

Rawr Pty Ltd Trading as Jasmat Steel Fabrications

(Supplier)

The person named in item 1 of the schedule

(the Customer)

Terms and Conditions

TERMS AND CONDITIONS

1 RECITALS

1.1 Rawr Pty Ltd ACN:160 589 462 trading as Jasmat Steel Fabrications ABN:611 605 894 62

Address: 11 Baldwin Street Kewdale WA 6105.

Email: annette@jasmat.com.au, Phone: 08 9353 3399

Jasmat Steel Fabrications carries on the business type of Steel Fabrication by supplying Goods and/or Services and Services to:

Business to Business customers

Business to Consumer

Jasmat Steel Fabrications is a privately owned and operated company with over 44 years' experience being supplier, fabricator and erector of quality, fabricated steel components and structures for the industrial commercial and multi-level high-rise steel industries.

1.2 The Customer has requested and Jasmat Steel Fabrications has agreed to enter into this Agreement for the purpose of supplying Goods and/or Services to the Purchaser in accordance with this Agreement and the attached Order or Quote.

1.3 Rawr Pty Ltd intends to utilise the Personal Property Securities Act 2009,

1.4 DEFINITIONS

In these Terms of Trade, unless the context indicates otherwise:

ACL means the Australian Consumer Law under the Consumer and Competition Act 2010 (Cth) as amended;

Agreed Delivery Address means the address for delivery or collection of the Goods and/or Services as nominated in an Order or subsequently agreed in writing by the parties, or as specified in item 3 of the schedule;

Business Day means any day other than a Saturday, Sunday, or public holiday in WA;

Collateral means property that is subject of a security interest;

Customer means the person named in item 1 of the schedule;

Default Event means any one of the following events:

(a) the Customer fail to make any payment when due, whether for the Goods and/or Services or otherwise;

(b) Winding Up commences against the Customer;

(c) a receiver is appointed to the Customer;

(d) the Customer become insolvent, bankrupt or commit an act of bankruptcy;

(e) proceedings are commenced or an application is made for the appointment of any persons listed in items (b) to (e) above; or

(f) a mortgagee or their agent enters into possession of the Customer assets;

Disputant means a party to a Dispute;

Dispute means a dispute arising out of or related to these Terms and Conditions;

Force Majeure Event means circumstances beyond our reasonable control shall include, but not be limited to compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, acts of God, acts of the public enemy, the Customer acts or omissions, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, riots, insurrections, defaults of our suppliers or subcontractors, delays in transportation, or loss or damage to Goods and/or Services in transit;

Grantor means the person who has the interest in property to which a security interest is attached;

GST means a tax imposed under the A New Tax System Goods and Services Tax) Act 1999;

Handling and Delivery Charges means any handling and delivery charges for Goods and/or Services that are notified to Jasmat Steel Fabrications by the person in charge of delivery, including those relating to packaging, freight, handling, and insurance, and any credit card or other bank transaction fees;

Initial Period means the 14 day period after a notice of a Dispute is given under clause 14.2;

Local Currency means the local currency of the Customer as agreed at the time of Order (for example, Australian dollars in Australia, Pounds sterling in the United Kingdom and Euro for other EU countries);

Material means any material in which the Customer may have Intellectual Property Rights provided by the Customer for use by Jasmat Steel Fabrications in the production, development and supply of the Goods and/or Services to the Customer;

Order means an order in writing for the purchase and supply of Goods and/or Services placed by the Customer in accordance with these Terms of Trade;

Order Confirmation means the written confirmation of Jasmat Steel Fabrications acceptance of an Order in whole or in part, setting out the details of the Order accepted, including but not limited to the quantity of Goods and/or Services that Jasmat Steel Fabrications will supply to the Customer, the amount due in respect of the Order (based on the fees including any discounts plus any Handling and Delivery Charges), the date by which payment must be received, the Agreed Delivery Address, and the expected delivery date for the Order;

Order Form means the order form specified by Jasmat Steel Fabrications for use when placing an Order for an Goods and/or Services;

Goods and/or Services means a product which is the subject of an Order which has been accepted by Jasmat Steel Fabrications;

PPSA means the Personal Property Securities Act 2009 (Cth) as amended;

PMSI means a purchase money security interest as defined by section 14 of the PPSA;

