

STODDART GROUP - TERMS OF SALE

BETWEEN

STODDART GROUP PTY LTD ACN 010 744 751 and their officers and any subsidiary or associated entity and as trustee of any trust ("STODDART")

AND

THE CUSTOMER

DEFINITIONS

The following definitions will apply for the purposes of these Terms of Sale:

"Account Customer" means a customer who has a current credit account with STODDART and the Customer's subsidiaries, holding companies and other related entities.

"Balance" means the Price less any Deposit.

"Commercial Customer" means a Customer using Equipment in relation to commercial, public or industrial building works including multiple home, apartment or unit constructions.

"Contract" means each and every contract from time to time made between STODDART and the Customer in respect of which credit and/or Products and Services are supplied by STODDART to the Customer at the Customer's request.

"Customer" means the Account or Non-Account Customer ordering, buying, or hiring the Products and/or Services, and includes both Domestic and Commercial Customers.

"Deposit" means the deposit specified in the Quotation.

"Domestic Customer" means a Customer using Equipment in relation to an individual home or other one-off domestic building works.

"Equipment" means any scaffolding, work platforms, railings and associated Products and equipment which the Customer requests STODDART to provide either on hire or by purchase.

"Event of Default" means any of the following events:

- (i) the Customer fails to pay for any Products and Services and/or the Customer breaches these Terms of Sale;
- (ii) the Customer ceases or threatens to cease carrying on business;
- (iii) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer resolves to appoint a receiver or provisional liquidator or an administrator, or a receiver or provisional liquidator or an administrator is appointed, or the Customer goes into liquidation or makes an assignment or an arrangement or composition with the Customer's creditor, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the Corporations Act 2001 (Cth); if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under administration;

"Non-account Customer" means a person or entity that does not have a current credit account with STODDART and their subsidiaries, holding companies and other related entities.

"Officer" means each director, secretary, credit manager and authorised representative of STODDART.

"PPSA" means the *Personal Property Securities Act 2009 (Cth)* as amended.

"Price" means the total price payable to STODDART under the Contract and/or Quotation.

"Products and Services" means all Products and Services supplied by STODDART to the Customer. Products include Equipment. Services include the installation of Products by affixing it to a designated structure at the site nominated by the Customer and the dismantling and removal of Equipment at the end of any hire.

"Quotation" means a quote for Products and/or Services issued to the Customer by STODDART.

"Site" means any place to which the Customer requests the supply of Products and Services by STODDART in accordance with these Terms of Sale.

"Works" refers to Services.

OPERATIVE PART

1. Incorporation of these Terms of Sale:

- (a) STODDART and the Customer agree that these Terms of Sale are and shall be incorporated into each and every Contract between them.
- (b) STODDART may at STODDART's complete discretion change, modify, add or remove portions of these Terms of Sale at any time.
- (c) The Customer acknowledges and agrees that their continued contracting with STODDART following changes to these Terms of Sale is to be construed as deemed acceptance by the Customer of those changes.
- (d) Previous dealings between STODDART and the Customer shall not have any effect on the Contract.
- (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- (f) No Terms and Conditions of the Customer apply to any agreement between the Customer and STODDART.

2. Quotations: All Quotations provided by STODDART will, subject to clauses 3 and 4 of these Terms of Sale, remain current for the period stated in the Quotation. If no period is stated, a Quotation will, subject to clauses 3 and 4 of these Terms of Sale, remain current for 30 days from the date of the Quotation.

3. Escalation and price variation: STODDART may increase or decrease the Price of Products and Services during the term of the Contract where it incurs an increase or decrease in its costs of supplying the Products and Services. STODDART reserves the right to charge additional administration fees as determined by STODDART from time to time.

4. Extras: Unless stated in the Quotation, the Price quoted does not include items such as assembly of Products, delivery of oversized loads or provision of vehicle escorts, on-Site scheduling, on-Site accommodation, provision of traffic control or any other item(s) specified in the Quotation as excluded. All extras will be charged by STODDART to the Customer.

5. Acceptance of Quotations: All Quotations are only capable of acceptance by the Customer in writing.

6. Payment: The Customer must pay for all Products and Services supplied by STODDART as follows: -

- (a) **Account Customers:** within 30 days after the end of the month of supply or within any alternative period granted in writing by STODDART.
- (b) **Non-Account Customers (except for Steel House Frames):** on a cash basis prior to the commencement of supply;
- (c) **Non-Account Customers for Steel House Frames:**

(i) Frames and Trusses (Products): 10% Deposit payable on order and the balance payable prior to manufacture; and

(ii) Erection labour (Services): 80% Deposit payable prior to commencement of work on Site and the balance payable on completion.

A pro-forma invoice for payments for Steel House Frames will be issued by STODDART when the deposit paid by the Customer is received. A final invoice will be issued to the Customer at the time of delivery of the Products and where applicable, once performance of the Services has been completed.

7. Interest: STODDART is entitled to charge the Customer interest on amounts not paid on or before the due date specified by STODDART at a rate equivalent to 3% more than the business overdraft commercial interest rate of STODDART's principal bankers per annum from the invoice date until the payment of the debt.

8. GST: Each amount payable by the Customer in respect of a Taxable Supply by STODDART is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the *New Tax System (Goods and Products and Services) Act 1999 (Cth)*.

