

## **Bowens Timber & Hardware**

(A Division of Bowen & Pomeroy Pty Ltd) ACN 004 174 887 (Bowens)

# **CONDITIONS OF TRADE**

### **1. PURPOSE & APPLICATION**

- 1.1. All Orders will be supplied, and all Quotations and tenders submitted by Bowens, will be subject to the terms of these Conditions of Trade (Conditions) and accordingly these Conditions apply to all current and future Orders. The Order and/or Quotation, together with these Conditions, comprise the agreement between them (Agreement).
- 1.2. If more than one person is the Customer those persons contract jointly and severally for themselves and each other.
- 1.3. Where the Customer as trustee of a trust incurs a liability for the Goods to Bowens the Customer will incur that liability personally as well as in its capacity as trustee.

### **2. GOVERNING LAW & AUSTRALIAN CONSUMER LAW**

- 2.1. These Conditions are governed by and construed in accordance with the laws of Victoria, Australia.
- 2.2. Nothing in these Conditions is intended to exclude, restrict or modify rights which the Customer may have under the ACL or any other Law.
- 2.3. If any provision of these Conditions is invalid under the ACL or any other Law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Conditions and the remainder of these Conditions will continue to have full force and effect.

### **3. SUPPLY OF GOODS**

- 3.1. Bowens and the Customer agree that Bowens will supply Goods to the Customer on an ongoing basis pursuant to these Conditions and any applicable Sales Order and successful Credit Application.
- 3.2. For the avoidance of doubt and in addition to any other rights of Bowens pursuant to these Conditions, Bowens may at its absolute discretion determine not to accept an Order.
- 3.3. The Customer is responsible for ensuring the accuracy of all specifications, details, sizes and quantities which form the basis of a Quotation or Order and Bowens does not accept any responsibility for any errors in such specifications, details, sizes and quantities. Bowens shall carry out the Order in conformity with the information supplied by the Customer. Subject to clauses 20 and 21, the Customer acknowledges that Bowens has no responsibility for the Goods ordered by the Customer being unfit for the purpose for which the Customer intends to use the Goods.

### **4. PROVISION OF INSTALLATION SERVICES**

- 4.1. If the Quotation and Order includes the provision of Installation Services by Bowens, Bowens and the Customer agree that Bowens will provide the Installation Services in accordance with these Conditions.
- 4.2. Unless the Quotation and Order provides that Bowens will attend the location at which Installation Services are to be provided for the purposes of conducting an inspection, the Customer is responsible for providing all plans, designs and measurements to Bowens in relation to the Installation Services (Customer Specifications) and ensuring the accuracy of same. Bowens shall carry out the Order in conformity with the Customer Specifications. The Customer acknowledges that Bowens has no responsibility for the Customer Specifications being incorrect.

4.3. The Customer Specifications can only be changed with the prior written consent of Bowens and may result in a new Quotation being issued by Bowens.

4.4. If there are any errors in the Customer Specifications:

- 4.4.1. that can in the opinion of Bowens be addressed, Bowens will provide a new Quotation in relation to the Goods required and/or Installation Services;
- 4.4.2. the Customer will be responsible for all costs to Bowens arising from the incorrect Customer Specifications; and
- 4.4.3. for the avoidance of doubt, in no circumstances will Bowens be liable for the errors or incorrect Customer Specifications.

4.5. The Customer is responsible for ensuring clear access in order for the Installation Services to be completed. Should the Customer fail to provide clear access the Customer shall be liable for any extra expenses incurred by Bowens by reason of their failure to provide clear access.

4.6. If during the provision of the Installation Services an issue is identified that prevents the Installation Services proceeding or being completed, Bowens will notify the Customer and:

4.6.1. If Bowens is able to undertake the additional work required to allow the Installation Services to proceed or be completed, Bowens will provide a Quotation to the Customer in respect of the additional works required;

4.6.2. If Bowens is unable to undertake the additional work required to allow the Installation Services to proceed or be completed, the Customer will be responsible for making arrangements to have such works undertaken by a third party;

4.6.3. The Customer will be responsible to pay for the Installation Services completed prior to the identification of the issue and in no circumstances is Bowens responsible for, or liable for, any costs or delays arising from the issue identified.

