

Definitions

“**Australian Consumer Law**” means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

“**Company**” means Nashco Pty Ltd (ACN 626 555 244).

“**Customer**” means the party placing the Order with or purchasing Products from the Company.

“**MTO**” includes any Product that has been specially ordered for a Customer (whether locally or from overseas) or which is specially manufactured for the Customer or is not a stocked item.

“**Order**” means an offer by a Customer to purchase Products from the Company.

“**PPS Act**” means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as varied from time to time.

“**PPSR**” refers to the Personal Property Securities Register established under the PPS Act.

“**Products**” means lightweight steel wall framing for internal partitions, external façade framing & suspended ceiling systems including accessories and other associated products and services for the construction industry and includes any product or service ordered by the Customer from the Company or supplied by the Company on the Order of the Customer.

“**Trading Ts&Cs**” means these Terms & Conditions of Trade or the current Terms & Conditions of Trade as varied and applicable from time to time.

“**Writing**” includes letter, fax, email, SMS and other similar electronic communication methods.

1. Sale Terms

- 1.1 The Trading Ts&Cs apply to all agreements between the Company and the Customer including all Orders or other sales and will prevail over all prior conditions previously agreed between the parties.
- 1.2 The terms of the Trading Ts&Cs may be varied from time to time by the Company by notice to the Customer. Publication of the amended Trading Ts&Cs on the website of the Company located at www.nashco.com.au will be deemed to be notice of that amendment. The amended Trading Ts&Cs will apply to any Order or part of an Order from the date on which the Company notifies the Customer of that change but such amendments will not affect any sale or services which the Company has already agreed to provide before such notice was given.
- 1.3 The Company may, but will not otherwise be required nor responsible to notify the Customer of the existence or content of any amendments to the Trading Ts&Cs.

2. Order and Acceptance

- 2.1 Any Order submitted to the Company by a Customer shall be deemed to be made pursuant to the terms of the Trading Ts&Cs.
- 2.2 Any Order placed or made by the Customer for the purchase of the Products shall be an irrevocable offer and shall constitute an unqualified acceptance by the Customer of the Trading Ts&Cs.
- 2.3 The Company reserves the right to accept or reject any Order for any reason, including without limitation, the unavailability of any Product, an error in the price or the Product description on the Company website, catalogue, price list or promotional material or an error in your Order. The Company may require additional verification or information before accepting any Order.
- 2.4 The Company may accept any Order in whole or in part by providing confirmation of the Order. Acceptance may be oral or in writing at the Company's discretion.
- 2.5 Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to the conditions set out herein) there is no right of return and where consent is provided may be subject to administrative charges.
- 2.6 Delivery by the Company of Products pursuant to an Order made by the Customer (whether by single or multiple delivery) will be taken as acceptance by the Company of the Order to the extent Products are delivered.
- 2.7 The Company reserves the right to substitute Products that are not available for comparable Products of equal or higher specification, unless the order specifies that the Products are “not to be substituted”.

3. Price

- 3.1 The price of the Products shall be as agreed in Writing between the parties or where there is no agreed price, the price will be such amount as indicated on the invoice provided by the Company to the Customer regarding the Products ordered.
- 3.2 If the Company's cost of supplying the Product increases by more than 10% due to any change in the amount of any GST and other taxes, currency fluctuations, duties, freight and transport charges which may be applicable, the Company may upon the provision of written notice to the Customer at any time before delivery increase the price of the Products by the same amount.
- 3.3 The Company may charge in addition to the price of the Products the recovery rate for delivery, freight and handling at rates dependent on distance and volume of Products supplied. Such rates are subject to change without notice.
- 3.4 The Company may set a minimum Order amount.
- 3.5 Any discount or rebate will only apply if the Customer and the Company agree in Writing.

4. Credit granting and payment

- 4.1 The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require a deposit or pre-payment as a condition of delivery.
- 4.2 Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, the Company may require payment for all Products supplied before delivery (cash or cleared funds). Where credit approval has been granted to the Customer, all invoices issued by the Company are due and payable by the date for payment agreed in Writing by the Customer and the Company but if no agreement in Writing is made then seven (7) days following the date of the invoice.

