



PURCHASE TERMS AND CONDITIONS FOR CABINS

RUBICONLAW

The Human Element in Law

Rubicon Law Pty Ltd

Level 1, 235 Varsity Parade
VARSITY LAKES QLD 4227

PO Box 714, VARSITY LAKES QLD 4227

Phone: 07 5575 8011

Fax: 07 5676 6774

Email: qld@rubiconlaw.com.au

PURCHASE TERMS AND CONDITIONS

1. THE CONTRACT

- 1.1 Cabins Direct and Cabins Direct North Queensland (**Supplier**) manufactures and sells the Products.
- 1.2 The Contract commences on the date the Customer pays the Initial Deposit, whole Deposit or the Purchase Price (whichever is earlier) (**Commencement Date**) for the Product(s) and automatically ends at the end of the last Warranty Period, unless terminated earlier in accordance with these Terms (**Term**).
- 1.3 The Customer's purchase of any Product(s) from the Supplier is subject to, and conditional on the parties' acceptance of, the Defects Schedule, Purchase Order, these Terms and the Warranty Card and the Specifications (together, the "**Contract**"). To the extent there is any inconsistency between the documents that form the Contract, the documents will take precedence in the aforementioned order.
- 1.4 Capitalised, defined terms and the rules of interpretation are in clause 17.

2. AUSTRALIAN CONSUMER LAW

- 2.1 The following provision applies if the Customer is a 'consumer' for the purposes of the ACL.
- 2.2 Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

3. PRODUCT & WARRANTY

The following terms in this clause 3 are subject to the ACL terms in clause 2.

- 3.1 For the Purposes of this clause 3, '**Class 1a Dwelling**' means a building as defined in the National Construction Code (NCC) or Building Code of Australia (BCA) (being a detached house or attached dwellings) intended for human habitation, the construction or placement of which constitutes "building work" regulated by the QBCC or relevant state building authority.
- 3.2 The Customer acknowledges and agrees that all Products are:
 - (a) supplied as prefabricated portable Products and not as a Class 1a Dwelling and must not be purchased for such use; and
 - (b) made, in most cases, from recycled or used materials, including shipping containers and therefore, to the maximum extent permitted by law, the Customer accepts all Minor Defects in the Products.
- 3.3 The Supplier warrants the Product against defective materials and workmanship for the Warranty Period, excluding any Minor Defects and any Material Defects accepted by the Customer in the Defects Schedule. The terms of the Supplier's voluntary warranty are further described in the Warranty Card provided to the Customer at Delivery.
- 3.4 The warranty under clause 3.3 does not apply to any defect or damage caused by or arising from:
 - (a) fair wear and tear;
 - (b) the Customer's failure to properly maintain, store, install or use the Product;

- (c) any modification, alteration or repair of the Product by any person other than the Supplier or a person authorised by the Supplier in writing;
- (d) the Customer's failure to follow the Supplier's reasonable instructions or guidelines;
- (e) accident, misuse, abuse, or any abnormal or extreme environmental conditions (including without limitation flood, fire, storm or hail); or
- (f) any transport or relocation of the Product after Delivery.

3.5 The Customer may not Object to a Product due to Minor Defects.

3.6 The Supplier warrants that the Ordered Product(s) reasonably match the Specifications, subject to any Material Defects or Minor Defects accepted under clause 5.

3.7 The Supplier makes no representation or warranty that any Products comply with local planning schemes or any specific building standards or licensing requirements.

3.8 The Customer is solely responsible for obtaining all necessary local council permits, planning approvals and certifications required for the placement and use of any Ordered Product.

3.9 To the maximum extent permitted by law, the Supplier:

- (a) disclaims all liability for any Loss that the Customer suffers or incurs in connection with any Ordered Product being deemed non-compliant to any law or regulation by a competent authority; and
- (b) will not offer any refund, cancellation or price reduction if the Product(s) are deemed non-compliant by a local authority, certifier or other competent authority.

4. ORDERS

4.1 If the Customer requests to purchase, or requests a quote for a Product or Products, the Supplier may provide the Customer a Purchase Order.

4.2 If, after receiving the Purchase Order, the Customer would like to proceed with placing an order in accordance with the Purchase Order, the Customer must sign the Purchase Order, which constitutes an offer that is capable of acceptance (**Offer**).

4.3 The Supplier is under no obligation to accept an Offer or part of an Offer, but if the Supplier does, the Offer will be immediately accepted upon the Supplier sending written notice of its acceptance to the Customer, thereby placing the Order.