9. Expenses: The Customer must pay to STODDART any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by STODDART in connection with any supply by STODDART to the Customer, the exercise or attempted exercise of any power, right or remedy under these Terms of Sale and/or the failure of the Customer to comply with these Terms of Sale.

- 10. Provision of information:** The Customer acknowledges and agrees that it must provide STODDART with all information reasonably necessary (including without limitation all necessary plans, specifications, engineering requirements, details, and/or special instructions) to enable supply and/or performance by STODDART of the Products and Services requested by the Customer before the commencement of supply and/or performance. The Customer acknowledges and agrees that: -
- (a) If the necessary information is not provided by the Customer, STODDART may refuse or suspend supply of its Products and Services to the Customer until the information is provided;
 - (b) STODDART is not liable for any loss, damage, cost or expense incurred by the Customer due to a suspension or cancellation of supply by STODDART of its Products and Services as a result of the Customer's failure to supply necessary information; and
 - (c) If errors occur as a result of documents supplied to STODDART by the Customer or a third party, the Customer must pay for the costs of rectification.
- The Customer indemnifies STODDART against all claims, costs, liabilities and expenses incurred by STODDART as a result of, or related to: -
- (a) Any inaccuracy, omission or error in the documents supplied by the Customer or a third party; and
 - (b) Any documents supplied by the Customer or a third party for the purposes of, or in the course of the supply of, the Products or Services that breach a third party's intellectual property rights.
- 11. Changes to Customer requirements:** The Customer acknowledges and agrees that where the Customer proposes any variations, substitutions, additions and deletions to plans, specifications, engineering requirements or special instructions, including without limitation any changes to product dimension, finish, or quantities required (collectively referred to in this clause as "variations") after a Quotation has been accepted by the Customer and/or an Order placed with STODDART: -
- (a) The Customer must obtain STODDART's written consent to the variations;
 - (b) The provision of STODDART's consent or otherwise is in STODDART's complete discretion. STODDART is not liable for any loss, damage, cost or expense incurred by the Customer as a result of any refusal by STODDART of consent;
 - (c) The Customer must pay STODDART for any expenditure commitment, work done, and material provided under the contract up to the date STODDART is notified in writing of any proposed variation;
 - (d) If the variations are accepted by STODDART, the Customer must pay STODDART for any increase(s) in the Price of Products and Services supplied and the date of delivery or completion of work by STODDART will be extended to any date nominated by STODDART.
- 12. Site measurement:** STODDART does not carry out Site measurements. The Customer acknowledges and agrees that where a Customer requests a Site visit by STODDART to check Site measurements STODDART will charge to the Customer travel time and time spent on Site by a STODDART representative at an hourly rate.
- 13. Pricing for Equipment:** The Customer acknowledges and agrees that: -
- (a) Where prices for the hire or sale of Equipment are quoted at individually negotiated rates, the price to be charged will be that applying at the time of the Equipment's first hire or in the case of purchases, at the rate operative at the time of delivery of the Equipment;
 - (b) For lump sum hire contracts for Equipment, unless it is otherwise stated in writing, the price will be adjusted in accordance with the rise and fall formula laid down by the National Cost Adjustment Provisions 1 (NCAP1) for the State or Territory in which the hire contract is to be carried out;
 - (c) The minimum hire period will be 7 days for all domestic customers except for First Floor Edge protection (external frame installation), where a minimum 3 day hire period applies, and 14 days for Commercial Customers from the date of installation, or if installation is not to be undertaken by STODDART from the date of delivery. All additional hire periods will be charged to the Customer on an ongoing basis while the Customer has continuing hire of the Equipment;
 - (d) If prices charged for Equipment hire are a special rate determined by reference to a minimum length of hire and STODDART agrees to accept an early return of the Equipment, STODDART will be entitled to charge the Customer the hire charges applying at the commencement of the hire for the entire duration of the minimum period;
 - (e) If the Customer requests STODDART transport the Equipment between STODDART's premises and the installation site, STODDART's charges and expenses for delivering and/or collecting the Equipment will be added to the hire charges payable by the Customer;
 - (f) For Domestic Customers, Quotations and charges for the erection and dismantlement of Equipment will be on all "all up all down" basis unless otherwise stated;
 - (g) Any additional labour and transport costs resulting from any variations to the Equipment or installation work required by STODDART will be payable by the Customer;
