



## TERMS AND CONDITIONS OF TRADE

### 1. INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

**“Authority to Proceed”** means an authority to proceed, signed on behalf of Shotton Manufacturing, to which are attached the Conditions, any quotation for supply or the manufacture and supply of the Goods and any Specification

**"Business Day"** means a day (other than a Saturday, Sunday or public holiday) when banks are open for business.

**"Conditions"** means the terms and conditions set out in this document.

**"Contract"** means the contract between Shotton Manufacturing and Customer for the sale and purchase of the Goods.

**"Customer"** means the person or firm who purchases the Goods from Shotton Manufacturing.

**"Force Majeure Event"** means has the meaning given in clause 14.

**"Goods"** means the goods (or any part of them) set out in the Order.

**“Items”** means goods not manufactured by Shotton Manufacturing

**“Normal Hours”** means 8am to 4.30pm Monday to Thursday and 7am to 1pm Friday excluding statutory or award public holidays.

**“Order”** means any order for goods comprised by a signed Authority to Proceed or an accompanying Purchase Order

**“Price”** means the price payable for the Goods, details of which are set out in an Authority to Proceed or an accompanying Purchase Order

**“Purchase Order”** means any purchase order raised by Customer in respect of the Goods



- "Specification"** means any specification for the Goods, including any related plans and drawings.
- "Shotton Manufacturing"** means The Shotton Group Pty Ltd (ABN: 14 005 550 747) trading as Shotton Manufacturing.

## 2. BASIS OF CONTRACT

- 2.1 The Authority to Proceed constitutes an offer by Shotton Manufacturing to supply or manufacture and supply the Goods in accordance with a Specification. Customer is responsible for ensuring that the terms of the Authority to Proceed and any attached Specification are complete and accurate.
- 2.2 Any Specification attached to an Authority to Proceed must have been approved and signed by both parties.
- 2.3 The Authority to Proceed will only be deemed to be accepted when Shotton Manufacturing receives a copy of the Authority to Proceed signed by Customer (which may or may not be accompanied by a Purchase Order), at which point the Contract is formed. The Contract is constituted by the fully executed Authority to Proceed and any documents attached to it including these Conditions
- 2.4 The Contract constitutes the entire agreement between the parties. Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Shotton Manufacturing which is not set out in the Contract.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, pre-printed terms and conditions on any Purchase Order from Customer will not apply to the Contract.
- 2.6 Any representation, warranty, condition, promise, undertaking or other provision not expressly set out in these Conditions is excluded and of no force or effect, unless the law requires that it must not be excluded or other terms are agreed in writing by Shotton Group and its customer. The balance of these terms and conditions will remain valid where not covered by any newly accepted agreement.
- 2.7 Any samples, drawings, descriptive matter, or advertising produced by Shotton Manufacturing and any illustrations contained in Shotton Manufacturing's brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract or have any contractual force.



2.8 An  
initial quotation or proposal for the Goods given by Shotton  
Manufacturing does not constitute an offer.

### 3. GOODS

3.1 The Goods are described in the Specification.

To the extent that the Goods are to be manufactured in accordance with a Specification supplied by Customer, Customer must indemnify Shotton Manufacturing against all liabilities, costs, expenses, damages and losses (but not including any direct, indirect or consequential losses, loss of profit or loss of reputation) suffered or incurred by Shotton Manufacturing in connection with any claim made against Shotton Manufacturing for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Shotton Manufacturing's use of the Specification. This clause 3.1 will survive termination of the Contract.

3.2 Shotton Manufacturing reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### 4. PRICE AND PAYMENT

#### 4.1

(a) Shotton Manufacturing may by notice to Customer prior to delivery increase the Price to reflect any increase in the cost of the Goods to Shotton Manufacturing beyond reasonable control, including changes to the Goods or Services requested by Customer, delays caused by Customer, foreign exchange fluctuations, taxes, duties, the cost of labour, materials or manufacturing costs.

(b) Customer will have 3 business days from this notice to cancel the Order by notice to Shotton Manufacturing, upon receipt of which, Shotton Manufacturing must invoice Customer for and Customer must pay Shotton Manufacturing a pro-rata portion of the Price representing work done to the date of cancellation.

(c) If Customer fails to cancel the Order, Customer must accept the Price increase.

