

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purpose of these Terms, unless the context otherwise requires:

"ACS" means **PPC Flashings Pty Ltd** trading as **Architectural Cladding Suppliers** ABN 13 168 547 902;

"Agreement" means the agreement for the supply of Goods and the provision of Services and incorporates any other agreement made between the Customer and ACS for the supply of Goods or the provision of Services;

"Credit Application and Guarantee" means a Customer's application to ACS for credit payment terms in ACS's required form with the attached guarantee;

"Customer" means any person, firm or corporation including successors, administrators and assignors who have requested ACS to supply of Goods;

"Goods" means any goods or Services which ACS has agreed to supply to the Customer pursuant to a Purchase Order or a Quotation;

"GST" has the same meaning as in A Tax System (Goods and Services Tax) Act 1999 (Cth); **"Insolvency Event"** means the happening of any of the following:

- (a) being an externally-administered body corporate;
- (b) being insolvent under administration;
- (c) if the relevant person is or states that it is unable to pay its debts when they fall due;
- (d) if any action or step is taken to appoint, in the case of a corporation, a liquidator (including provisional liquidator), a receiver, a receiver and manager, an administrator or any other external administrator of any of that corporation's assets;
- (e) if any action or step is taken, in the case of a natural person, to have that person made bankrupt;
- (f) if any action or step is taken to obtain protection from creditors under any law;
- (g) if anything occurs which is similar to or which has a substantially similar effect to any of the events set out above;

"Job Site" means any site nominated by the Customer for the delivery of Goods or the provision of Services;

"Inclusions" means additional goods or services that ACS will supply to the Customer and as specified in the **"Inclusions"** section of the Quotation;

"Purchase Order" means a request for the supply of Goods that ACS receives from the Customer. A **"Purchase Order"** usually takes the form of: -

- (a) ACS's acceptance of a Quotation by the Customer; or
- (b) The submission of a Purchase Order from the Customer to ACS for the Goods;

"Party" means **ACS** or the Customer and **"Parties"** means both **ACS** and the Customer;

"PPSA" means the Personal Property Securities Act 2009 (Cwth);

"PPS Law" means each of the following:

- (a) the PPSA;
- (b) the PPS Regulations;
- (c) any provision of the PPSA or PPS Regulations;
- (d) any amendment to any of the above, made at any time; and
- (e) any amendment made at any time to any other legislation as a consequence of a PPS Law referred to paragraphs (a) and (d) above;

"PPS Regulations" means the Personal Property Securities Regulations 2010 (Cwth);

"Price" means the amount payable by the Customer to ACS for the Goods as specified in the Purchase Order;

"Quotation" means any indication of pricing in writing for any Goods to be provided to the Customer by any authorised representative of ACS. This is usually ACS's standard Quotation form for Goods or Services to be supplied;

"Security Interest" means:

- (a) a security interest under the PPSA;
- (b) any other mortgage, pledge, lien or charge; and
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property;

"Services" means services provided by ACS to the Customer in relation to any goods supplied by ACS;

"Terms" means these terms and conditions of sale and supply as set out in this Agreement;

"Working Documentation" means any architectural drawings, structural drawings and construction drawings, specifications and reinforcement schedules or such other documents which are provided by the Customer to ACS together with any subsequent variation, amendment or site instruction.

1.2 Interpretation

The following rules of interpretation apply to these Terms unless the context requires otherwise:

1.3 Headings are for convenience only and do not affect interpretation

- (a) The **singular** includes the plural and conversely;
- (b) A **gender** includes all genders;
- (c) Where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- (d) A reference to any **agreement** or **document** is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Agreement or that other agreement or document;

- (e) A reference to any **legislation** or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (f) A reference to **dollars** or **\$** is to Australian currency;
- (g) A reference to a **right** or **obligation** of any 2 or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (h) A reference to **writing** includes an email transmission and any means of 2 reproducing words in a tangible and permanently visible form;
- (i) Specifying anything in this Agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.
- (j) All references to **time** are to Victorian time;
- (k) A provision of this Agreement must not be construed against ACS only because ACS prepared it;
- (l) If the time for performing any action falls on a Saturday, Sunday or public holiday, then time is extended to the next business day;
- (m) "person" includes:
 - (i) any individual, body corporate, government, governmental authority, agency or instrumentality; and
 - (ii) that person's representatives, successors and assignees.

