

**STODDART GROUP - TERMS OF SALE****BETWEEN****STODDART GROUP PTY LTD ACN 010 744 751 and their officers and any subsidiary or associated entity and as trustee of any trust ("STODDART")  
AND  
THE CUSTOMER****DEFINITIONS**

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

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

**"Australian Consumer Law"** means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*, as amended.

**"Balance"** means the Price less any Deposit.

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

**"Consequential Loss"** includes any:

- (a) consequential loss;
- (b) loss of anticipated or actual profits or revenue;
- (c) loss of production or use;
- (d) financial or holding costs;
- (e) loss or failure to realise any anticipated savings;
- (f) loss or denial of business or commercial opportunity;
- (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
- (h) loss or corruption of data;
- (i) downtime costs or wasted overheads; or
- (j) special, punitive, or exemplary damages.

**"Consumer Contract"** has the meaning given to this term in section 23(3) of the Australian Consumer Law.

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

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

**"Deposit"** means the deposit specified in the Quotation.

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

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

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

- (a) the Customer fails to pay for any Products and Services and/or the Customer breaches these Terms of Sale;
- (b) the Customer ceases or threatens to cease carrying on business; or
- (c) if the Customer is a company: an order is made or a resolution is effectively passed for winding up of the Customer, or the Customer goes into liquidation, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the *Corporations Act 2001 (Cth)*; if the Customer is a natural person: an order is made for the Customer's bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an order is applied for or made to place the assets and affairs of the Customer under administration.

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

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

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

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

**"Products and Services"** means all products, goods, and services supplied by STODDART to the Customer. Products as defined herein also include any Equipment as supplied and defined in these terms. Services include the installation of Products by affixing it to a designated structure at the Site nominated by the Customer and the dismantling and removal of Equipment at the end of any hire.

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

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

**"Small Business Contract"** has the meaning given to this term in section 23(4) of the Australian Consumer Law.

**"Works"** refers to Services.

**OPERATIVE PART**

1. **Incorporation of these Terms of Sale:**
  - (a) STODDART and the Customer agree that these Terms of Sale are and shall be incorporated into each and every Contract between them.
  - (b) STODDART may, upon the provision of notice, change, modify, add or remove portions of these Terms of Sale at any time.
  - (c) The Customer acknowledges and agrees that their continued contracting with STODDART following changes to these Terms of Sale is to be construed as deemed acceptance by the Customer of those changes.
  - (d) Previous dealings between STODDART and the Customer shall not have any effect on the Contract.
  - (e) Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
  - (f) Unless otherwise agreed, no Terms and Conditions of the Customer apply to any agreement between the Customer and STODDART.
2. **Quotations:** All Quotations provided by STODDART will, subject to clauses 3 and 4 of these Terms of Sale, remain current for the period stated in the Quotation. If no period is stated, a Quotation will, subject to clauses 3 and 4 of these Terms of Sale, remain current for 30 days from the date of the Quotation.
3. **Escalation and price variation:**
  - (a) STODDART may increase or decrease the Price of Products and Services during the term of the Contract where it incurs an increase or decrease in its costs of supplying the Products and Services.
  - (b) Where STODDART varies the price or rates payable for the Products or Services pursuant to clause 3(a), STODDART will notify the Customer of the new price/rates. Thereafter the Customer may reject the new price/rates within seven (7) days and terminate the contract for supply without any cost or penalty to the Customer, otherwise the Customer agrees that the price/rates will apply to the contract.
4. **Extras:** Unless stated in the Quotation, the Price quoted does not include items such as assembly of Products, delivery of oversized loads or provision of vehicle escorts, on-Site scheduling, on-Site accommodation, provision of traffic control or any other item(s) specified in the Quotation as excluded. All extras will be charged by STODDART to the Customer.
5. **Acceptance of Quotations:** All Quotations are only capable of acceptance by the Customer in writing.
  - (a) Quotations made by STODDART will not be construed as an offer or an obligation to supply in accordance with Quotation. STODDART reserves the right to accept or reject at its discretion any offer to purchase received by it upon the provision of written reasons to the Customer. Only written acceptance by STODDART of the Customer's offer will complete a contract.
6. **Payment:** The Customer must pay for all Products and Services supplied by STODDART as follows: -
  - (a) **Account Customers:** within 30 days after the end of the month of supply or within any alternative period granted in writing by STODDART.
  - (b) **Non-Account Customers:** on a cash basis prior to the commencement of supply;
7. **Interest:** STODDART is entitled to charge the Customer interest on amounts not paid on or before the due date specified by STODDART at a rate of 10 percent per annum.
8. **GST:** Each amount payable by the Customer in respect of a Taxable Supply by STODDART is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. "Taxable Supply" and "GST" have the meanings set out in the *New Tax System (Goods and Products and Services) Act 1999 (Cth)*.
9. **Allocation of payments:**
  - (a) Payments by or on behalf of the Customer's will be applied by STODDART as follows:
    - (i) The Customer must pay for its own legal, accounting and business costs and all costs incurred by STODDART relating to any default by the Customer under this agreement. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
    - (ii) The Customer will pay STODDART's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.
    - (iii) Subject to clauses 9(a)(i) and 9(a)(ii), payments by, or on behalf of, the Customer will be applied by STODDART as follows.
      - a. Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 9(a)(ii).
      - b. Secondly, in payment of any interest incurred.
      - c. Thirdly, in payment of the outstanding invoice(s).
  - (b) In circumstances where STODDART seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Customer will be allocated in a manner at the STODDART's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which STODDART seeks to enforce its purchase money security interest.
  - (c) To the extent that payments have been allocated to invoices by STODDART in its business records, STODDART may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at STODDART's absolute discretion, including in a manner inconsistent with clause 9(a)(ii).
  - (d) Payments allocated (and/or reallocated) will be treated as though they were allocated (and/or reallocated) in the manner determined by STODDART on the date of receipt of payment.
10. **Provision of information:**
  - (a) The Customer acknowledges and agrees that it must provide STODDART with all information reasonably necessary (including without limitation all necessary plans, specifications, engineering requirements, details, and/or special instructions) to enable supply and/or performance by STODDART of the Products and Services requested by the Customer before the commencement of supply and/or performance. The Customer acknowledges and agrees that: -
    - (i) if the necessary information is not provided by the Customer, STODDART may refuse or suspend supply of its Products and Services to the Customer until the information is provided;
    - (ii) STODDART is not liable for any loss, damage, cost, or expense incurred by the Customer due to a suspension or cancellation of supply by STODDART of its Products and Services as a result of the Customer's failure to supply necessary information; and
    - (iii) if errors occur as a result of documents supplied to STODDART by the Customer or a third party, the Customer must pay for the costs of rectification.

