



TRADING TERMS & CONDITIONS

VERSION 5 · AUGUST 2026

These terms apply to any quotation, order or contract for the supply, installation or hire of goods and services by ATOM Modular Pty Ltd. Where a quotation attaches these terms as Appendix A, they form part of that quotation.

VERSION

5

ISSUED

13 AUGUST 2026

SUPERSEDES

VERSION 4.99

These terms may be amended from time to time. The version published here applies to orders placed after the date of issue shown above.

ATOM MODULAR PTY LTD

78 BARRY RD, NEW GISBORNE VIC 3438 · ABN 59 663 752 565

1300 161 203

ATOMMODULAR.COM.AU



1 DEFINED TERMS

Accepted Order has the meaning given in clause 2.2 of these Terms.

Credit Application means a credit application completed and submitted by a Customer in a form nominated by ATOM Modular from time to time.

ACL means the Australian Consumer Law as detailed in schedule 2 of the Competition and Consumer Act 2010 (Cth).

Agreement means these terms and conditions and any agreed to Quotes.

Applicable Laws any laws governing or affecting the arrangements contemplated by this Agreement.

ATOM Modular means ATOM Modular Pty Ltd (ABN 59 663 752 565).

Business Day means any day which is not a Saturday, Sunday or public holiday in Victoria.

Client means the person or other entity (including an individual, body corporate, partnership or body politic, or any of them acting in the capacity as trustee of a trust) to whom a Quotation is addressed or who otherwise purchases or hires Goods and/or Services from ATOM Modular.

Commencement Date the date this Agreement become binding on the Client in accordance with clause 2.

Confidential Information means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods or Services or ATOM Modular's business.

Contract means the contract of supply or hire of Goods and/or Services between ATOM Modular and the Client which comprises these Terms, any Credit Application and an Accepted Order.

Control has the meaning given in section 50AA of the Corporations Act 2001 (Cth).

Credit Application means a credit application completed and submitted by a Client in a form nominated by ATOM Modular from time to time.

Damage Waiver Cover means damage waiver cover that a Client holds in accordance with clause 35 of these Terms.

Damage Waiver Cover Excess means the amount of \$5,000 (plus GST) or such other amount as notified by ATOM Modular.

Delivery has the meaning given in clause 6.3 of these Terms.

Equipment means any equipment used by the Supplier in the provision of the Services, including any Equipment that is left at the Site in connection with the Services.

Force Majeure Event means an event beyond the reasonable control of ATOM Modular including, but not limited to, strikes, fires, explosions, flood, riot, lock-out, injunction, interruption of transportation, accidents, war, pandemic, governmental action or other circumstances beyond ATOM Modular's control.

Goods means goods ATOM Modular sells or hires to the Client the subject of an Accepted Order.

GST means the goods and services tax under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

GST Act and terms used in these Terms have the meanings contained in the GST Act.

Hire Period has the meaning given in clause 31.1(a) of these Terms.

Insolvency Event in relation to a person means the happening of any of the following events to that person: (a) they are (or state they are) an insolvent under administration or insolvent (each as defined in the Corporations Act 2001 (Cth)); (b) they have had a controller (as defined in the Corporations Act 2001 (Cth)) appointed, are in liquidation, in provisional liquidation, under administration or wound up or have had a receiver or a receiver and manager appointed to any part of their property; (c) they are subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by ATOM Modular); (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with them, which is preparatory to or could result in any of the things referred to in paragraphs (a) to (c) inclusive above; (e) they are taken (under section 459F of the Corporations Act 2001 (Cth)) to have failed to comply with a statutory demand or have committed an act of bankruptcy as defined in the Bankruptcy Act 1966 (Cth); (f) they are otherwise unable to pay their debts when they fall due; or (g) something having a substantially similar effect to any of the things referred to above happens in connection with them under the law of any jurisdiction.

Intellectual Property Rights means (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques, (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist, (c) Confidential Information and trade secrets, (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names and logos, and (e) proprietary rights under the Circuit Layouts Act 1989 (Cth).

Loss means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer's fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise, including, in respect of ATOM Modular, any liability of ATOM Modular to any third party owners of hired Goods.



Mobilisation means transport, cramage, blocking and levelling, installation and de-installation of hired Goods, and all associated works.

PPSA means the *Personal Property Securities Act 2009* (Cth) and its regulations as amended and in force from time to time.

PPS Register means the Personal Property Securities Register established under the PPSA;

Price means the price payable for Goods and/or Services hired or purchased as determined in accordance with clause 4.

Quotation means a written quotation, estimate, proposal (or similar) issued by ATOM Modular to the Client.

Representatives means officers, directors, employees, agents, representatives, contractors and/or subcontractors of ATOM Modular or a Client (as applicable), but a party to the Contract and its officers, directors, employees, agents, representatives, contractors and subcontractors are not Representatives of the other party to the Contract.

Services means any services supplied by the Supplier to the Client, from time to time and includes without limitation the supply and installation of the Goods (and the Goods themselves).

Site means any site at which the Services are to be provided, as set out in a Quote.

Supplier means ATOM Modular Pty Ltd ABN 59 663 752 565.

State means Victoria.

Tax Invoice has the same meaning as in the GST Act.

Terms means these terms and conditions, including commencing on the Commencement Date and continuing until terminated in accordance with its terms.

1.2 In this Agreement unless inconsistent with the context or subject matter:

(a) References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.

(b) Words denoting the singular include the plural and words denoting the plural include the singular.

(c) Words denoting any gender include all genders.

(d) The word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any government agency.

(e) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.

(f) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.

(g) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this Agreement.

(h) If a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.

(i) A reference to time is a reference to time in the capital city of the State.

(j) A reference to a day is a reference to a day in the capital city of the State.

(k) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

(l) If any act is required to be performed under this Agreement on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.

(m) A reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.

(n) Where this Agreement are executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.

(o) A reference to writing or written includes email.

(p) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2 ORDER AND ACCEPTANCE

2.1 Each order placed by the Client will constitute an offer by the Client to purchase or hire Goods and/or Services from ATOM Modular on and subject to these Terms.

2.2 ATOM Modular may refuse to accept an order, or part of an order, placed by the Client in its sole unfettered discretion and without giving reasons. On acceptance of an order by ATOM Modular in writing (Accepted Order), a Contract will exist between ATOM Modular and the Client and, in the case where the Accepted Order relates to the hire of Goods, the Contract shall include a requirement that the Client hire the Goods for the Hire Period.

2.3 The Client is taken to have accepted, and is immediately bound by, these Terms if the Client places an order for, or accepts delivery of, any Goods or Services.

2.4 The Client may not, without ATOM Modular's written consent, vary or cancel an Accepted Order. If ATOM Modular consents to a variation or cancellation of an Accepted Order, the Client shall be liable for all reasonable costs and/or Loss incurred, suffered or to be suffered by ATOM Modular up to the date of variation or cancellation, and which shall include the following charges (in the case of a change to a booked Mobilisation date):

- (a) greater than 7 days from the booked Mobilisation date - 5% of all Mobilisation costs; and
- (b) within 7 days of the booked Mobilisation date - 15% of all Mobilisation costs.



2.5 In the case of cancellation, Goods the subject of the Accepted Order may be on hired by ATOM Modular in order to secure availability.

3 CHANGE OF CONTROL

3.1 The Client shall give ATOM Modular no less than 14 days prior written notice of:

- (a) any proposed change of Control of the Client; or
- (b) any change in the Client's details detailed in a Credit Application or otherwise most recently provided to ATOM Modular (including a change in the Client's name, address and/or contact details).

3.2 The Client shall be liable for any Loss incurred by ATOM Modular as a result of the Client's failure to comply with this clause.

