



Ibex Australia Pty Ltd
ABN 66 638 796 577
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Epping VIC 3076
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E accounts@ibexaustralia.com.au

Bank Details:
IBEX AUSTRALIA PTY LTD
BSB 302 162 A/C 170 1128

Application For Credit Account

Nature of Organisation:

Proprietary Company Partnership Sole Trader Trust Other

Trade Name: _____

Legal Name: _____

Delivery Address: _____

Postal Address: _____

Telephone: () _____ Fax: () _____ Mobile: () _____

Registered Office: _____ ACN: _____

ABN Number: _____ Paid up Capital: \$ _____

Years Trading: _____ Date Started: _____ Monthly Requirements: \$ _____

Affiliated Companies: _____

Previous Address Details (If less than 2 years): _____

Details of Directors (if Proprietary Company) or Partners (if Partnership) or Trustees (if Trust) or Individual (if Sole Trader or Individual)

Directors, Partners, Trustees, Individuals are guaranteeing the obligations of the Purchaser

1. Full Name: _____ 2. Full Name: _____

D.O.B: _____ D.O.B: _____

Home Address: _____ Home Address: _____

Home Phone: _____ Home Phone: _____

Accounts contact name & email: _____

Name and Branch of Bank: _____ Account Number: _____

Solicitors Name and Address: _____ Ph: _____ Fax: _____

Accountants Name and Address: _____ Ph: _____ Fax: _____

Trade References:

1. _____ Contact: _____ Ph: _____ Fax: _____

2. _____ Contact: _____ Ph: _____ Fax: _____

3. _____ Contact: _____ Ph: _____ Fax: _____

4. _____ Contact: _____ Ph: _____ Fax: _____

I certify that the above information is true and correct and that I am authorised to make this application for credit. In accordance with the Privacy Act (1988) I authorise any person or company to give information as may be required in response to credit inquiries. I have read and understand the GENERAL TERMS AND CONDITIONS OF TRADE of Ibex Australia Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Application and agree to be bound by these conditions.

Signed for Buyer: _____ Date: _____

Full Name: _____ Title: _____

Address: _____ Signature: _____

Signed for Ibex Australia Pty Ltd: _____

1. **Definitions**
- 1.1 "Seller" shall mean Ibx Australia Pty Ltd and its successors and assigns.
- 1.2 "Buyer" shall mean the Buyer or any person acting on behalf of and with the authority of the Buyer.
- 1.3 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Buyer on a principal debtor basis and includes the Directors named in the Application who have signed (or signed on behalf of by Buyer) the Application.
- 1.4 "Goods" shall mean goods supplied by the Seller to the Buyer (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.5 "Services" shall mean all services supplied by the Seller to the Buyer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Buyer subject to clause 4 of this contract.

2. Acceptance

- 2.1 Any instructions received by the Seller from the Buyer for the supply of Goods and/or the Buyer's acceptance of Goods supplied by the Seller shall constitute acceptance by the Buyer of the terms and conditions contained herein.
- 2.2 A contract under these terms and conditions shall only be or be deemed to have been entered into between Buyer and Seller upon acceptance by the Seller of any order from the Buyer for Goods or Services (such acceptance to be in writing or by overt act of acceptance.)
- 2.3 Where more than one Buyer has entered into this agreement, the Buyers shall be jointly and severally liable for all payments of the Price.
- 2.4 Upon acceptance of these terms and conditions by the Buyer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Seller.
- 2.5 None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Seller bound by any such unauthorised statements.
- 2.6 The Buyer undertakes to give the Seller not less than fourteen (14) days prior written notice of any proposed change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice).

3. Goods

- 3.1 The Goods are as described on the invoices, quotation, work authorisation or any other work commencement forms as provided by the Seller to the Buyer.
- 3.2 Quotations do not include building or development applications or fees to Council or relevant approvals for use required by Council or Government Codes. Responsibility is solely on the Buyer for such approvals for the Goods and their installation or use.
- 3.3 Clerical errors in computations, typing or otherwise of catalogue, quotation, acceptance offer, invoice, delivery docket, credit note, specifications of Seller shall be subject to correction.