Payment means payment of any amount relating to Goods and/or Services in accordance with these Terms and Conditions;

Quote means a quotation by Jasmat Steel Fabrications for the supply of particular Goods and/or Services containing details as specified in these terms and conditions;

Secured Party means a person who holds the benefit of a security interest;

Security Agreement means the security agreement set out in clause 12 (Security Interest and Title);

Tax Invoice means a tax invoice as defined in A New Tax System Goods and Services Tax) Act 1999;

Terms mean these Terms of Trade;

Jasmat Steel Fabrications means any person or entity that places an Order with Jasmat Steel Fabrications and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms and Conditions, including any related company, related party, officer and authorised person of the relevant person; and

Winding Up means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.

2. **OUTLINE & ORDERING Goods and/or Services**

2.1 These terms and conditions apply to the supply of all Goods and/or Services by Jasmat Steel Fabrications to the Customer from the date that the Customer accepts these terms and conditions.

2.2 The Customer accepts these terms and conditions when:

(a) the Customer submits an Order; or

(b) the Customer accepts delivery of, or any part of, the Goods and/or Services pursuant to an Order or otherwise; or

(c) the Customer makes a Payment, or a partial Payment, for any Goods and/or Services supplied by Jasmat Steel Fabrications.

(d) Orders can be placed by phone order, order by email.

Once an Order or Quote has been confirmed, the Customer can no longer cancel it.

(e) A purchase order is required prior to any orders being dispatched.

2.3 The Customer may request a Quote from Jasmat Steel Fabrications relating to the potential supply of Goods and/or Services.

If the Customer accepts the Quote, the Customer must place an Order with Jasmat Steel Fabrications within 90 days of the date of the Quote. The Customer must contact Jasmat Steel Fabrications directly to confirm its acceptance of the Quote by sending purchase order by email.

2.4 Once the quote is confirmed and the order placed Jasmat Steel Fabrications will process within allow up to 4 weeks.

2.5 If the Goods and/or Services are above a threshold Purchase Price, as directed by Jasmat Steel Fabrications in its sole discretion from time to time, and the Customer accepts the Quote, Jasmat Steel Fabrications will email a confirmation of the Order to the Customer and may from time to time include a direction to pay a deposit of 50%. A new purchase order may be required. Delivery of the Goods and/or Services will not commence until payment of any such deposit required.

2.6 Variations to the quote either by Jasmat Steel Fabrications or by the Customer must follow this procedure; Jasmat Steel Fabrications will send a revised quotation, the customer must stipulate the new quotation number on the purchase order.

2.7 Changes to the cost of materials, labour or unforeseen circumstances:

Jasmat Steel Fabrications will notify the customer, the customer must stipulate the new quotation number on the purchase order.

2.8 Unless otherwise agreed by Jasmat Steel Fabrications in writing, Jasmat Steel Fabrications will not be bound by any conditions added by the Customer in an Order (express or implied).

2.9 All Orders must indicate the following:

- (a) the Goods and/or Services being ordered by product number, if available;
 - (b) the quantity of Goods and/or Services being ordered; and
 - (c) the Agreed Delivery Address for the Goods and/or Services.
- 2.10 Following the receipt of an Order from the Customer, Jasmat Steel Fabrications will process the order and notify the Customer in writing through an Order Confirmation or an order rejection notice of its:
- (a) acceptance or rejection of the Order in its entirety; or
 - (b) acceptance of the Order in part; or
 - (c) acceptance of the Order subject to specified conditions.
- 2.11 Any variation of an Order or cancellation of an Order must be agreed to in writing by Jasmat Steel Fabrications.
- 2.12 Prices for freight, postage or delivery fees will be confirmed in the quote and will be indicated on the Invoice.