1.4 Precedence of Documents

If there is any ambiguity, inconsistency or discrepancy between any of the documents comprising the Agreement, the documents shall be read in the following order of priority:

- (a) the Quotation in particular the description of the Good the subject of the Quotation;
- (b) Specific conditions or Inclusions stipulated in the Quotation;
- (c) the relevant Purchase Order;
- (d) Specific Conditions or inclusions stipulated in the Purchase Order (if any);
- (e) These Terms
- (f) The Customer's Credit Application

except to the extent that a document lower in the order of precedence imposes duties, standards or obligations on the Customer which are greater than those arising under a document higher in the order of precedence, and in those circumstances the Customer must meet or discharge that greater duty, standard or obligation.

2. AGREEMENT

2.1 When ACS accepts the Customer's Purchase Order and subject to clause 8.1, ACS agrees to supply the Goods to the Customer for the Price subject to these Terms.

2.2 In consideration of ACS's promise to supply the Goods, the Customer agrees to pay ACS the Price.

2.3 This Agreement incorporates the terms and conditions of any Credit Application between ACS and the Customer.

3. QUOTATIONS

3.1 The mere provision of a Quotation by ACS does not constitute an agreement.

3.2 ACS may at any time and in its absolute discretion amend or withdraw its Quotation.

3.3 A Quotation expires on the date specified on the Quotation as the expiry date. If no expiry date is specified, the quotation expires 28 days after the date of the Quotation.

4. OFFER AND ACCEPTANCE OF QUOTATION

4.1 Creation of Contract

- (a) An agreement for the supply of Goods will be created when the following 2 conditions are satisfied:
- (b) ACS receives a signed Quotation from the Customer accepting ACS's quote for the supply of Goods at the quoted Price; and ACS accepts a Purchase Order from the Customer.

4.2 Alternatively, a contract may also be created when a Customer submits a Purchase Order for the Goods at the quoted price.

4.3 ACS may at any time before the Quotation or an Purchase Order is accepted, and in its absolute discretion, refuse to supply Goods to the Customer.

5. PURCHASE ORDERS & WORKING DOCUMENTATION

5.1 Any Purchase Order by the Customer for the supply of Goods shall:

- (c) if in writing, be signed by an authorised representative of the Customer;
- (d) identify the Goods ordered;
- (e) be subject to these Terms and such additional terms as ACS may in its absolute discretion require; and
- (f) specify the required date of delivery.

5.2 The Customer may not vary, amend or cancel any Purchase Order made unless ACS agrees in writing that: -

- (a) The Working Documentation is the current Working Documentation and that the Working Documentation is true and accurate;
- (b) All measurements for the Goods submitted are true and accurate and in accordance with the Customer's requirements
- (c) There have been no changes to the Working Documentation;
- (d) If there is any change to the Working Documentation, the Customer must promptly provide the current and up-to-date Working Documentation as amended to ACS before fabrication/manufacturing works commence on the Goods.

5.3 When ACS fabricates and manufactures the Goods for the Customer, ACS relies on the Customer's warranty and representation 5.4. It is the responsibility of the Customer to deliver all current Working Documentation without charge to ACS to enable scheduling of fabrication / manufacture of the Goods ordered.

5.5 ACS accepts no responsibility for the correctness or otherwise of the Working Documentation.

6. PRICE / PAYMENT

6.1 Price

- (a) Unless otherwise agreed to in writing by ACS and subject to subclauses (b) and (c) below, all Goods are sold to the Customer at ACS's ruling Price at the time the Purchase Order was placed.
- (b) ACS reserves the right to change the Price at any time and in its sole discretion and without any prior notice to the Customer.
- (c) Where in the period prior to the delivery of the Goods to the Customer, ACS incurs an increase in the cost of producing and/or delivering the Goods, ACS may increase the Price of those Goods.
- (d) All Prices are exclusive of GST unless stated otherwise.

6.2 Payment Terms

Unless specific payment terms are set out in the Specific Additional Terms and Conditions section of the Order, payment terms are as follows: -

- (a) Non-Account Customers
100% payment prior to manufacture of Goods.
- (b) Small Orders
Any Purchase Orders under \$1,000.00 (incl. GST) require 100% payment at Order.
- (c) Account Customers

6.3 Timing

6.4 Set offs

The Customer shall not be entitled to set off any amount whatsoever against ACS.