4. Price And Payment

- 4.1 A minimum order value of \$15.00 may be charged at the Seller's discretion.
- 4.2 At the Seller's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Seller to the Buyer in respect of Goods supplied; or
 - (b) Seller's quoted Price (subject to clause 4.2) which shall be binding upon the Seller provided that the Buyer shall accept in writing the Seller's quotation within thirty (30) days.
- 4.2 Any variation from the plan of scheduled works or specifications will be charged for on the basis of the Seller's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.4 At the Seller's sole discretion, payment for approved Buyer's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Buyer's address or address for notices.
- 4.5 At the Seller's sole discretion, for certain approved Buyers payment will be due seven (7) days or fourteen (14) days following the date of the invoice.
- 4.6 Payment will be made by cash on delivery, or by cheque, or by bank cheque, or by credit card, or by direct credit, or by any other method as agreed to between the Buyer and the Seller.
- 4.7 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in any quotation given by the Seller.

5. Delivery Of Goods / Services

- 5.1 Delivery of the Goods shall be made to the Buyer's address. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery of the Goods shall be made to the Buyer at the Seller's address.
- 5.2 Delivery of the Goods to a carrier, either named by the Buyer or failing such naming to a carrier at the discretion of the Seller for the purpose of transmission to the Buyer, is deemed to be a delivery of the Goods to the Buyer.
- 5.3 The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur, shall be reimbursed by the Buyer (without any set-off or other withholding whatever) and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent. It is the Buyer's responsibility to ensure that insurance is effected.
- 5.4 Where there is no agreement that the Seller shall send the Goods to the Buyer, delivery to a carrier at limited carrier's risk at the expense of the Buyer is deemed to be delivery to the Buyer.
- 5.5 The Seller may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule) and Buyer shall accept each delivery. The requirements of the Buyer shall not be a condition or of essence of the contract.
- 5.6 Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 5.7 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
- 5.8 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

6. Risk

- 6.1 If the Seller retains property in the Goods nonetheless, all risk for the Goods passes to the Buyer on delivery. This shall also apply to any partial delivery of Goods. If the delivery of Goods is delayed due to circumstances beyond the control of Seller the risk passes to Buyer on the day when the Goods are first ready for consignment from the Seller's warehouse and this day is to be regarded as delivery for the purposes of payment in Clause 4.3.
- 6.2 Accordingly the Seller will not in any circumstances accept liability for damage, shortage or loss during transit.
- 6.3 If any of the Goods are damaged or destroyed prior to property in them passing to the Buyer, the Seller is entitled, without prejudice to any of its other

rights or remedies under these Terms and Conditions of Trade (including the right to receive payment of the balance of the Price for the Goods), to receive all insurance proceeds payable for the Goods. This applies whether or not the Price has become payable under the Contract. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

7. Buyer's Disclaimer

- 7.1 The Buyer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to him by any servant or agent of the Seller and the Buyer acknowledges that he buys the Goods relying solely upon his own skill and judgement.
- 7.2 The Buyer acknowledges that excepting as provided by law this agreement does not entitle the Buyer to demand from Seller any site inspection or service of the Goods supplied, delivered and installed if applicable. If the Buyer does require Seller's services in respect of site inspection and service of the Goods, then the Buyer should enter into a separate agreement with Seller in respect of the same. In the event that no separate agreement in relation to installation, site inspection and service is required by the Buyer, then the Buyer acknowledges that in the event of the Goods supplied requiring to be serviced or inspected due to breakdown or otherwise, then the Buyer shall rely solely on any benefit in respect of same provided by the manufacturer of the Goods.

8. Defects / Returns

- 8.1 The Buyer shall inspect the Goods on delivery and shall within seven (7) days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Buyer believes the Goods are defective in any way. If the Buyer shall fail to comply with these provisions, the Goods shall be conclusively presumed to be in accordance with the terms and conditions and free from any defect or damage.
- 8.2 For defective Goods, which the Seller has agreed in writing that the Buyer is entitled to reject, the Seller's liability is limited to (at the Seller's discretion) replacing the Goods, repairing the Goods or the seller at their discretion may issue credit to the maximum amount of invoiced value in lieu of replacement or repair; provided that:
 - (a) the Buyer has complied with the provisions of clause 8.1;
 - (b) the Goods are returned at the Buyer's cost within fourteen (14) days of the delivery date;
 - (c) the Seller will not be liable for Goods which have not been stored or used in a proper manner;
 - (d) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 8.3 Orders accepted by the Seller cannot be countermanded or delivery deferred or goods returned except with written consent of the Seller and upon terms that reimburse and indemnify the Seller against all loss including cartage, bank charges and other incidental expenses of any part of the order that is cancelled.
- 8.4 The Seller may (in its discretion) accept the Goods for credit but this may incur a handling fee of 25% of the value of the returned Goods plus any freight.
- 8.5 Goods made to special order, Buyer specification or non-catalogue items are under no circumstances acceptable for credit or return.