4.4 Although the Supplier will provide the Customer with a Delivery Date for the Order, the time and dates for Delivery are estimates only and time is not of the essence.

5. INSPECTION, ACCEPTANCE

5.1 Inspection

- (a) Before Delivery, the Supplier will provide the Customer a Defects Schedule document.
- (b) The Customer must perform a thorough inspection of the Product(s) at the Supplier Premises and record, in the Defects Schedule:

- (i) any Material Defects; and
- (ii) whether the Customer accepts or rejects the Material Defects.

5.2 Acceptance

- (a) If the Customer completes and signs the Defects Schedule, the Customer accepts all Defects in the Ordered Product(s) and warrants that their inspection was performed thoroughly and to their satisfaction.
- (b) If the Customer identifies Material Defects during their inspection under clause 5.1 that the Customer does not accept, the Customer:
 - (i) must list those Material Defects in the Defects Schedule and not sign it; and
 - (ii) may request the Supplier rectify the Material Defects in accordance with these Terms.
- (c) If the Customer Objects to any Material Defects under clause 5.2(b), the Supplier is under no obligation to rectify any such Material Defects or to proceed with the sale of the Ordered Product. The Supplier may then, in its sole discretion, elect by written notice to the Customer to:
 - (i) rectify the Material Defect(s) within 20 Business Days of the date of the Defects Schedule and proceed with the sale of the Product(s); or
 - (ii) if a Deposit has been paid, terminate the Contract; or
 - (iii) if no Deposit has been paid, cancel the Order.
- (d) If the Supplier terminates the Contract under clause 5.2(c)(ii), the Supplier must promptly refund the Deposit.
- (e) This clause 5.2 does not limit any rights the Customer has under the ACL.

6. PAYMENT & DEPOSIT

6.1 Payment

- (a) Following the Customer's acceptance under clause 5.2(a) and subject to clause 6.2, the Customer must pay the Purchase Price in accordance with the relevant Purchase Order.
- (b) If the Customer fails to pay the Purchase Price in full, when it is due:
 - (i) the Supplier may terminate the Contract immediately on written notice to the Customer; and
 - (ii) the Customer will have no right to title or ownership of the Product(s) that were the subject of the Order.

6.2 Deposit

- (a) If the Purchase Order provides that the Customer must pay the:

- (i) Initial Deposit, the Customer must pay that amount on or before the date specified in a Purchase Order and if no date is specified within 5 Business Days; and
 - (ii) Balance Deposit, the Customer must pay that amount on or before the date specified in a Purchase Order and if no date is specified within 7 Business Days of the Initial Deposit (**Balance Deposit Due Date**).
- (b) If the Customer fails to pay the Balance Deposit by the Balance Deposit Due Date, the Supplier may, at its sole discretion:
 - (i) terminate the Contract immediately by written notice to the Customer and retain the Initial Deposit as liquidated damages; or
 - (ii) delay commencement of manufacture, procurement or preparation of the Ordered Product until the Balance Deposit is received, with no liability for delay.
- (c) If the Purchase Order provides that the Customer must pay the Deposit in full:
 - (i) the Customer must pay the Deposit in cleared funds pursuant to the Purchase Order, unless otherwise agreed by the parties in writing;
 - (ii) until the Deposit is received, the Supplier is not required to:
 - (I) order any specialised materials required for the manufacturing of the Ordered Product;
 - (II) commence manufacturing the Ordered Product(s); and
 - (III) prepare any Ordered Product(s) for Delivery.
- (d) Except for a Deposit refund under clause 5.2(d), to the maximum extent permitted by law, the Customer agrees that the Deposit is non-refundable because it represents a genuine pre-estimate of the Supplier's administrative, design, delivery, handling, material, assembly and/or procurement costs.

6.3 Cooling-Off Period

- (a) Except for under clause 6.4, the Customer may cancel an Order for a standard or stock Ordered Product within 10 Business Days of the date the Supplier accepts the Customer's Offer (**Cooling-Off Period**) by giving written notice to the Supplier.
- (b) If the Customer cancels during the Cooling-Off Period, the Supplier will refund any Deposit paid in full within 7 Business Days of receiving the Customer's cancellation notice.
- (c) After the Cooling-Off Period expires, the Deposit is non-refundable except as provided in clause 5.2(d).