4.7. The Customer acknowledges and agrees that Bowens has no responsibility for or otherwise liability in respect of, and the Customer waives any and all rights they may have in relation to, damage caused to any property of the Customer as a result of the Installation Services irrespective of whether such damage is caused at the time of provision of the Installation Services or after.

4.8. The Customer acknowledges that any completion date provided by Bowens in respect of the Installation Services (Installation Delivery Date) is indicative only and is not guaranteed.

### **5. PRICES**

5.1. A Quotation will be valid for the period as stated in the Quotation, or where no such period is stated, the Quotation will be valid for 30 days only from the date of issue.

5.2. Quotations and Prices are exclusive of delivery costs, GST and all other taxes, duties or government charges levied in respect of the Goods except to the extent that they are expressly included in the Price or Quotation.

5.3. Quotations and Prices are based on the specifications, details, sizes and quantities provided by the Customer. If there is any variation in the Goods required or Installation Services (if applicable) due to a change or error in the specifications, details, sizes and quantities provided by the Customer, Bowens reserves the right to vary the Quotation or the Price.

5.4. Where Bowens has agreed to the supply of Goods to a Customer over a set period of time, the Customer acknowledges that Bowens has the right to increase the price for the Goods supplied during this period to pass on to the Customer any increase in the cost price of the Goods (or part of the Goods) to Bowens. If this clause 5.4 applies, Bowens will provide written notice to the Customer of the increase in the cost of the Goods that will be passed on to the Customer.

5.5. There is no right of set-off in respect of any claims against Bowens.

## 6. PAYMENT

6.1. Customers who are not Credit Account Customers must:

- 6.1.1. Make payment of 50% of the Price upon the placement of the Order; the remaining balance of the Price is due five (5) Business Days prior to the Delivery Date (or Installation Delivery Date) set out in the Quotation or the Order.
- 6.1.2. Failure to pay the balance in accordance with clause 6.1.1 will result in the delivery being delayed by one Business Day for every day the full payment is late.
- 6.1.3. The delivery of the Goods or provision of the Installation Services (if applicable) will not be made until the Price is paid in full. Bowens is not responsible for any loss incurred as a result in delays caused by the Customer not paying the Price.

6.2. Credit Account Customers must pay the Price in accordance with the terms of their approved Credit Application or where no such terms are stated in the approved Credit Application:

- 6.2.1. subject to any credit limit set out in the Credit Application, the Price will be payable by the Customer by no later than 30 days from the end of the month in which delivery of the Goods took place;
- 6.2.2. if an Order will result in the credit limit set in the Credit Application being breached, subject to the written approval of the Credit Application continuing to apply to the Order regardless of the breach of the credit limit by an authorised representative of Bowens, clause 6.1 will apply to the payment of the Price for such Order.

6.3. The Customer agrees to provide a retainer as requested by Bowens for expenses incurred by Bowens in the supply of an Order.

## 7. CUSTOMER REFUNDS/CLAIMS FOR CREDIT

7.1. Unless otherwise stated within these Terms & Conditions, Bowens will accept the return of regular stock lines for a refund or credit under the following conditions:

- 7.1.1. Some products including custom made products, products cut to size, tinted paints and clearance items are exceptions and refunds/credits will not be given.
- 7.1.2. Proof of purchase must be supplied. - 2 -
- 7.1.3. Cash sale refunds will be given in same tender type as the original purchase.
- 7.1.4. Goods are returned in their original condition within 30 days from the date of purchase, delivery or pick-up.
- 7.1.5. Original condition is defined as the condition in which the goods were sold. Where applicable, any packaging must be clean, undamaged, unopened and in a saleable condition.
- 7.1.6. A restocking fee will be deducted from all refunds/credits for returned goods.
- 7.1.7. Where pick up from site is required, a pick-up fee will also be deducted from the refund/credit.
- 7.1.8. Any goods determined to be faulty may be replaced, repaired or refunded provided they fall within the individual manufacturer's warranty guidelines.
- 7.1.9. Claims for overcharges must be lodged within 60 days from the month of invoice.
- 7.1.10. SBI's (special buy-in) goods will not be refunded/credited unless a supplier credit can be obtained.