4 PRICE, INVOICING AND PAYMENT

4.1 Subject to clauses 4.3 and 4.4, the price payable by the Client in connection with Goods purchased or hired, or Services provided (collectively Price), shall be either:

- (a) ATOM Modular's quoted price which will be valid for the period stated in a Quotation or otherwise for a period of 30 days; or
- (b) in the absence of a Quotation, ATOM Modular's prevailing pricing as at the date of an Accepted Order in accordance with ATOM Modular's then current price list.

4.2 ATOM Modular shall, in the case of all hired Goods:

- (a) invoice the Client an initial hire amount for rental, fees and other costs and charges covering the period provided for in an Accepted Order or, in the absence of same, covering a minimum period of 8 weeks: such invoice to be fully paid by the Client not less than 7 days prior to delivery of the hired Goods; and
- (b) invoice, on an ongoing basis, the Client at the end of each month for all rental, fees and other costs and charges relevant to the following month.

4.3 ATOM Modular shall, in the case of Goods supplied and Services undertaken, then the following payment schedule will:

- (a) 50% of the fees are due upfront as a non refundable deposit;
- (b) 50% of the fees are due prior to the earliest of the Goods being dispatched or collected (as applicable) or the date of the installation of the Goods.

The Supplier will provide the Client with a Tax Invoice for the fees in accordance with the payment schedule and that Tax Invoice is payable on the date set out in the invoice.

4.4 ATOM Modular reserves the right to change the Price if:

(a) a variation to an Accepted Order is requested by the Client, in which case ATOM Modular will notify the Client in writing of the amount of any variation to the Price resulting from the variation (Price Variation). In the absence of the Client notifying ATOM Modular in writing of its acceptance of the Price Variation within one Business Day of notification of the Price Variation, the Accepted Order will remain unvaried and ATOM Modular will proceed on the basis of the Accepted Order; or

(b) there is any increase in the cost to ATOM Modular in supplying Goods purchased or hired or Services the subject of an Accepted Order including, but not limited to, labour, material and/or Mobilisation costs.

4.5 Any necessary variation to a Contract (including, but not limited to, any necessary variation arising as a result of additional works required due to hidden or unforeseen difficulties; additional costs incurred in Mobilisation of Goods, fluctuations in the currency exchange rate or changes in costs in accordance with clause 4.3) will be payable by the Client. Payment for all variations must be made in full in accordance with these Terms.

4.6 Nothing in this clause obliges ATOM Modular to agree to a variation to an Accepted Order requested by the Client.

4.7 Subject to the other terms of this clause, either party may propose changes to the scope or execution of the Services but no changes shall come into effect until agreed by both parties. Variations may result in delays and an extension may be required.

4.8 If the Supplier determines that additional Services are required to be carried out, or the Services requested by the Client which formed the basis for the Quote are incorrect or not ultimately suitable, then the Supplier reserves the right to increase the fees payable for the Services by providing the Client with written notice and such increases in the fees are payable immediately on demand by the Supplier (unless otherwise agreed by the Supplier).

4.9 Any Services outside of scope will incur additional costs.

4.10 A non-refundable deposit may be required by ATOM Modular to be paid for all non standard or custom purpose built Goods, which shall be payable within 4 weeks of an Accepted Order (and in any event prior to manufacture of such Goods).

4.11 Time for payment is of the essence. The Price will be payable by the Client on the date(s) determined by ATOM Modular, which:

- (a) in the case of a Client who has not been approved for credit by ATOM Modular (Non-Account Client), will be the earlier of (i) the date specified in any ATOM Modular invoice or Accepted Order, and (ii) any date as provided for in these Terms; and
- (b) in the case of a Client who has been approved for credit by ATOM Modular (Account Client), will be 30 days following the end of month date of any ATOM Modular invoice.

If payment is not made in accordance with this clause, the Supplier may (without limitation to its other rights):



(a) require the Client to pay the Supplier interest on all outstanding monies from the due date until the date of payment at the rate of 10% per annum accruing daily;

(b) demand payment and all money payable under this Agreement or any Quote to the Supplier shall immediately become due and payable;

(c) refuse to supply any further part of the Services to the Client until all outstanding monies, including any accrued interest, is paid in full; or

(d) terminate this Agreement whereupon the full price for the Goods and Services then supplied, whether or not the time for payment under this Agreement has arrived, will be immediately due and payable.

4.12 Payment shall be made by electronic / online banking, credit card (excluding American Express and Diners Club, and subject to a surcharge of up to 3% of the Price representing the surcharge incurred by ATOM Modular for that payment method, which ATOM Modular will pass through without imposing its own surcharge), or by any other method that ATOM Modular reasonably directs.

4.13 Unless expressly otherwise stated, the Price does not include GST or any other taxes and duties that may be applicable.

4.14 The Client must pay all amounts payable to ATOM Modular under these Terms without any deduction, withholding, counterclaim or set off.

5 CREDIT

5.1 A Client may apply to become an Account Client by providing to ATOM Modular a Credit Application.

5.2 The Client acknowledges and agrees that these Terms comprise and form part of the Credit Application.

5.3 Credit will only be granted at the sole unfettered discretion of ATOM Modular and the Client acknowledges that ATOM Modular has no obligation to provide or continue to provide any credit facility to the Client.

5.4 The Client is not entitled to any credit facility until it receives written notification from ATOM Modular to that effect and ATOM Modular may, at any time, reduce, vary or terminate any credit facility.

5.5 Without limiting the above:

(a) where a credit facility has been granted, ATOM Modular may, at any time, notify the Client of the terms upon which the credit facility shall continue to operate and apply, including terms concerning the payment of deposit amounts and progress payment amounts; and

(b) ATOM Modular reserves the right to reduce, vary, terminate or withdraw any credit facility upon any breach by the Client of these Terms, any Contract between ATOM Modular and the Client, or upon the Client becoming subject to an Insolvency Event.

5.6 In the event that ATOM Modular reduces, varies or terminates any credit facility, the Client agrees that any and all monies owing on account to ATOM Modular shall become immediately due and payable.

6 INSTALLATION, DELIVERY AND COLLECTION

6.1 Unless stated otherwise in an Accepted Order, ATOM Modular shall deliver and collect the Goods to and from the Client's premises and all associated Mobilisation costs will be at the Client's cost and comprise part of the Price.

6.2 The Client represents and warrants that its premises at which the Goods are to be delivered satisfy the site requirements detailed at clause 28 of these Terms.

6.3 Delivery of the Goods (Delivery) is taken to occur at the time that:

(a) the Client takes possession of the Goods at ATOM Modular's premises; or

(b) if the Goods are to be delivered to the Client, at the time the Goods have been delivered.

6.4 The Client represents that it is either the owner of the premises at where Goods are to be delivered or Services to be provided or has authority of the premises owner for delivery of the Goods or provision of the Services.

6.5 If the Client is unable to take delivery of the Goods as arranged, then ATOM Modular may deliver the Goods to a place of storage nominated by the Client and, failing such nomination, to a place determined by ATOM Modular provided that such place is within reasonable proximity to the initial delivery point and provided that ATOM Modular notifies the Client of such location. Such action shall be deemed to be delivery to the Client. The Client shall be liable for all reasonable costs, charges and expenses incurred by ATOM Modular in connection with such action.

6.6 In the event that (a) the Client premises at where the Goods are to be delivered do not satisfy the site requirements detailed at clause 28 of these Terms, (b) ATOM Modular is unable to, in its reasonable opinion, safely deliver the Goods at the premises at where Goods are to be delivered, (c) the Client (or a representative nominated by the Client) is not present at those premises at the time of delivery, or (d) for whatever reason ATOM Modular is unable to deliver the Goods at those premises, the Client shall be liable to ATOM Modular for all additional delivery, storage, handling and associated costs and expenses incurred as a result and as advised by ATOM Modular.

6.7 ATOM Modular will use all commercially reasonable efforts to deliver the Goods and/or provide the Services by the date specified in the Accepted Order and in the absence of any specified date, within a reasonable time.

