) **Indemnified Officers** means, in relation to a party, its directors, employees, contractors, agents and representatives.
- (h) **Intellectual Property** means all intellectual property rights, including copyright, inventions, patents (including patent applications), trade marks (whether registered or not), designs (whether registrable or not), eligible circuit layout rights, domain name licences, know-how, trade secrets, and includes the right to register any intellectual property rights.
- (i) **Liability** means any liability (whether actual or prospective), loss, damage, cost or expense of any description,

Including legal fees on a solicitor and own client basis.

- (j) **Order** means a request by the Buyer to Design to supply the Buyer with Goods and/or Services.
- (k) **Parties** means Design and the Buyer.
- (l) **Price or Prices** means the Price and/or Prices for the Goods and Services as listed in the Price List issued from time to time in writing or by verbal advice from an authorised employee of Design. All Prices are in Australian Dollars.
- (m) **Price List** means the Price List issued by Design from time to time listing the relevant Prices for Goods and/or Services.
- (n) **Secured Money** means any monies secured by Design by way of a security interest.
- (o) **Services** means any service associated with Design's supply of goods and includes, but not limited to, delivery and installation of goods by Design and/or its contractors.
- (p) **Terms and Conditions** means these Terms and Conditions.
- (q) **Website** means [www.designsheetmetal.com.au](http://www.designsheetmetal.com.au).
- (r) **The Buyer** means any person, firm, corporation, government, semi-government or local government department or authority, its successors, assignees, trustees, administrators or liquidators, to whom placed an order with Design for the supply of Goods and/or Services or to which Goods are provided or sold to by Design.

**23. Acknowledgement**

- (a) The Buyer acknowledges that the Buyer has carefully read, fully understood and agrees to be bound by all the provisions of this Agreement.
- (b) Design will not be liable for any loss and/or damages suffered whatsoever, whether directly and/or indirectly, from the Buyer's failure to obtain independent legal advice in relation to this Agreement.
- (c) The Buyer declares that all information provided to Design for the purposes of assessing the Buyer's suitability for credit, purchase and rental is true and correct in every particular.
- (d) This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Agreement. The Agreement may be entered into by and becomes binding on the Parties named in the Agreement upon one party signing the Agreement that has been signed by the other (or a photocopy or facsimile copy of that Agreement) and transmitting a facsimile copy of it to the other party.

TRADING NAME

.....

PRINT NAME

.....

TITLE

.....

SIGNATURE

.....

DATE

.....

COMPANY NAME

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