6.5 Interest

If payment in full is not received by ACS by the Payment Date, then ACS shall be entitled, without prejudice to any other rights it may have, to charge the Customer interest on amounts for owing to ACS calculated from the Payment Date until the date of actual payment at a rate of 2.5% per calendar month. All payments made by the Customer shall be first applied by ACS to the accrued interest (if any).

6.6 Indemnity

In addition to interest under clause 6.5, the Customer agrees to indemnify and keep ACS indemnified against all debt collection costs incurred by ACS, including but not limited to legal expenses on an indemnity basis and any debt collection costs and commissions.

7. CREDIT & ACCOUNT CUSTOMERS

- 7.1** If the Customer wishes to purchase Goods on credit from ACS, then it must first complete a Credit Application for trading terms. ACS may, in its sole discretion, elect to offer or refuse credit to the Customer.

8. CREDIT CHECK & GUARANTEE

- 8.1** This Agreement is conditional upon the Customer completing a satisfactory credit check and where required the Customer's guarantors signing the guarantee to the Credit Application.
- 8.2** The Customer and its guarantors must complete a Credit Application in ACS's usual form and sign or complete all necessary consents ACS requires.
- 8.3** ACS may in its sole and absolute discretion waive the requirement for the Customer to complete a Credit Application.

9. ADDITIONAL CHARGES

- 9.1** In addition to the Price, the Customer hereby agrees to pay to ACS:
 - (d) all taxes, stamp duty or other statutory charges or levies payable in relation to the supply of Goods;
 - (e) all costs, charges and expenses incurred by ACS where any variation is required to the Purchase Order or to the Goods supplied and the variation is not attributable to ACS's error or omission;
 - (f) all costs, charges and expenses incurred by ACS where any variation is required to the Purchase Order or to the Goods because the Working Documentation is incorrect or otherwise incomplete;
 - (g) where any variation to the Agreement or the Purchase Order is requested by the Customer and agreed to by ACS, all costs, charges and expenses incurred by ACS with respect to any variation of Agreement or the Purchase Order and ACS shall be granted an automatic extension of time for delivery of the Goods equal to the delay caused by the Variation of Agreement or the Purchase Order; and
 - (h) all costs and expenses incurred by ACS with respect to the recovery or return of Goods from the Customer including all legal costs (on a solicitor/client basis) and disbursements incurred by ACS in relation to the recovery of the Goods.

10. DELIVERY

- 10.1** Delivery of the Goods shall be deemed to have occurred upon either: -
 - (a) the collections of Goods from ACS at an agreed collection point; or
 - (b) upon the arrival of the Goods at the Job Site.
- 10.2** Where a delivery of Goods cannot be effected for whatever reason, the Customer shall pay to ACS a delivery and return fee calculated in accordance with the then applicable master carrier rates.
- 10.3** Subject to clause 10.4 below, the Customer must provide ACS with a minimum of 7 business days prior notice of the date by which the Customer requires the Goods to be delivered to it.
- 10.4** Where the Customer requires that the Goods be delivered to a Job Site, the Customer must provide ACS with the address for the Job Site at least 5 business days prior to the scheduled delivery.
- 10.5** ACS is not bound to accept any delivery date notified by the Customer.
- 10.6** The Customer acknowledges that all delivery times provided are estimates only and are not binding on ACS.
- 10.7** The Customer acknowledges that on occasions, materials for the manufacture/fabrication of Goods may be in short supply and that anticipated delivery dates for the Goods may need to be extended. ACS will notify the Customer if a scheduled delivery date cannot be achieved because of materials shortages.
- 10.8** If ACS is unable to fulfil a Purchase Order, it shall notify the Customer as soon as reasonably practicable, and this Agreement shall terminate. The Parties agree that termination of this Agreement for inability of ACS to fulfil a Purchase Order shall not give rise to any right to claim any costs, charges or penalties against ACS.

