

TERMS AND CONDITIONS

Definitions

1. In these terms and conditions:

'Confidential Information' means information that (i) is by its nature confidential; (ii) is designated by Staircase Constructions to be confidential; or (iii) the Customer knows or ought to know is confidential, relating to the Goods or Staircase Constructions' business which is not in the public domain, including trade secrets, know-how, scientific, technical, product, market or pricing information.

'Contract' means a contract between Staircase Constructions and the Customer for the supply of Goods and/or Services, as constituted by Staircase Constructions' quotation (if any), an Order, and these terms and conditions.

'Customer' means the person, firm, organisation, partnership, corporation, trustee of a trust or other entity (including its successors and permitted assigns) to whom Goods and/or Services are provided by Staircase Constructions.

'Customer Material' means any and all information, specifications, data, and documents provided by the Customer to Staircase Constructions (whether in hard copy or in an electronic format) in the course of Staircase Constructions supplying the Goods and/or Services.

'Goods' means all goods supplied by Staircase Constructions to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and as are described on the invoices, quotation, work authorisation or any other forms as provided by Staircase Constructions to the Customer.

'GST' has the meaning given to it by *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

'Intellectual Property Rights' means all intellectual property rights throughout the world, whether present or future, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

'Order' means a written or verbal order from the Customer requesting the supply of Goods and/or Services.

'Personnel' means officers, employees, and agents engaged by each party (but does not include the other party) and, in the case of Staircase Constructions, includes its subcontractors (and any employee of those subcontractors).

'PPSA' means the *Personal Property Securities Act 2009* (Cth).

'PPSR' means the *Personal Property Securities Register*.

'Price' means the Price payable for the Goods and/or the Services as determined in accordance with clause 2.

'Services' means all services supplied by Staircase Constructions to the Customer (and where the context so permits shall include any supply of Goods as described above).

'Staircase Constructions' means Staircase Constructions Pty Ltd ACN 150 328 813 as trustee for Gibson Family Trust ABN 58 537 359 507 and its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

'Staircase Constructions IP' means all Intellectual Property Rights in and in relation to:

- (i) Confidential Information;
- (ii) all documents, reports, computer programs, software, manuals, patents, and patentable inventions relating to the Goods; and
- (iii) Works.

'Works' means all literary, artistic and other works, including all physical works, production materials and subject matter created solely or jointly with others, by Staircase Constructions in the course of or in relation to any Contract in which Intellectual Property Rights may subsist and all drafts, variations, alterations, and adaptations of such works or subject matter (whether currently existing or created in the future).

Price and Payment terms

2. At Staircase Constructions' sole discretion, the Price shall be either:

- (a) as indicated on invoices provided by Staircase Constructions to the Customer in respect of Goods and/or Services;
- (b) Staircase Constructions' quoted Price (subject to clauses 10 and 15 to 17) which shall be binding on Staircase Constructions provided the Customer accepts the quotation in writing within the period specified in clause 11; or
- (c) as indicated on Staircase Constructions' then current price list (as amended from time to time).

3. Where the Customer has an approved commercial credit account, the terms of payment are strictly thirty (30) days from the date of invoice (or such other period as nominated by Staircase Constructions in writing). Staircase Constructions may, at any time, vary the terms of payment in accordance with these terms and conditions.

4. If credit is not extended by Staircase Constructions to the Customer, then the Customer must make payment of the Price either (at Staircase Constructions' option):

- (a) on delivery of the Goods;
- (b) before the commencement of the Services;
- (c) immediately upon completion of the Services;
- (d) by way of instalments/progress payments in accordance with Staircase Constructions' payment schedule; or
- (e) by the date nominated by Staircase Constructions' invoice(s).

5. The Customer must check all invoices and advise Staircase Constructions of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by Staircase Constructions.

6. Should the Customer not pay for the Goods and/or Services supplied by Staircase Constructions in accordance with the terms and conditions provided herein, or as agreed in writing by Staircase Constructions and Customer from time to time, after issuing a written demand to the Customer

demanding payment within fourteen (14) days, Staircase Constructions will be entitled to charge an administration fee of ten (10) percent of the amount outstanding in respect of the Goods and/or Services.

7. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum, which interest will accrue and be recoverable each day or part thereof that the debt remains outstanding.
8. The Customer acknowledges that Staircase Constructions shall be at liberty to charge a payment surcharge for credit card, prepaid credit card, and EFTPOS payments equal to Staircase Constructions' average cost of acceptance.

Purpose of credit

9. The Customer acknowledges and agrees that any credit to be provided to the Customer by Staircase Constructions is to be applied wholly or predominantly for business purposes.

Formation of Contract

10. Quotations:

- (a) are exclusive of GST;
- (b) are subject to Staircase Constructions' confirmation of site measurements; and
- (c) shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing.

11. Staircase Constructions, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a Contract in accordance with clause 12.

12. Quotations made by Staircase Constructions are estimates only and will not be construed as an offer or obligation to supply in accordance with the quotation. Staircase Constructions reserves the right to accept or reject, at its discretion, any Order. Only written acceptance by Staircase Constructions of an Order will complete a Contract.

13. Placement of an Order will constitute acceptance of these terms and conditions.

14. At Staircase Constructions' sole discretion, a deposit may be required. The deposit amount or percentage of the price due will be stipulated at the time of the order of the Goods and/or Services and shall immediately become due and payable upon the formation of a Contract in accordance with clause 12. For the purposes of clarity, where a deposit is requested, Staircase Constructions is under no obligation to supply Goods and/or Services until the deposit has been received by Staircase Constructions in cleared funds.

Variations

15. Where the Customer requests or directs that any Goods and/or Services be supplied that are not strictly in accordance with the quotation or Order, then such Goods and/or Services shall constitute a variation, unless otherwise agreed between the parties.

16. The Customer understands and agrees that:

- (a) all variations must be agreed between the parties in writing prior to the Goods and/or Services being supplied; and
- (b) all variations shall be, at Staircase Constructions' discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with Staircase Constructions' current prevailing rates (as amended from time to time).

17. Notwithstanding clauses 15 and 16, and subject to any rights the Customer might have under any relevant legislation, Staircase Constructions reserves the right to vary the quoted price if:

- (a) there is any movement in the cost of supplying the Goods and/or Services specified in the Order (including, without limitation, any actual increase in the costs to Staircase Constructions in manufacturing, procuring, or transporting the Goods, and/or actual increases in labour in connection with the supply of the Goods and/or Services);
- (b) the Goods and/or Services specified in the Order are varied from the Goods and/or Services specified in Staircase Constructions' quotation; or
- (c) otherwise as provided for in these terms and conditions.

Cancellation of Orders

18. Unless otherwise agreed in writing between the parties, the Customer may not cancel an Order (or any part of an Order) once accepted by Staircase Constructions, delivery of the Goods cannot be deferred, and Goods ordered cannot be returned except with the prior written consent of Staircase Constructions and then (subject to clause 39(b)) only upon terms that the Customer reimburse and indemnify Staircase Constructions against all losses it has incurred or may incur as a result of the cancellation, deferral or return, including, without limitation, cartage, bank charges, other incidental expenses incurred on any part of the Order and loss of profits.

19. Notwithstanding any other rights Staircase Constructions may have under these terms and conditions, Staircase Constructions may, in its sole discretion, cancel any Order or delivery of any Order, by providing written notice to the Customer if the Customer:

- (a) defaults in payment of any invoice by the due date;
- (b) enters into liquidation or, where the Customer is an individual, becomes bankrupt; or
- (c) breaches an essential term herein.

20. To the fullest extent permitted by law, Staircase Constructions accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of Staircase Constructions exercising its rights under clause 19.

Provision of Services

21. Where Staircase Constructions has been engaged to provide Services, the Customer acknowledges that it must ensure that site amenities required by Staircase Constructions' Personnel, including, but not limited to, water, electricity, and sanitary accommodation (i.e. serviced toilet facilities) are provided for Staircase Constructions' Personnel's use (at no cost to Staircase Constructions or its Personnel).