 - (h) If the Equipment is unavailable and/or cannot be used due to delays or any non-performance caused by the Customer, the hire charges will remain payable by the Customer;
 - (i) The Customer must "off-hire" the Equipment when the hire is complete by contacting the office of STODDART and obtaining an "off-hire" register number. The Customer will be invoiced for the entire period from the date of delivery or installation of the Equipment up to and including the "off-hire" date.
- 14. Dry Hire of Equipment and Occupational Health and Safety:** The Customer acknowledges and agrees that it is solely responsible for the erection and use of the Equipment and that the Customer must: -
- (a) use the Equipment for the sole purpose for which the Equipment is supplied in accordance with any limitations on the use of the Equipment arising from any statute, subordinate instrument, or the requirement of any local regulatory authority;
 - (b) ensure that the Equipment is erected and dismantled by suitably qualified persons and in accordance with the manufacturer's specification and user guide for installation and use (if provided to the Customer by STODDART). A suitably qualified person will be the holder of any certificate of competence or licence that may be required by any statute, subordinate instrument or local regulatory authority for the purpose of the erection or dismantling of the Equipment;
 - (c) disclose all related safety information provided by or on behalf of STODDART to all persons responsible for the installation, utilisation or dismantling of the Equipment;
 - (d) attach and maintain all safety signs supplied with the Equipment in noticeable positions on the Equipment or in such positions as are necessary to bring the signs to the attention of any users of the Equipment.
 - (e) comply with any relevant legislation concerning occupational health and safety requirements associated with use of the Equipment.
- The Customer will indemnify STODDART and its contractors against all liabilities (including without limitation legal costs) which any of them may incur due to a failure by the Customer to comply with its obligations under this clause or due to any fault, error or omission by the Customer, its employees and contractors in erecting or dismantling the Equipment.
- 15. Provision of Services:**
- (a) If STODDART provides the Customer with Services for the erection of supplied Products at the Customer's request, the Customer acknowledges and agrees that it bears sole responsibility for supplying, arranging and paying for:
 - (i) Any necessary crane hire and scaffolding, including without limitation, acrow props and trestles;
 - (ii) Any costs associated with sheet flooring being lifted onto joists;
 - (iii) Any costs associated with the hoisting of beams and/or trusses if required;
 - (iv) Any costs associated with the transportation of steel frames closer to the Site if there is limited access for delivery to the Customer by STODDART of supplied Products.
 - (b) If STODDART provides the Customer with Services for the installation of fascia and/or gutter at the Customer's request, the Customer acknowledges that any Quotation provided by STODDART for the Services is based on STODDART or its contractors being able to use their Standard Equipment. If STODDART or its contractors form the opinion that additional equipment is required, including but not limited to work platform, scaffold or fall protection, it must be supplied by the Customer and conform with local government requirements. Where workplace health and safety or other applicable laws of the jurisdiction in which the work is to be carried out require work platform, scaffolding or fall protection different to STODDART's Standard Equipment, the Customer must comply with all such requirements and provide the scaffolding, work platform and fall protection at its cost.
 - (c) If the Customer has engaged STODDART to erect Equipment in conjunction with the hire of Equipment, the Customer acknowledges and agrees that: -
 - (i) The Customer must ensure that the site is cleared and ready for installation of the Equipment before STODDART starts installation, and that the foundations upon which the Equipment is to be erected are sufficiently firm and otherwise suitable to safely carry the structure and the load to be placed on it without subsidence. The Customer acknowledges and agrees that it will be liable to STODDART and its contractors for any loss, costs or damage which they may suffer or incur by reason of the Customer's failure to carry out its obligations in this respect including without limitation, damages, or costs of delay due to the site not being cleared and ready, and for the cost of the hire of the Equipment, and that these amounts will be charged to the Customer.
 - (ii) Any additional cost involved in deviations between drawings or data supplied by the Customer and actual on-Site requirements for installation of Equipment will be charged to the Customer.
 - (iii) Any additional costs incurred by STODDART or its contractors due to delays caused by denial of access to the site, obstruction by other trades or curtailment of electric power or other matters beyond the reasonable control of STODDART and its contractors will be charged to the Customer.
 - (iv) The Customer must not interfere with the Equipment once installed unless in a way approved by STODDART in writing and the work is carried out by suitably qualified persons.