- 10.9** Unless otherwise agreed to in writing, ACS is not required to deliver any Goods to the Customer unless the Customer has paid all monies owing to ACS in full.
- 10.10** The Customer must ensure that the Job Site can be accessed by vehicle on properly constructed roadway.
- 10.11** ACS may, in its absolute discretion, unload the Goods at the Job Site or as close to the Job Site as conditions allow.
- 10.12** Unless otherwise agreed prior to delivery of Goods, all unloading of Goods shall be the responsibility of the Customer and shall be undertaken at the Customer's cost.
- 10.13** In the event that the Customer or its agent is not in attendance when the Goods are delivered, ACS reserves the right to unload the Goods and will not be responsible for any claims, damages, expenses or costs resulting or arising there from.
- 10.14** Where the Customer requires ACS or its agent to enter onto the Job Site for the purpose of unloading, ACS shall not be liable for any damage to the Goods thereon.
- 11. TESTS & INSPECTIONS & PRODUCT CARE**
- 11.1** Any tests or inspections of the Goods, or (where applicable) products or materials used in relation to the manufacture of the Goods required by the Customer prior to delivery, shall be conducted at the cost of the Customer. ACS shall have no responsibility whatsoever for the quality or accuracy of the tests conducted under the supervision of the Customer.
- 11.2** Any design or description of use, capacity, durability, colour, manner of installation, information, detail contained in drawings, data sheets, technical brochures or other documents provided by ACS are given as a general guide only and the Customer hereby acknowledges that it has satisfied itself as to the suitability of the Goods for the Customer's particular purpose, use or application and ACS shall not be liable in these respects.
- 11.3 Inspections & Returns**
- It is the responsibility of the Customer to inspect the Goods immediately upon delivery and to confirm that the Goods comply with the Purchase Order. The acceptance of the Goods by the Customer's representative shall represent acknowledgment by the Customer that the Goods comply with its order and have been supplied in accordance with this Agreement.
- 11.4** Any claim for:
- (c) a shortage of Goods;
 - (d) damage to the Goods; or
 - (e) defects of fault in the Goods,
- must be notified to ACS within 24 hours after delivery of those Goods.
- 11.5** Notice of any defects must be given to ACS in writing on the delivery docket/receipt/manifest and immediately returned with the cartage contractor. Where the Job Site is unattended, the Customer shall give notice in writing to ACS, within 24 hours from the time of delivery and prior to installation, of any defects in the Goods.
- 11.6** ACS reserves the right to inspect the Goods and to seek its own assessment of the Goods notified in accordance with clause 11.2.
- 11.7** If notice in accordance with clauses 11.5 is not given, the Goods shall be deemed to be in good order and condition and in accordance with this Agreement and the Customer is deemed to have accepted the Goods accordingly.
- 11.8 ACS Right of Inspection**
- ACS shall have the right to inspect on site any Goods notified by the Customer as being defective and until such inspection is completed the product shall not be installed.
- 11.9 Defective Goods**
- If upon inspection, the Goods are found to be defective and the Customer advises ACS of that defect in accordance with clause 11.2, ACS shall repair or resupply the Goods is subject to the Purchase Order, but ACS shall not be liable for the removal of any defective Goods or for the costs of the re-installation of any Goods.
- 11.10** ACS shall not be liable for any defect, loss, damage or injury howsoever arising by reason of:
- (a) a failure to use the Goods in a manner other than what is normally expected to be done with or in relation to the Goods;
 - (b) any delay in delivery;
 - (c) a failure to comply with any instructions or warnings with respect to doing anything with or in relation to the Goods.
- 11.11 Acceptance**
- If the Customer fails to advise ACS of any shortage, fault, defect, damage or failure of the Goods within 24 hours of delivery, then the Customer is deemed to have accepted the Goods and that the Goods generally accord with the Purchase Order.
- 11.12** ACS's liability for shortage in the quantity of the Goods delivered is limited to making good any shortage.
- 11.13** Goods shall not be deemed damaged or defective by reason only of presence of rust, millscale, rolling seams, or oil canning once installed.
- 11.14 Samples and Blending**
- Any sample Good or coloured sample in respect of that Good is provided to indicate only the general nature of the Good. ACS provides no warranty or guarantee that the Goods supplied shall correspond exactly in colour, texture or blend with any sample or with any previous or future Goods supplied. ACS shall not be liable for any failure of the Customer or others to blend the Goods.
- 12. RISK & TITLE**
- 12.1 Risk**
- Risk in the Goods shall pass to the Customer immediately upon delivery.
- 12.2 Property and Retention of Title & Security**
- Notwithstanding the passing of risk, title in the Goods delivered shall not pass to the Customer until all monies payable by the Customer to ACS have been paid in full.
- 12.3** The Customer shall hold all Goods on trust and as bailee for ACS until all amounts owed by the Customer to ACS have been paid in full.
- 12.4 Separate Storage**
- The Customer must store all Goods delivered by ACS separately from all other items or property in the possession or control of the Customer such that the Goods are clearly identifiable and distinguishable from all other goods in the possession or control of the Customer.