6.8 The failure of ATOM Modular to deliver the Goods and/or provide the Services by any agreed date does not entitle the Client to regard or treat the Contract as repudiated.



6.9 The Client must accept delivery of the Goods or provision of Services that occurs after any agreed date and, except where ATOM Modular's liability may not be excluded under the ACL, ATOM Modular will not be liable for any Loss suffered by the Client as a result.

6.10 The Client must provide ATOM Modular and its Representatives with unrestricted access to the Client's premises or other location where the Goods are to be delivered and/or the Services are to be provided. The Client must ensure that it complies with all laws concerning occupational health & safety at such premises or other location and must provide a safe working environment free from contamination and other hazardous materials. ATOM Modular may refuse to provide Services or suspend Services at any time if it determines, acting reasonably, that there is any risk of harm or danger to ATOM Modular or its Representatives, without liability. The Client must comply with any reasonable direction or request provided by ATOM Modular or its Representatives concerning occupational health or safety at any premises or other location at which Services are to be provided.

6.11 Rescheduling a delivery date will incur the following charges:

- (a) if the Client reschedules greater than 7 days prior to a delivery date, an amount equal to 5% of the Mobilisation costs (including all charges relating to Mobilisation) will be payable; and
- (b) if the Client reschedules 7 days or less prior to a delivery date, an amount equal to 15% of the Mobilisation costs (including all charges relating to Mobilisation) will be payable to ATOM Modular.

6.12 Rescheduling of a delivery date must be evidenced in writing.

6.13 The rates for installation are based on the initial quoting stage and the Supplier reserves the right to vary their rates depending on the complexity of the installation or any variant of the installation. The Supplier will notify the Client if higher rates apply, and if the Client instructs the Supplier to proceed with the installation then the Client is deemed to accept the new rates.

6.14 Where Equipment is required to be left and stored at the Site the Client shall ensure the security and safe keeping of such Equipment. Equipment left at the Site will be at the risk of the Client (however ownership shall at all times remain with the Supplier).

6.15 Colour/Style of the Goods when buying any Goods, the Client acknowledges that there will be slight variances in the colour or style of the Goods from the original sample. The Supplier will only be responsible for manufacturing defects or refer the dispute onto the manufacturer of the Goods in the case that there are manufacturing defects.

6.16 Home contents it is the Client's responsibility to properly pack and move contents of the Site to a safe place. The Supplier takes no responsibility for any contents of the Site that are damaged or stolen during the installation process

7 RISK, TITLE AND INSURANCE

7.1 In the case of purchased Goods, Goods are at the Client's risk from collection or delivery but title in those Goods will not pass to the Client until all monies owing with respect to those Goods have been fully paid. Until such time the Client has custody of the Goods as fiduciary agent and bailee of ATOM Modular and must return the Goods to ATOM Modular on request.

7.2 In the case of hired Goods, Goods are at the Client's risk from collection or delivery but title in those Goods will not pass to the Client. At all times the Client has custody of the Goods as fiduciary agent and bailee of ATOM Modular.

7.3 The Client must, in the case of hired Goods (and in the case of purchased Goods until title passes in those Goods to the Client):

- (a) safely store and properly cover/protect the Goods to avoid any exposure to damage;
- (b) store the Goods in such a manner as to show clearly that they are the property of ATOM Modular;
- (c) keep all Goods insured in accordance with clause 20;
- (d) not sell, assign, charge or otherwise encumber or grant any interest over any obligations which any third party may owe to the Client as a result of the use or resale of the Goods;
- (e) not sell, dispose of, deal with (including to on-hire), or otherwise part with possession of any Goods it hires from ATOM Modular; and
- (f) not sell, dispose of, deal with or otherwise part with possession of any Goods it purchases from ATOM Modular on credit terms subject to retention of title other than in the ordinary course of its ordinary business and for market value.

7.4 Subject to clause 35 of these Terms, if hired Goods are damaged or destroyed following delivery (or sold Goods prior to title passing to the Client), the Client shall make an insurance claim in respect of all Loss suffered by ATOM Modular as a result and pay to ATOM Modular all insurance proceeds received. The production of these Terms by ATOM Modular is sufficient evidence of ATOM Modular's right to receive the insurance proceeds without the need for any person dealing with ATOM Modular to make further enquiries.

7.5 If the Client requests that ATOM Modular leave any Goods outside ATOM Modular's premises for collection or deliver the Goods to an unattended location, such Goods shall be left at the Client's sole risk. The Client indemnifies ATOM Modular for any Loss suffered or incurred by ATOM Modular in connection with any such request.

7.6 At any time ATOM Modular may recover possession of any Goods in transit to the Client where title in those Goods has not passed to the Client.

7.7 ATOM Modular may commence proceedings to recover the Price of Goods sold notwithstanding that title in those Goods has not passed to the Client.



7.8 The Client represents and warrants to the Supplier that: (a) 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 the Supplier 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; and (b) it has all necessary rights and authorities to grant the Supplier access to the Site, and that by accessing the Site in accordance with this Agreement, the Supplier will not be infringing any third party rights.

7.9 The Supplier shall not be liable for any Loss or damage to the Site unless due to the Supplier's negligent act or omission or breach of this Agreement.

7.10 The Supplier may subcontract, delegate or perform the Services through any person without the prior written consent of the Client.

7.11 The provision of Services to a third party nominated by the Client shall be deemed to be provision of the Services to the Client for the purpose of this Agreement.

7.12 Although the parties may have agreed on the delivery schedule, the parties acknowledge and agree that any times provided by the Supplier to the Client in respect of the provision of the Services are variable and estimates only and are non-binding on the Supplier. Whilst the Supplier attempts to provide all Services at the agreed times, sometimes delays are inevitable and the Supplier will not be responsible for any Losses suffered by the Client in the event of delay.

7.13 If the Client is operating as a business, then it must obtain and maintain with a reputable insurer for the duration of the Services: (a) public liability insurance with a minimum indemnity limit of \$20,000,000 per occurrence; and (b) in relation to its Personnel, workers compensation insurance in accordance with this Agreement, the relevant state and territory legislation in which Services are to be provided.

7.14 If requested by the Supplier the Client must provide to the Supplier a copy of the certificate of currency for the insurance policies required to be held by it.

8 RIGHT TO ENTER CLIENT PREMISES

8.1 The Client irrevocably authorises ATOM Modular at any time to enter premises upon which Goods (where title remains with ATOM Modular) are stored to enable it to (a) inspect the Goods, or (b) retake possession of the Goods where the Client has breached these Terms. The Client undertakes to obtain all third party consents and authorisations necessary for ATOM Modular to do so.

8.2 While title to Goods remains with ATOM Modular under these Terms, the Client must not grant or permit to exist:

- (a) an encumbrance over the Goods (including any security interest for PPSA purposes) other than that in favour of ATOM Modular; or
- (b) any third party interest in the Goods.

9 PPSA

9.1 The Client acknowledges that the PPSA applies to all transactions pursuant to these Terms (or otherwise) and grants a security interest in all present and after acquired Goods as security for all monies now and in the future owing by the Client to ATOM Modular. The Client further acknowledges and agrees that these Terms, any terms set out in a Credit Application and each Accepted Order (either for Goods sold on credit terms to the Client or for Goods hired to the Client) constitute a security agreement for the purposes of the PPSA where a transaction contemplated by these Terms creates a security interest in the relevant Goods.