3. **PRICE**

- 3.1 Unless otherwise agreed to in writing by Jasmat Steel Fabrications or by Jasmat Steel Fabrications authorised representative, subject to this clause 3, the price charged and payable for the Goods and/or Services shall be the price in Local Currency at the date Jasmat Steel Fabrications accepts the Order, together with any applicable taxes, charges and delivery costs in relation to the Goods and/or Services.
- 3.2 Prices contained in any Quote or Order for the supply of Goods and/or Services are based on the cost prevailing and the specification supplied at the time of the Quote or Order. Jasmat Steel Fabrications reserves the right to vary the price if:
- (a) there is any movement in the cost of supplying the Goods and/or Services specified in the Order; or
 - (b) if the Goods and/or Services specified in the Order are varied from the Goods and/or Services specified in the Quote, and Jasmat Steel Fabrications provides the Customer with reasonable notice of any such variation of price.
 - (c) The Order or Quote is not deemed accepted until the price is confirmed in writing or email by Jasmat Steel Fabrications
 - (d) Prices are Inclusive of GST

4. **PAYMENT OF ORDERS**

- 4.1 Where Jasmat Steel Fabrications accepts an Order in accordance with clause 2, it will issue the Customer an Order Confirmation.
- 4.2 Acceptance of an Order Confirmation by a Customer will constitute acceptance of the Price set out in the Order Confirmation unless otherwise agreed in writing by the parties.
- 4.3 The Customer must pay GST and any other taxes, duties and government charges imposed or levied on the goods in connection with any Order or these terms and conditions. Unless otherwise indicated, the price and all other consideration for any supply made under any Order is Inclusive of GST imposed on the supply.
- 4.4 The Customer's liability to pay for the Goods and/or Services will not be offset, reduced or affected in any way as a result of any returns of, or credits or rebates relating to, the Goods and/or Services, unless otherwise agreed in writing by Jasmat Steel Fabrications; or
- 4.5 Payments must be made according to the methods selected by Jasmat Steel Fabrications, specified in item 5 of the schedule. The Customer may select from one of the following methods of payment:
- (a) Payments to be received in full upon making an Order; or
 - (b) Goods and/or Services to be delivered on credit to the Customer; or
 - (c) Payment of a 50% deposit upon making an Order and payment of the remainder upon delivery of the Goods and/or Services.
- 4.6 If Goods and/or Services are delivered to the Customer on credit, the following conditions apply:
- (a) The person named in item 2 of the schedule, guarantees to Jasmat Steel Fabrications the due and punctual payment by the Customer of its any amounts due to Jasmat Steel Fabrications under these Terms;
 - (b) The Customer must sign the Financing Statement annexed to these Terms; and
 - (c) The Customer must pay a tax invoice provided by Jasmat Steel Fabrications within 30 days of the date of issue.
- 4.7 Jasmat Steel Fabrications reserves the right to revoke at any time any credit extended to the Customer because of the Customer's failure to make any Payment when due or for any other reason.
- 4.8 The Customer may pay for Goods and/or Services in full by;
- (a) Direct Deposit
 - (b) Business or Company Cheque

- (c) Cash on Delivery
- 4.9 If the Customer fails to make a Payment when it is due, Jasmat Steel Fabrications shall, in addition to all other rights and remedies available under these Terms and Conditions at law or in equity, be entitled to charge Default Interest at the rate of Nil per annum plus the interest rate set by the Reserve Bank of Australia.
- 4.10 Jasmat Steel Fabrications reserves the right to pass any debts incurred under this Supply Agreement to a Debt Collection Agency and refer the Customer's details to credit reporting agencies if the Customer's account remains outstanding for more than three (3) months. In addition to any outstanding amounts, the Customer agrees to indemnify Jasmat Steel Fabrications for all legal costs (on a solicitor and client or full indemnity basis, whichever is greater) and other expenses incurred by Jasmat Steel Fabrications in connection with a demand, action, or other proceeding (including mediation, out of court settlement or any action taken for recovery of the debts from the Customer) arising out of a breach of the terms of this Agreement, including the failure by the Customer to pay an amount by the due date.
- 4.11 Default Interest pursuant to clause 4.9 shall be:
- (a) payable on demand; and
 - (b) calculated daily from the date the Payment was due to the actual date that the Payment is made in full.
- 4.12 Any Payment the Customer makes to Jasmat Steel Fabrications shall first be credited against any Default Interest accrued pursuant to this clause 4 to the actual date of Payment.
- 4.13 If as a consequence of an instruction from the Customer, Jasmat Steel Fabrications delays or suspends (but not cancels) an Order or any part of an Order for a period of 3 days or more, Jasmat Steel Fabrications may:
- (a) request the Payment in full for all work in progress relating to the relevant Order at the time of suspension; and/or
 - (b) vary the Price for the uncompleted portion of the relevant Order.
- (c) in the event of a default in payment Jasmat Steel Fabrications reserves the right to suspend or terminate supply to the customer and List customer with a credit reporting agency.
- Jasmat Steel Fabrications utilise's CreditorWatch to report defaults on payments.
- 4.14 The Customer may not cancel an Order, or any part of it, without our written consent, which may be withheld in Jasmat Steel Fabrications absolute discretion.
- 4.15 Without prejudice to Jasmat Steel Fabrications right to refuse consent for the Customer to cancel an Order under clause 4.13, as a condition of giving such consent Jasmat Steel Fabrications may require that the Customer pay any and all costs reasonably incurred by Jasmat Steel Fabrications in relation to the cancelled Order or the cancelled part of the Order plus a reasonable profit to the date of cancellation.
- 4.16 Jasmat Steel Fabrications may in writing cancel an Order or delivery of an Order without liability to the Customer (save as required by relevant laws) if:
- (a) Jasmat Steel Fabrications reasonably forms the opinion that the Customer is insolvent or at material risk of insolvency;
 - (b) the Customer fails to pay any amount for the Goods and/or Services on the due date; or
 - (c) Jasmat Steel Fabrications reasonably forms the opinion that supplying Goods and/or Services to the Customer may have a negative impact upon Jasmat Steel Fabrications business or commercial reputation or image.