- (d) STODDART will use all reasonable endeavours to perform the Services in a competent, proper and workmanlike manner, exercising a reasonable standard of skill and diligence, but is not liable for any inaccuracy, error or omission arising from performance of the Services.
- 16. Solar Panels:** The Customer acknowledges and agrees that in this clause 16, the Customer is referred to as the "Builder" and the Builders customer is referred to as the "Customer". Any reference to the "Builder" in this clause is a reference to the Customer under these Terms of Sale.
- (a) STODDART will issue a Tax Invoice to the Builder for the full value of the Solar Generation Unit ("SGU") system plus GST upon completion of installation of the SGU system;
- (b) The Builder or the Builder's Customer (as applicable) will retain ownership of the Renewable Energy Certificates ("RECS") generated from the installation of the SGU system;
- (c) The Builder will pay STODDART for the full amount of STODDART's Invoice.
- (d) Where the Builder or the Customer have opted to assign Renewable Energy Certificates to STODDART and STODDART has agreed to accept the assignment, in consideration the RECS being assigned to STODDART the Builder will be entitled to a reduction in the amount payable for the SGU system to the total value of the RECS assigned at a rate per REC agreed between STODDART and the Builder at the point sale subject to the following conditions: -
- (i) the Builder's customer agrees to complete the Application to Network Connect Photovoltaic Generation Form and return to STODDART. STODDART will not supply the SGU system until received.
- (ii) Where the Builder has stated in their building contract with their Customer that the Builder is the owner of the SGU at the time it is installed, the Builder shall complete the RECS Assignment Form and return it to STODDART.
- (iii) Where the Builder has stated in their building contract with the customer that the customer is the owner of the SGU at the time it is installed, the Builder shall arrange for the RECS Assignment Form to be completed by the customer and return it to STODDART.
- (iv) In the event where the RECS have been assigned and accepted by STODDART and clause 16(d)(iii) applies the amount payable by the builder to STODDART will be reduced by the amount equal to the total value of the RECS assigned. This RECS assignment will not be treated as a Taxable Supply and hence will not include any GST.
- (v) If for any reason, including but not limited to a cessation or variation to the Federal Government REC scheme, STODDART are unable to register or sell assigned RECS on the REC registry, or the total market value of a REC is less than \$1, the Builder must pay STODDART the full value of the SGU system plus GST, or if a deduction has already been made to the full value of the SGU system in consideration of the assignment of the RECS, reimburse STODDART the amount of any deduction received.
- (vi) If any federal or state legislation should be found to affect the validity of a requirement or action contained in a clause set out in this agreement, at any time prior to the completion of the agreement or prior to the assignment or sale of RECS on the REC Registry, any affected clause may be severed without affecting the validity of the entire agreement and a replacement clause negotiated by STODDART and the Builder. Where an agreement between the parties cannot be reached on a replacement clause, STODDART may terminate the agreement without penalty.
- 17. Site access:** The Customer acknowledges and agrees that provision of clear, adequate and unobstructed access to the Site for semi-trailers, delivery vehicles and body trucks is the sole responsibility of the Customer. The Customer acknowledges and agrees that all costs incurred by STODDART or its contractors for, amongst other things and without limitation:
- (a) recovery of bogged vehicles;
- (b) local Council fines issued to STODDART, its Contractors or the Customer;
- (c) delays to STODDART vehicles once on Site resulting in increased costs;
- that are caused whether directly or indirectly by difficulties associated with access to the Site will be charged to the Customer.
- The Customer acknowledges and agrees that where STODDART provides the Customer with Services for the installation of Steel House Frames, trusses, roofing, fascia and guttering Products: -
- (a) The Customer must ensure that STODDART has uninterrupted access to the roof or other structure upon which the Products are to be installed from the Commencement Date until the work has been completed;
- (b) All Quotations issued to the Customer by STODDART were based on the premises that uninterrupted access would be provided; and
- (c) All costs incurred by STODDART for any delays because of incomplete roof structure or other trades will be charged to the Customer.
- 18. Engineering certificates for Steel House Frames:** Final engineering certificates will only be released to the Customer on receipt by STODDART of payment in full of all amounts invoiced to the Customer for Products and Services supplied.