9.2 The Client agrees to do all such things, promptly sign all such documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) as are necessary and reasonably required to enable ATOM Modular to:

- (a) acquire a perfected security interest in all Goods supplied, including to prepare and register on the Personal Property Securities Register (PPSR) a financing statement or financing change statement in relation to a security interest granted by the Client to ATOM Modular, and to register a Purchase Money Security Interest (PMSI) under the PPSA;
- (b) correct a defect in a financing statement or a financing change statement referred to in clause 9.2(a);
- (c) ensure any security interest granted by the Client to ATOM Modular is at all times perfected, enforceable and has first ranking priority; and
- (d) exercise any of its rights or perform any of its obligations in connection with any security interest granted by the Client to ATOM Modular.

9.3 The Client acknowledges that a PMSI is granted in priority to all other creditors by the Client in favour of ATOM Modular and in all Goods that are supplied from time to time as security for the Client's obligations to ATOM Modular.

9.4 The Client indemnifies ATOM Modular for any liability for any costs of registration, maintenance, enforcement or discharge of a security interest (including all expenses incurred in registering a financing statement or a financing change statement, including to release Goods from a security interest) and such other costs and expenses as ATOM Modular may incur.

9.5 The Client waives its rights to receive notices under sections 95, 118, 121(4) and 130 of the PPSA and waives its rights as a grantor and/or a debtor under sections 132(3)(d), 132(4), 142 and 143 of the PPSA.

9.6 Unless otherwise agreed to in writing by ATOM Modular, the Client waives its right to receive any notice of verification statement in connection with any security interest in favour of ATOM Modular.



9.7 The Client agrees to waive or exclude such sections of the PPSA as ATOM Modular may require, subject to those sections being capable of exclusion. Without limiting the operation of this requirement, if Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest, the parties agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than sections 117, 118, 123, 126, 128, 129 and 134(1) of the PPSA, are contracted out of.

10 SECURITY AND CHARGE

10.1 In consideration of ATOM Modular agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these Terms (including, but not limited to, the payment of any monies).

10.2 The Client indemnifies ATOM Modular from and against all Loss, including ATOM Modular's legal costs on a solicitor and own client basis, incurred in exercising ATOM Modular's rights under this clause.

10.3 The Client irrevocably appoints ATOM Modular and each director of ATOM Modular as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause including, but not limited to, signing any document on the Client's behalf.

11 DEFECTS AND LIMITATION OF LIABILITY

11.1 The Client must inspect the Goods on delivery and must within 7 Business Days of delivery notify ATOM Modular in writing of any defect, damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow ATOM Modular to inspect the Goods.

11.2 Limitation of liability

(a) The Client may have rights under the ACL or other rights in relation to the supply or hire of Goods or provision of Services that cannot lawfully be excluded by ATOM Modular (Non-Excludable Rights). The only conditions, guarantees and warranties which are binding on ATOM Modular in respect of the state, quality, condition, suitability or fitness of the Goods and/or Services are those imposed and required to be binding by statute (including the ACL) which cannot be excluded. All other conditions, guarantees and warranties whether express or implied by law in respect of the state, quality or condition of the Goods and/or Services which may apart from this clause be binding on ATOM Modular are hereby expressly excluded.

(b) Subject to this clause, to the extent permitted by law, the liability, if any, of ATOM Modular arising from the breach of such conditions, guarantees or warranties (including any Non-Excludable Right) shall, at ATOM Modular's option, be limited to and completely discharged by the replacement or repair by ATOM Modular (in the case of Goods), the re-supply by ATOM Modular (in the case of Services), or the granting of credit in favour of the Client up to the value of the Goods and/or Services.

(c) Other than in respect of any Non-Excludable Right, ATOM Modular excludes all liability for any indirect or consequential Loss (including loss of use, production, profits, business, revenue, opportunity, goodwill, data, contract or anticipated savings, any financing costs or increase in operating costs, any economic loss, or loss arising from any failure, breakdown, defect or deficiency in the Goods and/or Services).

(d) In all cases the total liability of ATOM Modular under or in connection with an Accepted Order shall be capped at an amount equal to the greater of (a) 50% of the Price, or (b) such other amount recovered by ATOM Modular under insurance coverage.

(e) Subject to any rights the Client may have in respect of Non-Excludable Rights, ATOM Modular shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:

- (i) the Client failing to properly maintain or store the Goods;
- (ii) the Client using the Goods for any purpose other than that for which they were designed;
- (iii) the Client continuing to use the Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user; or
- (iv) the Client failing to follow any instructions or guidelines provided by ATOM Modular.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 The Client acknowledges and agrees that:

(a) all Intellectual Property Rights owned or licensed to ATOM Modular, including with respect to the Goods and Services supplied by ATOM Modular, are owned by ATOM Modular and the Client acquires no Intellectual Property Rights in any Goods or Services provided by ATOM Modular to the Client unless a separate agreement in writing is executed by ATOM Modular in relation to such Intellectual Property Rights; and



(b) any Intellectual Property Rights created or developed under or in connection with the Contract or in the course of supplying the Goods and/or Services (including any Intellectual Property Rights in non-standard, modified or custom purpose built Goods) are owned by ATOM Modular. For the avoidance of doubt, where ATOM Modular has designed, drawn or developed Goods for the Client, then the copyright in any designs, drawings and associated documents shall remain the property of ATOM Modular and may only be used by the Client at ATOM Modular's discretion.

12.2 The Client warrants that all designs, specifications or instructions provided to ATOM Modular will not infringe any third party Intellectual Property Rights.

12.3 Where the Supplier has designed, drawn or developed the Plans for the Client (whether alone or with the assistance of the Client), then the Supplier shall retain ownership of such Plans.

12.4 Where the Client has designed, drawn or developed the Plans by itself then the Client shall remain the owner of such Plans, and grants the Supplier the right to use such Plans for the purposes of providing the Services under these Terms.

12.5 The Client warrants that all Plans given to the Supplier will not cause the Supplier to infringe any intellectual property rights or third party rights of any third party and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

12.6 In the event the Client provides ATOM Modular with designs, specifications or instructions for the supply of Goods or Services, the Client warrants to ATOM Modular that same will comply with all applicable laws relating to the supply of the Goods or Services, and the Client shall indemnify and keep ATOM Modular fully indemnified from and against any and all suits, actions, claims, demands and Loss which may be made or brought against or suffered or incurred by ATOM Modular arising out of or in connection in any way with the use by ATOM Modular of same or the manufacture and supply of Goods or Services based on same.

12.7 The Client agrees that ATOM Modular may (at no cost) use, for the purposes of marketing, entry into any competition (or similar), any documents, images, designs, drawings or similar created by ATOM Modular associated with the supply of Goods or Services, which may include photographs, videos (or similar) of the Client's premises at which Goods are located.

13 DEFAULT

13.1 Interest on any amount due and payable by the Client to ATOM Modular but which remains unpaid accrues interest on a daily basis (and capitalised monthly) from the date when the amount became due and payable until paid, at the rate prescribed by the Penalty Interest Rates Act 1983 (Vic), after as well as before any judgment.

13.2 The Client is liable to reimburse to ATOM Modular all expenses incurred in collecting or attempting to collect any overdue monies, including all internal administrative costs, bank dishonour fees, collection agency costs, debt collector's expenses and/or legal costs on a solicitor and own client basis.

13.3 Without prejudice to any other remedies ATOM Modular has under these Terms, if at any time the Client is in breach of any obligation (including those relating to payment) under these Terms, ATOM Modular may suspend or terminate the supply of Goods or Services to the Client. ATOM Modular will not be liable to the Client for any Loss the Client suffers because ATOM Modular has exercised its rights under this clause.

13.4 Without prejudice to ATOM Modular's other remedies at law, ATOM Modular shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled (including any Accepted Order involving Services to be rendered in the future) and all amounts owing to ATOM Modular shall, whether or not due for payment, become immediately payable if any amount payable to ATOM Modular becomes overdue by more than 14 days, or if in ATOM Modular's reasonable opinion the Client will be unable to pay an amount when it falls due.