5. DELIVERY

- 5.1 The Customer shall pay all Handling and Delivery Charges associated with the Goods and/or Services.
Goods are to be picked up at the seller's address by the buyer or their nominated carrier
or Goods will be delivered to the buyer by the seller or the seller's nominated carrier
- 5.2 If the Customer has nominated an Agreed Delivery Address for the Goods and/or Services, Jasmat Steel Fabrications shall deliver, by Jasmat Steel Fabrications nominated carrier or otherwise, the Goods and/or Services to the Agreed Delivery Address, subject to the following conditions:
- (a) The Customer or its duly authorised representative shall be present at the Agreed Delivery Address for delivery. If not present, Jasmat Steel Fabrications, its duly authorised representative, or the person in charge of delivery may unload the Goods and/or Services at the place and in which case, it shall not be responsible for any claims, costs or losses arising from such a situation.
 - (b) If a delivery date is nominated, Jasmat Steel Fabrications shall take reasonable steps to dispatch the Goods and/or Services on or about that date. However, Jasmat Steel Fabrications does not make any warranty or promises that the Goods and/or Services will be available on that date. In the event that Jasmat Steel Fabrications is unable to deliver the goods on that date, Jasmat Steel Fabrications will not be liable for any loss, including any consequential loss, for failure or delay in delivery due to any cause whatsoever.

5.3 Jasmat Steel Fabrications reserves the right to make deliveries in instalments and these Terms and Conditions shall be severable as to such instalments.

Delivery; Once an Order is confirmed, the Customer must allow up to 4 weeks for manufacturing, then 2 to 4 days for delivery,

Transit times are provided by the carrier selected for the Order for Products and excludes weekends and holidays.

If the Goods and/or Services are defective, then the Customer must notify Jasmat Steel Fabrications in writing within 7 days of the Delivery. If notice is received within this timeframe, Jasmat Steel Fabrications may either replace or repair, or pay the cost of repair, or replacing the defective Goods and/or Services at its own cost.

The Customer must return the defective Goods and/or Services to Jasmat Steel Fabrications and Jasmat Steel Fabrications will affect the refund or replacement as soon as possible upon the receipt and inspection of the returned Goods and/or Services. The Customer is responsible for all associated costs in returning the defective Goods and/or Services. Jasmat Steel Fabrications is not liable for returning any Goods and/or Services lost in transit.

6. **TRANSFER OF TITLE AND RISK (IF PROVIDING GOODS)**

6.1 This clause 6 only applies when the Terms relate to the provision of Goods only or Goods as well as Services.

6.2 Jasmat Steel Fabrications retains title to the Goods and/or Services until delivery to the Agreed Delivery Address or collection of the Goods and/or Services by the Customer or its duly authorised representative from the Agreed Delivery Address, whichever is the earlier, at which time, provided that payment for the Goods and/or Services is received by Jasmat Steel Fabrications within the agreed timeframe for payment, title to the Goods and/or Services will be transferred to the Customer.