22. The Customer:
- acknowledges that it must obtain, and provide to Staircase Constructions, all things necessary for Staircase Constructions to perform the Services in a timely manner;
 - inform Staircase Constructions of any special requirements pertaining to the Order or the performance of the Services (including, without limitation, site-specific requirements, and safety requirements);
 - understands and agrees that store room framing below the stairs and all linings are the sole responsibility of the Customer; and
 - understands and agrees that the Building Code of Australia requirement for non-slip finish to the stairs is the sole responsibility of the Customer.
23. The Customer acknowledges and agrees that:
- any estimate for performance or completion of the Services provided by Staircase Constructions is an estimate only and is not a contractual commitment;
 - unless specified by Staircase Constructions in writing, Staircase Constructions does not make any warranty or representation that it will be capable of providing or completing the Services within any timeframe(s) specified by the Customer;
 - it is not relieved from any obligation arising under these terms and conditions by reason of any delay in the provision or completion of the Services;
 - Staircase Constructions may suspend or cease performance of the Services at any time upon written notice to the Customer if, in the reasonable opinion of Staircase Constructions (or its Personnel), it would be unsafe for any person for Staircase Constructions (or its Personnel) to provide (or continue to provide) Services at the Customer's nominated site.

Site access

24. The Customer acknowledges that it shall at all reasonable times permit Staircase Constructions (and its Personnel) to have free, clear, and unrestricted access to the site where the Services are to be provided to enable Staircase Constructions to fulfil its obligations without unreasonable interruption, impediment, delay, or obstruction. The Customer further acknowledges that it must provide Staircase Constructions (and its Personnel) with such materials including, but not limited to, information, plans, and drawings that Staircase Constructions may reasonably require to perform the Services.
25. In the event that the Customer makes available access to any site where the Services are to be performed, the Customer warrants that such work site is safe and that it complies with all relevant work health and safety laws and standards.
26. In the event that free, clear, and unrestricted access to the site is not available to Staircase Constructions in accordance with clause 24, Staircase Constructions reserves the right to suspend or cease the provision of Services upon the provision of written notice to the Customer.
27. The Customer agrees to indemnify Staircase Constructions for any and all costs and penalties (including claims for liquidated damages) incurred by Staircase Constructions if the provision or completion of the Services is delayed due to interrupted site access.

Site contamination

28. Should Staircase Constructions' Personnel discover asbestos or any other contaminants at the Customer's nominated site which pose (or may pose) a health risk to any person, then Staircase Constructions shall be entitled to suspend performance of the Services, until such time as licensed contractors commissioned by the Customer have cleared all such contaminants from the site. The Customer shall indemnify Staircase Constructions from any costs, losses, and expenses incurred.

Delivery

29. The Customer shall be liable for all costs associated with delivery, including freight, insurance, handling, and other charges, unless otherwise agreed in writing.
30. The Customer acknowledges and accepts that any period or date for delivery stated by Staircase Constructions is intended as an estimate only and is not a contractual commitment. Staircase Constructions will not in any circumstances be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated delivery.
31. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only, unless otherwise agreed to in writing.
32. Delivery is deemed to occur at the earlier of:
- the collection of Goods from Staircase Constructions by the Customer or any third party on behalf of the Customer;
 - the time the Goods are delivered to the Customer's nominated site;
 - the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
33. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
34. Staircase Constructions is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Goods.
35. The Customer accepts that Staircase Constructions may deliver Goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.
36. The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery.

Claims

37. The Customer must inspect the Goods immediately upon delivery or installation (as the case may be) and must within seven (7) days after the date of inspection give written notice to Staircase Constructions with particulars, of any claim that the Goods are not in accordance with the Contract. Further, the Customer must, upon request from Staircase Constructions, allow Staircase Constructions to enter upon any premises occupied by the Customer to inspect the Goods that are subject of the claim. If the Customer fails to give notice or refuses to allow Staircase Constructions to inspect the Goods, then to the extent permitted by law, the

Goods must be treated as having been accepted by the Customer (and the Customer shall have no claim against Staircase Constructions for damage or non-conformity of the Goods with the Contract) and the Customer must pay for the Goods in accordance with these terms and conditions.

