

1. Definitions

- 1.1 “**Bend-Tech**” means Bendtech Group Pty Ltd T/A Bend-Tech Group, its successors and assigns or any person acting on behalf of and with the authority of Bendtech Group Pty Ltd T/A Bend-Tech Group.
- 1.2 “**Confidential Information**” means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, “**Personal Information**” such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 “**Contract**” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 “**Cookies**” means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using Bend-Tech’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 “**Customer**” means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting Bend-Tech to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
- (d) includes the Customer’s executors, administrators, successors, and permitted assigns.
- 1.6 “**Goods**” means all Goods or Services supplied by Bend-Tech to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.7 “**GST**” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 “**Price**” means the Price payable (plus any GST where applicable) for the Goods as agreed between Bend-Tech and the Customer in accordance with clause 6 below.

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with Bend-Tech and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer’s credit limit and/or the account exceeds the payment terms, Bend-Tech reserves the right to refuse Delivery.

3. Electronic Transactions Act

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), the Electronic Communications Act 2000 (SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that Bend-Tech shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Bend-Tech in the formation and/or administration of this Contract; and/or
- (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Bend-Tech in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of Bend-Tech; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4.3 In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not). (“**Customer Error**”). The Customer must pay for all Goods it orders from Bend-Tech notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Goods. Bend-Tech is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

5. Change in Control

- 5.1 The Customer shall give Bend-Tech not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer’s details (including but not limited to, changes in the Customer’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by Bend-Tech as a result of the Customer’s failure to comply with this clause.

6. Price and Payment

- 6.1 At Bend-Tech’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by Bend-Tech to the Customer; or

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- (b) Bend-Tech's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 Bend-Tech reserves the right to change the Price if a variation to Bend-Tech's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the worksite, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to Bend-Tech in the cost of materials and labour) will be charged for on the basis of Bend-Tech's quotation, and will be detailed in writing, and shown as variations on Bend-Tech's invoice. The Customer shall be required to respond to any variation submitted by Bend-Tech within ten (10) working days. Failure to do so will entitle Bend-Tech to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At Bend-Tech's sole discretion, a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by Bend-Tech, which may be:
- (a) the date specified on any invoice or other form as being the date for payment; or
- (b) failing any notice to the contrary, the date which is thirty (30) days following the date of any invoice given to the Customer by Bend-Tech.
- 6.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and Bend-Tech.
- 6.6 Bend-Tech may in its discretion allocate any payment received from the Customer towards any invoice that Bend-Tech determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer Bend-Tech may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Bend-Tech, payment will be deemed to be allocated in such manner as preserves the maximum value of Bend-Tech's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Bend-Tech nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify Bend-Tech in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as Bend-Tech investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in Bend-Tech placing the Customer's account into default and subject to default interest in accordance with clause 17.1.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to Bend-Tech an amount equal to any GST Bend-Tech must pay for any supply by Bend-Tech under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. Delivery**
- 7.1 Subject to clause 7.2 it is Bend-Tech's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2 The Service's commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Bend-Tech claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Bend-Tech's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
- (b) have the worksite ready for the Services; or
- (c) notify Bend-Tech that the worksite is ready.
- 7.3 At Bend-Tech's sole discretion, the cost of Delivery is either included or is in addition to the Price.
- 7.4 Bend-Tech may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.5 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 7.6 Any time specified by Bend-Tech for Delivery of the Goods is an estimate only and Bend-Tech will not be liable for any loss or damage incurred by the Customer because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If Bend-Tech is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then Bend-Tech shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 8. Risk**
- 8.1 If Bend-Tech retains ownership of the Goods under clause 11 then:
- (a) where Bend-Tech is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that the Customer or the Customer's nominated carrier takes possession of the Materials at Bend-Tech's address; or
- (b) where Bend-Tech is to both supply and install Goods then Bend-Tech shall maintain appropriate insurance cover until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
- 8.2 Notwithstanding the provisions of clause 8.1 if the Customer specifically requests Bend-Tech to leave Goods outside Bend-Tech's premises for collection or to deliver the Goods to an unattended location then such Goods shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed then replacement of the Goods shall be at the Customer's expense.
- 8.3 Where the Customer is to supply Bend-Tech with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. Bend-Tech shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.
- 8.4 The Goods have been designed to withstand various wind conditions however there is a risk that the Goods will fail or the integrity of the retaining wall may be damaged, if mounted on or close to the retaining wall and exposed to high wind conditions. Bend-Tech does not warrant that the product is suitable for use in such conditions and specifically excludes any liability for claims arising from such use whether or not the wall has been built to engineering specifications, with council approval or self-installed.