6.3 The Customer accepts the risk of loss or damage to the Goods and/or Services and such risk in the Goods and/or Services is passed to the Customer from the time that the Goods and/or Services are placed onto Jasmat Steel Fabrications nominated form of transport for delivery to the Customer and will indemnify Jasmat Steel Fabrications for any such loss or damage between the time of delivery or collection of the Goods and/or Services and the time at which title to the Goods and/or Services is transferred to the Customer.

6.4 The Customer will ensure that it has appropriate insurance coverage to compensate Jasmat Steel Fabrications under clause 6.3 in the event of loss or damage to the Goods and/or Services unless otherwise agreed in writing by Jasmat Steel Fabrications.

6.5 Jasmat Steel Fabrications will not otherwise be liable in any manner whatsoever for any costs incurred or losses suffered (including but not limited to loss of business profits, business interruption and loss of opportunity) arising directly or indirectly from lost deliveries of Goods and/or Services.

7. **LIMITED PRODUCT WARRANTY (IF PROVIDING GOODS)**

7.1 This clause 7 only applies when the Terms relate to the provision of Goods only or Goods as well as Services.

7.2 This clause 7 is subject to clause 9 (Exclusions and Limitations), clause 10 (Statutory Rights) and any other statutory or legal right whether under these Terms and Conditions or otherwise.

7.3 The Customer may only return the Goods and/or Services if:

- (a) they do not materially comply with the Order; or
- (b) if permitted by law, including the ACL.

7.4 If the Customer wish to return any Goods and/or Services delivered to the Customer, the Customer must give to Jasmat Steel Fabrications:

- (a) notice within a reasonable time of the Customer receipt of the Goods and/or Services; and
- (b) the original Invoice details.

7.5 If Jasmat Steel Fabrications accepts the return of Goods and/or Services from the Customer, Jasmat Steel Fabrications will at our option either:

- (a) replace the returned Goods and/or Services; or
- (b) give a credit or a refund for such Goods and/or Services.

7.5 Costs relating to the return of Goods and/or Services under this clause 7 are payable:

- (a) if the defect is due to Jasmat Steel Fabrications, by Jasmat Steel Fabrications and to be transported by our nominated carrier; or
- (b) otherwise, by the Customer.

7.6 The Customer shall bear any expense of transportation of Goods and/or Services returned to Jasmat Steel Fabrications, unless the Customer have a statutory or other legal right that permits otherwise.

7.7 The Customer may not withhold any Payment due to Jasmat Steel Fabrications in respect of any other Goods and/or Services pending the resolution of a claim for a defect.

7.8 Jasmat Steel Fabrications will not accept notifications under clause 7.3 in the event of the Customer non-payment of an account.

7.9 If the Goods and/or Services are damaged in the course of being delivered to the Customer:

(a) the Customer must notify Jasmat Steel Fabrications of any claim for Goods and/or Services damaged in transit within a reasonable time of delivery; and

(b) subject to our acceptance of the Customer claim under this clause 7, Jasmat Steel Fabrications will replace the relevant Goods and/or Services.

8. **EXPRESS WARRANTY**

8.1 The warranty against defects (Warranty) contained in this clause 8 is provided by:

** The external manufacturer or supplier of products.

** Internally manufactured products supplied are covered for warranty by Jasmat Steel Fabrications

8.2 Jasmat Steel Fabrications warrants that the Goods and/or Services are supplied free from defects in material and workmanship except such defects as normally being regarded as being commercially acceptable.

8.3 The Goods and/or Services shall be covered by this Warranty for a period of 1 month from the date of delivery unless otherwise stated in writing.

8.4 The Customer may make a claim under this Warranty by providing Jasmat Steel Fabrications notice in writing to our address specified in clause 8.1 containing a reasonable description of the defect in the Good(s).

8.5 Jasmat Steel Fabrications will during the Warranty period and subject to clause 8.6, repair or replace at our option, any component or part of the Goods and/or Services which our examination shows to be defective.

8.6 Our obligations under this Warranty are limited to repairing or furnishing a replacement part to replace any part which has proven to have been defective.

