1. DEFINITIONS

1.1 Unless the context otherwise requires:

“Seller” means Teralba Industries Pty Ltd.

“Buyer” means the customer whose purchase order for the Goods is accepted by the Seller.

“Force Majeure” means any cause for delay to the delivery of Goods or Services beyond the Seller’s reasonable control, including but not limited to strikes, or other industrial action or disruption of transport, acts of God, acts of terror, machinery breakdowns and adverse weather conditions.

"Goods" means the equipment/goods or items specified on the quotation, Order or Acceptance, whichever is the latest;

“Purchase Order” means any request for a Variation to be added to the Goods or Services and includes without limitation changes to details, sizes, quantities, qualities, character of Goods, delivery instructions, delivery times, specifications for materials or anything else which may increase or add to the cost, time or work to be performed by the Buyer.

“Contract Price” means the price for the Goods and Services included in the Buyer's quotation Order or Acceptance, whichever is the later.

2. GENERAL CONDITIONS

2.1 These terms and conditions (“Terms”) apply to every quotation for and sale of all Goods and provision of Services from the Seller to the Buyer.

2.2 Any terms and conditions provided by the Buyer deviating from or inconsistent with these Terms are expressly rejected by the Seller. This rejection also applies to any statement by the Buyer that the terms and conditions prevail and to any stipulation by the Buyer as the manner of declaring such rejection.

2.3 A contract shall only be or deemed to have been entered into between the Seller and the Buyer upon an Order for the Goods and/or Services by the Buyer to the Seller (“Order”) and the Seller’s acceptance of the Order ("Acceptance"), in which case the contract shall be these Terms, the Order and Acceptance (“Contract”).

2.4 Acceptance of Buyer’s Order may be made and be communicated by the Seller to the Buyer in writing as an acknowledgement of order for or an act of acceptance of the Order by the Seller. The provision of this clause applies to every quotation or offer made by the Seller for the supply of Goods and/or Services.

2.5 The Goods may vary in finish and material composition and may vary from any samples provided to the Buyer. The Seller may, in its sole and unalterable discretion, vary the materials used in the manufacture of the Goods without a change to the Contract Price provided that the Goods remain fit for the Purpose.

2.6 In certain instances, the Seller allows for items supplied by the Buyer to be incorporated into the Goods (“Buyer Supplied Items”). Where the Buyer Supplied Items are demanded by the Seller to be defective, the Seller may require the Buyer to re-supply the Buyer Supplied Terms, or the Seller may provide acceptable replacements. The Seller may claim any additional costs resulting from defective Buyer Supplied Items as a Variation in accordance with these Terms.

2.7 Clerical errors in computations, typing or otherwise, of quotation, Acceptance, Order, invoices, delivery docket, credit note or specification may be the subject of correction by the Seller, and in which case, such corrections shall be deemed to be applied to the original document as at the date that document was issued.

2.8 If, after entering into the Contract, the Buyer changes or cancels the Order, specification or requests a Variation; the Buyer will (in addition to any variation and increase to the Contract Price in accordance with these Terms) be liable for and indemnify the Seller for any and all costs and losses associated with the Seller’s performance or part-performance of the Goods and/or Services as originally requested by the Buyer in the Order.

2.9 The Buyer warrants that it has conducted its own investigations and has determined that the Goods are fit for the Buyer’s intended purpose.

2.10 The Buyer warrants that it has not relied on any information, specifications, representations, or documents provided by the Seller ("Seller Supplied Information") for any purpose, including in entering into the contract or determining if the Goods and/or Services are fit for the Buyer’s intended purpose.

2.11 All Seller Supplied Information has or will be provided to the Buyer for its convenience only. The Seller shall not be liable to the Buyer for any additional payment, damages, compensation in addition to the Contract Price, or any incidental, special, indirect, punitive, or consequential, losses, losses suffered by the Buyer as a result of any reasonable reliance on any representations or misrepresentations made in relation to the Seller Supplied Information, or due to any errors, omissions, representations or misrepresentations contained in the Seller Supplied Information.