- 19. Placement of steel house trusses:** STODDART will make reasonable efforts to place trusses on the top plate of wall frames subject to the following conditions:
- (a) The structure must be capable of carrying the intended load and suitably braced;
- (b) There must be sufficient Site access to enable unobstructed crane set up and manoeuvring;
- (c) The Customer must provide assistance on Site to the delivery driver. If no on-Site assistance is provided the driver will place the supplied Products on the ground. STODDART accepts no liability for any loss, damage or costs incurred by the Customer whether directly or indirectly as a result of Products supplied to the Customer being placed on the ground under this clause; and
- (d) Large span trusses with a span outside the safe carriage limit of the crane may necessitate the use of a mobile crane by STODDART and all costs of any mobile crane required be will be charged to the Customer.
- 20. Equipment Hire; Risk, Insurance and Condition:** Where Equipment is to be supplied on hire:
- (a) The Customer must ensure that the Equipment is used at all times in a proper, professional and responsible manner. The Customer must ensure that the Equipment is maintained in good condition and kept clean. The Customer will be liable for the costs of any cleaning which STODDART considers necessary before or after return of the Equipment to STODDART;
- (b) STODDART or its contractors may inspect the Equipment at least once every 30 days or more frequently if required by statute or regulations;
- (c) Risk in the Equipment will pass to the Customer on delivery. The Customer must take out and maintain adequate insurance of the Equipment against all usual risks which identifies STODDART's interest as owner of the Equipment. All proceeds from such insurance must be paid to STODDART.
- (d) The Customer must notify STODDART immediately of any damage to or loss of the Equipment, giving reasonably full particulars of the nature and cause of the damage or loss. The Customer will be responsible for any loss or damage to the Equipment however caused, while in the possession or under the control of the Customer. If the Equipment is substantially or completely destroyed or is rendered unusable, the Customer must pay to STODDART or its nominated contractor the current retail price for the Equipment. If the Customer has paid to STODDART a waiver charge, the Customer will not be liable for the costs of repairing the Equipment due to accidental damage only if that damage is covered under STODDART's insurance and the Customer has paid to STODDART the amount of any excess payable by STODDART under that Insurance.
- 21. Affixing of Signs and Marketing material:** STODDART may affix to Equipment supplied by it any advertising or other notices, signs and materials it considers appropriate. The Customer must not attempt to remove, interfere, obscure or damage such signs and materials without the prior approval of STODDART. The Customer must not place marketing or advertising material on the Equipment without STODDART's prior written approval.
- 22. Property:**
- (a) Where Products are to be supplied by way of sale property in the Products shall not pass until the Customer has paid all moneys owing to STODDART in full. Risk in the Products passes to the Customer at the time of delivery.
- (b) The Customer holds the Products as fiduciary bailee and agent for STODDART and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by STODDART: -
- (i) at all times where the Products are supplied on hire; and
- (ii) until payment of all moneys owed by the Customer to STODDART where the Product are supplied by way of sale.
- (c) If an Event of Default occurs, then without prejudice to STODDART'S other rights, STODDART may without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.
- (d) If the Customer sells any of the Products supplied by way of sale while money is owed to STODDART, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (e) The Customer must not sell or otherwise dispose of any Products supplied on hire or things (including land or structure) to which the Products have been affixed without first obtaining the written consent of STODDART. If in breach of this condition the Customer sells any of the Products supplied on hire then, without prejudice to STODDART's other rights, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (f) If the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for STODDART. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to STODDART and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.
- (g) If the Products are resold, or goods and services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for STODDART. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to STODDART at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without STODDART's prior written consent.
- 23. Personal Property Securities Act:** "Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.