5. Credit Policy and Default

- 5.1 In the event that the Customer fails to make any payment payable pursuant to these Trading Ts&Cs within the payment terms or breaches any of the warranties, obligations or agreements, the Customer shall be in default.
- 5.2 The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment.
- 5.3 If the Customer defaults in payment of any invoice when due and payable, the Customer shall indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to the Company by any mercantile agency. If the Customer fails to pay the price by the due date, the Company may at its sole discretion:
- (a) cancel any provision of credit to the Customer;
 - (b) reverse or suspend any rebates, discounts and incentive programs allowed;
 - (c) change credit payment terms including require cash pre-payment for any further Products ordered;
 - (d) provide to a credit reporting agency details of the payment default;
 - (e) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
 - (f) decline to supply further Products to the Customer and terminate any other agreement with the Customer;
 - (g) withhold any product or system warranty certificate; and;
 - (h) exercise any other rights at law including pursuant to the PPSA.
- 5.4 A certificate of debt signed by a representative of the Company prepared with due care and from appropriate records will be prima facie evidence and proof of money owing by the Customer to the Company at the time of certificate.

6. Disputed Charges

- 6.1 If the Customer objects to any invoiced item or amount, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the invoice is paid in full and notice in Writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount.
- 6.2 The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice of the amount payable by the Customer and the basis of the decision.
- 6.3 Invoiced amounts that are not objected to in Writing within 30 days of the due date will be deemed to be correctly charged and accepted by the Customer and the Customer waives all claims against the invoice.

7. GST

- 7.1 Words used in this clause 7 that are defined or used in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning as in that Act unless the context indicates otherwise.
- 7.2 Unless expressly included all amounts of consideration expressed or described in any Quotation or agreement the subject of the Trading Ts&Cs are GST exclusive. The Customer must pay an additional amount equal to any applicable GST. The additional amount must be paid when the other consideration is payable or at any earlier time that the Company is obliged to pay or allow credit for the GST.
- 7.3 Whenever an adjustment event occurs in relation to any taxable supply to which clause 6.2 applies:
- (a) The supplier must determine the amount of the GST component of the consideration payable; and
 - (b) If the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable; and
 - (c) The supplier will issue an Adjustment Note to the recipient.
- 7.4 If either party is entitled under an agreement the subject of the Trading Ts&Cs to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with such agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.
- 7.5 If GST is payable on any taxable supply made by one party (Supplier) to another (Recipient) under an agreement the subject of the Trading Ts&Cs, then the Recipient will not be required to pay any amount to the Supplier in respect of that taxable supply unless it has first received a tax invoice from the Supplier.
- 7.6 The Company may require any evidence it reasonably requires to establish whether the supply of Products is GST-free or not. Where the Customer represents to the Company that supply of the Products is GST-free because they are being exported, the Customer indemnifies the Company for any GST including penalties that are payable because the supply is not GST-free.

8. Delivery

- 8.1 Delivery of the Products shall be deemed to have taken place when:
- (a) the Customer takes possession of the Products at the Company's address if the Products are collected; or
 - (b) the Products are delivered at the Customer's nominated address (in the event that the Products are delivered by the Company or the Company's nominated carrier); or
 - (c) the Customer's nominated carrier takes possession of the Products in which event the carrier shall be deemed to be the Customer's agent.
- 8.2 The Company's nominated address shall be the address specified in the Commercial Account Application Form or agreed by the Company.