6.4 Custom or Non-Standard Ordered Products

- (a) For custom or non-standard Ordered Products requiring manufacture, modification, or procurement to the Customer's specifications:
 - (i) no Cooling-Off Period applies; and
 - (ii) the Initial Deposit and/or the Balance Deposit (where applicable) is non-refundable from the date of payment.
- (b) The Supplier will notify the Customer at the time of accepting the Offer whether the Ordered Product is a standard product (to which the Cooling-Off Period applies) or a custom product (to which no Cooling-Off Period applies).

6.5 Default Interest

- (a) If the Customer fails to pay any sum payable under the Contract by its due date, the Customer must pay the Supplier interest at the rate of 10% per annum.
- (b) Interest payable under clause 6.5(a) accrues daily from the due date up to and including the date the unpaid amount is paid in full and compounds monthly on the first day of each calendar month.
- (c) The Supplier's right to charge interest under this clause 6.5 is in addition to, and does not limit, any other right or remedy of the Supplier under the Contract or at law.

6.6 No Set-Off

The Customer must pay all amounts owing to the Supplier under any Contract between the parties in full, without set-off, deduction, counterclaim or withholding of any kind, whether or not any part of the relevant invoice or amount is the subject of a dispute, claim or query by the Customer. Any dispute by the Customer in respect of an invoice or amount must be raised under clause 14 and does not relieve the Customer from the obligation to pay all amounts owing on the due date.

7. DELIVERY & DELIVERY LOCATION

7.1 Delivery

- (a) Once the Customer has paid the Purchase Price in cleared funds, the Supplier will:
 - (i) prepare the Ordered Product(s) for Delivery no later than seven (7) Business Days except for custom or non-standard Ordered Products – in which case, Delivery time will be provided on the Purchase Order;
 - (ii) confirm when the Ordered Product(s) are ready for Delivery by sending an email to the Customer's email address (**Delivery Notice**); and
 - (iii) inform the Customer if the Ordered Product(s) will not be ready for Delivery under clause 7.1(a)(i) and provide an alternative date for Delivery.
- (b) Subject to clause 7.2, the Customer is responsible for arranging the collection and transportation of the Ordered Product(s) to the Delivery Location.
- (c) On Delivery, risk and title to the Ordered Product(s) passes to the Customer.

7.2 Delivery Arranged by Supplier

If the Supplier arranges the Ordered Product(s) to be delivered to the Delivery Location by a third party, the Customer acknowledges that the Supplier is doing it on the Customer's behalf and accepts that such arrangement is between the Customer and the third-party transport company.

7.3 Delivery Location

- (a) The Customer warrants that the Delivery Location is level, stable and accessible for Delivery of the Ordered Products.
- (b) If the Delivery Location is unsuitable or inaccessible, the Delivery will be deemed to be at the nearest safe point to the Delivery Location and the Ordered Product(s) may not be returned to the Supplier under any circumstances.

7.4 Third Party Delivery Disclaimer

Whether third party delivery is arranged by the Supplier or Customer, to the maximum extent permitted by law, the Supplier disclaims all liability, costs, losses and expenses and any claims, actions or proceedings that the Customer suffers or incurs whether arising in contract, tort (including negligence (or otherwise)) or under any other applicable law due to the condition of the Delivery Location or any act or omission from any third party that transports the Ordered Product(s).

7.5 Supplier Storage Fees

- (a) If the Ordered Product(s) are ready for Delivery and the Customer fails to take Delivery, or fails to arrange for Delivery to occur, within 15 Business Days of the Delivery Notice, the Supplier may charge the Customer a storage fee of \$50 per day per Ordered Product (or such other rate notified by the Supplier from time to time) until Delivery occurs.
- (b) If the Customer fails to pay any storage fees within 14 days of invoice, or fails to take Delivery within 30 days of the Delivery Notice, the Supplier may, on written notice to the Customer:
 - (i) reallocate the Ordered Product(s) to another customer, in which case the Supplier will allocate the next available equivalent Product(s) to the Customer once any outstanding storage fees and the Purchase Price are paid in full; or
 - (ii) terminate the Contract, in which case the Supplier may retain the Deposit and any other amounts paid by the Customer up to the value of the storage fees, costs and losses incurred by the Supplier as a result of the Customer's failure.
- (c) Storage fees under this clause 7.5 are in addition to, and do not limit, any other right or remedy of the Supplier under the Contract or at law.