14 TERMINATION

14.1 Either party (Terminating Party) may immediately terminate any Contract by written notice to the other party if the other party (Defaulting Party):

(a) breaches these Terms or the Contract in a material respect and, in the reasonable opinion of the Terminating Party, the breach (i) cannot be remedied, or (ii) can be remedied, but is not remedied by the Defaulting Party within 7 Business Days after the Terminating Party gives the Defaulting Party notice of the breach; or

(b) suffers an Insolvency Event.

14.2 The Client must, within 7 Business Days after the date of termination:

(a) pay ATOM Modular all amounts owing to ATOM Modular as at the date of termination (including for the avoidance of doubt any amounts owing in arrears which have accrued but have not yet been invoiced or paid); and

(b) return all Confidential Information to ATOM Modular.

14.3 If a Contract is terminated ATOM Modular has an immediate right to possession of any hired Goods and all Goods sold on credit terms which have not been paid for, and all amounts owing by the Client in respect of the Goods together with all other amounts owing by the Client to ATOM Modular, will become immediately due and payable. Further, ATOM Modular will be entitled (without prejudice to any other right or remedy provided under these Terms) to do any one or more of the following:

(a) suspend all further deliveries of Goods or Services the subject of any Accepted Order;

(b) refuse to accept any further orders;



- (c) cancel any credit facility provided to the Client;
- (d) require the return of all hired Goods (or purchased Goods where title to such Goods has not passed to the Client); and
- (e) enter the premises where the hired Goods (or purchased Goods where title to such Goods has not passed to the Client) are situated and locate, retrieve and take possession of such Goods.

15 INDEMNITY

15.1 The Client indemnifies ATOM Modular and its Representatives against any Loss which ATOM Modular and/or its Representatives suffer, incur or are liable for in connection with:

- (a) any delay in the delivery of Goods due to matters beyond ATOM Modular's control;
- (b) any failure of the Client to comply with these Terms including, but not limited to, any claim, damage, cost or expense arising or resulting therefrom;
- (c) any negligent act or omission of the Client or its Representatives;
- (d) any breach of a Contract by the Client; or
- (e) enforcing any security interest arising under a Contract.

15.2 ATOM Modular holds the benefit of the indemnity in clause 15.1 on trust for its Representatives.

15.3 The indemnity in clause 15.1 will not apply to the extent that any Loss is caused or contributed to by ATOM Modular.

LIMITED WORKMANSHIP WARRANTY

15.4 The Supplier warrants that the labour component of the Services carried out by the Supplier will be free of any defects for a limited period of 12 months from the date that all applicable fees for the Services have been paid in full in cleared funds.

15.5 In order to claim pursuant to this warranty in the period of 12 months from the date that all applicable fees for the Services have been paid in full in cleared funds, the Client must comply with the terms of clause 16.

15.6 This limited express warranty is in addition to any rights the Client may have under the ACL.

15.7 a) The Client must inspect all Services immediately on installation and before use. The Client may reject as defective any Services that do not comply with the terms of clause 15 provided that the Client gives the Supplier notice of the rejection:

i) in the case of a defect that is apparent on normal visual inspection, within 7 days of the Services being carried out; or ii) in the case of a latent defect, within 7 days of the latent defect becoming apparent and within the warranty period as set out in clause 14 (as it relates to the labour component) and clause 15 (as it relates to the Goods).

b) The Client is deemed to have accepted the Services if the Client fails to give notice of rejection in accordance with this clause 16.

(c) Upon such notification of defective Services, the Client must: i) provide any photographic evidence requested by the Supplier; and ii) allow the Supplier to inspect the Services to determine whether they are defective.

(d) Where the Supplier attends to check or repair a Service, and the Supplier deems that Service not defective, or otherwise not covered by this warranty, the Supplier may charge the Client a call out fee as specified by the Supplier (based on its current rates) for having one of its Personnel attend the site.

(e) If the Supplier is notified of defective Services and agrees it is defective (acting reasonably) then the Supplier will at its election either: i) replace the defective Services; or ii) repair the defective Services (as applicable), unless a full refund is required by law.

(f) Subject to the terms of this clause, Services will only be dealt with in accordance with this clause provided that: i) the Client has complied with the other terms of this clause; and ii) the Supplier has agreed (in its reasonably opinion) that the Services are defective.

(g) Notwithstanding the above clauses, the Supplier will not be liable for and this warranty will not apply for any defect or damage in the Services in any of the following events:

i) where such defect or damage is caused or partly caused by or arises as a result of the Client (or the Client fails to take reasonable steps to prevent them from becoming defective), fair wear and tear, or any accident or circumstance outside the reasonable control of the Supplier;

ii) where the Client makes any further use of the Goods after giving notice of the defect; iii) the Client dismantles, modifies, alters or repairs those Goods without the written consent of the Supplier;

iv) the Supplier following any instructions supplied by the Client;

v) misuse, abuse, wilful damage, negligence, or abnormal storage or working conditions, fair wear and tear or normal deterioration;

vi) any event, accident or circumstance outside the reasonable control of the Supplier; or

vii) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

(h) Once the Supplier has complied with this clause, the Supplier is not liable to the Client and the Client has no further remedy arising out of or in connection with the rejected Goods.

(i) This limited express warranty is in addition to any rights the Client may have under the ACL.

Limited Goods Warranty



15.8 Subject to the other terms of this clause, the Supplier warrants that the Goods will be free from manufacturing defects for the duration of the manufacturer's warranty period as set out in the Quote or otherwise notified to the Client.

15.9 In order to claim pursuant to this warranty the Client must comply with the manufacturer's process and terms set out in any warranty documentation provided and clause 16, and otherwise not breach any other provision of this Agreement.

15.10 This limited express warranty is in addition to any rights the Client may have under the ACL.

Exclusion of liability

15.11 Notwithstanding any other clause in this Agreement, the Supplier will only be responsible for defects in the Services, Goods and components that the Supplier supplies. To the extent permitted by law the Supplier will not be liable for or required to provide any remedy for:

- (a) any components or materials supplied by the Client;
- (b) any services carried out by third parties;
- (c) any defect or damage where such defect or damage is caused by or arises as a result of the Client (or the Client fails to take reasonable steps to prevent them from becoming defective), fair wear and tear, or any accident or circumstance outside the reasonable control of the Supplier. Any damage and/or defects in the Services, Goods and components that the Supplier supplies caused by third party services (such as maintenance by a third party) will void this warranty. The Client must not attempt to repair any Goods itself except where directed by the Supplier in writing. Any replacement of parts or repairs to the Goods must be authorised by the Supplier and must be performed by the Supplier or a certified third party. Any unauthorised repairs will deem this warranty void.

16 FORCE MAJEURE

16.1 If there is any delay or failure in the supply, hire or delivery of Goods or provision of Services by ATOM Modular due to a Force Majeure Event:

- (a) ATOM Modular is deemed not to be in breach of these Terms or any Contract by reason of that Force Majeure Event;
- (b) ATOM Modular's obligation to supply, hire or deliver the Goods or provide the Services is suspended for the period of that Force Majeure Event;
- (c) if the Force Majeure Event continues for in excess of 30 days, ATOM Modular may terminate any Contract by notice in writing to the Client; and
- (d) ATOM Modular is not liable for any Loss incurred by the Client by reason of such suspension or termination.

17 PRIVACY AND CREDIT REPORTING

17.1 ATOM Modular collects personal information of the Client to enable it to:

- (a) provide a Quotation for its Goods and/or Services;
- (b) provide those Goods and/or Services to the Client;
- (c) market Goods by ATOM Modular, its Representatives and agents;
- (d) process any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) operate the Client's account and/or the collection of amounts outstanding in the Client's account.

17.2 ATOM Modular may disclose personal information of the Client to third parties that assist in providing the Goods and/or Services.