- 8.3 Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company.
- 8.4 The Customer must make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery.
- 8.5 In the event that the Customer is unable or unwilling to accept delivery of the Products as arranged, or the delivery point is inadequate, not suitable or inaccessible, then the Company shall be entitled to charge all reasonable costs for the return, storage and redelivery.
- 8.6 Delivery of Products to a third party or place nominated in any way by the Customer is deemed to be delivery to the Customer pursuant to these Trading Ts&Cs.
- 8.7 The Customer is responsible for unloading the Products.
- 8.8 The Company shall not be liable for any loss or damage or expense arising from failure by the Company to deliver the Products at a specified time, promptly or at all and the failure of the Company to deliver at a specific time or at all shall not entitle either party to treat this contract as repudiated.
- 8.9 A Proof of Delivery ("POD") document signed by the Customer or anyone appearing to act on its behalf will be deemed confirmation by the Customer that the delivery of Products is in accordance with the Customer's Order.
- 8.10 Where no one is present at the Customer's nominated address when delivery is made, a photo of the delivery at the address shall be sufficient POD.

9. MTO Products

- 9.1 Subject to clause 17.2, any MTO Products shall not in any case be eligible for return.
- 9.2 Orders placed for MTO Products are to be supplied as per quantities run at time of production that may vary by up to 10% of the total quantity in the Order.
- 9.3 Where MTO Products are held in inventory specifically for the Customer and the Customer:
- (a) notifies the Company that it wishes to terminate its account with the Company and no longer requires the MTO Products held in inventory by the Company; or
 - (b) fails to purchase those MTO Products in accordance with its normal terms of trade with the Company for a period of three consecutive months,
 - (c) then the Customer must buy all remaining inventory of the MTO Products:
 - (d) within 10 days of receiving notification from the Company to do so (Notification); and
 - (e) at the price payable by the Customer for the MTO Products had the Products been ordered by the Customer from the Company on the date of the Notification.
- 9.4 If the Customer fails to comply with the Notification, the Company may invoice all of the remaining MTO Products to the Customer and dispose of those MTO Products without liability for any loss or damage suffered by the Customer as a result. The Customer indemnifies the Company and keeps the Company indemnified against all claims, demands, loss, costs and expenses incurred by or made against the Company, arising out of any actual or alleged infringement of patents, copyright, trademarks, design rights or other intellectual property rights, by any logo, design, copyright or other material that the Company may use, print or reproduce at the Customer's request.

10. Product Information, Prices, Photos and Images

- 10.1 All prices, descriptive specifications, illustrations, photos, drawings, data, dimensions and weights supplied by the Company or otherwise contained in catalogues, price lists, advertising or in other printed material of the Company are approximate only and are for general illustration purposes only.
- 10.2 Such descriptive specifications, subject to the Australian Consumer Law, do not form part of the contractual description of the Products unless agreed to in Writing by the Company.
- 10.3 Notwithstanding that the Company may assist the Customer to reach a decision with respect to the purchase of the Products the subject of these Trading Ts&Cs (whether by way of representation, statement, information or advice, and whether of a technical nature or otherwise), it is agreed that responsibility for the final decision to purchase rests in all respects solely with the Customer.

11. Risk and Retention of Title to the Products Pending Payment

- 11.1 The risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the Customer, the Customer's agent or courier as the case may be.
- 11.2 Legal and beneficial ownership of the Products will remain with the Company and will not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which may become due to the Company from the Customer on any credit or other account with the Company or pursuant to these Trading Ts&Cs.
- 11.3 Until ownership of the Products has passed to the Customer, the Customer will keep the Products in question as fiduciary agent and bailee for and on behalf of the Company.
- 11.4 If:
- (a) the Customer fails to pay any amount (whether in part or whole) payable in respect of any Products by the time required for payment; or
 - (b) the Customer is the subject of an insolvency event (such as receivership, administration or liquidation);
- 11.5 the Company may, without notice to the Customer, enter at any reasonable time any premises where Products are located (or believed by the Company to be located) and take possession of those Products not paid for and any other Products to the value of the amount owing. The Company's permission to enter the Customer's premises for that purpose is irrevocable. The Company is not liable to the Customer in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Company under this clause.

