

1. Definitions

- 1.1 "FTD" means Finer Timber Doors (VIC) Pty Ltd, ABN 83 248 297 943, its successors and assigns or any person acting on behalf of and with the authority of Finer Timber Doors (VIC) Pty Ltd.
- 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting FTD to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - includes the Customer's executors, administrators, successors and permitted assigns.
- 1.3 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, Customer information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 "Goods" means all Goods or Services supplied by FTD to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between FTD and the Customer in accordance with clause 5 below.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular Customer and website and can be accessed either by the web server or the Customer's computer. **If the Customer does not wish to allow Cookies to operate in the background when using FTD's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.7 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999".

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and FTD.
- 2.3 Where colour matching is required, the Customer agrees to supply information and samples regarding the correct colour;
- 2.4 Any advice, recommendation, information, assistance or service provided by FTD in relation to Goods and Services supplied is given in good faith, is based on FTD's own knowledge and experience and shall be accepted without liability on the part of FTD and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Goods or Services
- 2.5 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with FTD and it has been approved with a credit limit established for the account.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Victoria) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Pricing

- 3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services. Any such GST and other taxes or duties are additionally at the Customer's account.
- 3.2 At FTD's sole discretion, or as otherwise agreed between the parties the Price shall be either:
- as indicated on any invoice provided by FTD to the Customer; or
 - FTD's quoted price (subject to clause 3.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
 - May be estimate only (subject to clause 3.3) which is a guide to potential price for goods or services.
- 3.3 If the Customer requests any variation to the Agreement, FTD may increase the price to account for the variation.
- 3.4 Subject to clause 3.3, where there is any change in the costs incurred by FTD in relation to goods or services, FTD may vary its price to take into account of any such change, by notifying the Customer.
- 3.5 At FTD's sole discretion, a non-refundable deposit may be required. If required, FTD will notify the Customer.

4. Payment

- 4.1 The time for payment for the Goods is of the essence.
- 4.2 The Price will be payable by the Customer on the date/s determined by FTD, which may be:
- on completion of the services;
 - on the Delivery of the Goods and/or Services;
 - before Delivery of the Goods and/or Services;
 - fourteen (14) and thirty (30) days following the end of the month in which a statement is posted to the Customers address or address for notices;
 - by way of installments/progress payments in accordance with FTD's payment schedule;
 - the date specified on any invoice or other form as being the date for payment; or
 - failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by FTD.
- 4.3 Payment may be made by electronic/on-line banking, credit card or by any other method as agreed to between the Customer and FTD.
- 4.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by FTD

nor to withhold payment of any invoice because part of that invoice is in dispute.

- 4.5 Payment made by credit card may incur a surcharge of up to 2.0%.
- 4.6 At FTD's sole discretion, a non-refundable deposit may be required.
- 4.7 FTD may in its discretion allocate any payment received from the Customer towards any invoice that FTD determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer FTD may re-allocate any payments previously received and allocated. In the absence of any payment allocation by FTD, payment will be deemed to be allocated in such manner as preserves the maximum value of FTD's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 4.7 Prices quoted for supply of goods & services exclude GST and any other taxes or duties imposed on or in relation to the goods & services. In addition to the Price the Customer must pay to FTD an amount equal to any GST FTD must pay for any supply by FTD under this or any other contract for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.8 Payment terms may be revoked or amended at FTD's sole discretion, upon giving the Customer prior written notice.

5. Delivery of Goods and/or Services

- 5.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- the Customer or the Customer's nominated carrier takes possession of the Goods at FTD's address; or
 - Delivery ("Delivery") of the Goods and/or Services is taken to occur at the time that FTD (or FTD's nominated carrier) delivers the Goods and/or Services to the Customer's nominated address even if the Customer is not present at the address.
- 5.2 At FTD's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 5.3 FTD may deliver the Goods and/or Services in separate installments. Each separate installment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.4 Any time specified by FTD for delivery of the Goods and/or Services is an estimate only and FTD will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every attempt to enable the Goods and/or Services to be delivered at the time and place as was arranged between both parties. In the event that FTD is unable to supply the Goods and/or Services as agreed solely due to any action or inaction of the Customer, then FTD shall be entitled to charge a reasonable fee for redelivery and/or storage.

6. Personal Property Securities Act 2009 ("PPSA")

- 6.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 6.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to FTD for Services – that have previously been supplied and that will be supplied in the future by FTD to the Customer.
- 6.3 The Customer undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which FTD may reasonably require to;
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 6.3(a)(i) or 6.3(a)(ii);
 - indemnify, and upon demand reimburse, FTD for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - not register a financing change statement in respect of a security interest without the prior written consent of FTD;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of FTD;
 - immediately advise FTD of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 6.4 FTD and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 6.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 120, 122(3)(d) and 122(4) of the PPSA.
- 6.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and FTD of the PPSA.
- 6.7 Unless otherwise agreed to in writing by FTD, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 6.8 The Customer must unconditionally ratify any actions taken by FTD under clauses 6.3 to 6.5.
- 6.9 Subject to any express provisions to the contrary (including those contained in this clause 6.6) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

7. Collateral & Assignment

- 7.1 The Customer hereby charges all its right, title and interest in the property or properties referred to in the Customer's Credit Application and also any property or properties that it owns currently or may acquire in the future solely or jointly or have or become to have a beneficial interest in, in favour of FTD, with the due and punctual observance and performance of all the obligations of the Customer. The Customer indemnifies FTD against all expenses and legal costs (on a solicitor/own Customer basis) for preparing, loading and removing any caveat.
- 7.2 The Customer hereby acknowledges that FTD may at its discretion register and lodge a caveat(s) on such property or properties in respect of the interests conferred on it under clause 7.1. Such registration of a

caveat by FTD over the Customer's property or properties must not be challenged by the Customer in any way whatsoever, and the Customer agrees not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Customer has paid all monies owing by it to FTD claimed from time to time.

8. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 8.1 The Customer must inspect the goods or services on delivery and must within seven (7) days of delivery notify FTD in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the goods or services as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow FTD to inspect the goods or services.
- 8.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 8.3 FTD acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 8.4 If the Customer is a consumer within the meaning of the CCA, FTD's liability is limited to the extent permitted by section 64A of Schedule 2.
- 8.5 If FTD is required to replace the Goods under this clause or the CCA, but is unable to do so, FTD may refund any money the Customer has paid for the Goods.
- 8.6 Subject to this clause 8.8, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 8.1; and
 - FTD has agreed that the goods or services are defective; and
 - the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 8.7 FTD may in its absolute discretion accept non-defective Goods for return in which case FTD may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 8.8 Notwithstanding anything contained in this clause if FTD is required by a law to accept a return then FTD will only accept a return on the conditions imposed by that law.
- 8.9 Subject to clause 8.1, customised, or non-stock list items or Incidental Items made or ordered to the Customer's specifications are not acceptable for credit or return.

9. Default and Consequences of Default

- 9.1 If the Customer defaults in payment by the due date of any amount payable to FTD, then all monies becomes immediately due and payable upon notice to the Customer, to FTD, without prejudice to any of its other accrued or contingent rights:
- Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at FTD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment;
 - charge the Customer a late payment administration fee equal to 10% of the invoice to a maximum of \$200 plus GST;
 - charge the Customer for, and the Customer must indemnify FTD from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
 - cease or suspend supply of any further goods or services to the Customer
 - by written notice to the Customer, terminate any uncompleted contract with the Customer.
- 9.2 Clauses 9.1(d) and 9.1(e) may also be relied upon, at FTD's option:
- where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.

10. Title

- 10.1 FTD and the Customer agree that ownership of the Goods shall not pass until:
- the Customer has paid FTD all amounts owing to FTD and
 - the Customer has met all of its other obligations to FTD
- 10.2 Receipt by FTD of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 10.1
- the Customer is only a bailee of the Goods and must return the Goods to FTD on request.
 - the Customer holds the benefit of the Customer's insurance of the Goods on trust for FTD and must pay to FTD the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for FTD and must pay or deliver the proceeds to FTD on demand.
 - the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of FTD and must sell, dispose of or return the resulting product to FTD as it so directs.
 - the Customer irrevocably authorises FTD to enter any premises where FTD believes the Goods are kept and recover possession of the Goods.

- (f) FTD may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) The Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of FTD
- (h) FTD may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 11. Cancellation**
- 11.1 Without prejudice to any other remedies that either party may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions the party may suspend or terminate the supply of Goods. FTD will not be liable to the Customer for any loss or damage the Customer suffers because FTD has exercised its rights under this clause.
- 11.2 FTD may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice FTD shall repay to the Customer any money paid by the Customer for the Goods. FTD shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.3 In the event that the Customer cancels delivery of any Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by FTD as a direct result of the cancellation (including, but not limited to, any loss of profits and costs of allocated labour).
- 11.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stock list items or modified goods, will definitely not be accepted once production has commenced, or an order has been placed.
- 11.5 At FTD sole discretion a Restocking fee may apply and the Customer shall be liable for any and all loss incurred (whether direct or indirect) by FTD as a direct result of the rescheduling previously appointed work. (including, but not limited to, any loss of profits and costs of allocated labour).
- 12. Risk**
- 12.1 If FTD retains ownership of the Materials under clause 10 then:
- (a) where FTD is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either:
- (i) the Customer or the Customer's nominated carrier takes possession of the Goods at FTD's address; or
- (ii) the Goods are delivered by FTD or FTD's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- 12.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, FTD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by FTD is sufficient evidence of FTD's rights to receive the insurance proceeds without the need for any person dealing with FTD to make further enquiries.
- 12.3 FTD shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, FTD accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 12.5 Where the Client has supplied materials for FTD to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. FTD shall not be responsible for any defects in the Services, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 12.6 The Client acknowledges that any damage to the Goods supplied to FTD by the Client or a third party shall be the responsibility of the Client with any repair work being a variation to the original scope of work.
- 12.7 The Client acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, markings, veining, surface and finish, and may fade or change colour over time. FTD will make every effort to match batches/samples of the Goods supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
- 12.8 The Client acknowledges that Goods supplied may:
- (a) fade or change colour over time; and
- (b) expand, contract or distort as a result of exposure to heat, cold, weather; and
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.
- 13. Privacy**
- 13.1 All emails, documents, images or other recorded information held or used by FTD is Personal Information, as defined and referred to in clause 13.2, and therefore considered Confidential Information. FTD acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). FTD acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by FTD that may result in serious harm to the Customer, FTD will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 13.2 The Customer agrees for FTD to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g., name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by FTD.
- 13.3 Notwithstanding clause 13.1, privacy limitations will extend to FTD in respect of Cookies where transactions for purchases/orders transpire directly from FTD's website. FTD agrees to display reference to such

Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

- (a) IP address, browser, email Customer type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to FTD when FTD sends an email to the Customer, so FTD may collect and review that information ("collectively Personal Information")
- 13.4 In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via FTD's website.
- 13.3 The Customer agrees that FTD may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 13.4 The Customer consents to FTD being given a consumer credit report to collect overdue payment on commercial credit.
- 13.5 The Customer agrees that personal credit information provided may be used and retained by FTD for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 13.6 FTD may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report; allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 13.7 The information given to the CRB may include:
- (a) personal information as outlined in 13.1 above;
- (b) name of the credit provider and that FTD is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g., date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and FTD has been paid or otherwise discharged and all details surrounding that discharge (e.g., dates of payments);
- (g) information that, in the opinion of FTD, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 13.8 The Customer shall have the right to request (by e-mail) from FTD:
- (a) a copy of the information about the Customer retained by FTD and the right to request that FTD correct any incorrect information; and
- (b) that FTD does not disclose any personal information about the Customer for the purpose of direct marketing.
- 13.9 FTD will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 13.10 The Customer can make a privacy complaint by contacting FTD via e-mail. FTD will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 14. Site Access**
- 14.1 The Customer shall ensure that FTD clear and free access to the site at all times to enable them to undertake the Works. FTD shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of FTD.
- 14.2 It shall be the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify FTD against all costs incurred by FTD in recovering such vehicles in the event they become bogged or otherwise immovable.
- 15. Change In Control**
- 15.1 The Customer shall give the supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the supplier as a result of the Customer's failure to comply with this clause.
- 16. Service of Notices**
- 16.1 Any written notice given under this Contract shall be deemed to have been given and received:
- a) by handing the notice to the other party, in person;
- b) by leaving it at the address of the other party as stated in this Contract;
- c) by sending it by registered post to the address of the other party as stated in this Contract;
- d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

- e) if sent by email to the other party's last known email address.
- f) Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

17. Errors and Omissions

- 17.1 The Customer acknowledges and accepts that FTD shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by FTD in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by FTD in respect of the Services.
- 17.2 In the event such an error and/or omission occurs in accordance with clause 17.1, and is not attributable to the negligence and/or wilful misconduct of FTD; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

18. Electronic Payments Act

- 18.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

19. Dispute Resolution

- 19.1 If a dispute arises between the parties to this Contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

20. Force Majeure

- 20.1 Neither FTD or the Customer shall be liable for any default on a Project due to any force majeure act, event or cause other than lack of funds which is beyond the reasonable control of that party, including:
- (a) Act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, strike or other labour difficulty (whether or not involving employees of the party concerned), epidemic, quarantine, radiation or radioactive contamination;
- (b) Action or inaction of any government or governmental or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, prohibition, intervention, requisition, requirement, direction or embargo by legislation, regulation, decree or other legally enforceable order; and
- (c) Breakdown of plant, machinery or equipment or shortages of labour, transportation, fuel, power or plant, machinery, equipment or material.

21. General

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality, and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which FTD has its principal place of business and are subject to the jurisdiction of the courts in Ringwood.
- 21.3 Subject to clause 8, FTD shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by FTD of these terms and conditions (alternatively FTD's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 21.4 FTD may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 21.5 The Customer cannot licence or assign without the written approval of FTD.
- 21.6 FTD may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of FTD's subcontractors without the authority of FTD.
- 21.7 The Customer agrees that FTD may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for FTD to provide Goods to the Customer.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lockout, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.