

**SMARTSTONE AUSTRALIA PTY LTD**  
**ABN 19 148 937 008 ACN 148 937 008**  
**TERMS & CONDITIONS OF TRADE**

**1. Application of Terms & Conditions of Trade**

- 1.1. These terms & conditions of trade replace in their entirety any previous terms & conditions of trade published, issued or used by SMARTSTONE AUSTRALIA PTY LTD.
- 1.2. These terms & conditions of trade apply to, form a part of and govern all Agreements.
- 1.3. The Purchaser acknowledges that its acceptance of these terms & conditions of trade was a condition of SMARTSTONE AUSTRALIA PTY LTD entering into each Agreement with the Purchaser and agreeing to supply Goods to the Purchaser.
- 1.4. Any Agreement may be varied only with SMARTSTONE AUSTRALIA PTY LTD's prior written consent and upon the provision of written notice to the Purchaser.
- 1.5. If the Purchaser does not agree to the variations proposed by SMARTSTONE AUSTRALIA PTY LTD, they must notify SMARTSTONE AUSTRALIA PTY LTD within fourteen (14) days from the date of the notice, that the variations are not agreed to. SMARTSTONE AUSTRALIA PTY LTD and/or the Purchaser will then be at liberty to suspend or withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. Absent notice from the Purchaser, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correct without notification.
- 1.6. The Purchaser must check all invoices and advise SMARTSTONE AUSTRALIA PTY LTD of any errors or omissions before the due date of the invoice. Failing advice from the Purchaser that the invoice contains errors or omissions, the invoice shall be deemed accepted by the Purchaser.
- 1.7. Should the Purchaser not pay for the Goods supplied by SMARTSTONE AUSTRALIA PTY LTD in accordance with the credit terms as provided herein, or as agreed in writing by SMARTSTONE AUSTRALIA PTY LTD and the Purchaser from time to time, after issuing a written demand to the Purchaser demanding payment within fourteen (14) days, SMARTSTONE AUSTRALIA PTY LTD will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable.
- 1.8. Any order or offer made by any Purchaser:
  - 1.8.1. Shall not be binding on SMARTSTONE AUSTRALIA PTY LTD until confirmed by SMARTSTONE AUSTRALIA PTY LTD in writing or in such other manner as SMARTSTONE AUSTRALIA PTY LTD in its sole discretion determines; and
  - 1.8.2. Is subject to the availability of the subject Goods.
- 1.9. A tender or quotation submitted by SMARTSTONE AUSTRALIA PTY LTD may at any time prior to acceptance of an offer by SMARTSTONE AUSTRALIA PTY LTD in respect of the supply of Goods and/or services be varied or withdrawn by SMARTSTONE AUSTRALIA PTY LTD. Clerical, typing or other errors made in, or in respect of, any tender or quotation shall be subject to correction by SMARTSTONE AUSTRALIA PTY LTD and the corrected tender or quotation shall apply.
- 1.10. Subject to clause 1.9 a quotation or tender submitted by SMARTSTONE AUSTRALIA PTY LTD shall remain valid for 30 days from the date of such quotation or tender.
- 1.11. Terms and conditions submitted by a Purchaser with a purchase order or otherwise do not form part of an Agreement unless expressly agreed in writing by SMARTSTONE AUSTRALIA PTY LTD. The Purchaser acknowledges and agrees that as a result of the benefit of the credit being supplied by SMARTSTONE AUSTRALIA PTY LTD these terms & conditions of trade will prevail over the Purchaser's terms and conditions (if any).
- 1.12. The acceptance by a Purchaser of the supply by SMARTSTONE AUSTRALIA PTY LTD of Goods and/or services shall constitute acceptance by the Purchaser of the supply by SMARTSTONE AUSTRALIA PTY LTD of such Goods and/or services solely on these terms & conditions of trade.