38. The Customer cannot return Goods to Staircase Constructions without the written agreement of Staircase Constructions. To the extent permitted by law, Goods that have been specifically produced or purchased by Staircase Constructions at the Customer's request cannot be returned in any circumstances.
39. After inspection has taken place as provided for by clause 37 (but subject to clause 38):
- if Staircase Constructions reasonably determines that:
 - the Goods are not damaged; or
 - the Goods were damaged by the Customer or the Customer failed to take reasonable steps to prevent the Goods from becoming damaged; and
 - the Goods are otherwise in conformity with the Contract, the Customer is deemed to have accepted the Goods and Staircase Constructions is entitled to the Price.
 - if Staircase Constructions reasonably determines that:
 - the Goods are damaged; and
 - the Goods were not damaged by the Customer and the Customer did not fail to take reasonable steps to prevent the Goods from becoming damaged; or
 - the Goods are otherwise not in conformity with the Contract, the Customer is entitled to any one or more, at the option of Staircase Constructions:
 - the replacement of the Goods or the supply of equivalent Goods;
 - the repair of the Goods;
 - the payment of the cost of replacing the Goods or acquiring equivalent Goods;
 - the payment of the cost of having the Goods repaired.

40. Where Goods are the subject of a notice under clause 37:
- the Customer must leave the Goods in the state and condition in which they were delivered and/or installed (as the case may be) until such time as Staircase Constructions or its duly authorised agent has inspected the Goods; and
 - such inspection must be carried out within a reasonable time after notification by the Customer.
41. The Customer acknowledges and agrees that any return, other than a return due to a default by Staircase Constructions under these terms and conditions or as otherwise permitted by law, will incur a handling and administration charge of ten (10) percent of the purchase price of the returned Goods.
42. Unless otherwise agreed in writing between the parties, the Customer must pay all costs associated with the return of any Goods (either to Staircase Constructions or from Staircase Constructions to the Customer or any third party) including freight, insurance, handling, and other charges. Goods to be returned to Staircase Constructions must be unsoiled, undamaged, packed and wrapped appropriately and must include all original packaging and documentation. Staircase Constructions accepts no liability for any damage that occurs to any Goods in return transit.

Risk

43. Where Staircase Constructions has been engaged to supply Goods only, risk of damage to or loss of the Goods passes to the Customer on delivery.
44. Where Staircase Constructions has been engaged to supply and install the Goods, risk of damage to or loss of the Goods passes to the Customer upon installation.
45. If any of the Goods are damaged or destroyed following delivery or installation (as the case may be) but prior to ownership passing to the Customer, Staircase Constructions is entitled to receive all insurance proceeds payable for the Goods to the extent of the indebtedness of the Customer to Staircase Constructions. The production of these terms and conditions by Staircase Constructions is sufficient evidence of Staircase Constructions' rights to receive the insurance proceeds without the need for any person dealing with Staircase Constructions to make further enquires.
46. The Customer acknowledges and understands that timber is a natural wood product and as such may exhibit variations in the texture, shade, colour, surface, finish, markings, veining, and contains natural fissures, lines, indentations and may fade or change colour over time. Whilst Staircase Constructions will take reasonable steps to match sales samples to the Goods supplied, Staircase Constructions, to the fullest extent permitted by law, accepts no liability whatsoever where such samples differ to the Goods supplied.
47. The Customer further acknowledges and understands that timber is a hygroscopic material subject to expansion and contraction, and as such, Staircase Constructions, to the fullest extent permitted by law, accepts no liability whatsoever for damage, disfiguration, deterioration, or loss to timber caused as a result of:
- natural expansion and contraction, warping, or swelling;
 - exposure to liquids or damaging substances;
 - exposure to the elements; or
 - impact, abrasion, or scratching.

Retention of title

48. Until such time as the Customer has made payment in full for the Goods and until such time as the Customer has made payment in full of all other money owing by the Customer to Staircase Constructions (whether in respect of money payable under a specific Contract or on any other account whatsoever):
- title in the Goods does not pass to the Customer;
 - the Customer agrees that property and title in the Goods will not pass to the Customer and Staircase Constructions retains the legal and equitable title in those Goods supplied and not yet sold;
 - the Customer will hold the Goods in a fiduciary capacity for Staircase Constructions and agrees to store the Goods in such a manner that