7.6 Installation

- (a) The Supplier does not offer any installation services in respect of any Ordered Products.
- (b) The Customer is solely responsible, at the Customer's cost, for all aspects of installation, set-up and connection of the Ordered Product at the Delivery Location, including:

- (i) ensuring the Delivery Location has stable, level and adequate footings or foundations to support the Ordered Product;
 - (ii) levelling, positioning and securing the Ordered Product at the Delivery Location;
 - (iii) installing windows, flashings, skirting, cornices and any other components reasonably required to complete set-up; and
 - (iv) all utility connections referred to in clause 7.6(c).
- (c) The Customer must engage appropriately licensed tradespersons to perform any work required to:
- (i) connect the Ordered Product to mains electrical power, install or modify any light fittings, power points, switches or other electrical components, and obtain final electrical certification (which must be performed by a licensed electrician);
 - (ii) connect the Ordered Product to water, sewer or grey water systems (which must be performed by a licensed plumber); and
 - (iii) install or connect any gas fittings, appliances or piping (which must be performed by a licensed gas fitter).
- (d) To the maximum extent permitted by law and subject to clause 2, the Supplier disclaims all liability for any Loss or Claim that the Customer suffers or incurs, whether in contract, tort (including negligence) or under statute, that arises out of or in connection with the Customer's breach of this clause 7.6.
- (e) Subject to clause 11.1(c), the Customer indemnifies the Supplier against any Loss or Claim that arises from or is connected with:
- (i) the Customer's failure to comply with this clause 7.6;
 - (ii) any work performed by the Customer or any third party engaged by the Customer in connection with the set-up, installation, modification, transport or use of the Ordered Product after Delivery; or
 - (iii) any defect or damage to the Ordered Product caused by inadequate footings or foundations, improper installation, or unauthorised modifications.
- (f) Any holes, cuts or modifications made to the Ordered Product following Delivery (including for electrical, plumbing, ventilation or any other purpose) are the sole responsibility of the party performing such work. The Supplier is not responsible for, and the warranty does not cover, any damage, leaks, rust, corrosion, structural compromise or other issues arising from such works.

7.7 Customer's Insurance

- (a) The Customer must, from Delivery, take out and maintain comprehensive insurance covering the Ordered Product for its full replacement value against all usual risks, including without limitation accident, fire, theft, storm, flood and burglary (**Insured Events**).
- (b) The Customer must produce evidence of the insurance required under clause 7.7(a) to the Supplier on request.

- (c) This clause 7.7 does not limit the Customer's obligation to pay the Purchase Price in full, regardless of any insurance claim made or pending in respect of the Ordered Product.
- (d) To the extent permissible by law, the Customer must claim against its insurer for all Insured Events, before contacting the Supplier for a warranty claim or other remedy concerning any Insured Event.

8. INVOICE & GST

8.1 Invoice

The Supplier agrees to provide the Customer with a tax invoice for the Ordered Product(s) in accordance with the Purchase Order within a reasonable time.

8.2 GST

- (a) The parties confirm that any amount due pursuant to these Terms (or Contract) is GST exclusive unless specifically stated.
- (b) The Supplier is responsible for ensuring that it is registered for GST (if applicable).
- (c) For the purposes of the GST Act and despite any other term of a Contract, any goods or services supplied by a party to the other are to be deemed and treated as Taxable Supplies for GST purposes.
- (d) Unless otherwise set out in the Contract or the parties otherwise agree, any fee is exclusive of GST even if the sum shown in any invoice may, or will where required by the GST Act, represent the total of the fee and the related GST.
- (e) Each party will do everything reasonably necessary to assist the other to claim a GST input tax credit.
- (f) If a party wishes to make a claim on the other party for GST which was not charged at the time of rendering the invoice for any reason, that claim must be made within 6 months of the date of the tax invoice.

9. CONFIDENTIALITY & INTELLECTUAL PROPERTY

9.1 Confidentiality

- (a) Each party (**Receiving Party**) must keep confidential all information disclosed to it by the other party (**Disclosing Party**) that is designated as confidential or that the Receiving Party ought reasonably to know is Confidential Information.
- (b) The Receiving Party must not disclose the Confidential Information to any third parties;
 - (i) unless compelled by law;
 - (ii) unless the information is already publicly available or it is independently created other than through breach of these Terms;
 - (iii) without the written consent of the Disclosing Party, other than to its employees or professional advisors who are subject to a duty of confidentiality, no less stringent than under these Terms and who have a need to know.
- (c) The Receiving Party must not misuse any Confidential Information to gain any type of benefit nor to the detriment of the Disclosing Party.