**2. Price**

- 2.1. The prices quoted by SMARTSTONE AUSTRALIA PTY LTD for the supply of Goods and/or services exclude GST and any relevant duties unless expressly stated otherwise by SMARTSTONE AUSTRALIA PTY LTD. All GST, other taxes and/or charges imposed and/or levied by or payable to any government or governmental authority upon or with respect to any Agreement, the Goods or other material described in any Agreement or the purchase price payable, shall be for the account of the Purchaser and shall be payable at the same time as the invoice from SMARTSTONE AUSTRALIA PTY LTD to which they relate.
- 2.2. Any additions or increases in the cost of the supply of Goods and/or services as a result of any additions or increases in charges, duties, taxes (including the rate of GST) or costs associated with manufacture or supply of goods and/or services by SMARTSTONE AUSTRALIA PTY LTD, including without limitation increases due to variations in exchange rates, the cost of transport or shipping, the cost of materials or labour and/or the cost of conforming with any relevant legislation, court orders, regulations or bylaws, between the date of SMARTSTONE AUSTRALIA PTY LTD's acceptance of the Purchaser's order and the date of supply of the relevant Goods and/or services shall be borne by the Purchaser, even if the Goods are sold on terms such as delivered or duty paid terms.
- 2.3. Unless otherwise stipulated, all references to dollars are references to the lawful currency of Australia (Australian dollars)
- 2.4. If any amount payable to SMARTSTONE AUSTRALIA PTY LTD by the Purchaser is stated in a currency other than Australian dollars and due to direction or action of any government or governmental agency the rate(s) of exchange changes such that there is a reduction in the Australian dollar equivalent to be received by SMARTSTONE AUSTRALIA PTY LTD in the currency other than Australian dollars, then SMARTSTONE AUSTRALIA PTY LTD may by notice in writing cancel the relevant Agreement or require the Purchaser to wholly compensate and indemnify SMARTSTONE AUSTRALIA PTY LTD in respect of such reduction.
- 2.5. It is acknowledged by the Purchaser that all communications and correspondence by whatever means, whether orally or in writing, by SMARTSTONE AUSTRALIA PTY LTD quoting prices of Goods are indicative only unless such communication or correspondence expressly states:
  - 2.5.1. that it is a firm offer; and
  - 2.5.2. the expiry date of the offer.

**3. Trade Credit Insurance**

- 3.1. All Agreements or other transactions conducted where physical delivery of Goods subject thereof is made or proposed to be made prior to SMARTSTONE AUSTRALIA PTY LTD being paid in full and in cleared funds in respect of such Goods shall be subject to this clause 3.
- 3.2. SMARTSTONE AUSTRALIA PTY LTD may require the existence of a current and subsisting policy of trade credit insurance issued by QBE Insurance (Australia) Ltd in favour of SMARTSTONE AUSTRALIA PTY LTD covering the full amount and subject matter of any Agreement(s) or transaction(s) between SMARTSTONE AUSTRALIA PTY LTD and the Purchaser.
- 3.3. SMARTSTONE AUSTRALIA PTY LTD may suspend from time to time some or all its obligations under these terms & conditions of trade or any Agreement with the Purchaser, including delivery of ordered Goods or offering further credit, in circumstances where no policy of trade credit insurance as described in clause 3.2 subsists. The non-performance of obligations suspended by SMARTSTONE AUSTRALIA PTY LTD is not a breach of these terms & conditions of trade or any Agreement and the Purchaser remains bound by its obligations to SMARTSTONE AUSTRALIA PTY LTD.
- 3.4. In order to accommodate increases in the value of trade between SMARTSTONE AUSTRALIA PTY LTD and the Purchaser, the parties will use their best endeavours to obtain an increase in the maximum sum insured under any policy of trade credit insurance referred to in clause 3.2 (the credit limit) as may be required from time to time.
- 3.5. In the event that any Agreement or transaction is entered into (subsequent order(s)) which would cause the total amount owing by the Purchaser to SMARTSTONE AUSTRALIA PTY LTD to be in excess of the credit limit and an increase of the credit limit cannot be obtained prior to the credit limit being

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exceeded, the Purchaser must make payment to SMARTSTONE AUSTRALIA PTY LTD of such earlier invoiced amounts as to ensure that any and all subsequent orders would not cause the total amount owing by the Purchaser to SMARTSTONE AUSTRALIA PTY LTD to be in excess of the credit limit.