7.1.1. All credits for SBI's will be subject to a re-stocking fee and if applicable, a pick-up fee.

## 8. CUSTOM MADE AND SPECIALITY GOODS

8.1. The Customer acknowledges that all Custom Made and Speciality Goods are supplied in accordance with the Customer's drawings, designs and specifications, a copy of which will be annexed to the Acceptance Form and initialised by the Customer. The specifications can only be changed with the written consent of Bowens.

8.2. The Customer acknowledges that all modifications made to the Custom Made and Speciality Goods by Bowens are done so at the instruction of the Customer.

8.3. In no circumstances will Bowens be liable for Custom Made and Speciality Goods being unfit for the purpose for which the Customer intends to use the Goods due to incorrect or altered Customer drawings, designs, plans or specifications.

8.4. For Custom Made and Speciality Goods the Customer must place an Order for the Goods at a minimum of twelve (12) weeks prior to the desired Delivery Date, unless otherwise agreed in writing by Bowens.

8.5. The Customer acknowledges that any reference by Bowens to projected Delivery Dates with respect to Custom Made and Speciality Goods are indicative only and cannot be guaranteed.

8.6. The Customer acknowledges and agrees that Custom Made & Speciality Goods are tailored to the Customer's specifications and accordingly the Price for Custom Made and Speciality Goods is non-refundable and cannot be returned.

## 9. INSTALLATION OF GOODS

Unless Installation Services are to be provided in accordance with clause 4, Bowens does not install any Goods. Where Bowens has agreed at the request of the Customer to provide a list of potential third party service providers in respect of the installation of Goods supplied to the Customer, the Customer must contract separately with the installer. Bowens will not be responsible for any installation of the Goods by a third party. Bowens is not responsible for any damage caused to the Goods during or by the installation. Bowens is not responsible for the Goods failing to work due to installation.

## 10. DEFAULT IN PAYMENT

10.1. Time is of the essence in this Agreement.

10.2. In the event of default in payment:

- 10.2.1. Bowens may charge interest on overdue amounts at the rate of 18% compounded daily from the date of due payment until the date of payment in full of the overdue amount, plus interest.
- 10.2.2. Bowens may charge an account keeping fee in the amount of \$5.00 per month until the Price is paid in full.
- 10.2.3. The Customer will pay to Bowens upon demand all costs and expenses incurred by Bowens as a result of the delay in payment.

## 11. TERMINATION

11.1. If the Customer commits an Act of Default which is not remedied within 7 days of Bowens giving written notice of the Act of Default, Bowens may terminate this Agreement or place the Customer on stop supply until the Customer has remedied the Act of Default.

11.2. If Bowens terminates this Agreement pursuant to clause 11.1:

- 11.2.1. all amounts payable by the Customer to Bowens will immediately become due and payable notwithstanding that the due date has not arisen;
- 11.2.2. Bowens may immediately reclaim any advertising or point of sale material incorporating Bowens' Intellectual Property and the Customer grants Bowens an irrevocable licence to enter upon the Customer's Premises to reclaim such material without incurring liability to the Customer or any other person; and

11.3. If Bowens commits an Act of Default which is not remedied within 7 days of the Customer giving written notice of the Act of Default, the Customer may terminate this Agreement and obtain a refund of any amount of the Price already paid for Goods not supplied, less any other amounts due and payable to Bowens under this Agreement.

## 12. CANCELLATION

### 12.1. Custom Made and Specialty Goods

Irrespective of any other provisions of this Agreement, if the Customer cancels an Order that relates to Custom Made and Specialty Goods, this Agreement is terminated and the Order of Custom Made and Specialty Goods will be cancelled. The Customer will remain liable for payment of the full Price of any Custom Made and Specialty Goods the subject of the Order that has been cancelled.

### 12.2. Goods other than Custom Made and Specialty Goods

12.2.1. If the Customer cancels an Order the Customer will be liable for any expenses incurred or work performed by Bowens in relation to the Order unless the Customer receives the prior written consent to the cancellation of the Order from Bowens.

12.2.2. If the Customer cancels an Order, Bowens will refund any deposit paid but may, before doing so, deduct any monies due under clause 12.2.1 or clause 12.2.4 from the deposit.