17.3 The Client authorises ATOM Modular and its Representatives and agents to make such enquiries as it deems necessary to investigate the creditworthiness of the Client including (without limitation) making enquiries with trade referees, financial institutions, credit providers and credit reporting agencies and the Client authorises the disclosure of all such information obtained to ATOM Modular. Without limiting this clause, the Client agrees to ATOM Modular:

- (a) obtaining a credit report containing personal credit information about the Client in relation to credit provided by ATOM Modular;
- (b) exchanging information concerning the Client with trade referees, financial institutions and/or credit providers; and
- (c) being provided a consumer credit report to collect all overdue payments (section 18K(1)(h) Privacy Act 1988 (Cth)).

17.4 The Client agrees that ATOM Modular may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Client;
- (b) to notify other credit providers of a default by the Client;
- (c) to exchange information with other credit providers as to the status of any credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client, and the Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).



17.5 ATOM Modular may give information about the Client to a credit reporting agency to obtain a consumer credit report about the Client and/or to allow the credit reporting agency to create or maintain a credit information file containing information about the Client, which information may include personal particulars, details concerning the Client's application for credit and the amount requested, advice that ATOM Modular is a current credit provider to the Client, advice of any overdue accounts or outstanding monies overdue by more than 60 days for which debt collection action has been started (and advice that same are no longer overdue), information that, in the opinion of ATOM Modular, the Client has committed a serious credit infringement, advice that cheques drawn by the Client for \$100 or more have been dishonoured more than once, and that credit provided to the Client by ATOM Modular has been paid or otherwise discharged.

18 LIEN

18.1 Where the Client has left any item with ATOM Modular for repair, modification, exchange or for ATOM Modular to perform any other service in relation to the item and ATOM Modular has not received the whole of any moneys owing to it by the Client, ATOM Modular shall have, until all moneys owing to ATOM Modular are paid:

- (a) a lien on the item; and
- (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

18.2 The lien of ATOM Modular shall continue despite the commencement of proceedings, or judgment for any moneys owing to ATOM Modular having been obtained against the Client.

19 SECURITY OF PAYMENT

19.1 At ATOM Modular'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 (Vic) may apply.

19.2 Nothing in these Terms is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 (Vic), except to the extent permitted by that Act where applicable.

20 INSURANCES

20.1 The Client must effect and maintain, from a reputable insurance company, an insurance policy, which notes the interest of ATOM Modular, covering the following Goods against theft, damage, and destruction for full replacement value:

- (a) hired Goods, for the duration of the Hire Period or for any time the Goods are in the Client's possession; and

- (b) Goods sold on credit terms to the Client, during the period between delivery and the date on which title to the Goods passes to the Client.

20.2 The Client must effect and maintain, from a reputable insurance company, a public liability insurance policy, which notes the interest of ATOM Modular, covering any loss, damage or injury to property or persons arising out of the use of hired Goods.

20.3 The Client must provide ATOM Modular with evidence of each insurance policy required to be held by the Client under this clause (including a copy of a certificate of currency) prior to delivery of the Goods and at any other time requested by ATOM Modular, including all replacement or renewed insurance policies.

20.4 The Client must not use the Goods, nor permit them to be used, in such a manner as would permit an insurer to decline any claim.

21 GST

21.1 The Client acknowledges and agrees that, to the extent that the supply of Goods and/or Services by ATOM Modular to it is subject to GST, the Client shall, unless the Price expressly states that GST is included, pay an additional amount to ATOM Modular equal to GST with respect to such supply, at the same time as the consideration for the supply is payable. Additionally, the Client must pay to ATOM Modular all other charges, duties, imposts, taxes and similar amounts payable in relation to the supply of all Goods and/or Services by ATOM Modular to the Client.

22 DISPUTES

22.1 Any dispute relating to these Terms (**Dispute**) will be dealt with in accordance with this clause.

22.2 The party claiming the Dispute will give notice of the Dispute to the other party which will include all facts on which that party relies in relation to that Dispute (**Dispute Notice**).

22.3 Within 5 Business Days after service of a Dispute Notice, each of the parties' Representatives will meet at least once to attempt, using their reasonable endeavours, to resolve the Dispute in good faith.

22.4 If the Dispute has not been resolved within 15 Business Days after the service of the Dispute Notice, either party may start mediation by serving a written notice setting out the nature of the dispute, the proposed mediator, venue and attendees (**Mediation Notice**).

22.5 Within 30 Business Days of the Mediation Notice, the parties must use best endeavours to agree on the mediator, venue and attendees.

22.6 If the parties cannot reach agreement about the mediator, either party may refer the matter to the Australian Disputes Centre for the appointment of a mediator.



22.7 Each party must pay an equal share of the mediator's fees and the mediation venue costs.

22.8 Each party must be represented at the mediation by a person with authority to settle the dispute.

22.9 Any information disclosed in connection with mediation remains confidential and is privileged from disclosure to third parties or in evidence, except to enforce a settlement agreement reached at the mediation.

22.10 Any agreement reached at mediation will not be binding unless it is reduced to writing and signed by the parties.

22.11 A party may not start court proceedings in relation to a Dispute until it has complied with this clause.

22.12 Nothing in this clause prevents a party seeking urgent injunctive or interlocutory relief.

22.13 Notwithstanding the existence of a Dispute, both parties will continue to perform their respective obligations under these Terms.

23 CONFIDENTIAL INFORMATION

23.1 Each party (Recipient) must keep confidential, and not disclose, any Confidential Information of the other party (Discloser) except:

- (a) as permitted under these Terms;
- (b) with the prior written consent of the Discloser; or
- (c) where the Recipient is compelled to do so by law, provided that it gives the other party written notice prior to disclosure.

23.2 The Recipient must only use the Confidential Information of the Discloser for the purpose for which it was disclosed and in connection with these Terms.

23.3 The Recipient must:

- (a) maintain effective security measures to protect all Confidential Information in the possession or control of the Recipient from unauthorised access, use, copying or disclosure;
- (b) notify the Discloser immediately in writing if the Recipient becomes aware of any anticipated, suspected or actual breach of these conditions by the Recipient and take all reasonable steps required to prevent or stop that breach, at the Recipient's expense; and
- (c) reasonably assist the Discloser in connection with any action or investigation by the Discloser regarding any anticipated, suspected or actual unauthorised disclosure or misuse of the Confidential Information by the Recipient.

24 TRUST

24.1 If the Client is the trustee of a trust:

(a) the Client is bound by these Terms and grants any security interest (for PPSA purposes) in the Goods in its personal capacity and in its capacity as trustee of the trust;

(b) the Client warrants that at all times while these Terms apply:

- (i) all transactions it undertakes with ATOM Modular (including those under which security interests arise) pursuant to these Terms are permitted by the terms of the trust;
- (ii) it has the right to be fully indemnified out of trust property for obligations owed to ATOM Modular pursuant to these Terms and the trust property is sufficient to satisfy that right of indemnity and all other obligations for which it is entitled to be indemnified out of trust property; and
- (iii) no action has been taken or proposed to terminate the trust nor has any event for the vesting of trust property occurred; and

(c) the Client agrees to notify ATOM Modular promptly whenever anything happens which would cause any of the warranties in clause 24.1(b) to be untrue.

25 PARTNERSHIP

25.1 If the Client is a partnership, its partners must:

- (a) not do anything, or permit anything to be done or fail to do anything, which may effect or facilitate the variation or dissolution of the partnership;
- (b) immediately notify ATOM Modular if the partnership is varied (including by a partner dying, leaving or joining the partnership) or dissolved; and
- (c) if ATOM Modular so requests, use their best endeavours to ensure all partners of any successor partnership sign and deliver to ATOM Modular a document (in form and substance satisfactory to ATOM Modular) by which they agree the successor partnership is bound by these Terms and by which arrangements satisfactory to ATOM Modular are made for the performance by the successor partnership of any obligations outstanding to ATOM Modular at the time the partnership was varied or dissolved.