2.12 The Buyer acknowledges that the matters set out in any schedule attached herein or otherwise provided in writing prior to the acceptance are true and sole description of the purpose for which the Goods purchased are to be applied (the “Purpose”). The Seller will not be liable for and costs, damages or repairs or any Goods produced by the Seller for the Buyer in accordance with the Order or any other way unless the Buyer, the Buyer in a manner, or for a purpose, other than that made in the Seller to the Buyer in writing prior to the Acceptance.

2.13 Unless specifically included with the Goods and Services, no allowance has been made in the Seller’s quotation for and unless otherwise agreed between the parties, the Seller has no obligation to perform or obtain the following:

(a) Delivery of the Goods;
(b) Any work outside normal working hours; or
(c) Any approvals from any third parties, including but not limited to, Councils (including any planning, building or development applications or approvals), electricity and water supply authorities, or other statutory authorities; or
(d) Design services of any kind.

2.14 The Buyer may request (verbally or in writing) that the Seller perform:

(a) any of the items listed in clause 2.14, and/or;
(b) any other Variation;

any such request will be deemed a request for a Variation, in which case the Seller may, in its sole discretion, elect to carry out the works, items or services which are the subject of the Variation.

2.15 If the Buyer requests (verbally or in writing) that the Seller perform:

(a) any of the items listed in clause 2.14, and/or;
(b) any other Variation;

any such request will be deemed a request for a Variation, in which case the Seller may, in its sole discretion, elect to carry out the works, items or services which are the subject of the Variation.

2.16 If the Seller is to perform any installation, commissioning, start up, testing, inspection, servicing or maintenance of the Goods, then for any such work, the Buyer must have the site clear, available and in such a condition as to allow the installation and operation of the Goods and, if required by the Seller, the Buyer must provide free of charge water, electricity, steam, gas, fuel and all other services essential to the installation, commissioning and continued functioning of the Goods prior to and during Seller’s attendance at the Site.

2.17 Unless agreed otherwise, and to the extent permissible at law, the Buyer acknowledges that if the Goods supplied are required to be serviced or inspected due to breakdown or otherwise, then the Buyer is entitle to return or request any such service to be carried out at the cost of the purchaser. The Seller shall not be liable for any costs or losses resulting from delayed or canceled service or any other Variation resulting from these Terms.

3. PRICE

3.1 Until Acceptance by the Seller, and notwithstanding anything stated on the quotation, all quotations are to be regarded as estimates only and are subject to withdrawal, correction or alteration by the Seller in accordance with these Terms. The Seller reserves the right to vary the Buyer and will expire and are not capable of Acceptance 21 days after their date of issue.

3.2 All prices in a quotation, Order, Acceptance or invoice are in Australian Dollars unless otherwise stated and unless otherwise stated shall exclude all taxes, duties and fees.

3.3 If the Seller uses imported materials as a component in the manufacture of the Goods, the parties agree that any change in exchange rate will entitle the Seller to adjust the Contract Price to account for any such change.

3.4 The Buyer and Seller will agreed the value of any Variation which will be applied to increase the Contract Price. If the Buyer and the Seller are unable to agree the value of the Variation, the value shall be the sum of actual materials and/or labour costs (including but not limited to any freight and insurance costs if applicable) plus a mark-up of 15% for profits and overhead.

4. TERMS OF PAYMENT

4.1 Payment by the Buyer for the Goods and Services must be by cash, cheque or electronic funds transfer in accordance with the invoice or on or prior to delivery. Where payment is made by credit card, the amendment of these Terms shall be in accordance with the following manner:

(a) 30% on placement order of the Goods or Services; or
(b) as defined in the quotation and as permitted by law.

4.2 The Seller reserves the right to require progress payments for the Goods and/or Services in the following manner:

(a) 10% on placement order of the Goods or Services.

4.3 The Buyer may grant credit facilities to the Buyer in payment for all Goods sold will be within 30 days from the last day of the month in which delivery was made.