- (a) In consideration of STODDART supplying the Products to the Customer at the request of the Customer, the Customer by signing these Terms of Sale:
- (i) grants to STODDART a "Purchase Money Security Interest" ("PMSI") in all Products supplied by STODDART to the Customer from time to time as security for payment of the purchase price of the Products;
 - (ii) grants to STODDART a "Security Interest" ("SI") in all Products supplied by STODDART to the Customer from time to time as security for payment of any other amount owed by the Customer to STODDART and as security for the performance by the Customer of the obligations set out in these Terms of Sale;
 - (iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Terms of Sale will come into existence subject to the PMSI and SI granted herein and these Terms of Sale without the need for any further action or agreement by any party;
 - (iv) acknowledges that the Customer has received valuable consideration from STODDART and agrees that it is sufficient;
 - (v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by STODDART to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.
- (b) STODDART reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Terms of Sale.
- (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by STODDART at STODDART'S complete discretion, and may, where applicable, be charged to the customer's credit account with STODDART.
- (d) The Customer must promptly, on request by STODDART, execute all documents and do anything else reasonably required by STODDART to ensure that the PMSI and SI created under these Terms of Sale constitutes a perfected security interest.
- (e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which STODDART has any PMSI and/or SI without the prior written consent of STODDART and will immediately notify STODDART if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products.
- (f) The Customer must not allow the Products to become accessions or commingled with other goods unless STODDART has first perfected any PMSI or SI that STODDART has in relation to the Products.
- (g) If STODDART perfects any PMSI and/or SI that STODDART has in relation to the Products, the Customer must not do anything that results in STODDART having less than the security or priority granted by the PPSA that STODDART assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
- (h) The Customer irrevocably grants to STODDART the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if STODDART has cause to exercise any of STODDART's rights under Chapter 4 of the PPSA, and the Customer will indemnify STODDART for any claims made by any third party as a result of such exercise.
- (i) The Customer acknowledges and agrees that: -
- (i) Nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Terms of Sale;
 - (ii) The Security Agreement created by these Terms of Sale may only be reinstated on the terms considered appropriate by STODDART at its complete discretion.
- (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Terms of Sale, and the Customer waives it's right to: -
- (i) not have goods damaged or be inconvenienced no more than necessarily incidental if STODDART removes an accession under s.92 PPSA;
 - (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
 - (iii) to apply to the Court for an order postponing the removal of the accession or to determine the amount payable to STODDART for the retention of the accession under s.97 PPSA
 - (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
 - (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
 - (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
 - (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA; and
 - (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA;
 - (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Terms of Sale under s.157 PPSA;
- 24. Delivery:** STODDART will deliver Products to the Site notified by the Customer subject to the following conditions: -
- (a) STODDART will endeavour to deliver Products to the Customer when the Customer requires them but will not be responsible for any delays in delivery of any nature.
 - (b) Products will be at the Customer's risk upon delivery. If the Site is unattended the delivery docket/manifest signed by the cartage contractor will be prima facie evidence of due delivery.
 - (c) Delivery to Carriers' depots are subject to availability of suitable materials handling equipment. Products delivered to, and acceptance at, carrier's depots will be at the Customer's risk upon acceptance of the Products by the nominated carrier.
 - (d) If the Customer fails to accept a delivery agreed to between STODDART and the Customer, the Customer will pay all costs incurred, including the costs of returning the Products to STODDART and any subsequent re-delivery of those Product to the Customer.
 - (e) All delivery, freight and other transport costs (including any insurance of the Products) are at the Customer's expense and will be charged to the Customer, unless STODDART expressly agrees otherwise in writing. Any additional costs associated with particular delivery instructions are at the Customer's expense and will be charged to the Customer even if the cost(s) have been omitted from any Quotation.
 - (f) STODDART may in STODDART's complete discretion deliver by instalments. Failure to deliver an instalment will not entitle the Customer to repudiate the contract and the Customer cannot reject Products due to late delivery.
 - (g) If STODDART delivers only part of the Products and/or Services, then it may invoice the Customer and the Customer must pay for, that part of the Products and/or Services delivered, unless otherwise agreed in writing between the parties.
- 25. Supply claims:** The Customer will inspect and check all Products received as soon as practicable upon unloading. Any claim by the Customer of a short supply of Products must be notified to STODDART at the time of delivery. The Customer acknowledges and agrees that any claim by the Customer for short supply of Products by STODDART after the time of delivery to the Site is waived. STODDART accepts no liability for any loss, damage, costs or expenses incurred by the Customer in relation to an alleged short supply of Products notified to STODDART after the time of delivery. All claims must be forwarded to STODDART at the address specified on the front of the Quotation. STODDART will endeavour to rectify any shortages as soon as practicable after receiving notice but will not accept any liability from or in respect of such rectification.
- 26. Rectification:** Requests by the Customer to STODDART for approval to undertake rectification works in relation to Products or Services supplied to the Customer must:
- (a) be in writing;
 - (b) be made within 28 days of the Products and Services being supplied by STODDART;
 - (c) clearly identify the STODDART order number to which the proposed rectification works relate; and
 - (d) provide sufficient details of the rectification work proposed to be undertaken by the Customer and the contractor or other party the Customer proposes to engage to undertake the work.
- STODDART accepts no obligation or liability to undertake rectification works requested by the Customer in the absence of a written rectification request made in accordance with the requirements of this clause. STODDART accepts no liability for any costs, loss, damage or expense incurred by the Customer associated with rectification works undertaken by the Customer or its agents or contractors without prior written approval from STODDART. STODDART may in its complete discretion approve or refuse a written rectification request made by the Customer.
- 27. Site Inspection:** If the Customer makes a complaint and requests a STODDART representative to visit a Site to inspect Products and Services supplied, STODDART will arrange for a representative to attend the Site. In the event that the subject of the complaint is in no way attributable to the Products and Services supplied by STODDART, STODDART is entitled to charge the Customer for expenses, travel time and time spent on Site by STODDART's representative at an hourly rate.
- 28. Liability:** The Customer acknowledges and agrees that: -
- (a) **Non-excludable Rights:** The parties acknowledge that there are statutes which may imply certain terms, conditions and warranties in these Terms of Sale and also avoid or prohibit the exclusion, restriction or modification of the application of, or rights arising under, those terms, conditions or warranties ("Non-Excludable Rights").
 - (b) **Exclusion of implied Terms, Conditions and Warranties:** All conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Products and/or Services supplied under the Contract are excluded to the full extent permitted by law.
 - (c) **Limitation of liability for Non-Excludable Rights:** To the extent permitted by law, the liability of STODDART for any breach of any Non-Excludable Right is limited, at the option of STODDART, to: -
 - (i) if the breach relates to Products:
 - (A) the replacement of the Products or the supply of equivalent Products;