12. PPS Act

- 12.1 Words in italic will have the meaning and definitions set out in the PPS Act.
- 12.2 The Customer acknowledges that by virtue of the Trading Ts&Cs the Company has a security interest in the Products and their proceeds and to the extent applicable, the PPS Act applies to any agreement pursuant to the Trading Ts&Cs.
- 12.3 The Customer acknowledges that the Company may do anything it considers necessary, including but not limited to registering on the PPSR any security interest in the Products which the Company has and including registration as a purchase money security interest (PMSI) in order to perfect the Company's security interest as a first priority interest under the PPS Act. The Customer agrees to do all things including signing any document which the Company reasonably requires to assist the Company to undertake the matters set out above.
- 12.4 The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a financing statement, financing change statement or a verification statement in relation to any registration on the PPSR.
- 12.5 The Customer and the Company agree, that pursuant to section 115 of the PPS Act the following provisions in the PPS Act are contracted out of insofar as they require the Company to give any notice or statement or allow any period of time or grant any opportunity to remedy to the Customer:
- (a) sections 95 (removal of accession), 96 (retention of accession);
 - (b) section 125 (obligation to dispose of or to retain collateral);
 - (c) section 129 (disposal by purchase);
 - (d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
 - (e) subsection 132(4) (statement of account if no disposal);
 - (f) section 135 (notice of retention);
 - (g) section 142 (redemption of collateral);
 - (h) section 143 (reinstatement of security agreement).
- 12.6 Solely to preserve their confidentiality, to the extent allowed under section 275 of the PPS Act, the Customer and Company agree that neither will disclose information if requested by a third party under section 275(1) of the PPS Act.
- 12.7 The Customer agrees that any rights of the Company under this document are in addition to and not in substitution for its rights under the PPS Act.
- 12.8 The Customer must not without the Company's consent specify an order of application of payments made to the Company different to that set out in section 14 of the PPS Act or different to any other order specified by the Company at any time.
- 12.9 The Customer undertakes to give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to, changes in its address, phone or facsimile number and trading name).

13. Charge

- 13.1 To secure the payment of all moneys owed and owing by the Customer to the Company under these Trading Ts&Cs (secured money), the Customer charges all of its interest in any real property (whether presently owned or subsequently acquired and wherever situate) in favour of the Company and grants to the Company an equitable charge over such property and acknowledges the Company's caveatable interest in such property. The Customer agrees to grant a mortgage over any such real property to better secure the secured money. The Customer grants a security interest pursuant to the PPS Act in all the Customer's present and after acquired property as security for the Customer's obligations in respect of the secured money. The Customer hereby irrevocably appoints the Company and any person nominated by the Company as the attorney of the Customer with power to execute, sign, seal and deliver any documents to better secure the secured money and to perfect any security, including to execute any registrable real property mortgage.
- 13.2 The Customer hereby separately indemnifies the Company against all losses and expenses (including legal costs on a solicitor/client basis) however arising, directly or indirectly, in respect of any default by the Customer under any agreement with the Company and including failure to pay any secured money.

14. Currency

- 14.1 For amounts invoiced in Australian dollars, payments must be made in Australian dollars. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving end.
- 14.2 For amounts invoiced in currency other than Australian Dollars, payments must be made in the currency advised by the Company and must include all related bank charges and currency conversion costs both on the payment and receiving end, if applicable.

15. Credit Card recovery of costs

- 15.1 A service fee sufficient to cover the Company's banking cost may be added to the price where payment by the Customer is made by way of a credit card.

16. Recovery

- 16.1 Notwithstanding any other provision to the contrary, if any amount is not paid by the Customer within the terms for payment, the Company reserves the following rights in relation to the Products until all amounts owed by the Customer to the Company in respect of the Products and all other Products supplied to the Customer by the Company at any time are fully paid:
- (a) legal and equitable ownership of the Products;
 - (b) to retake possession of the Products; and

(c) to keep or resell any of the Products repossessed.

- 16.2 The Customer hereby grants full leave and irrevocable license without any liability to the Company and any person authorised by the Company to enter any premises by any means where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.