4.2 Shotton Manufacturing may, by giving notice to Customer at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond Shotton Manufacturing's control (including foreign exchange fluctuations, increases



- n taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - (c) any delay caused by any instructions of Customer or failure of Customer to give Shotton Manufacturing adequate or accurate information or instructions.
- 4.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which must be invoiced to Customer.
- 4.4 All amounts payable under this Agreement are expressed exclusive of GST. Where a party ('Supplier') makes a taxable supply to another party ('Recipient'), the Recipient must pay to the Supplier an additional amount equal to the GST payable by the Supplier. The additional amount must be paid when any consideration for the taxable supply is first paid or provided subject to the Supplier first providing the Recipient with a tax invoice. Terms used in this clause have the meaning given to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 4.5 Shotton Manufacturing must invoice Customer for the Price in accordance with any terms set out in the Authority to Proceed. Customer must pay the invoice in full in accordance with those terms and in the manner stipulated in the Authority to Proceed. Payment must be made to the bank account nominated in writing by Shotton Manufacturing. Time of payment is of the essence.
- 4.6 Customer may apply to Shotton Manufacturing for a credit account. If credit is granted, payment for Goods will be as specified in the terms of the application for credit.
- 4.7 Customer must pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Shotton Manufacturing may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by Customer against any amount payable by Shotton Manufacturing to Customer.
- 4.8 Interest on overdue amounts owed by Customer to Shotton Manufacturing accrues daily from the date when payment becomes due until the date of payment at 2.5% compounding per calendar month or part month.
- 4.9 If Customer defaults in payment of any amount when due, then in addition to any other amount payable under these Conditions, Customer must pay to Shotton Manufacturing upon demand all of Shotton Manufacturing's costs and disbursements arising from the



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ault including legal costs on an indemnity basis, any late fees or administrative charges of Shotton Manufacturing and all of Shotton Manufacturing's costs of collection.

## 5. DELIVERY

### 5.1 Shotton Manufacturing must ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Authority to Proceed, all relevant Customer and Shotton Manufacturing reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if Shotton Manufacturing requires Customer to return any packaging materials to Shotton Manufacturing, that fact must be clearly stated on the delivery note. Customer must make any such packaging materials available for collection at such times as Shotton Manufacturing must reasonably request. Returns of packaging materials will be at Shotton Manufacturing's expense.

### 5.2 Goods must be delivered or collected as set out in the Authority to Proceed

### 5.3 If delivery is required by Shotton Manufacturing, Shotton Manufacturing must deliver the Goods to the location set out in the Authority to Proceed or such other location as the parties may agree ("**Delivery Location**") at any time after Shotton Manufacturing notifies Customer that the Goods are ready. Delivery Location can mean the address of a carrier selected by Customer or that of a third party nominated by Customer.

### 5.4 If collection is agreed by Customer, Customer must collect the Goods from Shotton Manufacturing's premises at Dandenong South or such other location as may be advised by Shotton Manufacturing prior to delivery ("**Collection Location**") within 3 Business Days of Shotton Manufacturing notifying Customer that the Goods are ready.

### 5.5 Delivery of the Goods will be completed on the Goods' arrival at the Delivery Location or (as the case may be) on the completion of loading of the Goods at the Collection Location.

### 5.6 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

### 5.7 Late or failed delivery of Goods does not entitle repudiation or constitute breach and Shotton Manufacturing is not liable for loss or damage for late or failed delivery of Goods.



## 5.8 If

Customer fails to take or accept delivery of the Goods within three Business Days of Shotton Manufacturing notifying Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Shotton Manufacturing's failure to comply with its obligations under the Contract:

- (a) delivery of the Goods must be deemed to have been completed at 9.00 am on the third Business Day after the day on which Shotton Manufacturing notified Customer that the Goods were ready and
- (b) Shotton Manufacturing must store the Goods until delivery takes place, and charge Customer for all related costs and expenses (including insurance).
- (c) All customer patterns, moulds and any other associated tooling that remain at Shotton Manufacturing are left at Customer's own risk and Shotton Manufacturing cannot accept responsibility for any damage, loss or theft of these goods.

- 5.9 If 10 Business Days after the day on which Shotton Manufacturing notified Customer that the Goods were ready for delivery Customer has not taken or accepted delivery of them, Shotton Manufacturing may dispose of part or all of the Goods and, after deducting reasonable storage, account to Customer for any excess over the Price or charge Customer for any shortfall below the Price.
- 5.10 Shotton Manufacturing may deliver the Goods by instalments under an agreed delivery schedule, which must be invoiced and paid for separately. Each instalment must constitute a separate Contract. Any delay in delivery or defect in an instalment will not entitle Customer to cancel any other instalment.