26 FITNESS FOR PURPOSE

26.1 ATOM Modular shall not be bound by nor be responsible for any term, condition, representation or warranty associated with Goods hired or sold to the Client other than that which is expressly stated in the Quotation or Accepted Order the subject of the Goods, and the Client acknowledges and agrees that it has not relied on any representation or warranty with respect to the merchantable quality, description, quality, suitability or fitness for purpose of the Goods unless expressly provided for in the Quotation or Accepted Order.



26.2 The Client must ensure that the Goods are suitable for their intended purpose and warrants and represents that the Goods, the subject of an Accepted Order, are both suitable for their intended purpose and shall conform with all legal requirements associated with that intended purpose.

26.3 The Client is responsible to ensure that ATOM Modular is made aware in writing of any specific requirements pertaining to the Goods prior to any Accepted Order (including, but not limited to, any site specific conditions such as water quality and type). The Client acknowledges that ATOM Modular will rely on all such specific requirements in the supply of the Goods and that ATOM Modular shall not be liable for any damage, loss or injury suffered as a consequence of any inaccurate or insufficient information concerning such requirements as provided by the Client.

26.4 ATOM Modular shall not be liable for damage, loss or injury suffered as a result of any person failing to follow instructions relating to Goods, modifying the Goods, failing to appropriately maintain, service or store them or using them for a purpose not disclosed to ATOM Modular in writing in accordance with these Terms.

27 NOTICES

27.1 Any notice, demand, approval, request or other communication in relation to these Terms (**Notice**) must be in writing in English, be marked for the attention of the Client or ATOM Modular (as applicable), and be given at the recipient's address by being:

- (a) hand delivered;
- (b) sent by email; or
- (c) sent by regular post (or airmail if posted to or from a place outside Australia).

27.2 A Notice is given if:

- (a) hand delivered, on the date of delivery;
- (b) sent by email, when the email (including any attachment) is sent to the receiving party at that email address, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent;
- (c) sent by prepaid mail within Australia, within 5 Business Days after the date of posting; or
- (d) sent by airmail, at 9:00am on the 12th Business Day after the date of posting.

27.3 If a Notice is regarded as being given and received on a day that is not a Business Day or after 5:00pm on a Business Day, then the Notice will be deemed as given and received at 9:00am on the next Business Day.

28 SITE REQUIREMENTS

28.1 The Client must:

- (a) ensure that the premises upon which the Goods are to be installed are level and the ground compacted to not less than 125 kPa; and
- (b) obtain all necessary permits, approvals and similar associated with installation of the Goods.

29 GENERAL

29.1 The failure by ATOM Modular to enforce any provision of these Terms shall not be treated as a waiver of that provision, nor shall it affect ATOM Modular's right to subsequently enforce that provision.

29.2 If any provision of these Terms shall be declared or held to be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions of these Terms shall not be affected, prejudiced or impaired and the offending provision shall be deemed as severed from these Terms.

29.3 These Terms shall be governed by the laws of the State of Victoria and are subject to the jurisdiction of the courts in that State.

29.4 ATOM Modular may assign or novate all or any part of its rights and obligations under these Terms without the Client's consent.

29.5 The Client must not without ATOM Modular's prior written consent assign or novate all or any part of its rights and obligations under these Terms, which consent will not be unreasonably withheld.

29.6 ATOM Modular may subcontract the provision of any part or whole of the Services to a related party, associate or third party.

29.7 ATOM Modular and the Client acknowledge and agree that these Terms take precedence over all other conditions of supply and hire and apply to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed, delivered with or referred to in any order or other documents delivered by the Client to ATOM Modular.

29.8 These Terms (or any part of these Terms) shall be available at the Website and may be amended, modified, added to or deleted at any time by ATOM Modular. Any such amendment, modification, addition or deletion to these Terms shall be legally effective from the date the amended Terms are displayed at the Website and shall apply to orders placed by the Client after that date.

29.9 The Client acknowledges and agrees that:

- (a) it has satisfied itself that the Goods and/or Services are suitable for the Client's purposes;
- (b) it has not entered into these Terms or any Contract in reliance upon any warranty or representation given by ATOM Modular in relation to the Goods and/or Services; and



- (c) it has the power to enter into these Terms and each Contract and has obtained all necessary authorisations to allow it to do so.

SALE OF GOODS

30 RETURN OF PURCHASED GOODS

30.1 This Part B applies where Goods are sold to the Client. Subject to any express warranty provided to the Client in respect of the Goods and clause 11, ATOM Modular may, but is not obliged to, accept the return of Goods purchased and delivered.

30.2 Where ATOM Modular has agreed to the return of Goods, they will only be accepted by ATOM Modular where:

- (a) the Client has strictly followed any instructions provided by ATOM Modular regarding the return of the Goods;
- (b) a copy of the invoice is enclosed with the returned Goods;
- (c) the Goods are either returned at the Client's cost within 14 days of delivery (or if ATOM Modular agrees, collected by ATOM Modular);
- (d) the Goods returned are of merchantable and reasonable quality on return;
- (e) the Goods are returned in the condition in which they were delivered with all packaging material, brochures and instruction material in as new condition as is reasonably possible;
- (f) the Goods are not non-standard or custom purpose built Goods; and
- (g) the Client has expressly agreed to pay to ATOM Modular all amounts notified by ATOM Modular including, but not limited to, reasonable handling fees and freight costs.

30.3 Storage Fees: Completed buildings must be collected or scheduled for delivery within seven (7) days of production completion and invoice issue. Storage fees of \$1.80 per square metre per day will apply to all buildings remaining in our yard after this period until collection or transport is arranged. Any storage penalties incurred will be invoiced separately and must be paid in full prior to building pickup or transport.

HIRE OF GOODS

31 HIRE TERMS

31.1 Period of Hire

(a) This Part C applies where Goods are hired to the Client. The period of hire for hired Goods (Hire Period) shall be as detailed in an Accepted Order and commences on delivery of the Goods and ends at the expiration of the Hire Period, or earlier if either the Contract is terminated earlier in accordance with these Terms or the Goods have been removed offsite by ATOM Modular.

(b) The Client acknowledges and agrees that, unless otherwise agreed by ATOM Modular, the Price for the hire of the Goods is based on the length of the Hire Period, and not the actual amount of time the Goods are used by, or are in the possession of, the Client.

31.2 Pre hire inspection

(a) The Goods will be inspected by ATOM Modular prior to their delivery to the Client to ascertain and record the condition of the Goods at the commencement of the Hire Period (Pre-Hire Inspection). ATOM Modular's record of the Pre-Hire Inspection is sufficient evidence of the condition of the Goods at the commencement of the Hire Period unless it is proven to be false.

(b) The Client is responsible to inspect the Goods on delivery and sign an acknowledgement (being a delivery acceptance or similar) on delivery recording the condition of the Goods at the commencement of the Hire Period.

31.3 Use of the Goods

(a) During the Hire Period, the Client must, and must procure that its Representatives:

- (i) use or operate the Goods strictly in accordance with ATOM Modular's and any manufacturer's instructions;
- (ii) use the Goods only in the operating conditions, for the purpose and within the capacity for which they are designed;
- (iii) ensure the Goods are used only by suitably trained and certified persons;
- (iv) wear suitable clothing and protective equipment when operating the Goods;
- (v) maintain the Goods in good condition and in accordance with applicable legislation, Australian Standards and industry best practices;
- (vi) store the Goods securely;
- (vii) maintain all licences, consents, permits and approvals required in connection with the possession and use of the Goods; and
- (viii) allow ATOM Modular or its nominee to inspect the Goods at any time during the Hire Period.
- (ix) ATOM Modular provides production drawings including drafted floor plans, elevations. Additional documentation can be provided, at additional costs.
- (x) Drawings: Drawings are concept drawings and are provided strictly for the purpose of working with you to design and cost the project. Included is four (4) revisions. Additional revisions are charged at \$110 each.