17. Defects, Claims and Returns

- 17.1 Refunds or returns will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or other applicable legislation.
- 17.2 The Company will not accept the return of Products for a cash refund.
- 17.3 Subject to clause 18.2, the Customer accepts that minor defects in the Products do not constitute grounds for a claim or return.
- 17.4 The Customer accepts that Products sold on a "No Return" basis may not be returned. Refunds or return will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or the Sale of Goods Act NSW or other applicable legislation.
- 17.5 No Return Products include promotional Products, Products with non-standard packaging, Products that have passed or are within 30 days of their stated expiry date and MTO Products as well as any other Product nominated by the Company as a "No Return" Product.
- 17.6 Subject to clause 18.2:
- (a) The Customer will inspect and check all Products received and within 7 days of receipt notify the Company in Writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products comply with those Ordered prior to use. After use or expiry of the time stated herein the Product shall be deemed to be free from any default or damage at delivery.
 - (b) The Customer agrees that it will not return any of the Products without first informing the Company so that a Goods Returns Form ("GRF") may be completed by the Company for valid returns. Returned Products must be unmarked, in a saleable condition and must include the original packaging, delivery document and invoice. Part pack quantities will not be accepted.
 - (c) No credit or replacement will be given unless and until Products returned have been verified as being valid for return or defective and a GRF completed. The Company reserves the right to recover its costs where the returned Products prove not to be valid for return, or are not defective. Returned Products must be returned to the factory or branch of the Company from which they were delivered unless written authorisation is received from the Company to return the Products to the closest branch. All freight, handling and other charges in relation to returning Products (other than Products defective or not ordered) are the responsibility of the Customer.
 - (d) The Customer shall be liable for a Restocking Fee on all Products accepted for return. The Restocking Fee shall not apply to Products returned for being defective, damaged or for failing to comply with the Order. The current Restocking Fee is the higher of 20% of the price of the Products returned or \$20.
 - (e) The Company may accept at its sole discretion a written request from the Customer to return Products correctly ordered, not defective and not otherwise valid for return. Credit will be passed at the lower of the original purchase price and the current sales price, less the Restocking fee.

18. Warranties, Disclaimer and Limitation of Liability

- 18.1 Subject to clause 18.2 and except as expressly provided in the Trading Ts&Cs or as set out in the Company's acceptance, and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, merchantability or fitness for purpose of any Products provided pursuant to the Trading Ts&Cs is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are hereby excluded.
- 18.2 The Company acknowledges that certain legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) to the extent it cannot lawfully be excluded, restricted or modified.
- 18.3 Subject to clause 18.2 and to the full extent permitted by law, the liability of the Company in respect of a breach of a guarantee, condition or warranty implied by legislation (other than any non-excludable implied guarantees, conditions or warranties), including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Company's option, to:
- (i) if the breach relates to supply of goods:
 - (a) the provision of a refund;
 - (b) replacement of the goods;
 - (c) repair of the goods; or
 - (d) the payment to the Customer of the reasonable cost of having the goods repaired or replaced.
 - (ii) if the breach relates to services:
 - (a) the provision of a refund; or
 - (b) re-supply of the services; or
 - (c) the payment to the Customer of the reasonable cost of having the services re-supplied.
- 18.4 The Customer acknowledges and agrees that in entering into an agreement the subject of the Trading Ts&Cs it has not relied in any way on the Company's representations and that it has satisfied itself as to the suitability of the Products for the Customer's purposes.