9.2 Intellectual Property Rights

- (a) The Supplier warrants that it has all necessary Intellectual Property Rights in the Ordered Products necessary for the Supplier to perform its obligations under the Contract, including to sell the Ordered Product(s) to the Customer.
- (b) The Supplier warrants that the Ordered Products do not infringe on the Intellectual Property Rights of any third parties.

9.3 Public Statements and Reviews

- (a) The Customer must not make any public statement (including on any social media, review or other online locations), about the Supplier, its personnel or the Ordered Product, that the Customer knows or ought reasonably to know is false or misleading (**Adverse Statement**).
- (b) Before making any Adverse Statements, the Customer must first attempt to resolve the matter with the Supplier.
- (c) Nothing in this clause prevents the Customer from making honest statements or exercising rights under the ACL.
- (d) If the Customer breaches clause 9.3(a), the Supplier may pursue remedies at law, including for defamation.

10. PRIVACY

- 10.1** The Supplier collects, uses, discloses and stores Personal Information about the Customer (and, where applicable, the Customer's personnel) in the course of supplying the Products and performing the Contract.
- 10.2** The Supplier handles all Personal Information in accordance with the Privacy Act and the Australian Privacy Principles.
- 10.3** The Supplier's Privacy Policy, available at <https://www.cabinsdirect.com.au/privacy> sets out how the Supplier collects, uses, discloses and stores Personal Information, how the Customer can access or correct their Personal Information, and how the Customer can make a privacy complaint.
- 10.4** By entering into the Contract, the Customer consents to the Supplier collecting, using, disclosing and storing the Customer's Personal Information for the purposes of:
 - (a) processing and fulfilling the Order, including arranging Delivery;
 - (b) administering the Contract, including invoicing, payment processing, and warranty servicing;
 - (c) complying with the Supplier's legal and regulatory obligations; and
 - (d) such other purposes as are set out in the Supplier's Privacy Policy.
- 10.5** The Customer warrants that, when providing Personal Information of any third party (including its personnel) to the Supplier, the Customer has obtained that person's consent to the collection, use and disclosure of their Personal Information in accordance with this clause and the Supplier's Privacy Policy.

11. INDEMNITY AND LIMITATION OF LIABILITY

11.1 Indemnities

- (a) Subject to clause 11.1(c), and except to the extent caused or contributed to by the negligent act or omission, wilful misconduct of the Supplier, the Customer indemnifies and will continue to indemnify the Supplier and its directors, officers and employees in respect of any Loss or Claim the Supplier suffers or incurs in connection with the Customer's breach of clause 6, 8 and 9.1.
- (b) Subject to clause 11.1(c), and except to the extent caused or contributed to by the negligent act or omission, wilful misconduct of the Customer, the Supplier indemnifies and will continue to indemnify the Customer and its directors, officers and employees in respect of any Loss or Claim the Customer suffers or incurs, in connection with the Supplier's breach of clause 9.1 and 9.2.
- (c) If a Claim under clause 11.1(a) or 11.1(b) is that of a third party, the indemnified party will: (a) give the indemnifying party notice of the claim, action or proceeding as soon as practicable; (b) give the indemnifying party sole control of the defence and settlement of the Claim; (c) not make any admission of liability without the consent of the indemnifying party; and (d) provide the indemnifying party all reasonable assistance at the indemnifying party's expense.

11.2 No Consequential Loss

Neither party, including its directors, officers, or employees will have any liability: (i) under or in connection with the Contract (whether in contract, tort (including negligence) or otherwise) for any loss of profits, revenue, anticipated savings, or goodwill; or (ii) any indirect, consequential, exemplary or punitive loss or damages.

11.3 Limitation of Liability

To the maximum extent permitted by law, including the ACL and subject to clause 11.4, the total aggregate liability of a party and, where relevant its directors, officers, employees and contractors that arises out of or in connection with the Contract will not exceed an amount equal to the Purchase Price of the Order out of which the liability arose.

11.4 Exclusions

The limitation of liability under clause 11.3 does not limit a party's liability for fraud, personal injury or death, breach of the ACL or the Customer's breach of clause 7.6 or liability that arises under an indemnity under clause 11.