- (B) the repair of the Products;
 - (C) the payment of the cost of replacing the Products or of acquiring equivalent Products; or
 - (D) the payment of the cost of having the Products repaired; and
- (ii) if the breach relates to Services:
- (A) the re-supplying of the Services; or
 - (B) the payment of the cost of having the Services re-supplied.
- (d) **Losses:** Subject to clauses 28(a) and (c), STODDART is not liable to the Customer in contract, tort including without limitation, negligence or breach of statutory duty, or to otherwise compensate the Customer, for:-
- (i) any death, injury, loss or damage to any person;
 - (ii) any damage to property or the Products;
 - (iii) any loss of profit, penalties, expenditure, damages or losses (including without limitation any consequential, special, incidental or indirect loss or damages) of the Customer or a third party;
- caused, directly or indirectly, as a result of:-
- (iv) guardrail and/or fall arrest barrier systems being affixed or otherwise attached to Products supplied by STODDART. The Customer acknowledges that STODDART wall frames and trusses have not been designed to accommodate any guardrail or fall arrest barrier systems being affixed or otherwise attached to them;
 - (iv) any technical advice given by its employees in connection with the design, installation and use of Products supplied by STODDART;
 - (v) the Customer or any person other than STODDART installing the Products;
 - (vi) the improper use by the Customer of the Products supplied, incorrect positioning of the Products or the performance of Products supplied;
 - (vii) any delay in delivery of the Products or completion of the work;
 - (viii) any use of or dealing with the Products whether arising from any defect in the Products or unsuitability for the Customer's purpose;
 - (ix) any inaccuracies in weights, measurements, capacities and other particulars of Products specified by STODDART;
 - (x) an act or omission (including negligent acts or omissions) of STODDART or any of STODDART's employees, contractors or agents, or in any other way caused by any fault or negligence by STODDART, its employees, agents or subcontractors in performing the work; or
 - (xi) any failure or omission on the part of STODDART to comply with its obligations under the contract.
- (e) **Force Majeure:** STODDART is not liable for any failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:
- (i) circumstances outside STODDART's control;
 - (ii) any failure of STODDART's machinery; or
 - (iii) any failure of a supplier to STODDART.
- (f) **Indemnity:** In addition to all other indemnities set out in these Terms of Sale, the Customer indemnifies STODDART, its employees, agents and contractors:
- (i) against any claims made against STODDART by any third party in respect of any loss, damage, death or injury to any person, except to the extent the liability arises out of an act or omission of STODDART, its employees, contractors or agents;
 - (ii) in respect of any cost, loss, damage or liability (including consequential loss, loss of profits or pecuniary or special damages) incurred by STODDART resulting from any claim arising from or in connection with any design, the installation or use of Products. The Customer accepts full responsibility and liability for any design, installation and use of Products including, in respect of the design for the infringement of any patent, registered design or other similar matters; and
 - (iii) against all losses and expenses which STODDART may suffer or incur due to the failure of the Customer to fully observe its obligations under these Terms of Sale.
- (g) **Warranty:** STODDART warrants that if during the period of 24 months from the date the original installation of Products is completed there appears any defect in the work carried out in affixing the products to the designated structure then STODDART will without cost to the Customer at its option either repair or redo properly such faulty work within a reasonable time of being notified in writing by the Customer of such defect PROVIDED THAT this warranty is given upon and subject to the following conditions:
- (i) for the purposes of this warranty the definition of Products is limited to, fascia, gutter and roofing;
 - (ii) this warranty does not apply to Steel House Frames and Trusses, Scaffolding or Solar Panels;
 - (iii) this warranty does not apply to any defects or faults in the Products;
 - (iv) this warranty is not binding upon STODDART unless the Customer has paid in full all invoices issued by STODDART for the Products and Services;
 - (v) this warranty will not apply where the defect complained of is not directly attributable to any fault or defect in the performance of the work of affixing the Products to a structure (including without any limitation whatsoever any defects or faults caused by: (i) defects or faults in the Products themselves; (ii) defects in the structure to which the Products are affixed; or (iii) unusual or unreasonable treatment of the installed Products by the Customer or any third party);
 - (vi) all reasonable expenses incurred by the Customer in making a claim under this warranty where a claim is discovered to be justified will be paid by STODDART;
 - (vii) STODDART will not be liable under the warranty for any consequential, indirect or special loss or damage arising out of any defects or faults in the services;
 - (viii) the extent of STODDART's liability under this warranty is limited, at the option of STODDART, to the lesser of the cost of rectification and the amount charged by STODDART for the original installation of the Products. In discharging its liability under this warranty STODDART is not required to expand more than the amount charged by STODDART for the original installation of the Products;
 - (ix) the Customer's claim under this warranty must be notified to STODDART in accordance with the requirements set out in clause 26 (with the exception of sub-clause 26(b)) and must be made within 28 days of the earlier of the date the Customer became aware, or the date a reasonable person in the same circumstances would have become aware, of the defect.
 - (x) the benefits conferred by this warranty on the Customer are in addition to all Non-excludable Rights. This warranty does not exclude or modify any Non-excludable Rights and to the extent of any inconsistency between such rights and remedies and the terms of this warranty, this warranty shall be read subject to those rights and remedies, and clauses 28(a) to (f).
- STODDART warrants that the Steel House Frames and Trusses supplied by STODDART to the Customer for the Customer's Client (the Customer's Client means the person who owns or is to own the house in which the Steel House Frames and Trusses are to be installed or incorporated by the Customer) are manufactured from prime material and if during the period of 50 years commencing on the date of the delivery of the Steel House Frames and Trusses by STODDART to the Customer there appears any defect or fault in the Steel House Frames and/or Trusses then STODDART will at its option either replace or repair the defective Steel House Frames and Trusses or pay the reasonable costs of having the defective Steel House Frames and Trusses repaired within a reasonable time of being notified in writing by the Customer of such defect PROVIDED THAT this warranty is given upon and subject to the following conditions and exclusions:-
- (i) this warranty does not apply to any Steel House Frames and Trusses if the Steel House Frames and/or Trusses fails or is otherwise defective as a result of any of the following:-
 - A. the effect of chemical agents, fumes, liquids or solids;
 - B. contact with soils, ashes, fertilisers or moisture retaining substances;
 - C. contact with lead or copper;
 - D. installation in an area which is subject to unusually corrosive or highly corrosive environment;
 - E. damage by storm, tempest, acts of God or any other cause beyond the reasonable control of STODDART;
 - F. installation other than in accordance with Australian Standards and STODDART's specifications;
 - G. installation in an area which is within 300 meters of breaking surf;
 - H. modification of the Steel House Frames and/or Trusses by a third party in any manner not approved by STODDART.
 - (ii) this warranty does not apply where the defect complained of is not directly attributable to a defect or fault in the Steel House Frames and Trusses themselves (including without limitation whatsoever any defects or faults caused by (i) any fault or defect in the performance of the work carried out to install the Steel House Frames and Trusses or in affixing them to a structure; and (ii) defects in the structure to which the Steel House Frames and Trusses are affixed);
 - (iii) this warranty is not binding upon STODDART unless the Customer has paid in full all invoices issued by STODDART;