(xi) ATOM reserves the right to charge additional costs for demobilisation costs, such as increase in fuel and transport.

(b) During the Hire Period, the Client must not, and must procure that its Representatives do not, without the prior written consent of ATOM Modular:

- (i) do anything in breach of clause 31.3(a);
- (ii) undertake any modifications or additions to the Goods;
- (iii) deface, cover up or remove any identifying marks on the Goods;
- (iv) reverse engineer the Goods;
- (v) allow the Goods to become affixed to land or to become an accession to any other goods;
- (vi) sell, assign, lend, lease, sub-hire, bail, give a security interest (as that term is defined in the PPSA) in or otherwise deal with the Goods;
- (vii) use the Goods in an area where contaminants or materials that present a risk of harm to human health or the environment (including asbestos) are present; or
- (viii) move the Goods from the Client's premises to any other location other than a location approved by ATOM Modular for storage and/or use of the Goods.

32 BREAKDOWN AND REPAIR OF HIRED GOODS

32.1 The Client must promptly notify ATOM Modular if any hired Goods break down or require repair.

32.2 ATOM Modular will only be responsible for the cost of replacing parts and components of hired Goods (other than ground engaging parts) required to be replaced due to normal wear and tear.

32.3 The Client will be responsible for the cost of any replacement parts or components damaged either directly or indirectly by:

- (a) the misuse, mishandling, negligent use or operation of the Goods by the Client or any other person, including use of the Goods in adverse environments causing premature failures to any parts or components; or
- (b) failing to comply with the Client's obligations pursuant to clause 31 of these Terms.

32.4 ATOM Modular will not be liable for any Loss incurred or suffered by the Client (including any delay in the Client's work) as a result of any of the above circumstances.

33 RETURN OF HIRED GOODS

33.1 At least 10 Business Days prior to the end of the Hire Period, the Client must notify ATOM Modular that the hired Goods will be ready to be removed by ATOM Modular at the end of the Hire Period (Pick Up Request) during ATOM Modular's normal business hours (unless otherwise agreed).

33.2 The hired Goods must be returned to ATOM Modular in a clean, undamaged and unaltered condition, fair wear and tear excepted.

33.3 ATOM Modular may collect the hired Goods from the Client if it has received a Pick Up Request. In the event that a Pick Up Request is made for collection of the hired Goods prior to the end of the Hire Period, ATOM Modular's agreement to collect the hired Goods from the Client before the end of the Hire Period does not, in any way, affect the Client's obligation to pay the Price for those hired Goods as it relates to the unexpired portion of the Hire Period.

33.4 ATOM Modular is entitled to charge the Client a fee on a 'costs incurred basis' in each of the following circumstances:

- (a) ATOM Modular accepts a Pick Up Request;
- (b) the Client returns the Goods to ATOM Modular other than at its premises or outside ATOM Modular's normal business hours; or
- (c) ATOM Modular collects the Goods from the Client, either at the request of the Client or because the Client fails to return the Goods to ATOM Modular.

34 POST HIRE INSPECTION

34.1 Upon the return of the hired Goods to ATOM Modular's premises, an inspection of the hired Goods will be conducted by ATOM Modular to ascertain and record the condition of the hired Goods (Post-Hire Inspection).

34.2 The Client acknowledges and agrees that ATOM Modular's record of the Post-Hire Inspection is deemed evidence of the condition of the hired Goods.

34.3 Subject to clause 35 of these Terms, the Client acknowledges and agrees that the costs of (a) repairing any damage to the hired Goods occurring during the Hire Period (whether identified during or subsequent to the Post-Hire Inspection), (b) cleaning the hired Goods, and (c) replacing any components, consumables and worn parts comprising the hired Goods will be the responsibility of the Client and must be paid by the Client to ATOM Modular within 30 days after the Client is invoiced by ATOM Modular for those costs.

34.4 Subject to clause 35 of these Terms, if any hired Goods are not returned to ATOM Modular (including where the hired Goods have been destroyed) or are returned to ATOM Modular in a condition that ATOM Modular determines, acting reasonably, renders them unsuitable for future use, ATOM Modular may charge the Client the full cost of replacing those hired Goods.

34.5 The Client must:

- (a) keep the hired Goods complete with all parts and accessories, clean and in good order as delivered;



- (b) comply with any maintenance schedule as advised by ATOM Modular to the Client including, but not limited to, the regular maintenance of hired Goods that comprise air conditioners (or similar);
- (c) ensure all premises and areas in which hired Goods are stored or used are clean; and
- (d) not use the hired Goods in a manner that may permit an insurer to decline any claim under any required insurance policy.

34.6 The Client acknowledges and agrees that some of the Goods supplied by ATOM Modular for hire may be supplied to ATOM Modular by a third party under a hire or lease arrangement. The Client agrees to pay any costs or charges that ATOM Modular incurs or is liable to pay that third party in connection with the use of the Goods by the Client, except where such costs or charges are caused by an act or omission of ATOM Modular.

35 DAMAGE WAIVER

35.1 This clause only applies to the provision of hired Goods where Damage Waiver Cover is included in an Accepted Order and the Client has paid for the Damage Waiver Cover.

35.2 Unless expressly otherwise agreed to by ATOM Modular, Damage Waiver Cover shall be automatically included in an Accepted Order.

35.3 Damage Waiver Cover costs are calculated and payable at an amount representing 15% of all hire costs invoiced by ATOM Modular from time to time (plus GST) and shall be invoiced to the Client in addition to the hire costs during the Hire Period.

35.4 Save for liability associated with the Damage Waiver Cover Excess, payment of the Damage Waiver Cover costs relieves the Client from liability for loss and damage suffered to the hired Goods suffered as a consequence of:

- (a) a Force Majeure Event;
- (b) vandalism;
- (c) theft; or
- (d) graffiti.

35.5 Damage Waiver Cover is not insurance but is an agreement by ATOM Modular to limit the Client's liability in accordance with this clause 35. The Client acknowledges that Damage Waiver Cover does not extend to general liability incurred or suffered by it (including, but not limited to, any loss or injury to third parties) or the Client's use of the hired Goods, or any consequential or indirect loss suffered by the Client or any third party.

35.6 Damage Waiver Cover does not cover loss or damage suffered to the hired Goods:

- (a) caused by the Client's wilful misconduct, gross negligence, or breach of Contract;
- (b) arising from the use of the hired Goods for a purpose other than that for which they are designed;

- (c) caused while the hired Goods are in transit (unless transported by ATOM Modular);
- (d) arising from misuse, overloading or incorrect operation of the hired Goods, or failure to follow manufacturer's instructions concerning the hired Goods; or
- (e) occurring outside of the Hire Period.

35.7 In order to be entitled to Damage Waiver Cover, the Client must:

- (a) pay all Damage Waiver Cover costs due and owing;
- (b) pay the Damage Waiver Cover Excess;
- (c) demonstrate, to ATOM Modular's reasonable satisfaction, that it has taken all necessary steps to prevent loss and damage being suffered to the hired Goods;
- (d) comply with all reasonable directions issued by ATOM Modular from time to time associated with the protection of the hired Goods;
- (e) notify ATOM Modular in writing within 24 hours of any loss or damage to the hired Goods;
- (f) return all damaged hired Goods to ATOM Modular;
- (g) provide a police incident report (where appropriate) within 5 Business Days; and
- (h) not be in breach of these Terms.

35.8 Notwithstanding any other term detailed in these Terms, the Client cannot limit its liability under this clause to the extent any loss and damage is caused by the wilful, negligent or reckless act or omission of the Client or its Representatives including, but not limited to, a failure to take all steps to protect the hired Goods from the events detailed in clause 35.4.