- 12.5** The Customer hereby authorises ACS to enter onto the Customer's premises and/ or the Job Site to repossess the Goods.
- 12.6** The Customer may transfer, sell or dispose of the Goods, the new objects, the mixed goods and the newgoods to a third party in the ordinary course of business provided that:
- (d) all monies owing to ACS have been paid in full; or
 - (e) the Customer deposits the proceeds from the sale of the Goods, the new objects, the new goods and the mixed goods (the "sale proceeds") into a bank account specifically created for the purpose of receiving the sale proceeds. Only sale proceeds may be deposited into the specifically created bank account. The Customer will hold the sale proceeds in trust for ACS until such time as all of the monies due and owing by the Customer to ACS have been paid for in full.
- 12.7** The right of the Customer to deal with the Goods will immediately cease upon the appointment to the Customer of either a liquidator, a receiver, a receiver and manager, an administrator, provisional liquidator, or a bankruptcy trustee.
- 13** **FORCE MAJEURE**
- 13.1** **ACS May Be Relieved from Obligation**
- ACS shall not be liable to the Customer for any claim, loss, costs, expenses or damage by reason of any delay or default in any ACS's performance under this Agreement, if the default or delay is caused by events beyond ACS's reasonable control ("Force Majeure Event"), including, but not limited to; acts of God, regulation or law or other action of government agency, war or insurrection, civil commotion, destruction of production facilities or materials by earthquake, fire, flood, or storm, manufacturer's and/or supplier caused delays, air-carrier, shipping transport or labour disturbances or disputes, pandemic or epidemic, or failure ACS's public utilities or common carriers.
- 13.2** **ACS will give notice to the Customer**
- If ACS is affected by a Force Majeure Event, ACS will promptly provide the Customer with written notice of the nature and the expected duration of, and the obligation affected by, the Force Majeure Event. ACS must use all reasonable endeavours to mitigate the effects of the Force Majeure Event on ACS's obligations under this Agreement and perform its obligations under this Agreement to the extent it is able to do so, despite the Force Majeure Event. ACS will endeavour to resume its performance obligations under this Agreement if performance is delayed or interrupted by reason of a Force Majeure Event.
- 14.** **PERSONAL PROPERTIES SECURITIES**
- 14.1** **PPS Law Definitions**
- In this Agreement unless the context requires otherwise, expressions or terms used in this clause and in the PPSA have the same meanings as when used in the PPSA.
- 14.2** **Acknowledgements**
- The Customer acknowledges and agrees:
- (a) this Agreement creates a Security Interest in favour of ACS for the purposes of the PPSA;
 - (b) the Security Interest created by this Agreement extends not only to the Goods but to all and any proceeds arising from any dealings with the Goods;
 - (c) ACS may register this Security Interest on the Personal Property Securities Register pursuant to the PPSA in order to perfect its Security Interest;
 - (d) the Security Interest granted to ACS pursuant to this Agreement is also a purchase money Security Interest for the purpose of the PPSA;
 - (e) the Customer grants the Security Interest to ACS to secure the punctual payment of all amounts that the Customer owes or may owe to ACS under this Agreement;
 - (f) any Security Interest created by this Agreement attaches or otherwise takes effect immediately upon the Customer entering into this Agreement;
 - (g) It must not dispose or purport to dispose of, or create or purport to create or permit to be created any Security Interest in the Goods other than with the express written consent of ACS;
 - (h) it must not lease, hire, bail or give possession to, the Goods to anyone else unless ACS (in its absolute discretion) first consents in writing (which may be withheld in its absolute discretion).
- 14.3** **PPS Law Notices**
- If under PPS Law, the Customer may by agreement waive its right to receive a notice under the PPS Law, then the Customer hereby waives the requirement for ACS to give it the required notice.
- 14.4** **Release of Security Interest**
- Within five (5) business days of expiry or termination of this Agreement, provided the Goods have been returned in reasonably good condition and no monies are owing under the Agreement, ACS will apply to the Personal Property Securities Register to remove the Security Interest it registered against the Customer under this Agreement from the Personal Property Securities Register.
- 15.** **EXCLUSIONS OF LIABILITY**
- 15.1** The Customer acknowledges that:
- (i) ACS has not provided any warranties, assurances, promises or representations regarding the quality, fitness for use, suitability or merchantability of the Goods; and
 - (j) when placing its order for the Goods, it has relied entirely on its own knowledge, skill and judgement.
- 15.2** **Warranties Excluded**
- Subject to this Agreement, all warranties, representations, promises, conditions or statements regarding the Goods whether express or implied including warranties or conditions as to the suitability or fitness of the Goods for any particular purpose, are expressly excluded to the fullest extent permitted by law.
- 15.3** **Liability for Breach of Warranties**