- (iv) all reasonable expenses incurred by the Customer in making a claim under this warranty where a claim is discovered to be justified will be paid by STODDART;
 - (v) STODDART will not be liable under the warranty for any consequential, indirect or special loss or damage arising out of any such defects or faults;
 - (vi) the extent of STODDART's liability under this warranty is limited, at the option of STODDART, to the lesser of the cost of replacement and the amount charged by STODDART for the original supply of the defective Steel House Frames and Trusses. In discharging its liability under this warranty STODDART is not required to expand more than the amount charged by STODDART for the original supply of the defective Steel House Frames and Trusses;
 - (vii) the Customer's claim under this warranty must be notified to STODDART in accordance with the requirements set out in clause 26 (with the exception of sub-clause 26(b)), subject to and in addition to the following requirements: -
 - A. the Customer's claim must be made within 28 days of the earlier of the date the Customer or the Customer's client (as applicable) became aware, or the date a reasonable person in the same circumstances would have become aware, of the defect or fault;
 - B. the Customer's claim must identify the relevant work or Invoice number, the location of the house where the Steel House Frames and/or Trusses were installed, and the date of STODDART's delivery of the Steel House Frames and/or Trusses to the Customer; and
 - C. the Claim must be made in writing and sent to "The Manager, Steel House Frames Australia Pty Ltd, 18 – 26 Lahrs Road, Ormeau, QLD, 4208"
 - (viii) the benefits conferred by this warranty on the Customer are in addition to all Non-excludable Rights. This warranty does not exclude or modify any Non-excludable Rights and to the extent of any inconsistency between such rights and remedies and the terms of this warranty, this warranty shall be read subject to those rights and remedies, and clauses 28(a) to (f).
- 29. Expenses:** The Customer must pay to STODDART any costs, charges and expenses (including all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by STODDART in connection with any supply by STODDART to the Customer, the exercise or attempted exercise of any power, right or remedy under these Terms of Sale and/or the failure of the Customer to comply with these Terms of Sale.
- 30. Suspension or Ceasing of Supply:**
- (a) STODDART may in STODDART'S complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Terms of Sale.
 - (b) Without limiting clause 30(a), if an Event of Default occurs, STODDART may, without prejudice to STODDART'S other rights, call up moneys owed to STODDART by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.
- 31. Service of Notices and Documents:** All notices or documents required to be given to STODDART for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by STODDART to the Customer for the purposes of the PPSA or for any other purposes will be effectively 'given', 'served' and 'delivered' if sent by STODDART to the Customer by pre-paid ordinary post to any one of the following addresses: -
- (a) the last address for the Customer known to STODDART;
 - (b) if the Customer is a Company, the registered office or principal place of business; or
 - (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.
- 32. Waiver:** The failure by STODDART to insist upon the compliance with any of these Terms of Sale does not constitute a waiver and STODDART is entitled to insist upon compliance with all provisions of these Terms of Sale at any time.
- 33. Assignment:** The Customer may not assign any of its rights and obligations under these Terms of Sale or otherwise transfer the benefit of them or any right or remedy under them without the prior written consent of STODDART.
- 34. Severance:** Each clause, subclause and part of these Terms of Sale is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
- 35. Application of Laws:** These Terms and Conditions are governed by the laws of the State of Queensland. The Customer submits to and consents to the central Courts of Brisbane having jurisdiction over these Terms of Sale.
- 36. Miscellaneous:** The parties acknowledge that: -
- (a) All Products that are not normally stocked by STODDART for supply to Customers are non-refundable and must be paid for by the Customer.
 - (b) Any description of Products in STODDART's quote or elsewhere will be by way of identification only and the use of the description will not create a sale by description. STODDART may at its complete discretion alter the material specifications shown in its promotional material to reflect changes made after the date of publication.
 - (c) The Customer has not relied on any representations made by STODDART, its employees and agents which have not been stated expressly in this contract or upon any descriptions or illustrations or specifications contained in any document including any catalogue or publicity material produced by STODDART.
 - (d) The Customer acknowledges and agrees that the Products are required for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other Products or fixtures on land.
 - (e) The Customer acknowledges that only some of the Products or components thereof may be manufactured by STODDART. For those Products or components not manufactured by STODDART, STODDART will give the Customer, and use its best endeavours to enforce at the cost of, and for the benefit of, the Customer, such warranties and guarantees as STODDART has obtained from its supplier in respect of those Products.
 - (f) The Customer acknowledges and agrees that it must not enter into and has not entered into any agreement with a third party which would prevent the Customer from complying with these Terms of Sale.
 - (g) STODDART will use its reasonable endeavours, where as part of the Services it has prepared the design, to avoid the infringement by the design of any patent, registered design or other similar matters.
 - (h) STODDART may subcontract the performance of the whole or part of the Products and Services it is to provide under the Contract.
 - (i) The Customer acknowledges that STODDART Wall Frames and Trusses have not been designed to accommodate any guardrail or fall arrest barrier systems being affixed or otherwise attached to them;
 - (j) If STODDART receives or recovers money in respect of a debt of the Customer, STODDART may use the money to pay off whichever debt or part of a debt STODDART chooses and is not compelled to apply the money as directed by the Customer or any other person.
 - (k) STODDART may at any time set-off amounts owed by STODDART to the Customer against amounts owed by the Customer to STODDART.
- 37. Garage Doors**
- (a) Customer will ensure that ample side room and head room will be available for the installation of Products. If any modifications are required to the building structure or the construction of the Products, these will be the responsibility of the Customer.
 - (b) Where any Products are to be installed by STODDART, adequate solid fixing for the Products must be provided by the Customer.
 - (c) In the case of residential Products installation of power outlets for electrical openers is at the cost of the Customer and is not included in the Price quoted, unless stated in the Quotation.
 - (d) In the event that electrical and/or lighting fittings require removal or relocation to allow installation this will be done at the Customer's cost and is not included in the Price quoted, unless stated in the Quotation.
 - (e) For the purpose of installation work, it will be necessary for the 240 volt supply to be available within 20m of the opening to facilitate the use of power tools where applicable.
 - (f) The Customer agrees and undertakes to provide full unfettered access to the Site for the duration of the Works including any maintenance that may be required.
 - (g) Any relevant measurements provided by the Customer are to be guaranteed by the Customer and it is the Customer's responsibility to advise STODDART of any variations in writing before manufacture of the Products. Where variations occur and no advice has been received by STODDART, it is the responsibility of the Customer to cover all costs incurred.
 - (h) The Customer acknowledges that garage doors and accessories are manufactured from pre-painted sheet metal which is subject to scratching and denting. The Customer acknowledges STODDART'S right to make good scratches and dents by repairing dents and/or touching up painted surfaces.
 - (i) Timber garage doors are manufactured from natural products and as such variations in timber colour and grain will be experienced. The Customer acknowledges that STODDART will not be liable for such variations in colour and grain.
 - (j) All timber garage doors require ongoing maintenance to the timber surface by the reapplication of timber sealers, as and when required. Such reapplication shall be the responsibility of the Customer.
 - (k) All doors are made good front face side only. There is no cosmetic warranty on the internal make of the door. Minor objects in finish not visible from 3 metres will not be accepted by STODDART as a warranty claim.