12.2.3. If Goods are returned by the Customer or an Order is cancelled and Bowens are required to collect the Goods, it is the Customer's responsibility to ensure that the Goods are fit for trade.

12.2.4. If the Goods are not fit for trade, Bowens reserves the right to retain the value of the Goods from any refund of deposit to be made in accordance with clause 12.2.2;

12.2.5. In the event of cancellation and the return of Goods, the Customer will be charged a handling fee equivalent to a minimum of 15% of the Price.

### 12.3. Installation Services

12.3.1. If the Customer cancels an Order relating to Installation Services the Customer will be liable for any expenses incurred or work performed by Bowens in relation to the Order unless the Customer receives the prior written consent to the cancellation of the Order from Bowens.

12.3.2. If the Customer cancels an Order, Bowens will refund any deposit paid but may, before doing so, deduct any monies due under clause 12.3.1 from the deposit.

12.4. If Bowens has reason to believe that it will be unable to supply an Order to the Customer within a reasonable time or at all due to circumstances beyond its reasonable control, Bowens may, without penalty, cancel the Order, in which case, Bowens will refund the Customer any amount of the Price already paid in respect of that Order.

## 13. RISK

Risk of loss and damage to the Goods passes to the Customer upon the Goods leaving Bowens Premises whether or not Bowens arranges delivery.

## 14. TITLE TO THE GOODS

14.1. Ownership of and title to the Goods remains with Bowens until the Customer has paid Bowens in full the Price and any other money that the Customer may owe to Bowens at any time on any account.

14.2. Until ownership of and title of the Goods passes to the Customer:

14.2.1. the Customer will not, without Bowens' consent:

14.2.1.1. make any alterations to the Goods or do or allow anything to happen to the Goods that might contribute to the deterioration in their value or otherwise adversely affect the interests of Bowens;

14.2.1.2. purport or attempt to sell or dispose of the Goods except in the ordinary course of its business; or

14.2.1.3. charge, encumber or create a Security Interest in the Goods.

14.2.2. the Customer will keep proper stock records and records of account with respect to the purchase, receipt, sale of, and other dealings with the Goods.

14.2.3. Bowens may give notice in writing to the Customer to return the Goods or any of them to Bowens and, upon such notice, the Customer's right to obtain ownership or any other interest in the Goods will cease.

14.3. If the Customer supplies the Goods to any person before ownership of and title to the Goods passes to it, whether or not with Bowens' consent, the Customer holds the proceeds of the resupply of the Goods on trust for Bowens and will pay the proceeds of sale to Bowens upon receipt.

14.4. If the Customer breaches clauses 14.2.1 or 14.3, Bowens may enter upon the Customer's Premises, or any other site, to repossess the Goods without incurring liability to the Customer or any other person, and the Customer grants Bowens an irrevocable licence to do so.

## 15. PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

15.1. The Customer acknowledges and agrees that:

15.1.1. these Conditions constitute a Security Agreement for the purposes of the PPSA which creates a Security Interest in favour of Bowens in the Goods and in all present and after acquired property supplied by Bowens to the Customer (or for the Customer's account) until the Price has been paid for in full;

15.1.2. Bowens may, without notice to the Customer, register its Security Interest in the Goods, in all present and after acquired property and in their proceeds as a Purchase Money Security Interest on the Register; and

15.1.3. the Customer will do all things necessary to facilitate Registration of Bowens' Security Interest.

15.1.4. the Security Interest is not discharged nor the Customer's obligations affected by the administration of the Customer.

15.2. Where the PPSA applies to action taken by Bowens in relation to the Goods, the Customer waives its right to receive any notices required under sections 95, 118, 121, 130, 132 or 135 of the PPSA.

15.3. The Customer waives its rights under section 157 of the PPSA to receive a verification statement.

15.4. The Customer waives its rights under sections 96, 125, 142 and 143 of the PPSA.

## 16. DELIVERY

16.1. The Customer will elect to request delivery of the Goods in accordance with clause 18 or the Customer is to collect the Goods in accordance with clause 17.

16.2. The costs of delivery of the Goods to the Customer are for the Customer's account whether or not Bowens arranges delivery.