8.7 The Customer will be liable for all transport charges incurred in returning defective components or parts for repair or replacement together with the cost of returning them to the Customer. An invoice for such transport charges will be provided upon returning the relevant Good(s) to the Customer which will be payable in accordance with these Terms and Conditions.

8.8 A replacement part supplied by Jasmat Steel Fabrications during the warranty period shall be covered by the warranty for the unexpired portion of the warranty period which covered the original Goods and/or Services.

8.9 The benefits to the Customer given by this Warranty are in addition to the Customer other rights and remedies under the ACL or the relevant laws.

8.10 This Warranty against is provided in addition to other rights and remedies the Customer may have at law. Jasmat Steel Fabrications goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer are entitled to a replacement or refund for a major failure and for compensation for any reasonably foreseeable loss or damage. The Customer are entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

9. **EXCLUSIONS AND LIMITATIONS**

9.1 The exclusions and limitations in this clause 9 are subject to clause 10 (Statutory Rights).

9.2 All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms and Conditions, that are not contained in it, are excluded to the fullest extent permitted by law.

9.3 Any liability arising in relation to Goods and/or Services the subject of the Order or Jasmat Steel Fabrications supply to the Customer, arising and whether for consequential loss or otherwise, including any liability arising by virtue of any representation or warranty, whether express or implied by law, is hereby excluded to the fullest extent permitted by law.

9.4 No warranty is given and Jasmat Steel Fabrications will not be liable for:

(a) alterations to Goods and/or Services for which Jasmat Steel Fabrications is not responsible;

(b) damage or failure caused by unusual or non-recommended use or application of the Goods and/or Services; or

(c) loss caused by any factors beyond our control.

9.5 Jasmat Steel Fabrications will not be liable for any special, indirect, consequential or economic loss or damage or loss of profits (in contract or tort or arising from any other cause of action) suffered by the Customer or any other person resulting from any act or omission by Jasmat Steel Fabrications (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms and Conditions)

9.6 Jasmat Steel Fabrications's total liability for breach of these Terms and Conditions or breach of Jasmat Steel Fabrications's contractual obligations or duties at law or in equity (howsoever arising) is limited at the option of Jasmat Steel Fabrications to:

- (a) the replacement of the Goods and/or Services or the supply of equivalent Goods and/or Services;
 - (b) the repair or rectification of the Goods and/or Services;
 - (c) the payment of the cost of replacing the Goods and/or Services; or
 - (d) the payment of the cost of the repair or rectification of the Goods and/or Services.
- 9.7 If Jasmat Steel Fabrications obtains goods or services from a third party in order to carry out the Customer's instructions or complete an Order:
- (a) Jasmat Steel Fabrications will not be liable for any breach of these Terms and Conditions if that breach is as a result or is connected with the supply by a third party of such goods or services;
 - (b) Jasmat Steel Fabrications acquire such goods or services as agent for the Customer not as principal and will have no liability to the Customer in relation to the supply of these goods or services;
 - (c) any claim by the Customer in relation to the supply of such goods or services must be made directly against that third party; and
 - (d) the Customer must pay for such goods or services and Jasmat Steel Fabrications will give the Customer notice of any such third party charges as applicable.
- 10.1 **ACL rights:** In circumstances where the Customer is acquiring Goods and/or Services from Jasmat Steel Fabrications as a 'consumer' for the purposes of (and as defined in section 3 of Schedule 2 of) the ACL, Jasmat Steel Fabrications acknowledges and agrees that certain statutory guarantees and rights shall apply to the Customer as provided by relevant laws but subject to these Terms and Conditions as applicable and where permitted by relevant laws.
- 10.2 **No restriction:** Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified, which may include the ACL and corresponding provisions and relevant laws of State or Territory legislation containing implied terms and/or statutory guarantees which operate to protect the Customers of goods and services in various circumstances.
- 10.3 **Unfair contract:** If section 23 of the ACL applies to any provisions in these Terms and Conditions, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.
11. **SECURITY INTEREST AND TITLE (IF PROVIDING GOODS)**
- 11.1 This clause 11 only applies when the Terms relate to the provision of Goods only or Goods as well as Services.
- 11.2 This clause 11 sets out the Security Agreement between Jasmat Steel Fabrications and the Customer.
- 11.3 The Customer (Grantor) grant to Jasmat Steel Fabrications (Secured Party) a Purchase Money Security Interest (PMSI) in the Goods and/or Services (Collateral) as security for all or part of the Payment for the Goods and/or Services.
- 11.4 Our security interest attaches to the Collateral by virtue of the Customer's possession of the Goods and/or Services as bailee under clause 11.7.
- 11.5 Jasmat Steel Fabrications may, without notice, apply to register a financing statement with respect to the PMSI described in this clause 11.3.
- 11.6 Until full title in the Goods and/or Services has passed to the Customer, the Customer will ensure that the Goods and/or Services are identifiable and distinguishable:
- (a) from any other goods that may be in the Customer's possession; and
 - (b) as to each particular Invoice of Goods and/or Services.
- 11.7 Jasmat Steel Fabrications will retain absolute title over the Goods and/or Services until:
- (a) Jasmat Steel Fabrications has received Payment in full in respect of the Goods and/or Services;
 - (b) Jasmat Steel Fabrications registers a financing statement as described in clause 11.4; or
 - (c) the Customer sells the Goods and/or Services in the manner prescribed under clause 11.10.
- 11.8 After delivery of the Goods and/or Services, until the full Payment has been made the Customer shall possess the Goods and/or Services as bailee only.
- 11.9 Until Payment in full for the Goods and/or Services has been received by Jasmat Steel Fabrications, Jasmat Steel Fabrications may, without notice, seize the Goods and/or Services if:
- (a) a Default Event occurs; or
 - (b) the Customer is in breach of these Terms and Conditions.
- 11.10 For the purposes of carrying out seizure under clause 11.8, Jasmat Steel Fabrications may without notice, enter the Customer's premises and seek any or all remedies provided under Chapter 4 of the PPSA and any other remedies provided at law or in equity or otherwise.
- 11.11 The Customer may only sell all or any of the Goods and/or Services in respect of which full Payment has not been received to a third party if:
- (a) Jasmat Steel Fabrications have not exercised our right to seize the Goods and/or Services under clause 11.8;

(b) the sale is a bona fide transaction at market value in the ordinary course of business; and

(c) all proceeds of sale of those Goods and/or Services is:

(i) immediately paid to Jasmat Steel Fabrications; or

(ii) held on trust for Jasmat Steel Fabrications in a separate account, payable immediately on demand.

11.12 Notice requirements under sections 95, 118, 121, 130, 132 and 135 of the PPSA shall not apply and not place any obligations on Jasmat Steel Fabrications in the Customer favour

11.13 The Customer agree to waive the Customer's right to receive from Jasmat Steel Fabrications a copy of any financing statement, financing change statement or verification statement that is registered, issued or received at any time in relation to these Terms and Conditions and this Security Agreement.

11.14 The Customer shall immediately notify Jasmat Steel Fabrications in writing of any change of name.

11.15 The Customer acknowledge receipt of a copy or due notice of these Terms and Conditions and this Security Agreement.

12. **INTELLECTUAL PROPERTY**

12.1 If the Customer provides Jasmat Steel Fabrications with Material to be used in the supply of the Goods and/or Services:

(a) the Customer warrants and represents to Jasmat Steel Fabrications that any Goods and/or Services supplied to the Customer based on the Material the Customer provide to Jasmat Steel Fabrications will not infringe the Intellectual Property Rights of any third party; and

(b) the Customer indemnifies and will keep the indemnified from and against any and all claims, liabilities, obligations, expenses or damages which Jasmat Steel Fabrications may suffer or incur as a result or in connection with the representation or warranty in clause 12.1(a) being untrue or breached.

12.2 The Customer grants to Jasmat Steel Fabrications a non-exclusive royalty free license throughout the universe to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the production of the Goods and/or Services and the matters contemplated in relation to the delivery of the relevant Goods and/or Services.

12.3 All Intellectual Property Rights in and relating to the production, development and supply of the Goods and/or Services (excluding Materials licensed to Jasmat Steel Fabrications pursuant to clause 12.2) will remain Jasmat Steel Fabrications property and will not be disclosed to any other person by the Customer without our prior written consent.