#### **4. Orders and Payment.**

- 4.1. Unless otherwise agreed between the parties once an order made by the Purchaser has been confirmed by SMARTSTONE AUSTRALIA PTY LTD, it cannot be cancelled or modified without SMARTSTONE AUSTRALIA PTY LTD's prior written consent.
- 4.2. In the event of a cancellation in accordance with clause 4.1, the Purchaser shall reimburse SMARTSTONE AUSTRALIA PTY LTD for all costs, loss of profits and expenses incurred by SMARTSTONE AUSTRALIA PTY LTD as a result of the cancellation whether such expenses were incurred before or after the date of cancellation.
- 4.3. The Purchaser shall be invoiced when the Purchaser is notified that the Goods are available for despatch or as SMARTSTONE AUSTRALIA PTY LTD in its discretion otherwise considers acceptable or as agreed between the parties.
- 4.4. All invoices shall be due and payable within 30 days from the end of the month of invoice, or as agreed between the parties at time in which the invoice was issued.
- 4.5. The Purchaser shall not (nor shall it be entitled to) set off or deduct from any amount payable to SMARTSTONE AUSTRALIA PTY LTD under any Agreement any amount(s) disputed by the Purchaser or any amount(s) owing or alleged to be owing by SMARTSTONE AUSTRALIA PTY LTD to the Purchaser on any account whatsoever. Any reasonable requests to set off, deduct or withhold from accounts outstanding will be considered by SMARTSTONE AUSTRALIA PTY LTD, provided that reasonable evidence is provided to SMARTSTONE AUSTRALIA PTY LTD as to why the Purchaser is entitled to the set off, deduction or to without from amounts outstanding.
- 4.6. Interest is payable to SMARTSTONE AUSTRALIA PTY LTD by the Purchaser on any amount outstanding from time to time after the due date for payment at the rate of 2 percent per month.
- 4.7. Until all monies due to SMARTSTONE AUSTRALIA PTY LTD by the Purchaser on any account whatsoever are paid in full and title to the Goods passes to the Purchaser in accordance with these terms & conditions of trade, the Purchaser agrees that:
- 4.7.1. the Goods shall be held by the Purchaser in a fiduciary capacity as bailee for and on behalf of SMARTSTONE AUSTRALIA PTY LTD;
- 4.7.2. the Purchaser irrevocably gives SMARTSTONE AUSTRALIA PTY LTD and its agent(s) the right, without notice, to enter the premises of the Purchaser at any time for the purpose of inspecting, removing or taking possession of the Goods or any part of the Goods;
- 4.7.3. if SMARTSTONE AUSTRALIA PTY LTD enters the Purchaser's premises pursuant to clause 4.7.2 SMARTSTONE AUSTRALIA PTY LTD and its agent(s) shall be entitled to use all reasonable force to gain access to the premises and shall not be liable for any damage or loss occasioned to the Purchaser or its premises and the Purchaser shall indemnify SMARTSTONE AUSTRALIA PTY LTD and its agent(s) against any loss or damage suffered by any person, SMARTSTONE AUSTRALIA PTY LTD or its agent(s) arising from such repossession;
- 4.7.4. the Purchaser shall store the Goods separately from goods owned by the Purchaser and shall identify them as Goods of SMARTSTONE AUSTRALIA PTY LTD;
- 4.7.5. if the Goods or any part of them have been on-sold by the Purchaser prior to all monies due to SMARTSTONE AUSTRALIA PTY LTD having been paid then the proceeds or debtors of the Purchaser arising from such on-sales shall be the property of SMARTSTONE AUSTRALIA PTY LTD and shall be held on a fiduciary basis and retained in a separate account payable to SMARTSTONE AUSTRALIA PTY LTD on demand.
- 4.8. Where any payment is to be made by letter of credit, the Purchaser shall establish an irrevocable authority and confirmed letter of credit with a bank satisfactory to SMARTSTONE AUSTRALIA PTY LTD. The letter of credit shall be in a form and upon terms satisfactory to SMARTSTONE AUSTRALIA PTY LTD, shall be in favour of SMARTSTONE AUSTRALIA PTY LTD, and shall provide that all payments be made only to the order of the negotiating bank.
- 4.9. Any letter of credit shall refer to the relevant Agreement or SMARTSTONE AUSTRALIA PTY LTD's invoice by number and authorise reimbursement to SMARTSTONE AUSTRALIA PTY LTD for the amount thereof together with any amounts (if any) as may be advanced by SMARTSTONE AUSTRALIA PTY LTD in respect of consular invoices, inspection fees and other expenditures. A letter of credit shall also provide for partial availments against partial deliveries and shall be maintained for a period of not less than thirty days after the latest delivery under the relevant Agreement.
- 4.10. If any part of an amount owing to SMARTSTONE AUSTRALIA PTY LTD is at any one time overdue, then the whole amount owing to SMARTSTONE AUSTRALIA PTY LTD at that time is deemed immediately due and payable.