16.3. The Customer shall accept delivery or collect the Goods on the delivery date set out in the Quotation or Order or other such date as advised by Bowens (Delivery Date). The Customer acknowledges that any Delivery Date is indicative only and is not guaranteed. The Customer shall be liable for any expenses incurred by Bowens by the Customer's non-acceptance of the Goods on the Delivery Date. Bowens is not responsible for any costs incurred by the Customer as a result of the Customer not accepting delivery of the Goods.

16.4. In relation to delivery of the Goods in accordance with clause 18, the Customer acknowledges that any time of day estimated for delivery or collection is an estimate only. Bowens cannot guarantee that Goods will be delivered at any particular hour of the day.

## 17. DELIVERY BY COLLECTION

- 17.1. In the event the Customer elects to collect the Goods from Bowens Premises, the Customer must collect the Goods on the date set out in the Order or, within two (2) days of the Customer receiving notice from Bowens that the Goods are ready for collection (Notice of Collection). If the Goods are not collected in accordance with this clause 17.1:
- 17.1.1. Bowens will charge the Customer a handling fee of 15% of the total value of the Order; and
  - 17.1.2. If the Goods are not collected within 10 Business Days of the Customer receiving the Notice of Collection, Bowens will accept the non-collection of the Goods as notification of a cancelled order and the Goods will be returned to stock.
- 17.2. If the Customer elects to collect the Goods from Bowens Premises. It is the Customer's responsibility to ensure the Goods are secured safely and in accordance with the applicable laws governing the transfer of Goods. Bowens accepts no responsibility for damage or loss incurred as a result of the Customer transporting the Goods.

## 18. DELIVERY TO SITE

- 18.1. It is the responsibility of the Customer to ensure clear access is provided to the Site, and should the Customer fail to provide clear access to the Site delivery shall be made as close to the Site as possible. Clear access areas are to comply with Work Safe Guidelines. Should delivery be deemed to be impossible or not compliant with Work Safe guidelines by the truck driver the Goods shall be returned to Bowens and re-delivery shall be scheduled by agreement between the Customer and Bowens. The Customer shall be liable for the additional delivery charges and extra expenses incurred by reason of their failure to provide clear access to the Site to facilitate delivery.
- 18.2. The Customer must inform Bowens of any Site that has overhead powerlines that lie within a 6.4 metre circumference of the Site. Any Site that has overhead powerlines within a 6.4 metre circumference of the Site shall require additional delivery services the cost of which the Customer will be responsible for. For the avoidance of doubt, the charges for any additional delivery services have not been included in the Quotation.
- 18.3. It is the responsibility of the Customer to organise a crane service to ensure safe delivery of the Goods in compliance with OHS regulations. The Customer is responsible for any additional crane charges.
- 18.4. All deliveries are quoted with one driver operating without a dogman. Should a dogman be required to facilitate the delivery to comply with OHS regulations then additional charges will apply and will be the responsibility of the Customer to pay for any additional dogman charges.

## 19. INSURANCE

From the time the Goods leave Bowens Premises until title and ownership in the Goods passes to it, the Customer will maintain, at its own expense, comprehensive insurance over the Goods for their full insurable value, in the names of Bowens and the Customer.

## 20. WARRANTIES

- 20.1. Bowens warrants that the Goods comply with the warranties included in any Warranty Document.
- 20.2. To the extent permitted by Law, all other guarantees, warranties, undertakings, or representations expressed or implied, whether arising by statute or otherwise, which are not given in these Conditions or any Warranty Document are expressly excluded.
- 20.3. If the Customer is a Consumer and any Goods supplied by Bowens are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Customer agrees that Bowens' liability for a failure to comply with a consumer guarantee under the ACL in relation to those Goods (other than a guarantee under sections 51, 52 and 53 of the ACL) is limited, at the option of Bowens, to one or more of the following:
- 20.3.1. the replacement of the Goods or the supply of equivalent goods;

- 20.3.2. the repair of the Goods;
- 20.3.3. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- 20.3.4. the payment of the cost of having the Goods repaired.