- 18.5 Subject to clause 18.2, and to the full extent permitted by law the Company will not be liable to the Customer for any loss or damage including loss of profits or any other indirect or consequential loss or damage, arising directly or indirectly, and whether or not as a result of negligence, in any way in respect of anything done or supplied under the Trading Ts&Cs including:
- (a) the supply to or use by the Customer of any Product; or
 - (b) delayed or non-delivery of the Products for any reason including but not limited to loss, damage, theft of the Products whilst in transit; or
 - (c) any breach by the Company of its obligations under an agreement the subject of the Trading Ts&Cs.
- 18.6 The Customer acknowledges and agrees that the only warranties and guarantees that will apply to all goods, parts, materials or equipment not manufactured by the Company (Excluded Goods) will be limited to the warranties and guarantees to which the Company is entitled from its supplier or manufacturer. The Company will use reasonable endeavours to assist the Customer to obtain the benefit of any guarantee or warranty offered by the original supplier or manufacturer in respect of any Excluded Goods supplied to the Customer.
- 18.7 The Customer acknowledges and agrees that the Products may be shipped and delivered using heavy vehicles. The Customer:
- (a) must ensure that its employees and contractors comply with applicable heavy vehicle laws;
 - (b) must ensure that all its staff and contractors are given adequate briefing and instruction in relation to their duties and obligations under such heavy vehicle laws ; and
 - (c) indemnifies the Company for any liability to the extent arising from a breach of its obligations under this clause.
- 19. Unpaid Seller's Rights**
- 19.1 Where the Customer has left any item with the Company for repair, modification, exchange or for the Company to perform any other Service in relation to the item and the Company has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Company shall have:
- (a) a lien on the item;
 - (b) the right to retain the item for the Price while the Company is in possession of the item;
 - (c) a right to sell the item.
- 19.2 The lien of the Company shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
- 20. Building and Construction Industry Security of Payment Act 1999 (NSW) (BCISP Act)**
- 20.1 At the Company's sole discretion, if there are any disputes or claims for unpaid Products and/or services then the provisions of the BSISP Act may apply.
- 20.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the BSISP Act of New South Wales, except to the extent permitted by the BSISP Act where applicable.
- 21. Set-off and Assignment**
- 21.1 The Customer is not entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.
- 21.2 The Customer must not assign or subcontract any contract for the purchase of Products or its rights or obligations under an agreement the subject of the Trading Ts&Cs without the prior written consent of the Company.
- 22. Force Majeure**
- 22.1 The Company will have no liability to the Customer in relation to any act of God, loss, damage or expense caused by the Company's failure to complete an order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, industrial disputes or unrest, government restrictions or intervention, transport delays, breakdown of plant, shortage of supplies or labour, strike, lock-out, war or the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.
- 23. Privacy consent**
- 23.1 The Company collects, uses, stores and discloses personal information in accordance with the Company's Privacy Policy, which the Customer acknowledges it has had an opportunity to read and understand. The Customer can access the current policy from the Company's web site located at www.nashco.com.au, or by contacting the Company's privacy officer at accrec@nashco.com.au.
- 23.2 The Company may give information to third parties about the Customer, its guarantors, directors or proprietors in accordance with the company's Privacy Policy, including for the following purposes:
- (a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
 - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
 - (c) for registration on the PPSR or other public records or registers; and
 - (d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.
- 24. Waiver of terms of agreement**
- 24.1 The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company shall be entitled to require strict compliance at all times.



TERMS AND
CONDITIONS OF TRADE
V19332001

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25. Proper Law

- 25.1 The agreement is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.
- 25.2 The parties agree to submit to the exclusive jurisdiction of the Courts of the State of NSW if the Magistrates Court has jurisdiction the parties consent to the exclusive jurisdiction of the Magistrates Court closest to the Company's place of business.
- 25.3 Any agreement formed pursuant to the Trading Ts&Cs shall be deemed to have been entered into at the Company's place of business.

26. General

- 26.1 This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of these Trading Ts&Cs shall be legally binding upon either party unless in writing and signed by both Parties or allowed by these Trading Ts&Cs.
- 26.2 The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices shall be deemed to be given:
- (a) where delivered by hand, on the day of delivery;
 - (b) where sent by post, two (2) business days after the day of posting; and
 - (c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.
- 26.3 If any term of this agreement shall be invalid, void, illegal or unenforceable, they shall be severed from the agreement and the remaining provisions shall not be affected, prejudiced or impaired by such severance.
- 26.4 The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.
- 26.5 In the event that the Customer sells or otherwise disposes of its business (or any part thereof), the Customer shall be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer shall be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.