9. Warranty

For Goods not manufactured by the Seller, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Seller shall not be bound by nor responsible for any term, condition, representation or warranty given by the manufacturer of the Goods.
The Seller shall not be liable for any direct, indirect or consequential loss, costs or damage howsoever arising or occurring, whether founded in tort, contract, statute or otherwise.

10. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974 or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

11. Intellectual Property

- 11.1 Where the Seller has designed or drawn Goods for the Buyer, then the copyright in those designs and drawings shall remain vested in the Seller, and shall only be used by the Buyer at the Seller's discretion.
- 11.2 The Buyer warrants that all designs or instructions to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order.

12. Default & Consequences Of Default

- 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% compounding per calendar month and shall accrue at such a rate after as well as before any judgement.
- 12.2 If the Buyer defaults in payment of any invoice when due, the Buyer shall indemnify the Seller from and against all the Seller's costs and disbursements including on a solicitor and own client basis and in addition all of the Seller's nominees costs of collection.
- 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Buyer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller exercised its rights under this clause.
- 12.4 If any account remains unpaid at the end of the second month after supply of the Goods or Services an immediate amount of the greater of \$20.00 or 10.00% of the amount overdue shall be levied for administration fees which sum shall become immediately due and payable.
- 12.5 In the event that:
 - (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - (b) the Buyer 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer, then without prejudice to the Seller's other remedies at law:
 - (i) the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unperformed in addition to and without prejudice to any other remedies; and
 - (ii) all amounts owing to the Seller shall, whether or not due for payment, immediately become payable in addition to the interest payable under clause 12.1 hereof.

- (iii) The directors (if the Buyer is a company), partners (if Buyer is a partnership) or proprietors of the Buyer shall be held personally responsible for any payment not received.

13. Title

- 13.1 It is the intention of the seller and agreed by the Buyer that property in the Goods shall not pass until:
- The Buyer has paid all amounts owing for the particular Goods, and
 - The Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer, and that where practicable the Goods shall be kept separate until the Seller shall have received payment and all other obligations of the Buyer are met.
- 13.2 Receipt by the Seller 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 and until then the Seller's ownership of rights in respect of the Goods shall continue.
- 13.3 It is further agreed that:
- Until such time as ownership of the Goods shall pass from the Seller to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller. Upon such notice the rights of the Buyer to obtain ownership or any other interest in the Goods shall cease.
 - The Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - If the Buyer fails to return the Goods to the Seller then the Seller or the Seller's agent may enter upon and into land and premises owned, occupied or used by the Buyer, or any premises as the invitee of the Buyer, where the Goods are situated and take possession of the Goods.
 - The Buyer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Buyer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller.
 - The Buyer shall not deal with the money of the Seller in any way which may be adverse to the Seller.
 - The Buyer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller.
 - The Seller may require payment of the Price or the balance of the Price due together with any other amounts due from the Buyer to the Seller arising out of these terms and conditions, and the Seller may take any lawful steps to require payment of the amounts due and the Price.
 - The Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Buyer.
 - Until such time that ownership in the Goods passes to the Buyer, if the Goods are so converted, the parties agree that the Seller will be the owner of the end products.
- 13.4 Any Goods delivered to the Buyer on consignment shall remain the property of the Seller until paid for in full and will be at the risk of the Buyer from delivery. The Buyer shall be responsible for the maintenance and repair of any Goods on consignment. The Buyer will forthwith return any Goods on consignment to the Seller on written demand.

14. Security Interest Under The PPSA

- 14.1 The Buyer agrees that:
- Each order accepted by the Seller, being an order accepted under these Terms & Conditions of Sale, creates a registrable security interest under the PPSA in any Goods supplied under it, including Goods on consignment.
 - The Buyer acknowledges the right of the Seller to register a financing statement under PPSA with respect to the security interest created by these Terms & Conditions of Sale;
 - if the Seller registers a security interest under the PPSA, the Seller may exercise any or all remedies afforded to the Seller as a secured party under it without prejudice to any other rights or remedies arising out of a breach by the Buyer of any agreement with the Seller; and
 - The Goods, including Goods on consignment, are collateral for the purposes of the PPSA.
- 14.2 The Buyer waives any right the Buyer has under the PPSA to receive notice in relation to registration events.
- 14.3 The Buyer and Seller agree that neither will disclose information of the kind specified in Section 275(1) of the PPSA.
- 14.4 At the election of the Seller to be exercised at any time in its absolute discretion, any section of the PPSA specified in Section 115 will not apply to the extent permitted by Section 115.