- 20.4. If the Customer is not a Consumer, to the extent permitted by Law, Bowens will not be liable in any circumstances for any:
- 20.4.1. loss or damage to any property or person whatsoever relating to or resulting from the provision of the Goods;
  - 20.4.2. loss arising from delay in delivery; or
  - 20.4.3. Loss.

## 21. EXCLUSIONS

- 21.1. Except as expressly provided in these Conditions or any Warranty Document, Bowens excludes, to the fullest extent permitted by Law, all warranties, representations, guarantees, undertakings and conditions whether express or implied and whether arising under law, trade, custom or otherwise.
- 21.2. In no circumstance will Bowens or its employees, officers or agents be liable, whether in tort, contract or otherwise for any indirect loss, loss of profits, Loss or special or exemplary damage suffered by the Customer or any other person, even if such loss or damage was foreseeable and whether or not Bowens has been advised of the possibility thereof.
- 21.3. Without limiting any other provision in these Conditions, to the extent permitted by Law, in no event will the liability of Bowens exceed the amount of the Price paid by the Customer for the relevant Goods.
- 21.4. To the extent permitted by Law, the Customer acknowledges that Bowens will not be liable to the Customer for loss or damage caused by:
- 21.4.1. any floor plan or site take off errors or omissions;
  - 21.4.2. the Customer failing to properly maintain the Goods;
  - 21.4.3. the Customer using the Goods for any purpose other than that for which they were designed;
  - 21.4.4. the Customer continuing the use of the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - 21.4.5. the Customer failing to follow any industry instructions or guidelines;
  - 21.4.6. subject to clause 20.1 the Customer failing to properly safeguard the Goods from exposure to the weather; or
  - 21.4.7. fair wear and tear, any accident, or a Force Majeure Event.
- 21.5. The Customer acknowledges that timber Goods of a particular trade description vary as to grain, colour hardness and other characteristics. The Customer acknowledges it is their responsibility to order sufficient quantities of the product in order to select and match the product.

## 22. FORCE MAJEURE

Neither party will be liable for any delay or failure in the performance of any obligation or the exercise of any right under this Agreement or for any loss or damage if such performance or exercise is prevented or hindered in whole or in part by reason of a Force Majeure Event.

## 23. INTELLECTUAL PROPERTY

All Intellectual Property of Bowens, including any developed during the supply of the Goods, is the sole property of Bowens.

## 24. CONFIDENTIALITY

All information supplied by a party to the other party will be treated as confidential except to the extent that it becomes public knowledge, and will not be disclosed to a third party without the prior written consent of the party who originally supplied the information, or as required by law.

## 25. VARIATIONS

- 25.1. This Agreement may be amended from time to time by Bowens amending the Conditions for legitimate business reasons upon written notice to the Customer.
- 25.2. If the Customer does not cancel its current Orders within 7 days of receiving notification of amendment under clause 25.1, the Customer will be deemed to have accepted this Agreement, as amended, and the amended Conditions will apply to all current and future Orders.

## 26. PRIVACY POLICY

- 26.1. Bowens is an organisation bound by the Australian Privacy Principles and the Credit Reporting Code under the Privacy Act 1988 (Cth) (Privacy Act). A copy of the Australian Privacy Principles and Credit Reporting Code are both available from the Office of the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au).
- 26.2. Bowens' Privacy Policy and Credit Reporting Policy, as amended from time to time, are incorporated into this Agreement. A copy of the Privacy Policy and Credit Reporting Policy can be accessed on the Bowens website at [www.bowens.com.au](http://www.bowens.com.au).

## 27. DISPUTE

- 27.1. If a dispute arises under this Agreement, the parties will attempt to negotiate a resolution by good faith negotiations.
- 27.2. If a dispute persists for more than 30 days, either party can refer the dispute to mediation before a mediator to be appointed by the Australian Commercial Disputes Centre. The costs of mediation will be shared by the parties equally.

## 28. WAIVER

A single or partial exercise or waiver of a right relating to these Conditions will not prevent any other exercise of that right or another right.