- (b) The Customer indemnifies STODDART against all claims, costs, liabilities, and expenses incurred by STODDART as a result of, or related to: -
  - (i) any inaccuracy, omission or error in the documents supplied by the Customer or a third party; and
  - (ii) any documents supplied by the Customer or a third party for the purposes of, or in the course of the supply of, the Products or Services that breach a third party's intellectual property rights.

**11. Changes to Customer requirements:** The Customer acknowledges and agrees that where the Customer proposes any variations, substitutions, additions and deletions to plans, specifications, engineering requirements or special instructions, including without limitation any changes to product dimension, finish, or quantities required (collectively referred to in this clause as "variations") after a Quotation has been accepted by the Customer and/or an Order placed with STODDART: -

- (a) The Customer must obtain STODDART's written consent to the variations.
- (b) The provision of STODDART's consent or otherwise is in STODDART's complete discretion;
- (c) The Customer must pay STODDART for any expenditure commitment, work done, and material provided under the contract up to the date STODDART is notified in writing of any proposed variation.
- (d) STODDART reserves the right to charge the Customer for any changes made after an order is made including cancellation, amendments in full or part, including the recovery of any costs, special products, materials, toolage or labour to the date of cancellation or amendment. If the variations are accepted by STODDART, the Customer must pay STODDART for any increase(s) in the Price of Products and Services supplied and the date of delivery or completion of work by STODDART will be extended to any date nominated by STODDART.

**12. Site measurement:** STODDART does not carry out Site measurements. The Customer acknowledges and agrees that where a Customer requests a Site visit by STODDART to check Site measurements STODDART will charge to the Customer travel time and time spent on Site by a STODDART representative at an hourly rate.

**13. Pricing for Equipment:** The Customer acknowledges and agrees that: -

- (a) STODDART's estimate of quantities for the hire of Equipment shown in the Quotation are calculated as accurately as possible based on the information supplied by the Customer. If there is any discrepancy between the estimate and the actual quantities of Equipment required, the Customer must pay STODDART any increase(s) in the Price of Equipment charged by STODDART for the actual quantities used.
- (b) Where prices for the hire or sale of Equipment are quoted at individually negotiated rates, the price to be charged will be that applying at the time of the Equipment's first hire or in the case of purchases, at the rate operative at the time of delivery of the Equipment.
- (c) For lump sum hire contracts for Equipment, unless it is otherwise stated in writing, the price will be adjusted in accordance with the rise and fall formula laid down by the National Cost Adjustment Provisions 2 (NCAP2) for the State or Territory in which the hire contract is to be carried out.
- (d) The minimum hire period will be:
  - (i) 7 days for all domestic customers except for First Floor Edge protection (external frame installation), where the minimum period of hire will be 3 days; and
  - (ii) 14 days for Commercial Customers;

from the date of installation, or if installation is not to be undertaken by STODDART from the date of delivery. Unless otherwise advised all hire rates will be based on the minimum period of hire and all additional hire periods will be charged to the Customer on an ongoing basis while the Customer has continuing hire of the Equipment.

- (e) If prices charged for Equipment hire are a special rate determined by reference to a minimum length of hire and STODDART agrees to accept an early return of the Equipment, STODDART will be entitled to charge the Customer the hire charges applying at the commencement of the hire for the entire duration of the minimum period.
- (f) If the Customer requests STODDART transport the Equipment between STODDART's premises and the installation site, STODDART's charges and expenses for delivering and/or collecting the Equipment will be added to the hire charges payable by the Customer.
- (g) For Domestic Customers, Quotations and charges for the erection and dismantlement of Equipment will be on all "all up all down" basis unless otherwise stated.
- (h) Any additional labour and transport costs resulting from any variations to the Equipment or installation work required by STODDART will be payable by the Customer.
- (i) If the Equipment is unavailable and/or cannot be used due to delays or any non-performance caused by the Customer, the hire charges will remain payable by the Customer.
- (j) The Customer must "off-hire" the Equipment when the hire is complete by contacting the office of STODDART and obtaining an "off-hire" register number. The Customer will be invoiced for the entire period from the date of delivery or installation of the Equipment up to and including the "off-hire" date.

**14. Dry Hire of Equipment and Occupational Health and Safety:** The Customer acknowledges and agrees that it is solely responsible for the erection and use of the Equipment and that the Customer must: -

- (a) use the Equipment for the sole purpose for which the Equipment is supplied in accordance with any limitations on the use of the Equipment arising from any statute, subordinate instrument, or the requirement of any local regulatory authority;
- (b) ensure that the Equipment is erected and dismantled by suitably qualified persons and in accordance with the manufacturer's specification and user guide for installation and use (if provided to the Customer by STODDART). A suitably qualified person will be the holder of any certificate of competence or licence that may be required by any statute, subordinate instrument or local regulatory authority for the purpose of the erection or dismantling of the Equipment; and
- (c) disclose all related safety information provided by or on behalf of STODDART to all persons responsible for the installation, utilisation or dismantling of the Equipment;
- (d) attach and maintain all safety signs supplied with the Equipment in noticeable positions on the Equipment or in such positions as are necessary to bring the signs to the attention of any users of the Equipment.
- (e) comply with any relevant legislation concerning occupational health and safety requirements associated with use of the Equipment.

**15. Provision of Services:**

- (a) If STODDART provides the Customer with Services for the erection of supplied Products at the Customer's request, the Customer acknowledges and agrees that it bears sole responsibility for supplying, arranging and paying for:

- (i) any necessary crane hire and scaffolding, including without limitation, acrow props and trestles;
  - (ii) any costs associated with sheet flooring being lifted onto joists;
  - (iii) any costs associated with the hoisting of beams and/or trusses if required;
  - (iv) any costs associated with the transportation of steel frames closer to the Site if there is limited access for delivery to the Customer by STODDART of supplied Products.
- (b) If STODDART provides the Customer with Services for the installation of Products at the Customer's request, the Customer acknowledges that any Quotation provided by STODDART for the Services is based on STODDART or its contractors being able to use their Standard Equipment. If STODDART or its contractors form the opinion that additional equipment is required, including but not limited to work platform, scaffold or fall protection, it must be supplied by the Customer and conform with local government requirements. Where workplace health and safety or other applicable laws of the jurisdiction in which the work is to be carried out require work platform, scaffolding or fall protection different to STODDART's Standard Equipment, the Customer must comply with all such requirements and provide the scaffolding, work platform and fall protection at its cost.
- (c) If the Customer has engaged STODDART to erect Equipment in conjunction with the hire of Equipment, the Customer acknowledges and agrees that: -
- (i) The Customer must ensure that the site is cleared and ready for installation of the Equipment before STODDART starts installation, and that the foundations upon which the Equipment is to be erected are sufficiently firm and otherwise suitable to safely carry the structure and the load to be placed on it without subsidence. The Customer acknowledges and agrees that it will be liable to STODDART and its contractors for any loss, costs or damage which they may suffer or incur by reason of the Customer's failure to carry out its obligations in this respect including without limitation, damages, or costs of delay due to the site not being cleared and ready, and for the cost of the hire of the Equipment, and that these amounts will be charged to the Customer.
  - (ii) Any additional cost involved in deviations between drawings or data supplied by the Customer and actual on-Site requirements for installation of Equipment will be charged to the Customer.
  - (iii) Any additional costs incurred by STODDART or its contractors due to delays caused by denial of access to the site, obstruction by other trades or curtailment of electric power or other matters beyond the reasonable control of STODDART and its contractors will be charged to the Customer.
  - (iv) The Customer must not interfere with the Equipment once installed unless in a way approved by STODDART in writing and the work is carried out by suitably qualified persons.
- (d) STODDART will use all reasonable endeavours to perform the Services in a competent, proper, and workmanlike manner, exercising a reasonable standard of skill and diligence.

**16. Solar:** The Customer acknowledges and agrees that in this clause 16, the Customer is referred to as the "Builder" and the Builder's customer is referred to as the "Customer". Any reference to the "Builder" in this clause is a reference to the Customer under these Terms of Sale.

- (a) STODDART will issue a Tax Invoice to the Builder for the full value of the Small Generation Unit ("SGU") system plus GST upon completion of installation of the SGU system.
- (b) The Builder or the Builder's Customer (as applicable) will retain ownership of the Renewable Energy Certificate ("REC") generated from the installation of the SGU or Solar Hot Water ("SHW") system.
- (c) The Builder will pay STODDART for the full amount of STODDART's Invoice.
- (d) Where the Builder or the Customer have opted to assign RECs to STODDART and STODDART has agreed to accept the assignment, in consideration the RECs being assigned to STODDART the Builder will be entitled to a reduction in the amount payable for the SGU or SHW system to the total value of the RECs assigned at a rate per REC agreed between STODDART and the Builder at the point sale subject to the following conditions: -
  - (i) The Builder's Customer agrees to complete the Application to Network Connect Photovoltaic Generation Form and return to STODDART. STODDART will not supply the SGU system until received.
  - (ii) Where the Builder has stated in their building contract with their Customer that the Builder is the owner of the SGU at the time it is installed, the Builder shall complete the RECS Assignment Form and return it to STODDART.
  - (iii) Where the Builder has stated in their building contract with the customer that the customer is the owner of the SGU or SHW at the time it is installed, the Builder shall arrange for the RECS Assignment Form to be completed by the customer and return it to STODDART.
  - (iv) In the event where the RECS have been assigned and accepted by STODDART and clause 16(d)(iii) applies the amount payable by the builder to STODDART will be reduced by the amount equal to the total value of the RECs assigned. This REC assignment will not be treated as a Taxable Supply and hence will not include any GST.
  - (v) If for any reason, including but not limited to a cessation or variation to the Federal Government REC scheme, STODDART are unable to register or sell assigned RECs on the REC registry, or the total market value of a REC is less than \$1, the Builder must pay STODDART the full value of the SGU or SHW system plus GST, or if a deduction has already been made to the full value of the SGU or SHW system in consideration of the assignment of the RECs, reimburse STODDART the amount of any deduction received.
  - (vi) If any Federal or State Legislation should be found to affect the validity of a requirement or action contained in a clause set out in this agreement, at any time prior to the completion of the agreement or prior to the assignment or sale of RECs on the REC Registry, any affected clause may be severed without affecting the validity of the entire agreement and a replacement clause negotiated by STODDART and the Builder. Where an agreement between the parties cannot be reached on a replacement clause, STODDART may terminate the agreement without penalty.
  - (vii) The Builder acknowledges that the SGU and SHW are separate and individual system.
  - (viii) The Builder is of the understanding that Stoddart will be supplying the products only for the SHW and is not the installer of the system.
  - (ix) The Builder will be invoiced for the full price plus GST of the SHW system upon delivery of the water tank to site.
  - (x) The Builder and STODDART agree to the following process to record the transaction of the RECs assigned to Stoddart:
    - a. Stoddart will issue a Recipient Created Tax Invoice (RCTI) to the builder within 28 days of making, or determining, the value of the taxable supply.
    - b. The Builder warrants that it is registered for GST when it enters into each transaction with STODDART.
    - c. The Builder will notify STODDART if it ceases to be registered for GST.

- d. STODDART warrants that it is registered for GST when it enters into each transaction.
- e. STODDART will notify the Builder if it ceases to be registered for GST

**17. Site access:**

- (a) The Customer acknowledges and agrees that provision of clear, adequate and unobstructed access to the Site for semi-trailers, delivery vehicles and body trucks is the sole responsibility of the Customer. The Customer acknowledges and agrees that all costs incurred by STODDART or its contractors for, amongst other things and without limitation:
  - (i) recovery of bogged vehicles;
  - (ii) local Council fines issued to STODDART, its Contractors or the Customer;
  - (iii) delays to STODDART vehicles once on Site resulting in increased costs;

that are caused whether directly or indirectly by difficulties associated with access to the Site will be charged to the Customer.

- (b) The Customer acknowledges and agrees that where STODDART provides the Customer with Services for the erection and/or installation of Steel House Frames, trusses, roofing, fascia, guttering, solar products, and other Products: -
  - (i) the Customer must ensure that STODDART has uninterrupted access to the roof or other structure upon which the Products are to be installed from the Commencement Date until the work has been completed;
  - (ii) the Customer must provide all reasonable assistance required by STODDART and its contractors to enable the provision of the Services;
  - (iii) the Customer must, where relevant, ensure that STODDART has full and safe access to the Site and to any necessary essential services, such as electrical power;
  - (iv) all Quotations issued to the Customer by STODDART were based on the premises that uninterrupted access would be provided; and
  - (v) all loss, costs, or damage incurred by STODDART due to any delays because of incomplete roof structure, obstruction by other trades, curtailment of electrical power or other matters beyond the reasonable control of STODDART and its contractors will be charged to the Customer; and
  - (vi) the Customer acknowledges and agrees that it will be liable to STODDART and its contractors for any loss, costs, or damage which they may suffer or incur by reason of the Customer's failure to carry out its obligations in clause 17 including, without limitation, damages or costs incurred by STODDART due to the Site not being cleared and ready.

**18. Engineering certificates for Steel House Frames:** Final engineering certificates will only be released to the Customer on receipt by STODDART of payment in full of all amounts invoiced to the Customer for Products, Equipment and Services supplied.

**19. Placement of steel house trusses:** STODDART will make reasonable efforts to place trusses on the top plate of wall frames subject to the following conditions:

- (a) The structure must be capable of carrying the intended load and suitably braced;
- (b) There must be sufficient Site access to enable unobstructed crane set up and manoeuvring;
- (c) The Customer must provide assistance on Site to the delivery driver. If no on-Site assistance is provided the driver will place the supplied Products on the ground; and
- (d) Large span trusses with a span outside the safe carriage limit of the crane may necessitate the use of a mobile crane by STODDART and all costs of any mobile crane required will be charged to the Customer.

**20. Equipment Hire; Risk, Insurance and Condition: Where Equipment is to be supplied on hire:**

- (a) The Customer must ensure that the Equipment is used at all times in a proper, professional and responsible manner. The Customer must ensure that the Equipment is maintained in good condition and kept clean. The Customer will be liable for the costs of any cleaning which STODDART considers necessary before or after return of the Equipment to STODDART.
- (b) STODDART or its contractors may inspect the Equipment at least once every 30 days or more frequently if required by statute or regulations.
- (c) Risk in the Equipment will pass to the Customer on delivery. The Customer must take out and maintain adequate insurance of the Equipment against all usual risks which identifies STODDART's interest as owner of the Equipment. All proceeds from such insurance must be paid to STODDART.
- (d) The Customer must notify STODDART immediately of any damage to or loss of the Equipment, giving reasonably full particulars of the nature and cause of the damage or loss. The Customer will be responsible for any loss or damage to the Equipment however caused, while in the possession or under the control of the Customer. If the Equipment is substantially or completely destroyed or is rendered unusable, the Customer must pay to STODDART or its nominated contractor the current retail price for the Equipment. If the Customer has paid to STODDART a waiver charge, the Customer will not be liable for the costs of repairing the Equipment due to accidental damage only if that damage is covered under STODDART's insurance and the Customer has paid to STODDART the amount of any excess payable by STODDART under that Insurance.

**21. Affixing of Signs and Marketing material:** STODDART may affix to Equipment supplied by it any advertising or other notices, signs, and materials it considers appropriate. The Customer must not attempt to remove, interfere, obscure, or damage such signs and materials without the prior approval of STODDART. The Customer must not place marketing or advertising material on the Equipment without STODDART's prior written approval.

**22. Property:**

- (a) Property and title in all Equipment supplied on hire remains with STODDART. Where Equipment is supplied by way of sale, title in the Equipment shall not pass until the Customer has paid all moneys owing to STODDART in full (whether or not Equipment is delivered in instalments, some of which have been paid for by the Customer). Risk in the Equipment passes to the Customer at the time of delivery.
- (b) Where Products are to be supplied by way of sale title in the Products shall not pass until the Customer has paid all moneys owing to STODDART in full. Risk in the Products passes to the Customer at the time of delivery.
- (c) The Customer holds the Products as fiduciary bailee and agent for STODDART and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by STODDART: -
  - (i) at all times where the Products are supplied on hire; and
  - (ii) until payment of all moneys owed by the Customer to STODDART where the Product are supplied by way of sale.

- (d) If an Event of Default occurs, then without prejudice to STODDART's other rights, STODDART may without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products.
- (e) The Customer will be responsible for STODDART's reasonable costs and expenses in exercising its rights under clause 22(d). Where STODDART exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against STODDART, its employees, servants, or agents.
- (f) If the Customer sells any of the Products supplied by way of sale while money is owed to STODDART, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (g) The Customer must not sell or otherwise dispose of any Products supplied on hire or things (including land or structure) to which the Products have been affixed without first obtaining the written consent of STODDART. If in breach of this condition the Customer sells any of the Products supplied on hire then, without prejudice to STODDART's other rights, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds.
- (h) If the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for STODDART. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to STODDART and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged.
- (i) If the Products are resold, or goods and services using the Products are manufactured and resold by the Customer, the Customer holds all of the book debts owed in respect of such sales and proceeds of such sales in trust for STODDART. Such part of the book debts and proceeds will be deemed to equal in dollar terms the amount owed by the Customer to STODDART at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without STODDART's prior written consent.
- (j) The Customer's indebtedness to STODDART, whether in full or in part, will not be discharged by the operation of clauses 22(g) to (i) hereof unless and until the funds held on trust are remitted to STODDART.
- (k) For the avoidance of doubt, STODDART's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

**23. Personal Property Securities Act:**

"Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.

- (a) In consideration of STODDART supplying the Products and/or Services to the Customer at the request of the Customer, the Customer by signing these Terms of Sale:
  - (i) grants to STODDART a "Purchase Money Security Interest" ("PMSI") in all Products supplied by STODDART to the Customer from time to time as security for payment of the purchase price of the Products;
  - (ii) grants to STODDART a "Security Interest" ("SI") in all Products supplied by STODDART to the Customer from time to time as security for payment of any other amount owed by the Customer to STODDART and as security for the performance by the Customer of the obligations set out in these Terms of Sale;
  - (iii) agrees that any Products supplied by STODDART to the Customer by way of sale, or proceeds of sale of the Products coming into existence after the date of these Terms of Sale will come into existence subject to the PMSI and SI granted herein and these Terms of Sale without the need for any further action or agreement by any party;
  - (iv) acknowledges that the Customer has received valuable consideration from STODDART and agrees that it is sufficient; and
  - (v) agrees that the PMSI and SI has attached to all Products supplied now or in the future by STODDART to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.
- (b) STODDART reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Terms of Sale.
- (c) The costs of registering a financing statement or a financing change statement can be charged to the Customer by STODDART at STODDART's complete discretion, and may, where applicable, be charged to the customer's credit account with STODDART.
- (d) The Customer must promptly, on request by STODDART, execute all documents and do anything else reasonably required by STODDART to ensure that the PMSI and SI created under these Terms of Sale constitutes a perfected security interest.
- (e) The Customer must not agree to allow any person to register a financing statement over any of the Products in which STODDART has any PMSI and/or SI without the prior written consent of STODDART and will immediately notify STODDART if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to the Products.
- (f) The Customer must not allow the Products to become accessions or commingled with other goods unless STODDART has first perfected any PMSI or SI that STODDART has in relation to the Products.
- (g) If STODDART perfects any PMSI and/or SI that STODDART has in relation to the Products, the Customer must not do anything that results in STODDART having less than the security or priority granted by the PPSA that STODDART assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage.
- (h) The Customer irrevocably grants to STODDART the right to enter upon the Customer's property or premises, upon the provision of written notice, and without being in any way liable to the Customer or to any third party, if STODDART has cause to exercise any of STODDART's rights under Chapter 4 of the PPSA, and the Customer will indemnify STODDART for any claims made by any third party as a result of such exercise.
- (i) The Customer acknowledges and agrees that: -
  - (i) nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Terms of Sale; and
  - (ii) the Security Agreement created by these Terms of Sale may only be reinstated on the terms considered appropriate by STODDART at its complete discretion.
- (j) The Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Terms of Sale, and the Customer waives its right to: -
  - (i) not have goods damaged or be inconvenienced no more than necessarily incidental if STODDART removes an accession under s.92 PPSA;
  - (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
  - (iii) to apply to the Court for an order postponing the removal of the accession or to determine the amount payable to STODDART for the retention of the accession under s.97 PPSA;

- (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
- (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA
- (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
- (vii) to receive a Statement of Account if no disposal under s.132(4) PPSA;
- (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
- (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Terms of Sale under s.157 PPSA;

**24. Delivery:** STODDART will deliver Products to the Site notified by the Customer subject to the following conditions: -.

- (a) STODDART will endeavour to deliver Products to the Customer when the Customer requires them but will not be responsible for any delays in delivery of any nature.
- (b) Products will be at the Customer's risk upon delivery. If the Site is unattended the delivery docket/manifest signed (and/or photos taken) by the cartage contractor will be prima facie evidence of due delivery.
- (c) Delivery to Carriers' depots are subject to availability of suitable materials handling equipment. Products delivered to, and acceptance at, carrier's depots will be at the Customer's risk upon acceptance of the Products by the nominated carrier.
- (d) If the Customer fails to accept a delivery agreed to between STODDART and the Customer, the Customer will pay all costs incurred, including the costs of returning the Products to STODDART and any subsequent re-delivery of those Product to the Customer.
- (e) All delivery, freight, and other transport costs (including any insurance of the Products) are at the Customer's expense and will be charged to the Customer, unless STODDART expressly agrees otherwise in writing. Any additional costs associated with particular delivery instructions are at the Customer's expense and will be charged to the Customer even if the cost(s) have been omitted from any Quotation.
- (f) STODDART may at STODDART's complete discretion deliver by instalments. Failure to deliver an instalment will not entitle the Customer to repudiate the contract and the Customer cannot reject Products due to late delivery.
- (g) If STODDART delivers only part of the Products and/or Services, then it may invoice the Customer and the Customer must pay for, that part of the Products and/or Services delivered, unless otherwise agreed in writing between the parties.
- (h) The Customer accepts and acknowledges that estimated delivery or supply of Products provided by STODDART is an estimate only and STODDART will not be liable for any loss suffered by the Customer as a result of delay in the delivery of Products.

**25. Supply claims:** The Customer will inspect and check all Products received as soon as practicable upon unloading. Any claim by the Customer of a short supply of Products must be notified to STODDART at a reasonable time following delivery. All claims must be forwarded to STODDART at the address specified on the front of the Quotation. STODDART will endeavour to rectify any shortages as soon as practicable after receiving notice.

**26. Rectification and Claims:** Requests by the Customer to STODDART for approval to undertake rectification works in relation to Products or Services supplied to the Customer must:

- (a) be in writing;
- (b) be made within 28 days of the Products and Services being supplied by STODDART;
- (c) clearly identify the STODDART order number to which the proposed rectification works relate; and
- (d) provide sufficient details of the rectification work proposed to be undertaken by the Customer and the contractor or other party the Customer proposes to engage to undertake the work.

STODDART may in its complete discretion approve or refuse a written rectification request made by the Customer.

**27. Site Inspection:** If the Customer makes a complaint and requests a STODDART representative to visit a Site to inspect Products and Services supplied, STODDART will arrange for a representative to attend the Site. In the event that the subject of the complaint is in no way attributable to the Products and Services supplied by STODDART, STODDART is entitled to charge the Customer for expenses, travel time and time spent on Site by STODDART's representative at an hourly rate.

**28. Indemnity**

- (a) If the Customer defaults in the performance or observance of its obligations under any contract of which these Terms of Sale form part, then:
  - (i) STODDART will take steps to mitigate its loss and act reasonably in relation to any default by the Customer; and
  - (ii) STODDART will give the Customer notice requesting payment for loss and damage occasioned in respect of those events and requesting that the Customer remedy any breach within a reasonable time; and
  - (iii) if that demand is not met then the Customer will indemnify STODDART in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that STODDART has suffered arising therefrom.
- (b) The Customer's liability to indemnify STODDART will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by STODDART or a breach of STODDART'S obligations under contract has contributed to the claim, loss, damage, or cost which is the subject of the indemnity.
- (c) The Customer's liability to indemnify STODDART is a continuing obligation separate and independent from the Customer's other obligations and survives the termination or performance of any contract of which these Terms of Sale form part.

**29. Limitation of Liability**

- (a) No party is liable to the other party for any Consequential Loss, including under clause 28, however caused arising out of or in connection with any contract for supply of which these Terms form part.
- (b) While STODDART will take reasonable endeavours to meet any estimated delivery date or estimated time for Products and Services, the Customer acknowledges and agree that STODDART is not liable for any delay associated with meeting those estimated timeframes.
- (c) If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, STODDART'S liability is limited to:
  - (i) (in the case of a supply of Products):
    - a. STODDART repairing or replacing the Products; or
    - b. STODDART paying the Customer the cost of having the Products repaired or replaced.

- (ii) (in the case of a supply of Services):
  - a. STODDART supplying the Services again; or
  - b. STODDART paying the Customer the cost of having equivalent Services supplied.

**30. Termination**

A party may, with immediate effect, terminate any contract for supply of which these Terms of Sale form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Terms of Sale and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
  - (i) has committed an act of bankruptcy; or
  - (ii) has been made bankrupt;
- (g) comprises a corporation which:
  - (i) enters into voluntary administration;
  - (ii) is subject to a deed of company arrangement; or
  - (iii) is subject to the appointment of liquidators or provisional liquidators.

**31. Australian Consumer Law** If the Australian Consumer Law applies to the Customer, then clauses 32 and 33 must be read subject to the following statement:

Our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (a) to cancel your service contract with us; and
- (b) to a refund for the unused portion, or to compensation for its reduced value.

You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

**32. Warranty:** STODDART warrants that if during the period of 24 months from the date the original installation of Products is completed there appears any defect in the work carried out in affixing the products to the designated structure then STODDART will without cost to the Customer at its option either repair or redo properly such faulty work within a reasonable time of being notified in writing by the Customer of such defect PROVIDED THAT this warranty is given upon and subject to the following conditions:

- (a) for the purposes of this warranty the definition of Products is limited to, fascia, gutter and roofing, solar panels, solar generation units, solar power systems, panels, inverters, electronic components, mountings and other associated products;
- (b) this warranty does not apply to Steel House Frames and Trusses or Scaffolding;
- (c) this warranty does not apply to any defects or faults in the Products;
- (d) this warranty is not binding upon STODDART unless the Customer has paid in full all invoices issued by STODDART for the Products and Services;
- (e) this warranty will not apply where the defect complained of is not directly attributable to any fault or defect in the performance of the work of affixing the Products to a structure, including without any limitation whatsoever any defects or faults caused by:
  - (i) defects or faults in the Products themselves;
  - (ii) defects in the structure to which the Products are affixed; or
  - (iii) (unusual or unreasonable treatment of the installed Products by the Customer or any third party).
- (f) all reasonable expenses incurred by the Customer in making a claim under this warranty where a claim is discovered to be justified will be paid by STODDART; and
- (g) the Customer's claim under this warranty must be notified to STODDART in accordance with the requirements set out in clause 26 (with the exception of sub-clause 26(b)) and must be made within 28 days of the earlier of the date the Customer became aware, or the date a reasonable person in the same circumstances would have become aware, of the defect.

**33. Warranty in respect of Steel House Frames and Trusses:** STODDART warrants that the Steel House Frames and Trusses supplied by STODDART to the Customer for the Customer's Client (the Customer's Client means the person who owns or is to own the house in which the Steel House Frames and Trusses are to be installed or incorporated by the Customer) are manufactured from prime material and if during the period of 50 years commencing on the date of the delivery of the Steel House Frames and Trusses by STODDART to the Customer there appears any defect or fault in the Steel House Frames and/or Trusses then STODDART will at its option either replace or repair the defective Steel House Frames and Trusses or pay the reasonable costs of having the defective Steel House Frames and Trusses repaired within a reasonable time of being notified in writing by the Customer of such defect PROVIDED THAT this warranty is given upon and subject to the following conditions and exclusions: -

- (a) this warranty does not apply to any Steel House Frames and Trusses if the Steel House Frames and/or Trusses fails or is otherwise defective as a result of any of the following: -
  - (i) the effect of chemical agents, fumes, liquids or solids;
  - (ii) contact with soils, ashes, fertilisers or moisture retaining substances;
  - (iii) contact with lead or copper;
  - (iv) installation in an area which is subject to unusually corrosive or highly corrosive environment;
  - (v) damage by storm, tempest, acts of God or any other cause beyond the reasonable control of STODDART;
  - (vi) installation other than in accordance with Australian Standards and STODDART's specifications;
  - (vii) installation in an area which is within 300 meters of breaking surf; or



- (viii) modification of the Steel House Frames and/or Trusses by a third party in any manner not approved by STODDART.
- (b) this warranty does not apply where the defect complained of is not directly attributable to a defect or fault in the Steel House Frames and Trusses themselves (including without limitation whatsoever any defects or faults caused by:
  - (i) any fault or defect in the performance of the work carried out to install the Steel House Frames and Trusses or in affixing them to a structure; and
  - (ii) defects in the structure to which the Steel House Frames and Trusses are affixed;
- (c) this warranty is not binding upon STODDART unless the Customer has paid in full all invoices issued by STODDART;
- (d) all reasonable expenses incurred by the Customer in making a claim under this warranty where a claim is discovered to be justified will be paid by STODDART;
- (e) the Customer's claim under this warranty must be notified to STODDART in accordance with the requirements set out in clause 26 (with the exception of sub-clause 26(b)), subject to and in addition to the following requirements: -
  - (i) the Customer's claim must be made within 28 days of the earlier of the date the Customer or the Customer's client (as applicable) became aware, or the date a reasonable person in the same circumstances would have become aware, of the defect or fault;
  - (ii) the Customer's claim must identify the relevant work or Invoice number, the location of the house where the Steel House Frames and/or Trusses were installed, and the date of STODDART's delivery of the Steel House Frames and/or Trusses to the Customer; and
  - (iii) the Claim must be made in writing and sent to "The Manager, Steel House Frames Australia Pty Ltd, 18-26 Lahrs Road, Ormeau, QLD, 4208".

**34. Suspension or Ceasing of Supply:**

- (a) If an Event of Default occurs, STODDART may, without prejudice to STODDART's other rights, call up moneys owed to STODDART by the Customer, retain all moneys paid on account, or cease further deliveries and/or take immediate possession of any Products and Services for which payment remains outstanding.

**35. Service of Notices and Documents:** All notices or documents required to be given to STODDART for the purposes of the PPSA must be given in accordance with the PPSA.

**36. Waiver:** A waiver of any provision of these Terms of Sale will only be effective if made by the affected party in writing.

**37. Assignment:** A party may only assign its rights under the contract for supply with the written consent of the other party.

**38. Severance:** Each clause, subclause and part of these Terms of Sale is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.

**39. Application of Laws:** These Terms and Conditions are governed by the laws of the State of Queensland. The Customer submits to and consents to the central Courts of Brisbane having jurisdiction over these Terms of Sale.

**40. Miscellaneous:** The parties acknowledge that: -

- (a) The Customer cannot return Products to STODDART without STODDART'S written agreement. The Customer acknowledges and agrees that any return will incur a handling and administration charge of 10 percent of the purchase price of the Products.
- (b) All Products that are not normally stocked by STODDART for supply to Customers are non-refundable and must be paid for by the Customer.
- (c) Any description of Products in STODDART'S Quotation or elsewhere will be by way of identification only and the use of the description will not create a sale by description.
- (d) The Customer has not relied on any representations made by STODDART, its employees and agents which have not been stated expressly in this contract or upon any descriptions or illustrations or specifications contained in any document including any catalogue or publicity material produced by STODDART.
- (e) The Customer acknowledges and agrees that the Products are required for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other Products or fixtures on land.
- (f) The Customer acknowledges that only some of the Products or components thereof may be manufactured by STODDART. For those Products or components not manufactured by STODDART, STODDART will give the Customer, and use its best endeavours to enforce at the cost of, and for the benefit of, the Customer, such warranties and guarantees as STODDART has obtained from its supplier in respect of those Products.
- (g) The Customer acknowledges and agrees that it must not enter into and has not entered into any agreement with a third party which would prevent the Customer from complying with these Terms of Sale.
- (h) STODDART will use its reasonable endeavours, where as part of the Services it has prepared the design, to avoid the infringement by the design of any patent, registered design or other similar matters.
- (i) All payments required to be made by the Customer under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by STODDART and the Customer in writing.
- (j) Any amount due to STODDART from time to time may be deducted from any monies which may be or may become payable to the Customer by STODDART.

**41. Garage Doors:**

- (a) Customer will ensure that ample side room and head room will be available for the installation of Products. If any modifications are required to the building structure or the construction of the Products, these will be the responsibility of the Customer.
- (b) Where any Products are to be installed by STODDART, adequate solid fixing for the Products must be provided by the Customer.
- (c) In the case of residential Products installation of power outlets for electrical openers is at the cost of the Customer and is not included in the Price quoted, unless stated in the Quotation.
- (d) In the event that electrical and/or lighting fittings require removal or relocation to allow installation this will be done at the Customer's cost and is not included in the Price quoted, unless stated in the Quotation.
- (e) For the purpose of installation work, it will be necessary for the 240 volt supply to be available within 20m of the opening to facilitate the use of power tools where applicable.
- (f) The Customer agrees and undertakes to provide full unfettered access to the Site for the duration of the Works including any maintenance that may be required.

- (g) Any relevant measurements provided by the Customer are to be guaranteed by the Customer and it is the Customer's responsibility to advise STODDART of any variations in writing before manufacture of the Products. Where variations occur and no advice has been received by STODDART, it is the responsibility of the Customer to cover all costs incurred.
- (h) The Customer acknowledges that garage doors and accessories are manufactured from pre-painted sheet metal which is subject to scratching and denting. The Customer acknowledges STODDART's right to make good scratches and dents by repairing dents and/or touching up painted surfaces.
- (i) Timber garage doors are manufactured from natural products and as such variations in timber colour and grain will be experienced. The Customer acknowledges that STODDART will not be liable for such variations in colour and grain.
- (j) All timber garage doors require ongoing maintenance to the timber surface by the reapplication of timber sealers, as and when required. Such reapplication shall be the responsibility of the Customer.
- (k) All doors are made good front face side only. There is no cosmetic warranty on the internal make of the door. Minor objects in finish not visible from 3 metres will not be accepted by STODDART as a warranty claim.

**42. Anti-dumping:** Notwithstanding any other provision of these Terms of Sale, STODDART may terminate any supply agreement upon written notice to the Customer, without liability, if the prices or amounts payable by STODDART to its suppliers or other persons in respect of the Products or any components or constituent parts thereof, are increased (including retrospectively) by the imposition of any dumping or countervailing or similar duties by Australian authorities. Such termination will not affect any written orders of Products received and accepted by STODDART prior to the date notice of termination was given, which orders must be met in accordance with these Terms of Sale.