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- 8.5 Where Bend-Tech is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and Bend-Tech shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 9. Access**
- 9.1 The Customer shall ensure that Bend-Tech has clear and free access to the worksite at all times to enable them to undertake the Services. Bend-Tech shall not be liable for any loss or damage to the worksite unless due to the negligence of Bend-Tech.
- 10. Compliance with Laws**
- 10.1 The Customer and Bend-Tech shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
Modern Slavery
- 10.2 For the purposes of this clause:
- (a) “**Act**” means the *Modern Slavery Act 2018 (cth)*
- (b) “**Modern Slavery**”, “**Modern Slavery Statement**” and “**Reporting Entity**” have the meanings given by the Act.
- 10.3 If the Customer is a Reporting Entity, it shall comply with all of its obligations under the Act.
- 10.4 Whether the Customer is a Reporting Entity or not, the Customer shall:
- (a) use reasonable endeavours to identify, assess and address risks of modern slavery practices in its operations and supply chains;
- (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
- (c) use its reasonable endeavours to ensure that if at any time the Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
- (d) provide to Bend-Tech a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
- (e) within seven (7) days of Bend-Tech’s request (or such longer period as Bend-Tech agrees), provide to Bend-Tech any information or assistance reasonable requested by Bend-Tech;
- (i) concerning the Customer’s compliance with the Act;
- (ii) concerning the Customer’s operations and supply chains;
- (iii) to enable Bend-Tech to prepare a Modern Slavery Statement or otherwise comply with the Act; or
- (iv) to enable Bend-Tech to assess and address risks of Modern Slavery practices in its operations and supply chains.
- 10.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and Bend-Tech will be able to terminate the Contract for any breach by the Customer.
- 10.6 The Customer warrants that any information supplied to Bend-Tech is true and accurate and may be relied upon for the purposes of the Act.
- 10.7 The Customer shall indemnify Bend-Tech against any loss or liability suffered by Bend-Tech as a result of the Customer’s breach of this clause 10.
- 11. Title**
- 11.1 Bend-Tech and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Bend-Tech all amounts owing to Bend-Tech; and
- (b) the Customer has met all of its other obligations to Bend-Tech.
- 11.2 Receipt by Bend-Tech 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.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 11.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to Bend-Tech on request;
- (b) the Customer holds the benefit of the Customer’s insurance of the Goods on trust for Bend-Tech and must pay to Bend-Tech the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Bend-Tech and must pay or deliver the proceeds to Bend-Tech on demand;
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Bend-Tech and must sell, dispose of or return the resulting product to Bend-Tech as it so directs;
- (e) the Customer irrevocably authorises Bend-Tech to enter any premises where Bend-Tech believes the Goods are kept and recover possession of the Goods;
- (f) Bend-Tech may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Bend-Tech;
- (h) Bend-Tech may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 12. Personal Property Securities Act 2009 (“PPSA”)**
- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Bend-Tech to the Customer, and the proceeds from such Goods.
- 12.3 The Customer undertakes to:

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- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Bend-Tech may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, Bend-Tech for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Bend-Tech;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of Bend-Tech;
 - (e) immediately advise Bend-Tech of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 12.4 Bend-Tech and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by Bend-Tech, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by Bend-Tech under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of Bend-Tech agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering Bend-Tech's security interest over the Customer on the PPSA, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Customer indemnifies Bend-Tech from and against all Bend-Tech's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Bend-Tech's rights under this clause.
- 13.3 The Customer irrevocably appoints Bend-Tech and each director of Bend-Tech as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify Bend-Tech in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Bend-Tech to inspect the Goods.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 14.3 Bend-Tech acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Bend-Tech makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Bend-Tech's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, Bend-Tech's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If Bend-Tech is required to replace the Goods under this clause or the CCA, but is unable to do so, Bend-Tech may refund any money the Customer has paid for the Goods.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, Bend-Tech's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by Bend-Tech at Bend-Tech's sole discretion;
 - (b) limited to any warranty to which Bend-Tech is entitled, if Bend-Tech did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 14.1; and
 - (b) Bend-Tech has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, Bend-Tech shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (a) the Customer failing to properly maintain or store any Goods;
 - (b) the Customer using the Goods for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by Bend-Tech;
 - (e) fair wear and tear, any accident, or act of God.

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- 14.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Bend-Tech as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Bend-Tech has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 14.10.
- 14.11 Notwithstanding anything contained in this clause if Bend-Tech is required by a law to accept a return, then Bend-Tech will only accept a return on the conditions imposed by that law.
- 14.12 Subject to clause 14.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

15. Limitation of Liability

- 15.1 The Customer accepts and acknowledges that Bend-Tech shall not accept liability for any damage or loss including personal injury or death in the event that the Customer chooses to install product that subsequently proves to be insufficient for the purposes that the Customer desired to achieve particularly where this against any recommendation of Bend-Tech.
- 15.2 Bend-Tech shall accept no responsibility for Services (including but not limited to equipment failure) undertaken by any third-party contractor employed by the Customer to effect installation of the Goods. If the Customer believes that they have any claim in relation to Services undertaken by that third party then said claim must be made against the third party contractor in the first instance.