## 6. Defects and Returns

- 6.1 Customer will be responsible for immediate examination of Goods upon arrival at their destination and will be taken to have accepted Goods received by it as being in accordance with its order unless it notifies Shotton Manufacturing in writing of its claim, including invoicing shortages, within 2 days from the date of receipt of the Goods.
- 6.2 The Company will not accept the return of Goods that are specifically made to the Customer's specifications or ordered for special manufacture.
- 6.3 The Company will not accept claims for incorrect application or use of the Goods. The responsibility to verify that the Goods have or will be used in the correct application rests with the Customer.
- 6.4 No return of Goods that are allegedly defective or faulty will be accepted by Shotton Manufacturing unless either:





(a) C

- ustomer is a Consumer in relation to those Goods and is entitled to return them because a Consumer Guarantee applies; or
- (b) The Company has given prior written authorisation for the return of the Goods.
- 6.5 All Goods for return must be inspected by a representative of Shotton Manufacturing prior to Shotton Manufacturing accepting any obligation for the return of the Goods.
- 6.6 If Shotton Manufacturing consents under paragraph 6.4(b) for the return of Goods supplied, the Customer must:
- (a) Provide to Shotton Manufacturing a written statement setting out the reasons for the return of the Goods;
  - (b) Give Shotton Manufacturing details of the original invoice number and the date of delivery of the Goods;
  - (c) Provide to Shotton Manufacturing a copy of the receipt or delivery docket relating to the Goods;
  - (d) Return the Goods in their original condition as at the time of their sale and/or packed in their original, undamaged containers and are in new condition including all parts and components;
  - (e) In Shotton Manufacturing's discretion, pay Shotton Manufacturing a handling charge equivalent to 30% of the purchase price of the Goods or the manufacture's surcharge, which ever is the greater.
- 6.7 In the event of Shotton Manufacturing delivering the Goods to the Customer's nominated carrier, the Customer shall be responsible for the expense of that carrier, and Shotton Manufacturing shall be liable only to replace defective or faulty goods and not Goods damaged in transit.
- 6.8 In the event of Shotton Manufacturing agreeing to accept a return of Goods, these shall be returned to Shotton Manufacturing at the expense of the Customer, and Shotton Manufacturing shall credit the Customer's account with an amount equal to the invoiced sum less the sum payable under clause 6.6(e).

## 7. RISK AND INSURANCE

- 7.1 Risk for Goods passes to Customer on delivery by Shotton Manufacturing to the Delivery Location or are collected in accordance with clause 5.4.
- 7.2 Customer must insure the Goods, against loss, damage, destruction and theft, and include the interest of Shotton Manufacturing in the insurance policy and provide proof of the insurance to Shotton Manufacturing from delivery until:
- (a) Customer has paid to Shotton Manufacturing all amounts owing for the Goods, Customer has met all of its other obligations to Shotton Manufacturing, and payment other than in cash is honoured, cleared or acknowledged; and



(b) t

he Goods are discharged from any Security Interest held by Shotton Manufacturing.

- 7.3 If Goods are damaged, destroyed or stolen before property passes to Customer or before the Goods are discharged from any Security Interest, Shotton Manufacturing is entitled to receive all insurance proceeds whether or not the Price is payable, without limiting any rights or remedies under the Agreement, including the right to require payment of the balance of the Price. Production of the Agreement by Shotton Manufacturing is sufficient evidence of Shotton Manufacturing's right to receive insurance proceeds without the need for further enquiries.

## 8. TITLE

- 8.1 Property in Goods does not pass from Shotton Manufacturing to Customer unless clause 9 applies, or unless and until:
- (a) Customer has paid to Shotton Manufacturing all amounts owing for the Goods;
  - (b) Customer has met all of its other obligations to Shotton Manufacturing; and
  - (c) payment other than in cash is honoured, cleared or acknowledged.
- 8.2 Where practicable Customer must keep the Goods stored separately from any other property until Shotton Manufacturing has received payment and all other obligations of Customer are met.
- 8.3 Until property in Goods passes to Customer:
- (a) Shotton Manufacturing may give notice in writing to Customer to return the Goods or any of them and the rights of Customer to obtain ownership or any other interest in the Goods will immediately cease;
  - (b) Shotton Manufacturing may stop the Goods in transit whether or not delivery has been made;
  - (c) if Customer fails to return any Goods Shotton Manufacturing or its agent may enter any property to re-take possession;
  - (d) Customer is a bailee of the Goods, must hold any proceeds of sale or disposal on trust for Shotton Manufacturing and not deal with them in any way adverse to Shotton Manufacturing;
  - (e) Customer must not encumber, charge or give any interest in the Goods;
  - (f) Shotton Manufacturing may issue proceedings to recover the Price even where ownership has not passed to Customer; and
  - (g) if the Goods are converted or made part of any end product, Shotton Manufacturing will be the owner of





he end product.