- they can be identified as the property of Staircase Constructions, and will not mix the Goods with other similar goods; and
- (d) the Customer will be entitled to sell the Goods in the ordinary course of its business but will sell as agent and bailee for Staircase Constructions and the proceeds of sale of the Goods will be held by the Customer on trust for Staircase Constructions absolutely.
49. The Customer's liability to Staircase Constructions under these terms and conditions will not be discharged by the operation of clause 48(d) (but its levels of indebtedness will be reduced by the extent of the funds so remitted to Staircase Constructions).
50. The Customer agrees that whilst property and title in the Goods remains with Staircase Constructions, Staircase Constructions has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the Goods of Staircase Constructions and, when payment is overdue, to immediately enter the premises (as the Customer's invitee) to repossess the Goods which may be in the Customer's possession, custody or control when payment is overdue.
51. The Customer will be responsible for Staircase Constructions' costs and expenses (including legal costs, on an indemnity basis) in exercising its rights under clause 50 where the Customer is otherwise in default of the terms of the Contract. Where Staircase Constructions exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Staircase Constructions, its employees, servants, or agents.
52. The Customer agrees that where the Goods have been retaken into the possession of Staircase Constructions, Staircase Constructions has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Customer on those Goods, and the Customer hereby grants an irrevocable licence to Staircase Constructions to do all things necessary to sell the Goods bearing the name or trademark of the Customer.
53. For the avoidance of doubt, Staircase Constructions' interest constitutes a 'purchase money security interest' pursuant to the PPSA.
- Personal Property Securities Act**
54. The Customer acknowledges that by assenting to these terms and conditions, the Customer grants a security interest to Staircase Constructions in all Goods (and their proceeds) now or in the future supplied by Staircase Constructions to the Customer (or to its account).
55. The Customer undertakes to do anything that is required by Staircase Constructions:
- (a) so that Staircase Constructions can acquire and maintain one or more perfected security interests under the PPSA in respect of the Goods and their proceeds;
- (b) to register a financing statement or financing change statement; and
- (c) to ensure that Staircase Constructions' security position, and rights and obligations, are not adversely affected by the PPSA.
56. Unless the Customer has obtained Staircase Constructions' prior written consent, the Customer undertakes not to:
- (a) register a financing change statement in respect of a security interest contemplated or constituted by these terms and conditions; and
- (b) create or purport to create any security interest in the Goods, nor register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party.
57. The Customer:
- (a) waives its right under section 157 of the PPSA to receive a copy of the verification statement relating to a security interest created under these terms and conditions;
- (b) agrees that to the extent permitted by the PPSA, the following provisions of the PPSA will not apply and are contracted out of: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 96; section 118 (to the extent that it allows a secured party to give notices to the grantor); section 121(4); section 125; section 130; section 132(3)(d); section 132(4); section 135; section 142 and section 143; and
- (c) agrees that the following provisions of the PPSA will not apply and the Customer will have no rights under them: section 127; section 129(2) and (3); section 130(1); section 132; section 134(2); section 135; section 136(3), (4) and (5) and section 137.
58. The Customer agrees that it will, if requested by Staircase Constructions, sign any documents, provide any information, or do anything else Staircase Constructions requests, to ensure that any security interest created in Staircase Constructions' favour by these terms and conditions is, to the fullest extent possible under the PPSA, perfected in accordance with Part 2.2 of the PPSA.
59. Notwithstanding section 275 of the PPSA, the parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.
60. The Customer irrevocably grants to Staircase Constructions the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if Staircase Constructions has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify Staircase Constructions from any claims made by any third party as a result of such exercise.
61. The Customer will be responsible for Staircase Constructions' costs and expenses (including legal costs, on an indemnity basis) in exercising its rights under clause 60 where the Customer is otherwise in default of these terms and conditions. Where Staircase Constructions exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Staircase Constructions, its employees, servants, or agents.
62. The Customer agrees to accept service of any document required to be served, including any notice under these terms and conditions or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Staircase Constructions by the Customer or the Customer's authorised representative.
63. The Customer further agrees that where Staircase Constructions has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
- Security/charges**
64. The Customer charges in favour of Staircase Constructions all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with payment of all monies which are now or in the future become owing to Staircase Constructions whether pursuant to these terms and conditions or otherwise until all such monies are paid in full by the Customer.
65. The Customer charges in favour of Staircase Constructions all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with payment of all monies which are now or in the future become owing to Staircase Constructions whether pursuant to these terms and conditions or otherwise until all such monies are paid in full by the Customer.
66. As security for the payment of the amount of its indebtedness to Staircase Constructions from time to time, the Customer irrevocably appoints as its duly constituted attorney Staircase Constructions' company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat Staircase Constructions may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).
67. Where the Customer has previously entered into an agreement with Staircase Constructions by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created by these terms and conditions and will secure all indebtedness and obligations of the Customer hereunder. Staircase Constructions may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages, or other securities to reflect the terms herein.
- Account suspension**
68. Where the Customer has an approved commercial credit account, Staircase Constructions may, without prejudice to any other rights that Staircase Constructions may have, suspend the Customer's account if the Customer fails to make payment of any invoice by the due date. An account suspension may cause any unfulfilled Orders to be cancelled by Staircase Constructions.
- Cancellation of terms of credit**
69. Where the Customer has an approved commercial credit account, Staircase Constructions reserves the right to withdraw credit at any time upon provision of forty-eight (48) hours' written notice.
70. Notwithstanding clause 69, if the Customer defaults in the payment of any amount due to Staircase Constructions under any Contract and does not cure such default within seven (7) days after being given notice of such default, Staircase Constructions may terminate this agreement (to be effective immediately) upon notice to the Customer.
71. Upon the withdrawal of credit in accordance with clause 69, or upon termination of this agreement in accordance with clause 70, all liabilities incurred by the Customer become immediately due and payable to Staircase Constructions.
72. For the avoidance of doubt, termination of this agreement will not affect:
- (a) the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
- (b) the rights and/or obligations pursuant to this agreement which by their nature are intended to survive termination of this agreement.
- Provision of further information**
73. The Customer undertakes to comply with any reasonable written requests by Staircase Constructions to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
74. If the Customer is a corporation (with the exception of a public listed company), it must advise Staircase Constructions of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders Staircase Constructions may ask for its directors to sign a guarantee and indemnity.
- Corporations**
75. If the Customer is a corporation, the Customer warrants that all of its directors have signed this agreement and acknowledges that all of its directors may be required to enter into a guarantee and indemnity with Staircase Constructions in relation to the Customer's obligations to Staircase Constructions.
- Trustee capacity**
76. If the Customer is the trustee of a trust (whether disclosed to Staircase Constructions or not), the Customer warrants to Staircase Constructions that:
- (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
- (b) the Customer has the right to be reasonably indemnified out of trust assets;
- (c) the Customer has the power under the trust deed to sign this agreement; and
- (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising Staircase Constructions and having the new or additional trustee sign an agreement on substantially the same terms as this agreement.