4.4 Where the Buyer has failed to make payment in accordance with these Terms or by the due date identified on the invoice provided, the Seller:

(a) may suspend delivery of Goods and Supply of the Services to the Buyer;
(b) is entitled to immediately pay all Goods and Services that are the subject of the Contract; and
(c) is entitled to payment of interest on any unpaid amounts from the Buyer, calculated at 18% per annum, calculated monthly.

4.5 The Buyer and Seller agree that this amount is a genuine assessment of all costs, losses and charges on unpaid amounts.

5. DELIVERY AND PART DELIVERY

5.1 If the Seller is requested by the Buyer to deliver the Goods, the Seller will make reasonable endeavours to complete delivery of the Goods within the period requested by the Buyer.

5.2 Delivery dates quoted by the Seller are indicative only and do not include delays occasioned by factors outside the Seller’s control. The Seller is not liable for any costs, losses or damages resulting from delayed or disrupted delivery. Some Goods and Services are subject to pre-order and delivery times, specifications for materials and any other item of the Seller’s instruction.

5.3 The Buyer may order the Goods and Services to be delivered in full or in part at any time before the date of the Order. If the Buyer requests the Goods prior to making payment in full, the Buyer agrees to:

(a) Store the Goods separately from the property of any other person;
(b) At all times store and label the Goods in some manner that will enable it to be identified as the Seller's property.
12.4 If a Dispute arises, the party initiating the Dispute must serve a Notice of Dispute on the other party within 7 days of receiving a notice from the other party that the Goods are ready for delivery. (At any time prior to delivery, the Seller may require the Buyer to rectify a breach of these Terms or provide further documentation in support of the claim before the Goods are delivered.)

12.5 The Goods shall only have the benefit of a manufacturer's warranty if the Buyer has complied with the manufacturer's instructions in relation to the operation and maintenance of the Goods. (Until such time as the Goods are ready for delivery, any claims for warranty or defects in the Goods must be made directly to the manufacturer.)

12.6 The Buyer further acknowledges sole responsibility for any loss, damage or injury to the environment, property or persons caused by using the sold Goods. (The Seller is not responsible for any loss, damage or injury caused by the Buyer's use of the Goods.)

12.7 The Buyer releases and indemnifies the Seller for any injury, loss, or damage occasioned to the Buyer or any third party having right of recourse or relief against the Buyer including but not limited to loss or damage occasioned to any Service unless and until the Buyer has paid the costs of having the Goods repaired; or (The Seller shall not be liable for any loss or damage to the Buyer's property unless the Seller is negligent.)

12.8 The Seller, having repossessed the Goods, to recover the debt incurred by the Buyer by selling or disposing of the Goods and/or Services, the Buyer is liable to the Seller for the recovery of losses sustained by the Seller in relation to the Goods or Services. (The Buyer must pay all costs and expenses incurred by the Seller in recovering the debt.)

12.9 The parties have 14 days after the mediation in accordance with clause 10.8 to agree the mediator to be appointed. If they are unable to agree the appointment of a mediator, the dispute will be referred to an arbitrator. (Any inability to agree on the appointment of a mediator will result in arbitration proceedings.)

12.10 The final award of the arbitrator shall be final and binding on the parties and must determine which party is responsible for payment of the arbitrator's fees. (The parties agree to be bound by the final award of the arbitrator.)

10.1 If a dispute or difference arises between the Buyer and Seller in relation to the Contract, the Goods or Services (a "Dispute"), the parties must, before commencing any litigation (other than for urgent injunctive relief) seek to resolve the Dispute in accordance with the process set out in this clause.

10.2 If a dispute arises, the party initiating the Dispute must serve a notice of dispute on the other party which sets out details of the Dispute, including any cause of action and relevant material facts to the dispute ("Notice of Dispute").

10.3 Within 7 days after receipt of a Notice of Dispute or such longer period of time agreed by the parties, authorised representatives of the parties must meet to attempt to resolve the Dispute ("Parties Meeting").