## 29. INTERPRETATION

Unless otherwise inconsistent with the context:

**ACL** means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

**Act of Default** occurs if either party:

commits a breach of these Conditions;

- 27.2 commits an act of bankruptcy, enters into any composition or arrangement with its creditors or does anything which would make it liable to be put into liquidation;
- 27.3 is subject to a resolution or an application for liquidation;
- 27.4 has a receiver, other form of insolvency administrator or statutory or official manager appointed over any of its assets; or
- 27.5 anything analogous to or having similar effect to any of the other events above arises.

**Acceptance Form** means any form issued by Bowens requesting the Customer's acceptance of these Conditions confirmation of the Goods ordered and for Custom Made or Specialty Goods includes any annexes, drawings, plans and other specifications for the Custom Made or Specialty Goods.

**Agreement** has the meaning given to it in clause 1.1 of these Conditions;

**All present and after acquired property, Purchase Money Security Interest, Registration, Security Agreement, Security Interest and Verification Statement** have the meanings prescribed to them in the PPSA;

**Bowens Premises** means the place from which the Goods are despatched for delivery to the Customer;

**Business Day** means a day on which banks are open for business in Victoria but does not include, for the avoidance of doubt, a Saturday, Sunday or public holiday in Victoria;

**Consumer** has the meaning prescribed to it in the ACL;

**Credit Application** means an application by a Customer to purchase Goods subject to these Conditions on credit;

**Credit Account Customer** means a Customer who has had a Credit Application with Bowens approved and which remains current;

**Credit Reporting Information, Credit Eligibility Information, Personal Information and Sensitive Information** have the meaning prescribed to them in the Privacy Act 1988 (Cth);

**Custom Made and Speciality Goods** means any product altered, varied or amended from the original manufacturer specifications on the request of the Customer, including all Goods supplied by Ozone Panel (Aust) Pty Ltd ACN 603 050 022;

**Customer** means the person (including a Corporation) or entity named as the customer in the Sales Order completed for the Customer's initial purchase of Goods under these Conditions, or any person or entity acting on their behalf;

**Customer Specifications** has the meaning given to that term in clause 4.2;

**Customer's Premises** means any site owned, possessed, used or controlled by the Customer;

**Force Majeure Event** means any event or circumstances which is beyond the reasonable control of the effected party which results in or causes the failure of that party to perform any of its obligations under this Agreement;

**Goods** means goods and services specified in a Sales Order, including Custom Made and Speciality Goods;

**GST** has the meaning prescribed to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended);

**Installation Delivery Date** has the meaning given to that term in clause 4.7;

**Installation Services** means any installation services in relation to Goods to be provided by Bowens as specified in a Quotation and Order;

**Intellectual Property** means all rights resulting from intellectual activity and includes copyright, inventions, patent rights, registered and unregistered trademarks, design rights, circuit layouts and all rights and interests of a like nature, including but not limited to methods and techniques, together with any documentation relating to such rights and interests;

**Law** means any relevant federal, state or local statute, ordinance, rule, regulation or standard, and includes the ACL, as amended from time to time;

**Loss** means any liability, including any loss resultant or consequential claim, damage, demand, injury or death, loss of anticipated savings or business opportunity and any penalty imposed by a statutory or other authority;

**Order** means an order by the Customer, an Acceptance Form and as otherwise set out in the Sales Order for the supply of Goods pursuant to this Agreement, or as placed by the Customer in accordance with any other order process imposed by Bowens as advised to the Customer from time to time;

**PPSA** means the Personal Property Securities Act 2009 (Cth);

**Price** means the price specified in a Sales Order for the Goods and, unless otherwise agreed in writing, excludes delivery costs;

**Quotation** means any written quotation provided by Bowens for the provision of Goods;

**Regular Stock Line** means any product stocked at a Bowens store;

**Sales Order** means the document entitled "Sales Order / Tax Invoice" and which constitutes a Tax Invoice for the purposes of A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended);

**SBI's (Special Buy In product)** means any product manufactured to a customer's specifications. An SBI can also refer to a non-stocked product ordered/sourced specifically for an individual customer.

**Site** means the location specified in the Quotation or Order where the Goods shall be delivered or, if no such location is specified in the Quotation or Order, the location where the Client requests in writing that the Goods be delivered;

**Warranty Document** means any warranty document referred to in a Sales Order or provided with the Goods in which Bowens gives a warranty in relation to the Goods; and