77. The Customer must give Staircase Constructions a copy of the trust deed upon request.

Partnership

78. If the Customer enters into this agreement in its capacity as a partnership, the Customer warrants that all of the partners have signed this agreement.

79. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising Staircase Constructions.

Insolvency

80. If the Customer becomes insolvent, to the extent permitted by law, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if Staircase Constructions receives a dividend or payment as a result of the Customer being insolvent.

Indemnity

81. The Customer agrees to indemnify Staircase Constructions in respect of all liability, claims, damage, loss, costs, and expenses (including collection costs, debt recovery fees, and legal costs on an indemnity basis) that Staircase Constructions may suffer or incur at any time, directly or indirectly, as a result of any default by the Customer in the performance or observance of the Customer's obligations under these terms and conditions.

82. The Customer's liability to indemnify Staircase Constructions will be reduced proportionally to the extent only that:

(a) any negligent act or omission by Staircase Constructions or a breach of Staircase Constructions' obligations under these terms and conditions has contributed to the liability, claim, damage, loss, cost, or expense which is the subject of the indemnity; or

(b) these terms and conditions make Staircase Constructions specifically liable for any cost or expense or rectifying or repairing any defect in, malfunction of or damage to the Goods.

83. The Customer's liability to indemnify Staircase Constructions is a continuing obligation separate and independent from the Customer's other obligations and survives termination of any Contract.

84. It is not necessary for Staircase Constructions to incur any expense or make any payment before enforcing its rights of indemnity conferred by these terms and conditions.