12. FORCE MAJEURE

12.1 Affected Party's Obligations

If a party (**Affected Party**) is prevented, hindered, or delayed in performing any of its obligations under a Contract by a Force Majeure Event:

- (a) the Affected Party's obligations (other than an obligation to pay money) will be suspended while the Force Majeure Event continues to the extent that it prevents, hinders, or delays the Affected Party from performing those obligations;
- (b) the Affected Party must, as soon as reasonably practicable, give the other party written notice of the Force Majeure Event, the date it started, its likely duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations;
- (c) the Affected Party must use its reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations; and
- (d) if the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than 60 days, either

party may terminate the Contract immediately by giving written notice to the other party.

12.2 Specific Events

For the purposes of this clause 12, a '**Force Majeure Event**' includes:

- (a) any natural disaster, fire, flood, storm, or act of God;
- (b) any health pandemic, epidemic, or government-mandated lockdown or restriction;
- (c) the unavailability of raw materials, components, or specialised shipping containers required for the Ordered Product;
- (d) transport or shipping difficulties, port congestion, or fuel shortages; and
- (e) illness or injury to the Supplier's key manufacturing personnel.

13. CANCELLATION, TERMINATION & SURVIVAL

13.1 Cancellation

Either party may cancel an Order at any time before payment of an Initial Deposit by giving written notice to the other party. No party will have any liability to the other arising from cancellation under this clause.

13.2 Termination

- (a) Either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
 - (i) commits a material breach of the Contract that cannot be remedied;
 - (ii) commits a material breach of the Contract that is capable of being remedied and is not remedied within 30 days after being notified to do so; or
 - (iii) is subject to an Insolvency Event.
- (b) Termination under this clause 13.2 will also immediately terminate all other documents that the Contract consists of.

13.3 Effects of Termination

Termination or expiry of the Contract will not affect any rights, remedies, obligations or liabilities of the parties under or in connection with a Contract, which have accrued up to the date of termination or expiry.

13.4 Survival

The following terms and conditions of these Terms will survive the termination or expiry of the Contract: clause 2 (**Australian Consumer Law**), clause 6 (**Payment and Deposit**), clause 9 (**Confidentiality & Intellectual Property**), clause 11 (**Indemnity & Limitation of Liability**), clause 13.4 (**Survival**), clause 14 (**Dispute Resolution**), clause 16 (**General**), clause 17 (**Definitions & Interpretation**) and other terms contained in any other document that forms the Contract that are reasonably necessary to give effect to the forgoing clauses, will survive.

14. DISPUTE RESOLUTION

- 14.1** Subject to urgent injunctive relief, neither party may commence any form of legal proceeding that arises out of or in connection with the Contract (**Dispute**) until the parties undertake the following Dispute resolution process.
- 14.2** The parties agree to act in good faith to resolve Disputes.
- 14.3** If a Dispute arises, the party raising the dispute (**Disputing Party**) must give written notice to the other party (**Recipient**), specifying the nature of the Dispute and a proposed method to resolve the Dispute and relevant supporting documents (**Dispute Notice**).
- 14.4** No later than 21 days after the Recipient receives a Dispute Notice, the parties must meet (**Dispute Resolution Meeting**) and attempt to resolve the Dispute. Senior representatives who have authority to settle the dispute must be present at the Dispute Resolution Meeting.
- 14.5** If the parties are unable to resolve the Dispute 7 days from the Dispute Resolution Meeting, the parties must engage in mediation. Either party may request mediation from the Queensland Law Society. Both parties must attend the mediation and share equally in the cost of mediation - except for the ancillary costs of mediation, including travel, food and sustenance. The mediation must be set down promptly, with the seat of mediation being Townsville Queensland and if a mediator cannot be agreed within 14 days, the parties agree that the QLS must appoint the mediator.

15. SERVICE OF NOTICES

- 15.1** Any notice, consent, demand or other communication required or permitted to be given under the Contract (Notice) must be in writing and may be given by:
- (a) personal delivery to the recipient;
 - (b) prepaid post to the recipient's address last notified to the sender; or
 - (c) email to the recipient's email address last notified to the sender.
- 15.2** A Notice is deemed to be received:
- (a) if delivered personally, at the time of delivery;
 - (b) if sent by prepaid post within Australia, on the third Business Day after posting;
 - (c) if sent by prepaid post to an address outside Australia, on the seventh Business Day after posting; or
 - (d) if sent by email, at the time the email enters the recipient's information system, provided the sender does not receive a delivery failure notification within 4 hours of sending,
- except that a Notice deemed received outside the recipient's normal business hours (9.00am to 5.00pm on a Business Day in Queensland) is deemed received at 9.00am on the next Business Day.
- 15.3** The parties' Notice details are as set out in the Purchase Order, or as otherwise notified in writing from time to time.