10.4 If the Dispute is not resolved at the Parties Meeting, either party may refer the dispute to mediation and in which case, the parties must agree the mediator to be appointed within this time then either may request that a mediator be appointed by the Resolution Institute. (The parties may agree to refer the dispute to mediation.)

10.5 If the Dispute is not resolved at the mediation in accordance with clause 10.4, then any dispute which solely relates to an alleged defect or technical issue in the Goods and/or Services may be referred to an expert for determination ("Expert Determination"). In which case:

(a) the parties have 14 days after the mediation in accordance with clause 10.4 to agree to the appointment of an expert engineer ("Expert") to determine the alleged defect or technical issue in relation to the Goods and/or Services. If the parties are unable to agree the appointment of an Expert within this timeframe, then either party may request that the Expert be appointed by Engineers Australia;

(b) the Expert act as an expert engineer and not as an arbitrator;

(c) the Expert must inspect the Goods and apply his or her own expertise;

(d) the Expert may determine the terms and procedure for the Expert Determination as he or she sees fit and will not be bound to observe natural justice;

(e) Unless agreed otherwise by the parties, the Expert will make a determination within 30 days of the Expert's appointment ("Expert Determination").

(f) The Expert Determination must be in accordance with these Terms and be in writing.

(g) The Expert Determination will be final and binding on the parties and must determine which party is responsible for payment of the Expert's fees.

11.1 Any intellectual property, including but not limited to copyright, patents, brand names, logos, registered and unregistered trademarks, registered designs, trade secrets, discoveries, inventions, secret processes, business methods, procedures or improvements created by or on behalf of the Seller in connection with any Contract remains the property of the Seller.

11.2 The Buyer acknowledges that all intellectual property, technical information, advice, know how, drawings and designs and samples provided by the Seller are confidential and the property of the Seller ("Confidential Information"). The Buyer will keep all Confidential Information secret and confidential and will not disclose it to any third party without the prior express written consent of the Seller.

12.10 With the exception of a Dispute which is the subject of an Expert Determination in accordance with clause 10.5, the parties may commence court proceedings, after a mediation in accordance with clause 10.4.

11.1.1 Any intellectual property, including but not limited to copyright, patents, brand names, logos, registered and unregistered trademarks, registered designs, trade secrets, discoveries, inventions, secret processes, business methods, procedures or improvements created by or on behalf of the Seller in connection with any Contract remains the property of the Seller.

11.2.1 The Buyer acknowledges that all intellectual property, technical information, advice, know how, drawings and designs and samples provided by the Seller are confidential and the property of the Seller ("Confidential Information"). The Buyer will keep all Confidential Information secret and confidential and will not disclose it to any third party without the prior express written consent of the Seller.

12.11.2 All modifications and amendments to these Terms must be agreed by the Seller in writing otherwise they will not be binding on the Seller.

12.12.1 If any of the provisions of this Contract are unlawful or invalid by reason of any applicable statute or rule of law, then such provision shall be severed from the rest of this Contract which shall remain valid and binding on all parties.

12.13.1 Unless otherwise stated, all notices under these Terms must be provided in writing.

12.14.1 The failure of the Seller to enforce any of these Terms shall not be deemed to be a waiver of these Terms.

12.15.1 A reference in these Terms to:

(a) the singular includes the plural and the plural includes the singular;

(b) these Terms include any variation to these Terms, the Goods or the Services;

(c) a day or month means a calendar day or calendar month.

12.16.1 Headings in these Terms are for convenience only and do not form part of these Terms.

12.17.1 If a period of time is specified and dates from a given day or act or event, it is to be calculated exclusive of that day.

12.18.1 A provision in these Terms must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Terms or the inclusion of a clause into these Terms.

12.19.1 The Contract between the parties shall be governed by and construed in accordance with the laws of New South Wales and the parties hereby submit to the non-exclusive jurisdiction of the (a) District Court of New South Wales.