Costs

85. The Customer must pay for its own legal, accounting and business costs and all costs incurred by Staircase Constructions relating to any default by the Customer under any Contract. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).

86. The Customer will pay Staircase Constructions' costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.

87. Subject to clauses 88 and 89, payments by, or on behalf of, the Customer will be applied by Staircase Constructions as follows.

(a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 51, 61, 81, and 86.

(b) Secondly, in payment of any interest incurred in accordance with clause 7.

(c) Thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by Staircase Constructions in its absolute discretion.

88. To the extent that payments have been allocated to invoices by Staircase Constructions in its business records, Staircase Constructions may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at Staircase Constructions' absolute discretion, including in a manner inconsistent with clause 87 herein.

89. Payments allocated (and/or reallocated) under clause 87 and/or 88 will be treated as though they were allocated (and/or reallocated) in the manner determined by Staircase Constructions on the date of receipt of payment.

Taxes and duty

90. The Customer must pay GST on any taxable supply made by Staircase Constructions to the Customer under any Contract. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.

91. If as a result of:

(a) any legislation becoming applicable to the subject matter of any Contract; or

(b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;

Staircase Constructions becomes liable to pay any tax, duty, excise, or levy in respect of the amounts received from the Customer, then the Customer must pay Staircase Constructions these additional amounts on forty-eight (48) hours' written demand.

Subcontracting and assignment

92. Staircase Constructions may engage a subcontractor without the approval of the Customer to perform all or any of its obligations under these terms and conditions.

93. Neither party shall assign its benefits or obligation under these terms and conditions without the written consent of the other (which consent shall not be unreasonably withheld).

Accuracy of Customer Material

94. The Customer warrants that any and all Customer Material provided to Staircase Constructions is accurate and correct. Staircase Constructions, to the maximum extent permitted by law, accepts no liability for any loss, damage, costs, or expense (including, for the avoidance of doubt, rectification costs) incurred by the Customer or by any third party as a result of the Customer Material being inaccurate or incorrect.

Intellectual Property

95. The Customer acknowledges that:

(a) the Staircase Constructions IP in existence at the date a Contract is formed is and will at all times remain the property of Staircase Constructions;

(b) the Staircase Constructions IP created or developed following the formation of a Contract vests in Staircase Constructions as soon as

those Intellectual Property Rights are created or developed and will at all times remain the property of Staircase Constructions; and

(c) it has no rights under these terms and conditions or otherwise to use Staircase Constructions IP except as set out herein.

Waiver

96. A waiver of any provision or breach of these terms and conditions by Staircase Constructions shall only be effective if made by an authorised officer of Staircase Constructions in writing. A waiver of any provision or breach of these terms and conditions by the Customer shall only be effective if made by the Customer's authorised officer in writing. If Staircase Constructions or the Customer elect not to enforce its rights arising as a result of a breach of these terms and conditions, that will not constitute a waiver of any rights relating to any subsequent or other breach.

Set-off

97. All payments required to be made by the Customer under any Contract will be made free of any set-off, or counterclaim, and without deduction or withholding, unless agreed to otherwise by Staircase Constructions and the Customer in writing or as required by law.

98. Any amount due to Staircase Constructions from time to time may be deducted from any monies which may be or may become payable to the Customer by Staircase Constructions.

Building and Construction Industry Security of Payment Act 2002 (Vic)

99. At Staircase Constructions' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the *Building and Construction Industry Security of Payment Act 2002 (Vic)* may apply.

100. Nothing in these terms and conditions is intended to have the effect of contracting out of any provisions of the *Building and Construction Industry Security of Payment Act 2002 (Vic)*, except to the extent permitted by the Act where applicable.

Limitation of liability

101. In relation to the supply of Goods, to the fullest extent permitted by law, Staircase Constructions' liability to the Customer for any loss, damage, or injury, whether under contract, in tort, pursuant to statute or otherwise, is limited to, at Staircase Constructions' discretion, to any one or more of the following:

(a) the replacement of the Goods or the supply of equivalent Goods;

(b) the repair of the Goods;

(c) the payment of the cost of replacing the Goods or acquiring equivalent Goods;

(d) the payment of the cost of having the Goods repaired.