16. GENERAL

16.1 Costs

Each party must pay its own costs of and incidental to the preparation and execution of the Contract.

16.2 Governing Law

The parties agree that the Contract will be governed by the law in force in the State of Queensland and agree to submit to the non-exclusive jurisdiction of the courts of Queensland.

16.3 Amendments in Writing

No amendment to the Contract will have any force or effect unless it is in writing and signed by all parties to the Contract.

16.4 Entire Agreement

The Contract represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties in relation to the subject matter of the Contract. No oral or written representation, statement, warranty or undertaking made by any employee, agent or representative of the Supplier binds the Supplier unless it is expressly recorded in the Purchase Order or otherwise confirmed in a separate written document signed by an authorised officer of the Supplier. The Customer acknowledges that they have not relied on any representation, warranty or statement not expressly recorded in the Contract documents.

16.5 Severability

If any term (or part of a term) of the Contract is invalid or unenforceable then that term (or part of the term) will be deemed deleted and the remainder of the Contract will remain in full force and effect.

16.6 Parties Intention

It is the intention of the parties that if any term of this Contract is capable of two constructions one of which would render the term void and the other which would render the term valid, then the term will have the meaning which renders it valid.

16.7 Waiver

No delay or omission to exercise any right, power or remedy accruing to a party under this Contract will impair any right, power or remedy of that party nor will it be construed to be a waiver of the right of the party at a later time to enforce the right, power or remedy.

16.8 No Merger

The rights and obligations of the parties contained in the Contract will not be extinguished by or upon completion of any transactions contemplated by the Contract.

16.9 Further Assurances

Each party must sign all documents and do all things necessary to give full effect to the Contract and the transactions contemplated by it.

16.10 Counterparts

This Contract is made up of the documents set out in clause 1.3 and any of those documents may be signed in counterparts to form the Contract and those documents may also be signed and/or exchanged electronically, and if so, those counterparts taken together constitute one and the same instrument.

17. DEFINITIONS & INTERPRETATION

17.1 Definitions

Capitalised terms or expressions used in the Contract have the following meanings:

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

Balance Deposit means any additional deposit payment required from the Customer after payment of the Initial Deposit, as specified in the Purchase Order.

Balance Deposit Due Date means the date by which the Customer must pay any Balance Deposit, as specified in the Purchase Order.

Business Day means a day on which banks are open for business in Brisbane, Queensland, other than a Saturday, Sunday or public holiday in that city.

Claim means any claim, demand, remedy, suit, injury, damage, loss, cost action, proceeding, right of action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against a party, arising out of or in connection with the Contract, an Order or an Ordered Product (whether in contract, tort (including misrepresentation or negligence or otherwise)) or under legislation.

Commencement Date means the date the Contract is formed in accordance with the conditions under clause 1.2.

Confidential Information means all information of a party, including:

- (a) Personal Information;
- (b) accounts, financial data, projections and forecasts of a party;
- (c) any trade secrets;
- (d) the existence and details of any dispute under the Contract;
- (e) any information designated as confidential or which a reasonable person would understand to be confidential,

however, Confidential Information does not include information that is or becomes available in the public domain other than through a breach of the Contract or any other wrongful act or omission of a party.

Defects Schedule means the document that the Supplier provides to the Customer for the purposes of identifying and listing any Material Defects in a Product that is signed by the parties at the time of Delivery.

Delivery means, as specified in a Purchase Order or otherwise agreed in writing, the moment when the Customer, its representative, or agent (including delivery personnel arranged by the Supplier on behalf of the Customer) commences loading the Product(s) for transport from the Supplier Premises.

Delivery Date means the date specified for Delivery of an Order in a Purchase Order or otherwise by agreement between the parties.

Delivery Location means the destination site or address nominated by the Customer in the Purchase Order for the placement of the Product(s).

Delivery Notice has the meaning given under clause 7.1(a)(ii).

Deposit means the total amount paid by the Customer to the Supplier as a deposit for the Ordered Product (whether paid as a single payment, or in instalments such as an Initial Deposit and Balance Deposit), as specified in the Purchase Order.

GST means Goods and Services Tax within the meaning of the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth). In this Contract, terms used that are defined in the GST Act have the meaning given in that Act.

Initial Deposit means the first deposit payment required from the Customer, as specified in a Purchase Order.