- 8.4 Shotton Manufacturing must supply the Goods free from encumbrances including any Security Interest, subject to clause 8.

## 9. PERSONAL PROPERTY SECURITIES LAW

- 9.1 If Shotton Manufacturing elects that property in Goods will pass from Shotton Manufacturing to Customer before:
- (a) Customer has paid to Shotton Manufacturing all amounts owing for the Goods;
  - (b) Customer has met all of its other obligations to Shotton Manufacturing; or
  - (c) payment other than in cash is honoured, cleared or acknowledged,

Customer acknowledges that the Agreement constitutes a Security Interest for the purposes of the PPS Law in the Goods.

- 9.2 Any payments received by Shotton Manufacturing will be allocated by it as it decides and they may be allocated to Goods encumbered by a Security Interest after payments for other purposes.
- 9.3 Where Shotton Manufacturing holds a Security Interest over Goods, Customer:
- (a) must not grant another Security Interest to a third party in the same Goods;
  - (b) waives any right to receive a verification statement or financing change statement concerning the Security Interest;
  - (c) indemnifies and on demand must reimburse Shotton Manufacturing for all expenses incurred in registering a verification statement or financing change statement on the PPS Register or releasing the Goods from a Security Interest; and
  - (d) must not register a financing change statement

## 10. SHOTTON MANUFACTURING'S RIGHTS TO DISPOSE OF GOODS

If:

- (a) Shotton Manufacturing retains or regains possession or control of the Goods;



- (b) payment is due to Shotton Manufacturing;
- (c) Shotton Manufacturing has demanded payment; and
- (d) Shotton Manufacturing has not received payment

then, Shotton Manufacturing may dispose of the Goods and may claim from Customer any loss to Shotton Manufacturing on disposal.

## 11. WARRANTIES, INDEMNITIES AND LIABILITY

11.1 Shotton Manufacturing does not make any express or implied warranties in relation to the Goods.

11.2 Shotton Manufacturing warrants that any defect in any workmanship of Shotton Manufacturing which becomes apparent and is notified to Shotton Manufacturing within the warranty period stipulated by Shotton Manufacturing or if none is stipulated within 12 months after delivery, Shotton Manufacturing will either repair or remedy the defect, subject to the conditions that:

- (a) the warranty does not cover any defect or damage from any:
  - (i) failure to properly maintain Goods;
  - (ii) failure to follow instructions or guidelines provided by Shotton Manufacturing;
  - (iii) use of Goods otherwise than for their proper purpose;
  - (iv) continued use of Goods after a defect becomes apparent or should be apparent to a prudent user; or
  - (v) fair wear and tear, any accident or anything beyond the reasonable control of Shotton Manufacturing;
- (b) the warranty will cease and Shotton Manufacturing is not liable under the warranty if Goods are repaired, altered or overhauled by Customer without Shotton Manufacturing's consent;
- (c) Shotton Manufacturing is not liable to compensate Customer for any warranty claim for delay by Shotton Manufacturing in replacing or repairing Goods or in properly assessing a claim; and
- (d) where a claim under warranty is approved by Shotton Manufacturing, any repairs will be carried out during Normal Hours or outside Normal Hours only if Shotton Manufacturing agrees.

11.3 For Goods not manufactured by Shotton Manufacturing, any



warranty is the warranty provided by the manufacturer or supplier to Shotton Manufacturing. Shotton Manufacturing is not bound by, or responsible for, any term, condition, representation or warranty given by the manufacturer or supplier.

## 11.4 Limitation of liability

- (a) Any representation, warranty, condition, guarantee or undertaking that would be implied into this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by law, provided that nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on Customer by the Australian Consumer Law in Schedule 2 of the Competition and Consumer Act 2010 (Cth) (ACL) or any other applicable law that cannot be excluded, restricted or modified by agreement.
- (b) To the maximum extent permitted by law (including the ACL), unless expressly stated to the contrary in this Agreement, Shotton Manufacturing does not provide any warranties or make any representations or guarantees in respect of Goods, including warranties of acceptable quality, availability, conformity with description, non-infringement of third party rights, compliance with laws, or fitness for a particular purpose.
- (c) Each party's liability to the other party (Liability), including under any indemnity, is reduced to the extent that the Liability was caused or contributed to by the other party or its personnel.
- (d) To the maximum extent permitted by law (including under the ACL):
  - (i) Shotton Manufacturing is not liable to Customer or to any other person for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise, or a party or any other person was previously notified of the possibility of the loss or damage;
  - (ii) Shotton Manufacturing's liability for its failure to comply with a consumer guarantee under the ACL



other than a guarantee under section 51, 52 or 53 of the ACL) is limited, at Shotton Manufacturing's option, to one or more of the following:

- a. when the breach relates to goods, 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 of acquiring equivalent goods, and/or the payment of the cost of having the goods repaired; and
- b. when the breach relates to services, the supplying of the services again, and/or the payment of the cost of having the services supplied again; and

(iii) the maximum aggregate liability of Shotton Manufacturing for all Liabilities arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the Price.