#### **5. Default and Termination**

- 5.1. An event of default will have occurred under these terms & conditions of trade and under any Agreement if:
- 5.1.1. Any amount is outstanding and due and payable by the Purchaser to SMARTSTONE AUSTRALIA PTY LTD but is unpaid;
- 5.1.2. The Purchaser fails to take delivery of any Goods in accordance with an Agreement;
- 5.1.3. The Purchaser fails to provide any letter of credit, Bill of Exchange or any other security required by SMARTSTONE AUSTRALIA PTY LTD from time to time;
- 5.1.4. SMARTSTONE AUSTRALIA PTY LTD obtains unfavourable reports on the financial standing of the Purchaser;
- 5.1.5. The Purchaser dies or becomes incapacitated, or ceases, or indicates that it is about to cease, to carry on business;
- 5.1.6. The Purchaser fails to perform any of its obligations under these terms & conditions of trade or any Agreement including failure to pay any amount by its due date;
- 5.1.7. An application is made, or proceedings are initiated or a meeting (whether of shareholders, creditors or directors) is called with a view to winding the Purchaser up or placing the Purchaser in any kind of insolvency or other external administration;
- 5.1.8. The Purchaser becomes bankrupt or insolvent, goes into voluntary or compulsory liquidation or a step is taken to have a receiver, receiver and manager, provisional liquidator, liquidator or administrator appointed to the Purchaser or any of its assets; or
- 5.1.9. Anything happens that reasonably indicates that there is a significant risk that the Purchaser is or will become unable to pay debts as they fall due. This includes execution or distress being levied against any income or assets of the Purchaser; a meeting of the Purchaser's creditors being called or held; a step being taken to make the Purchaser bankrupt; and the Purchaser entering into any type of arrangement with, or assignment for the benefit of, all or any class of its creditors, or being subject to a deed of company arrangement.
- 5.2. Upon the happening of an event of default, and without notice to the Purchaser:
- 5.2.1. SMARTSTONE AUSTRALIA PTY LTD may terminate any Agreement with the Purchaser.
- 5.2.2. SMARTSTONE AUSTRALIA PTY LTD may take steps to recover all outstanding monies, including engaging a mercantile agency or instituting legal proceedings.
- The Purchaser is liable for any costs of taking steps to recover the amount the costs of a mercantile agency, court costs and legal costs on a full indemnity basis.
- 5.2.3. Interest will apply to recovery costs owing by the Purchaser to SMARTSTONE AUSTRALIA PTY LTD at the rate of 2 percent per annum above the National Australia Bank Limited, Business Lending Base Rate, as current from time to time, from the date the costs are incurred.
- 5.2.4. SMARTSTONE AUSTRALIA PTY LTD may elect to suspend from time to time some or all its obligations under these terms & conditions of trade or any Agreement with the Purchaser, including offering further credit, until full payment is received by SMARTSTONE AUSTRALIA PTY LTD. The non-performance of obligations suspended by SMARTSTONE AUSTRALIA PTY LTD is not a breach of these terms & conditions of trade or any Agreement and the Purchaser remains bound by its obligations to SMARTSTONE AUSTRALIA PTY LTD.
- 5.2.5. SMARTSTONE AUSTRALIA PTY LTD shall be entitled as a condition of resuming delivery under any Agreement suspended in accordance with clause 5.2.4 to require prepayment of such security as it may in its sole discretion require for any further Agreements or outstanding Agreements, orders or deliveries.
- 5.2.6. SMARTSTONE AUSTRALIA PTY LTD shall be entitled, without prejudice to any of its rights and remedies, to terminate in whole or in part any Agreement to which the Purchaser is a party.
- 5.2.7. SMARTSTONE AUSTRALIA PTY LTD may exercise all rights resulting from the failure to pay money at any later time despite the supply of Goods by SMARTSTONE AUSTRALIA PTY LTD after it becomes aware of a failure by the Purchaser to pay money.
- 5.2.8. The right to terminate an Agreement may be exercised concurrently with the suspension of obligations by SMARTSTONE AUSTRALIA PTY LTD.

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- 5.3. If an Agreement is ended because of the Purchaser's default and the Purchaser owes SMARTSTONE AUSTRALIA PTY LTD money, the money becomes immediately payable to SMARTSTONE AUSTRALIA PTY LTD.
- 5.4. The acceptance by SMARTSTONE AUSTRALIA PTY LTD of any payment from or on behalf of the Purchaser after the specified due date thereof shall not constitute a waiver of the Purchaser's obligations to make further payments.
- 5.5. In the event of termination of any Agreement by SMARTSTONE AUSTRALIA PTY LTD pursuant to clause 5.2.1, SMARTSTONE AUSTRALIA PTY LTD shall, after taking into account payments made by the Purchaser, be entitled to be paid by the Purchaser for work done and expenditure made under the Agreement up to and including the date of termination and any direct and indirect loss suffered by SMARTSTONE AUSTRALIA PTY LTD including without limitation SMARTSTONE AUSTRALIA PTY LTD's loss of profit on the Agreement and the reasonable legal costs of SMARTSTONE AUSTRALIA PTY LTD (on a full indemnity basis) incurred in relation to the termination and any prior breach and in exercising any rights and remedies as a consequence of the termination and any prior breach.
- 5.6. Termination of the Agreement pursuant to this clause 5 shall be without prejudice to the rights of SMARTSTONE AUSTRALIA PTY LTD accruing up to the date of termination.