15. Security And Charge

- 15.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
- Where the Buyer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Buyer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Buyer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - Should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer and/or Guarantor shall indemnify the seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - To give effect to the provisions of clause [14.1 (a) and (b)] inclusive hereof the Buyer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registrable or not) including such other terms and conditions as the Seller and/or the Seller's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Buyer and/or the Guarantor in any land, realty or asset in favour of the Seller and in the Buyer's and/or Guarantor's name as may be necessary to secure the said Buyer's and/or Guarantor's obligations and indebtedness to the Seller and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Seller's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

16. Cancellation

The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

17. Privacy Act 1988

- 17.1 The Buyer and/or the Guarantor/s agree for the Seller to obtain from a credit-reporting agency a credit report containing personal credit information about the Buyer and Guarantor/s in relation to credit provided by the Seller.

- 17.2 The Buyer and/or the Guarantor/s agree that the Seller may exchange information about Buyer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:
- To assess an application by Buyer;
 - To notify other credit providers of a default by the Buyer;
 - To exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and
 - To assess the credit worthiness of Buyer and/or Guarantor/s.
- 17.3 The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Buyer agrees that Personal Data provided may be used and retained by the Seller for the following purposes and for other purposes as shall be agreed between the Buyer and Seller or required by law from time to time:
- provision of Services & Goods;
 - marketing of Services and/or Goods by the Seller, its agents or distributors in relation to the Services and Goods;
 - analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to provision of Services/Goods;
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by Buyer; and
 - enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Services and Goods.
- 17.5 The Seller may give, information about the Buyer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Buyer; and/or
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.

18. Unpaid Seller's Rights To Dispose Of Goods

- 18.1 In the event that:
- the Seller retains or regains possession or control of the Goods; and
 - payment of the Price is due to the Seller; and
 - the Seller has made demand in writing of the Buyer for payment of the Price in terms of this contract; and
 - the Seller has not received the Price of the Goods,
- then, whether the property in the Goods has passed to the Buyer or has remained with the Seller, the Seller may dispose of the Goods and may claim from the Buyer the loss to the Seller on such disposal.

19. No Third Parties

- 19.1 The contract is between Buyer and Seller only. No interference to the performance of this contract by a third party, eg. union, will be tolerated by either party. Where on-site work is included in this contract, the Seller shall be solely responsible to the Buyer and/or his agent for directions, orders, measurements, set-outs, liaison with other trades and delivery times. Such directions shall not be interfered with by any other parties such as union officials and their agents, other trades, property owners or tenants, and the Buyer agrees that the Seller shall not be held responsible for any decision or disruption caused by such parties. Unrestricted access to site during normal business hours for deliveries and/or site works is to be assured. Materials and equipment used by Seller, contractor or its agents may be left on site. The Seller, contractor or its agent shall not be liable for, and accept no responsibility for any personal or property injury, loss or damage as a result of the use or interference with such materials or equipment whether such injury, loss or damage is caused by negligence or otherwise.

20. Agreed Use

The Buyer acknowledges that the matters set out in the schedule hereto are a true description of the purposes for which the Goods purchased hereby are to be applied in respect of work required to be performed by such Goods and that the Buyer may forfeit any rights, if any, he may have against the Seller for the supply of the subject Goods if they are applied to any other use. The Buyer further acknowledges sole responsibility for any damage or injury to property or persons caused by using the sold Goods.

21. Description and Specifications

- 21.1 Whilst the Seller endeavours to ensure their accuracy, the descriptions, illustrations and material contained in any catalogue, price list, brochures, leaflets, or other descriptive matter provided by or on behalf of the Seller represent the general nature only of the items described therein and, save where the Seller has accepted an order for Goods specified as so described or illustrated, shall not form any part of any order or agreement or amount to any representation or warranty and, save as aforesaid, the use of such description or illustration shall not constitute a contract of sale by description. The Seller reserves the right to modify the design of the Goods without notice. Pipe/Tube 6 metre length tolerance +/- 2%. Unless otherwise agreed the Seller may make any alteration or departure from any specification or design subject to no substantial deviation from the specified performance being caused thereby, and without incurring any obligation to make equivalent changes to any product previously supplied.

22. General

- 22.1 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.
- 22.2 All Goods supplied by the Seller are subject to the laws of Victoria and the Seller takes no responsibility for changes in the law which affect the Goods supplied.
- 22.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions.
- 22.4 In the event of any breach of this contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller2
- 22.5 The Buyer shall not set off against the Price amounts due from the Seller.
- 22.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.
- 22.7 The Seller reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the seller notifies the Buyer of such change.
- 22.8 Neither party shall be liable for any default due to any act of government, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.