Insolvency Event means where a party: (i) becomes insolvent or bankrupt or goes into liquidation or has instituted against it any action or proceeding which has an object or may result in bankruptcy or liquidation; (ii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets or becomes subject to any form of external administration; (iii) enters into an arrangement with its creditors or otherwise takes advantage of any laws in force in connection with insolvent debtors; or (iv) is wound up, voluntarily or involuntarily; or (v) is unable to pay its debts when they become due.

Intellectual Property Rights means any intellectual and industrial property and design rights, including trade marks, copyright (including past and future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights and any other intellectual property rights including any application or right to apply for or renew the registration of any such rights.

Loss means any loss, liability, damage, expense or cost of any nature or kind, including in relation to any Claim and includes legal costs on a solicitor and own client basis.

Material Defect means any defect in a Product that materially affects the Product's structural integrity or fitness for its primary purpose but excludes any Minor Defect.

Minor Defect means any aesthetic, cosmetic or minor imperfection including minor paint scuffs, minor water leaks, variations in material texture or dents that do not render the Product unfit for its primary purpose or affect its structural integrity.

Object means to (a) avoid or rescind the Contract; (b) refuse to accept the Product Delivery; (c) delay any payment; (d) seek a price reduction; (e) retain any part of the Purchase Price as a "defect liability" amount; or (f) refuse to accept Defects in a Defects Schedule.

Offer has the meaning given in clause 4.2.

Order means the Customer's signed Offer that the Supplier has accepted, which becomes a Contract upon payment of the Deposit or Purchase Price (whichever occurs first).

Ordered Product means the specific Product(s) that are the subject of an Order.

Personal Information has the meaning given in the Privacy Act.

Privacy Act means the *Privacy Act 1988* (Cth).

Product means the prefabricated portable structure and any accessories specified in an Order. The Customer acknowledges the Product is supplied as a chattel only and is not a Class 1a dwelling.

Purchase Price means the total amount payable by the Customer for an Order, being the sum total of the prices specified in the Purchase Order for the Ordered Products, plus GST, delivery charges and any other amounts specified in the Purchase Order.

Purchase Terms means these Purchase Terms and Conditions, as amended from time to time.

Specifications means the document containing the measurements, dimensions and data related to the Product that the Supplier provides to the Customer when requested by the Customer or on or about the time of Deposit payment or full payment of the Purchase Price.

Supplier Premises means the premises located at 711 Woolcock St, Mount Louisa, QLD, or any other location used by the Supplier for the manufacture, storage, or supply of Products.

Term means the period from the Commencement Date until the expiry of the last Warranty Period or the full payment of the Purchase Price, whichever is later, and subject to any surviving clauses.

Warranty Period means, 12 months from the date of Delivery of an Ordered Product.

17.2 Interpretation

In the Contract, the following rules of interpretation apply, unless the contrary intention appears or the context otherwise requires:

- (a) a reference to the singular includes the plural and vice versa;
- (b) a reference to a "person" includes an individual, corporation or other body corporate, partnership, joint venture, trust, association and any Government agency;
- (c) a reference to a party means a party to the Contract;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a clause, schedule or annexure is a reference to a clause in or schedule or annexure to any of the documents that make up the Contract;
- (f) using 'include', 'includes', 'including', 'for example' or 'such as' or a similar expression must be interpreted to be without limitation, unless it is expressly stated otherwise;
- (g) headings and any table of contents are for convenience only and do not form part of this Contract or affect its interpretation;
- (h) if a party consists of more than one person, the Contract binds them jointly and each of them severally;
- (i) an obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly;
- (j) a party includes the party's executors, administrators, successors and permitted assigns;
- (k) if an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day;
- (l) any reference to legislation includes the legislation as amended, consolidated, replaced or re-enacted, including all amendments to that legislation and replacement legislation and all regulations and other subordinate legislation made under the Act and any substitute legislation;
- (m) no doctrine or rule of construction of documents will apply to the disadvantage of a party, on the basis that the party put forward or prepared the Contract;

- (n) all references to money are to Australian dollars and, unless otherwise stated, are exclusive of GST;
- (o) references to clauses, schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the Schedules, annexures, appendices, attachments and exhibits to, the Contract or any document that the Contract comprises;
- (p) a reference to any agreement or document (including this Contract) includes any amendments, supplements and replacements of that document; and
- (q) a reference to a month is to be interpreted as a calendar month.