12.4 The Customer shall keep confidential and shall not use any confidential information communicated by Jasmat Steel Fabrications to the Customer without our prior written consent.

12.5 The Service Provider is the exclusive owner of all of the Service Provider's Intellectual Property in the Products and Services, including any Intellectual Property provided in conjunction with a Quote, e.g. designs.

13. **GST**

13.1 Unless otherwise agreed, prices with respect to any taxable supply are exclusive of GST.

13.2 The Customer must pay to Jasmat Steel Fabrications all GST in addition to any other amounts payable by the Customer to Jasmat Steel Fabrications, which will be payable by the Customer when required to pay for the Goods and/or Services.

13.3 Jasmat Steel Fabrications will issue a tax invoice for any taxable supply to the Customer, which will enable the Customer, if permitted by the GST Law, to claim a credit for GST paid by the Customer.

13.4 If GST is payable for a taxable supply by a third party, Jasmat Steel Fabrications will request that party to provide the Customer with a tax invoice.

13.5 Prices for imported goods are to be converted into Australian dollars based on the Reserve Bank Exchange Rate on the date that such goods are ordered.

14. **DISPUTE RESOLUTION**

14.1 A party must not start court proceedings in respect of a Dispute unless it has complied with this clause 14.

14.2 A party claiming that a Dispute has arisen must notify each other party to the Dispute giving details of the Dispute.

14.3 During the Initial Period after a notice is given under clause 14.2 each Disputant must authorise a representative to use their best efforts to resolve the Dispute.

14.4 If, in relation to a Dispute, a Disputant breaches any provision of clauses 14.1 to 14.3, each other Disputant need not comply with clauses 14.1 to 14.3 in relation to that Dispute.

15. **RELATIONSHIP**

15.1 The Parties acknowledge that they are not in partnership, there is no joint venture between them or franchise arrangement, and that the only relationship between them is that of Customer (in the case of the Customer) and as

service provider (in the case of Jasmat Steel Fabrications) in respect of the Services on the terms in this Agreement. Neither Party may claim or hold itself out as having any other relationship, authority, right or entitlement to represent or act as agent of the other or to have any interest or shareholding in the other.

15.2 It is expressly agreed that nothing in this Agreement will give rise to any fiduciary relationship between the Customer and Jasmat Steel Fabrications and neither Party owes any fiduciary duty to the other in respect of its conduct.

16. **GENERAL**

16.1 Variations

This Agreement may only be varied in writing signed by both the Parties.

16.2 Waiver

16.3 Notices

16.4 Confidentiality of Agreement

All terms of this Agreement shall be kept strictly confidential as between the Parties. None of the Parties to this Agreement shall disclose any terms or information relating to, received, or developed in the course of this Agreement relating to the Agreement or the business of either Party without prior written consent of the other party.

16.5 Force Majeure

Except for obligations to make payment, delay or non-performance by any Party will be excused if such delay or non-performance is due to an event or events outside the Party's reasonable control, including but not limited to:

16.6 Severability

If any clause of this Agreement is invalid under any applicable such Law, the clause will be limited, narrowed, construed or altered as necessary to render it valid, but only to the extent necessary to achieve such validity. If necessary the invalid clause will be deleted from the Agreement and the remaining clauses will remain in full force and effect.

16.7 Counterparts

This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which together will constitute one instrument and Agreement.

16.8 Entire Agreement

16.9 Governing Law and Jurisdiction

It is agreed by the Parties that this Agreement is to be construed in accordance with the Laws of Australia and each Party covenants that it submits to the jurisdiction of the Courts of the State or Territory in which the Territory is located for the resolution of any dispute under the Agreement. If the Territory is the whole of Australia then the Parties submit to the jurisdiction of all State and Territory Courts and Federal Courts.

**EXECUTED by Rawr Pty
Ltd ABN 611 605 894 62
TRADING AS Jasmat
Steel Fabrications** in
accordance with section 127
of the *Corporations Act
2001*:

.....
Director

.....
Director / Secretary

.....
Name (print) Date:

.....
Name (print) Date:

**EXECUTED by [INSERT]
ABN [INSERT] in**
accordance with section 127
of the *Corporations Act
2001*:

.....
Director

.....
Director / Secretary

.....
Name (print) Date:

.....
Name (print) Date: