

- 1. Definitions**
- 1.1 "Alclad" means Alclad Architectural Pty Ltd ACN 126 164 396 ATF Williams Family Trust T/A Alclad Architectural ABN 77 240 335 459, its successors and assigns or any person acting on behalf of and with the authority of Alclad Architectural Pty Ltd ACN 126 164 396 ATF Williams Family Trust T/A Alclad Architectural.
- 1.2 "Customer" means the person/s buying the Goods (and/or hiring Equipment) as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 "Goods" means all Goods or Services supplied by Alclad 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).
- 1.4 "Equipment" means all Equipment including any accessories supplied on hire by Alclad to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Alclad to the Customer.
- 1.5 "Price" means the Price payable (plus any GST where applicable) for the Goods/Equipment hire as agreed between Alclad and the Customer in accordance with clause 5 below.
- 1.6 "Rental Period" means the period as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Alclad to the Customer.
- 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/Equipment.
- 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 agreement between the Customer and Alclad.
- 2.3 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the two documents, then the terms and conditions contained in this document shall prevail.
- 3. Electronic Transactions (Victoria) Act 2000**
- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 4. Change in Control**
- 4.1 The Customer shall give Alclad 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 fax number/s, or business practice). The Customer shall be liable for any loss incurred by Alclad as a result of the Customer's failure to comply with this clause.
- 5. Price and Payment**
- 5.1 At Alclad's sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by Alclad to the Customer; or
  - (b) the Price as at the date of delivery of the Goods/Equipment according to Alclad's current price list; or
  - (c) Alclad's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 Alclad reserves the right to change the Price if a variation to Alclad's quotation is requested. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed, inaccurate measurements provided by the Customer or as a result of any increase to Alclad's in the cost of materials and labour) will be charged for on the basis of the Alclad's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by Alclad within ten (10) working days. Failure to do so will entitle Alclad to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 5.3 At Alclad's sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by Alclad, which may be:
  - (a) on delivery of the Goods/Equipment;
  - (b) before delivery of the Goods/Equipment;
  - (c) by way of instalments/progress payments in accordance with Alclad's payment schedule;
  - (d) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Alclad.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Alclad.
- 5.6 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 Alclad nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Alclad an amount equal to any GST Alclad must pay for any supply by Alclad under this or any other agreement for the sale of the Goods/hire of the Equipment. 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.
- 6. Delivery of Goods/Equipment**
- 6.1 Delivery ("Delivery") of the Goods/Equipment is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at Alclad's address; or
  - (b) Alclad (or Alclad's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At Alclad's sole discretion, the cost of delivery is included in the Price.
- 6.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Alclad shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 6.4 Alclad may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 6.5 Any time or date given by Alclad to the Customer is an estimate only. The Customer must still accept delivery of the Goods/Equipment even if late and Alclad will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.
- 7. Maintenance of Equipment**
- 7.1 Alclad and the Customer acknowledge and agree that the Equipment is generally in an undamaged condition except as otherwise set out in this Agreement.
- 7.2 Alclad and the Customer will:
  - (a) Maintain the Equipment to the manufacturers' recommended specifications;
  - (b) Maintain up to date logbooks and technical documentation, and where there are no recommended specifications, will maintain the Equipment using the care of a prudent owner;
  - (c) Not have any repairs carried out to the Equipment unless expressly authorised by Alclad;
  - (d) Not alter, deface, remove or erase any identifying marks, safety information or notices on the Equipment;
  - (e) Replace, at the Customer's cost, all consumables during the Rental Period;
  - (f) Permit the inspection of the Equipment by Alclad at any time during the Rental Period;
  - (g) Be fully responsible to Alclad for any loss or damage to the equipment (however occasioned). The Customer must give notice to Alclad of the loss or damage where it is of a substantial or material nature as soon as possible after it occurs;
  - (h) Return the Equipment to Alclad in the same condition it was in at the commencement of the agreement, subject to fair wear and tear.
- 8. Use and security**
- 8.1 The Customer will be entitled to use the Equipment during the Rental Period for its own purposes subject to these terms and conditions. The Customer will keep the Equipment under its control at all times, and will not remove the Equipment;
- 8.2 The Customer will not:
  - (a) Allow the Equipment to be used for any illegal purpose;
  - (b) Use the Equipment when it is damaged or unsafe;
  - (c) Use the Equipment in contravention of any law;
  - (d) Use the Equipment recklessly, negligently or with any intent to cause injury, loss or damage or while intoxicated with any substance;
- 8.3 The Customer will ensure persons operating or erecting the Equipment are suitably trained, licensed, experienced and (if necessary) certified;
- 8.4 The Customer will display and maintain all safety signs and instructions and ensure that all instructions and signs are observed and obeyed by those using the Equipment.
- 9. Damage**
- 9.1 If, during the Rental Period, the Equipment is stolen, the Customer must:
  - (a) Immediately notify Alclad and act according to instructions given by Alclad;
  - (b) Immediately report the theft to the police and provide a copy of the report to Alclad;
  - (c) Permit Alclad or its insurer to bring, defend, enforce or settle any legal proceedings in the Customer's name.
- 9.2 If, during the Rental Period, the Equipment is damaged or loss is suffered (except fair wear and tear), the Customer must:
  - (a) Immediately notify Alclad and act according to instructions given by Alclad;
  - (b) Not make any offer, promise of payment, settlement or admission of liability to any other party;
  - (c) Permit Alclad or its insurer to bring, defend, enforce or settle any legal proceedings in the Customer's name;
  - (d) Pay Alclad a sum equal to cover the repair, replacement parts, or replacement of the Equipment (less depreciation), noting that this sum may be deducted from the deposit per clause 5.3.
  - (e) Pay Alclad interest calculated at a rate of 15% per annum on all outstanding repair or replacement costs.
- 9.3 The Customer hereby assumes and shall bear the entire risk of loss and damage to the Equipment from any and every cause whatsoever, fair wear and tear excepted; and
- 9.4 The Customer is liable for damage to the property of any person which is caused or contributed by the Customer or which arises from the use of the Equipment by the Customer or any other person the Customer allows to use the Equipment.
- 10. Online Ordering**
- 10.1 The Customer acknowledges and agrees that:
  - (a) Alclad do not guarantee the websites performance or availability of any of its Goods; and
  - (b) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades; and
  - (c) there are inherent hazards in electronic distribution and as such Alclad cannot warrant against delays or errors in transmitting data between the customer and Alclad including orders, and you agree that to the maximum extent permitted by law, Alclad will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders.
- 10.2 Alclad reserve the right to terminate your order if it learns that you have provided false or misleading information, interfered with other users or the administration of Alclad services, or violated these terms and conditions.
- 10.3 Any sample Goods produced at the request of the Customer shall be at the Customer's expense. Such samples produced are to be indicative of the general nature of the Goods and Alclad offers no warranty or guarantee that the sample Goods produced by Alclad will correspond with any colour, texture or blend with the sample provided by the Customer or with any previous sample provided.
- 11. Risk**
- 11.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 11.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Alclad is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Alclad is sufficient evidence of Alclad's rights to receive the insurance proceeds without the need for any person dealing with the Alclad to make further enquiries.
- 11.3 If the Customer requests Alclad to leave Goods outside Alclad's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 11.4 Where Alclad is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Alclad shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 11.5 Whilst every care shall be taken by Alclad, any damage or breakage to the Customer's existing glass during works by Alclad shall be at the Customer's own risk.
- 11.6 Where the Customer has supplied measurements or templates for Alclad to complete the Goods, the Customer acknowledges that Alclad shall not be liable for any errors or damage resulting from the Customer's incorrect measurements or templates, unless the is a mistake by Alclad by virtue of misinterpreting the measurements provided.
- 11.7 Holes, cut outs and cutting of the Goods may weaken the strength of the Goods and although it's unlikely, cracking may occur. Alclad accepts no responsibility against cracks occurring after such Goods (that are subject to holes and cut outs) are installed unless a toughened glass is used.
- 12. Underground Locations**
- 12.1 Prior to Alclad commencing any work the Customer must advise the Alclad of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst Alclad will take all care to avoid damage to any underground services the Customer agrees to indemnify Alclad in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.
- 13. Access**
- 13.1 The Customer shall ensure that Alclad has clear and free access to the work site at all times to enable them to undertake the Services. Alclad 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 Alclad.
- 14. Insurance**
- 14.1 The Hirer must take out and maintain during the Rental Period, at its own cost, policies of insurance for:
  - (a) Indemnity cover of not less than the full new replacement cost the Equipment; and
  - (b) Third party and public liability indemnity cover of not less than \$20,000,000.00.
- 15. Title To Goods**
- 15.1 Alclad and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid Alclad all amounts owing to the Alclad; and
  - (b) the Customer has met all of its other obligations to Alclad.
- 15.2 Receipt by Alclad 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.
- 15.3 It is further agreed that:
  - (a) until ownership of the Goods passes to the Customer in accordance with clause 15.1 that the Customer is only a bailee of the Goods and must return the Goods to Alclad on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Alclad and must pay to Alclad the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.

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- (c) 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 Alclad and must pay or deliver the proceeds to Alclad on demand.
- (d) 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 Alclad and must sell, dispose of or return the resulting product to Alclad as it so directs.
- (e) the Customer irrevocably authorises Alclad to enter any premises where Alclad believes the Goods are kept and recover possession of the Goods.
- (f) Alclad 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 Alclad.
- (h) Alclad may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 16. Personal Property Securities Act 2009 (“PPSA”)**
- 16.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 16.2 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/Equipment that has previously been supplied and that will be supplied in the future by Alclad to the Customer.
- 16.3 The Customer undertakes to:
- (a) 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 Alclad may reasonably require to;
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 16.3(a)(i) or 16.3(a)(ii);
- (b) indemnify, and upon demand reimburse, Alclad 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/Equipment charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of Alclad;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of Alclad;
- (e) immediately advise Alclad of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 16.4 Alclad 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.
- 16.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 16.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 16.7 Unless otherwise agreed to in writing by Alclad, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 16.8 The Customer must unconditionally ratify any actions taken by Alclad under clauses 16.3 to 16.5.
- 16.9 Subject to any express provisions to the contrary (including those contained in this clause 16) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 17. Security and Charge**
- 17.1 In consideration of Alclad agreeing to supply the Goods/Equipment, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 17.2 The Customer indemnifies Alclad from and against all Alclad's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Alclad's rights under this clause.
- 17.3 The Customer irrevocably appoints Alclad and each director of Alclad as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 17 including, but not limited to, signing any document on the Customer's behalf.
- 18. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 18.1 The Customer must inspect the Goods/Equipment on delivery and must within seven (7) days of delivery notify Alclad 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/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification, the Customer must allow Alclad to inspect the Goods/Equipment.
- 18.2 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**).
- 18.3 Alclad acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Alclad makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. Alclad's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.5 If the Customer is a consumer within the meaning of the CCA, Alclad's liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.6 If Alclad is required to replace the Goods under this clause or the CCA, but is unable to do so, the Alclad may refund any money the Customer has paid for the Goods.
- 18.7 If the Customer is not a consumer within the meaning of the CCA, Alclad's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Alclad at Alclad's sole discretion;
- (b) limited to any warranty to which Alclad is entitled, if Alclad did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 18.8 Subject to this clause 18, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 18.1; and
- (b) Alclad has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 18.9 Notwithstanding clauses 18.1 to 18.8 but subject to the CCA, Alclad shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods/Equipment;
- (b) the Customer using the Goods/Equipment for any purpose other than that for which they were designed;
- (c) the Customer continuing the use of the Goods/Equipment after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Customer failing to follow any instructions or guidelines provided by Alclad;
- (e) fair wear and tear, any accident, or act of God.
- 18.10 Alclad may in its absolute discretion accept non-defective Goods for return in which case Alclad may require the Customer to pay handling fees of up to five percent (5%) of the value of the returned Goods plus any freight costs.
- 18.11 Notwithstanding anything contained in this clause if Alclad is required by a law to accept a return then Alclad will only accept a return on the conditions imposed by that law.
- 19. Intellectual Property**
- 19.1 Where Alclad has designed, drawn or developed Goods/Equipment for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Alclad.
- 19.2 The Customer warrants that all designs, specifications or instructions given to the Alclad will not cause Alclad to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Alclad against any action taken by a third party against Alclad in respect of any such infringement.
- 19.3 The Customer agrees that Alclad may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Alclad has created for the Customer.
- 20. Default and Consequences of Default**
- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of twelve percent (12%) per calendar annum after as well as before any judgment.
- 20.2 If the Customer owes Alclad any money the Customer shall indemnify Alclad from and against all costs and disbursements incurred by Alclad in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Alclad's contract default fee, and bank dishonour fees).
- 20.3 Further to any other rights or remedies Alclad may have under this contract, if a Customer has made payment to Alclad, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Alclad under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.
- 20.4 Without prejudice to Alclad's other remedies at law Alclad shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Alclad shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Alclad becomes overdue, or in Alclad's opinion the Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by Alclad;
- (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 21. Compliance with Laws**
- 21.1 The Customer and Alclad shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 21.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 21.3 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
- 22. Cancellation**
- 22.1 Without prejudice to any other remedies Alclad may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Alclad may suspend or terminate the supply of Goods/Equipment to the Customer. Alclad will not be liable to the Customer for any loss or damage the Customer suffers because Alclad has exercised its rights under this clause.
- 22.2 Alclad may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are delivered by giving written notice to the Customer. On giving such notice Alclad shall repay to the Customer any money paid by the Customer for the Goods/Equipment. Alclad shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 22.3 In the event that the Customer cancels delivery of Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Alclad as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 22.4 Cancellation of orders for Goods/Equipment made to the Customer's specifications, or for non-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 23. Privacy Act 1988**
- 23.1 Alclad's Privacy Policy can be found on our website at [www.alclad.com.au](http://www.alclad.com.au). A hardcopy of this policy can be obtained by request.
- 24. Other Applicable Legislation**
- 24.1 At Alclad's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building and Construction Industry Payments Act 2004 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 24.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 5.1 (each as applicable), except to the extent permitted by the Act where applicable.
- 25. Service of Notices**
- 25.1 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.
- 25.2 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.
- 26. General**
- 26.1 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.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria the state in which Alclad has its principal place of business, and are subject to the jurisdiction of the Melbourne Courts in that state.
- 26.3 Subject to clause 18 Alclad 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 Alclad of these terms and conditions (alternatively Alclad's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).
- 26.4 Alclad may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 26.5 The Customer cannot licence or assign without the written approval of Alclad.
- 26.6 Alclad 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 Alclad's sub-contractors without the authority of Alclad.
- 26.7 The Customer agrees that Alclad 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 Alclad to provide Goods/Equipment to the Customer.
- 26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.