To the extent that the exclusion of implied terms in this Agreement is prohibited by the Competition and Consumer Act 2010 (Cwth) or equivalent State legislation, ACS's liability for a breach of such implied term will be limited, at the ACS's option, to one or more of the following:

- (a) In the case of the supply of goods
 - (i) the replacement of the Goods or the supply of equivalent goods;
 - (ii) a refund of the Price paid by the Customer for the affected Goods
 - (iii) the repair of the Goods;
 - (iv) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; and
- (b) In the case of services
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

15.4 Liability for Indirect or Consequential Losses

Notwithstanding any other provision in this Agreement, a Party to this Agreement shall not be liable to the other Party for indirect or consequential loss including any loss of profit, loss of opportunity, loss of business, loss of production, loss of time in work schedules, losses arising from failure to complete orders, diminution of goodwill or share value or loss of reputation of a Party.

15.5 Subject to clause 15.3, ACS is not bound to accept a return of any Goods from the Customer and is not bound to refund any monies to the Customer.

16. DEFAULT BY THE CUSTOMER

16.1 In the event that:

- (a) any money payable to ACS becomes overdue; or
- (b) in ACS's reasonable opinion the Customer will be unable to meet its payments as they fall due; or
- (c) the Customer suffers an Insolvency Event then:
 - (i) ACS shall be entitled to cancel all or any part of any Purchase Order which remains unperformed;
 - (ii) all amounts owing to ACS will, whether or not due for payment, become immediately due and payable; and
 - (iii) ACS may terminate any agreement in place with the Customer.

16.2 The Customer shall not at any time be entitled to retain any money owing to ACS notwithstanding any default or alleged default by ACS of the Terms including the supply of allegedly faulty or defective Goods.

17. GENERAL

17.1 Service of Notices

A Party or their nominated representative may give a notice in writing by:

- (a) personally delivered;
- (b) left at the Party's current address for notices;
- (c) sent to the Party's current address for notices by pre-paid ordinary mail;
- (d) if the address is outside Australia, by pre-paid airmail; or
- (e) emailed to the Party's current email address for notices.

17.2 Subject to clause 17.5, posted notices will be taken to have been received, if:

- (a) within Australia to an Australian address, two Business Days after posting; or
- (b) in any other case, fourteen days after posting.

17.3 A notice delivered personally is taken to be received on the date of delivery.

17.4 A notice transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

17.5 A notice delivered or sent by email after 5.00 p.m. will be taken to have been received at 9.00 a.m. on the next business day at the place where they have been delivered or sent.

17.6 Assignment

The Customer may not assign any or all of its rights under the Agreement without the prior written consent of ACS. **17.7 Variations**
ACS reserves the right to change these Terms at any time without notification to the Customer and without the Customer's consent. Any changes to this Term do not affect any agreement in place in respect of a Purchase Order accepted prior to the changes. The most recent Terms will be posted on the ACS website.

17.8 Relationship

ACS is a manufacturer and supplier of high quality, non-combustible metal cladding and roofing products to the building and construction industry and the Customer agrees and acknowledge that ACS shall not be regarded as a sub-contractor.

17.9 Jurisdiction

These Terms shall be governed by the laws of the State of Victoria. The parties submit to the jurisdiction of the courts in the State of Victoria.

17.10 Termination

ACS reserves the right to terminate this Agreement and the supply of Goods to the Customer in whole or in part, at any time and for any or no reason.

17.11 Waiver

ACS's failure to enforce any provision of this Agreement shall not be deemed a waiver of that provision nor of the right to enforce that provision.

17.12 Severability

If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision and the remaining provisions of this Agreement shall in no way be affected or impaired.