16. Intellectual Property

- 16.1 Where Bend-Tech has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Bend-Tech. Under no circumstances may such designs, drawings and documents be used without the express written approval of Bend-Tech.
- 16.2 The Customer warrants that all designs, specifications, or instructions given to Bend-Tech will not cause Bend-Tech to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Bend-Tech against any action taken by a third party against Bend-Tech in respect of any such infringement.
- 16.3 The Customer agrees that Bend-Tech may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Bend-Tech has created for the Customer.

17. Default and Consequences of Default

- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Bend-Tech's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes Bend-Tech any money, the Customer shall indemnify Bend-Tech from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, Bend-Tech's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 17.3 Further to any other rights or remedies Bend-Tech may have under this Contract, if a Customer has made payment to Bend-Tech, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Bend-Tech under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 17.4 Without prejudice to Bend-Tech's other remedies at law Bend-Tech shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Bend-Tech shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to Bend-Tech becomes overdue, or in Bend-Tech's opinion the Customer will be unable to make a payment when it falls due;
 - (b) the Customer has exceeded any applicable credit limit provided by Bend-Tech;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

18. Cancellation

- 18.1 Without prejudice to any other remedies Bend-Tech may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Bend-Tech may suspend or terminate the supply of Goods to the Customer. Bend-Tech will not be liable to the Customer for any loss or damage the Customer suffers because Bend-Tech has exercised its rights under this clause.
- 18.2 Bend-Tech may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Bend-Tech shall repay to the Customer any money paid by the Customer for the Goods. Bend-Tech shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 If the Customer cancels Delivery of Goods, the Customer shall be liable for all losses incurred (whether direct or indirect) by Bend-Tech as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

19. Privacy Policy

- 19.1 All emails, documents, images, or other recorded information held or used by Bend-Tech is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. Bend-Tech acknowledges its obligation in relation to the handling, use,

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- disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (“the Act”) including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area (“EEA”), under the EU Data Privacy Laws (including the General Data Protection Regulation “GDPR”) (collectively, “EU Data Privacy Laws”). Bend-Tech acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer’s Personal Information, held by Bend-Tech that may result in serious harm to the Customer, Bend-Tech will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to Bend-Tech in respect of Cookies where the Customer utilises Bend-Tech’s website to make enquiries. Bend-Tech agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer’s:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to Bend-Tech when Bend-Tech sends an email to the Customer, so Bend-Tech may collect and review that information (“collectively Personal Information”)
- If the Customer consents to Bend-Tech’s use of Cookies on Bend-Tech’s website and later wishes to withdraw that consent, the Customer may manage and control Bend-Tech’s privacy controls via the Customer’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.3 The Customer agrees that Bend-Tech may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer’s repayment history in the preceding two (2) years.
- 19.4 The Customer consents to Bend-Tech being given a consumer credit report to collect overdue payment on commercial credit.
- 19.5 The Customer agrees that personal credit information provided may be used and retained by Bend-Tech for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer’s credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 19.6 Bend-Tech may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 19.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
 - (b) name of the credit provider and that Bend-Tech is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer’s application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided Bend-Tech is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and Bend-Tech has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of Bend-Tech, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer’s overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.8 The Customer shall have the right to request (by e-mail) from Bend-Tech:
- (a) a copy of the Personal Information about the Customer retained by Bend-Tech and the right to request that Bend-Tech correct any incorrect Personal Information; and
 - (b) that Bend-Tech does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 19.9 Bend-Tech will destroy Personal Information upon the Customer’s request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.10 The Customer can make a privacy complaint by contacting Bend-Tech via e-mail. Bend-Tech will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 20. Confidentiality**
- 20.1 Bend-Tech and the Customer agree to keep confidential any information in relation to the other party which is not in the public domain (including, but not limited to, trade secrets, processes, formulae, accounts, marketing, designs, databases and all other information held in any form).
- 21. Other Applicable Legislation**
- 21.1 At Bend-Tech’s sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017

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- (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 21.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 21.1 (each as applicable), except to the extent permitted by the Act where applicable.
- 22. Service of Notices**
- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 23. Trusts**
- 23.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not Bend-Tech may have notice of the Trust, the Customer covenants with Bend-Tech as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Customer will not without consent in writing of Bend-Tech (Bend-Tech will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 24. General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the Perth Courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 24.3 Subject to clause 14, Bend-Tech shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Bend-Tech of these terms and conditions (alternatively Bend-Tech's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 24.4 Bend-Tech may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 24.5 The Customer cannot licence or assign without the written approval of Bend-Tech.
- 24.6 Bend-Tech may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of Bend-Tech's sub-contractors without the authority of Bend-Tech.
- 24.7 The Customer agrees that Bend-Tech may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for Bend-Tech to provide Goods to the Customer.
- 24.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.
- 24.9 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 24.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.