102. In relation to the supply of Services, to the fullest extent permitted by law, Staircase Constructions' liability to the Customer for any loss, damage, or injury, whether under contract, in tort, pursuant to statute or otherwise, is limited to, at Staircase Constructions' discretion, to any one or more of the following:

(a) the supply of the Services again; or

(b) providing for the cost of having the Services supplied again.

103. Staircase Constructions is not liable for loss of profit, economic or financial loss, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the Goods and/or Services supplied under these terms and conditions.

104. All terms, conditions, warranties, indemnities, and statements (whether express, implied, written, oral, collateral, statutory or otherwise) which are not expressly set out in these terms and conditions are hereby expressly excluded and, to the extent they cannot be excluded, Staircase Constructions disclaims all liability in relation to them.

Liability of parties

105. If two or more parties are included within the same defined term in these terms and conditions:

(a) these terms and conditions have separate operation in relation to each of them;

(b) a liability or obligation of those persons under these terms and conditions is a joint liability or obligation of all of them and a several liability or obligation of each of them; and

(c) a right given to those parties under these terms and conditions is a right given severally to each of them.

Force majeure

106. Staircase Constructions is not liable to the Customer for any delay or failure to perform its obligations pursuant to these terms and conditions if such delay or failure to perform is due to force majeure being a circumstance beyond its reasonable control, including strikes, lockouts, fires, floods, storm, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, disease or pandemic, government intervention or regulation, acts of God or any other activity beyond Staircase Constructions' control.

Severance

107. If any provision of these terms and conditions is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

108. If any part of these terms and conditions is invalid or unenforceable, that part is deleted and the remainder of these terms and conditions remains effective.

Variation of agreement

109. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of Staircase Constructions at any time by written notice to the Customer. Subject to clause 110, after fourteen (14) days of receipt of the written notice of the variation(s), the variation(s) will be deemed agreed by the Customer.

110. If the Customer does not agree with the variation(s) proposed by Staircase Constructions, it must notify Staircase Constructions in writing within fourteen (14) days from receipt of the written notice that the variation(s) is/are not agreed to. Staircase Constructions and/or the Customer will then be at liberty to suspend/withdraw credit facilities until such time as agreement can be reached between the parties regarding the proposed variation(s). Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by Staircase Constructions without notification.

111. Any proposed variation to these terms and conditions by the Customer must be requested in writing. Staircase Constructions may refuse any such request without providing reasons either orally or in writing.

112. Variations requested by the Customer will only be binding upon Staircase Constructions if they are in writing signed by an authorised officer of Staircase Constructions.

Jurisdiction

113. The Customer acknowledges and agrees that these terms and conditions will be governed by the laws of Victoria, and the laws of the Commonwealth of Australia which are in force in Victoria.

114. The Customer acknowledges and agrees that any Contract between Staircase Constructions and the Customer is formed at the address of Staircase Constructions.

115. The parties submit to the non-exclusive jurisdiction of the courts of Victoria and the relevant federal courts and courts competent to hear appeals from those courts.

Entire agreement

116. These terms and conditions, together with the terms of any Contract, constitute the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by Staircase Constructions and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda, or commitments about the subject matter of these terms and conditions are merged herein and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty, or understanding.

117. Notwithstanding clause 116, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and Staircase Constructions, these terms and conditions will constitute a variation of the Original Agreement whereby the terms and conditions of the Original Agreement are deleted and replaced with the terms and conditions herein, unless the terms and conditions of the Original Agreement are otherwise expressly or implicitly preserved by the terms and conditions herein in which case they will co-exist with the terms and conditions herein, and, to the extent of any inconsistency, these terms and conditions will prevail.

118. Staircase Constructions does not accept retentions and/or liquidated damages.

119. These terms and conditions shall apply to every Contract between Staircase Constructions and the Customer. Any terms and conditions of the Customer's Order or of any other document deviating from or inconsistent with these terms and conditions are expressly rejected by Staircase Constructions. For the avoidance of doubt, the Customer understands and agrees that these terms and conditions will prevail over, and Staircase Constructions will not be bound by, any terms or conditions (express or implied) added or provided by the Customer, whether in an Order or otherwise, unless otherwise agreed in writing by Staircase Constructions.