## 12. CANCELLATION

- 12.1 Shotton Manufacturing may without liability terminate the Contract or cancel delivery of the Goods at any time before the Goods are delivered by giving notice to Customer.
- 12.2 Subject to clause 12.3, Customer may terminate the Contract or cancel delivery of the Goods at any time before the Goods are delivered by giving notice to Shotton Manufacturing.
- 12.3 If Customer terminates the Contract or cancels delivery of the Goods under clause 12.2, then:
  - (a) if that cancellation or termination occurs when the Goods are within 5% of completion, Shotton Manufacturing will be entitled to invoice Customer for the full Price in accordance with clause 4.5.
  - (b) if that cancellation or termination occurs other than when the Goods are within 5% of completion, Shotton Manufacturing will be entitled to invoice Customer in accordance with clause 4.5 for the full amount expended by Shotton Manufacturing on labour and materials in the manufacture of the Goods to the date of cancellation or termination.



## 13. TERMINATION

### AND SUSPENSION

- 13.1 If Customer becomes subject to any of the events listed in clause 13.2, Shotton Manufacturing may terminate the Contract with immediate effect by giving written notice to Customer.
- 13.2 For the purposes of clause 13.1, the relevant events are:
- (a) Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, or (being a partnership) has any partner to whom any of the foregoing apply;
  - (b) Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of Customer with one or more other companies or the solvent reconstruction of Customer;
  - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of Customer, other than for the sole purpose of a scheme for a solvent amalgamation of Customer with one or more other companies or the solvent reconstruction of Customer;
  - (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over Customer;
  - (e) (being a company) the holder of a qualifying floating charge over Customer's assets has become entitled to appoint or has appointed an administrative receiver;
  - (f) a person becomes entitled to appoint a receiver over Customer's assets or a receiver is appointed over Customer's assets;
  - (g) (being an individual) Customer is the subject of a bankruptcy petition or order;



- (h) a creditor or encumbrancer of Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (i) any event occurs, or proceeding is taken, with respect to Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(a) to clause 13.2(f) (inclusive);
  - (j) Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - (k) Customer's financial position deteriorates to such an extent that in Shotton Manufacturing's opinion Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - (l) (being an individual) Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 13.3 Without limiting its other rights or remedies, Shotton Manufacturing may suspend provision of the Goods under the Contract or any other contract between Customer and Shotton Manufacturing if Customer becomes subject to any of the events listed in clause 13.2 , or Shotton Manufacturing reasonably believes that Customer is about to become subject to any of them, or if Customer fails to pay any amount due under this Contract on the due date for payment.
- 13.4 On termination of the Contract for any reason Customer must immediately pay to Shotton Manufacturing all of Shotton Manufacturing's outstanding unpaid invoices and interest.
- 13.5 Termination of the Contract, however arising, must not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 13.6 Clauses which expressly or by implication survive termination of the Contract must continue in full force and effect.





## 14. FORCE MAJEURE

Neither party must be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Shotton Manufacturing or subcontractors.

## 15. GENERAL

### 15.1 Assignment and other dealings.

- (a) Shotton Manufacturing may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Shotton Manufacturing.

### 15.2 Notices

- (a) Any notice required or authorised to be given by one party to another concerning anything relating to this agreement will be in writing and will be given by letter sent by email to the receiving party at the email addresses set out in the Authority to Proceed
- (b) A notice sent by email will be deemed to have been properly and effectively given on the date and time at which it enters the addressee's information system (as shown in a confirmation delivery report from the sender's information system which indicates the email was set to the email address of the addressee notified for the purposes of this clause).
- (c) If any notice given under this clause is given on a day when the office of the party to whom it is addressed is not open for business the notice will be deemed to have been given on the next day on which such office



is open for business.

### 15.3 Waiver

The failure of either party to insist upon a strict performance of any of the terms and provisions of this document shall not be deemed a waiver of any subsequent breach or default in those terms or provisions.

### 15.4 Variation

Any modification, alternation, change or variation of any term and condition of this Agreement must be only made in writing and executed by both parties.

### 15.5 Governing law

This Agreement must be construed in accordance with and governed by the laws of the State of Victoria, Australia and the parties submit to the jurisdiction of the Courts of that State for the resolution of any disputes under this Agreement