**6. Delivery**

- 6.1. Unless otherwise agreed, where the Purchaser has nominated an address for delivery, SMARTSTONE AUSTRALIA PTY LTD shall deliver the Goods to that nominated address.
- 6.2. SMARTSTONE AUSTRALIA PTY LTD shall not be responsible for unloading Goods at the point of delivery.
- 6.3. Where the Goods are to be delivered to a nominated address SMARTSTONE AUSTRALIA PTY LTD shall be deemed to have delivered the goods in accordance with the Agreement if it obtains a receipt or signed delivery docket for the Goods from any person at that address.
- 6.4. If a nominated address is unattended or if delivery cannot otherwise be effected or the Goods cannot be despatched due to any act, matter or thing beyond the control of SMARTSTONE AUSTRALIA PTY LTD, SMARTSTONE AUSTRALIA PTY LTD in its discretion may store the goods at the Purchaser's risk and expense or take such other steps as it considers appropriate.
- 6.5. SMARTSTONE AUSTRALIA PTY LTD reserves the right to refuse to supply Goods and/or services under an Agreement if a Purchaser is in default of any of its payment obligations under any one or more Agreements.
- 6.6. SMARTSTONE AUSTRALIA PTY LTD reserves the right to choose or vary the means, route and procedure of delivery, transport and handling of Goods. If the Purchaser requires a different means, route or procedure, the cost of delivery shall be borne by the Purchaser notwithstanding any other provision of these terms & conditions of trade or an Agreement.
- 6.7. SMARTSTONE AUSTRALIA PTY LTD may supply Goods and/or services in instalments and these terms & conditions of trade shall apply to each and every supply of Goods and/or services. Each instalment shall be deemed to be sold under a separate Agreement and shall be paid for separately by the Purchaser. Any default by SMARTSTONE AUSTRALIA PTY LTD in respect of any part delivery or instalment shall not entitle the Purchaser to treat the Agreement as repudiated in regard to the balance of the Goods delivered under the Agreement or instalments remaining to be delivered.
- 6.8. Any delivery or completion dates stated are estimates only and are not essential terms of any Agreement. SMARTSTONE AUSTRALIA PTY LTD shall make all reasonable efforts to meet any date for supply of Goods and/or services agreed between SMARTSTONE AUSTRALIA PTY LTD and the Purchaser. Where a delay to supply Goods and/or services occurs, in no event shall SMARTSTONE AUSTRALIA PTY LTD incur any liability or penalty for failure to supply Goods and/or services by an agreed time.
- 6.9. If the Purchaser fails to take delivery of the Goods and this continues for 60 days or more, SMARTSTONE AUSTRALIA PTY LTD may resell those Goods. The Purchaser must pay to SMARTSTONE AUSTRALIA PTY LTD any difference between the original sale price of the Goods and the resale price of the Goods and must also pay a restocking fee of 15 percent of the original sale price of the Goods.
- 6.10. The prices include the cost of packing the Goods in accordance with SMARTSTONE AUSTRALIA PTY LTD's standard practice. If the Purchaser requires the Goods to be provided in any other manner the cost of the packing shall be the responsibility of the Purchaser. SMARTSTONE AUSTRALIA PTY LTD shall not be liable for any damage or loss occurring as a result of goods being packed in accordance with the Purchaser's instructions.

**7. Title and Risk**

- 7.1. Unless agreed otherwise in writing by the parties, the risk of loss or damage to Goods shall pass to the Purchaser at the time of dispatch or when the Purchaser is notified that the Goods are available for dispatch, as the case may be.
- 7.2. Notwithstanding that the Purchaser has possession of the Goods, title to the Goods remains with SMARTSTONE AUSTRALIA PTY LTD, and no legal or equitable interest or property in the Goods whatsoever will pass to the Purchaser, until the full amount for the Goods has been paid in cleared funds.
- 7.3. Where the title and property in any particular Goods has not passed, the Purchaser may nevertheless dispose of these Goods to a bona fide sub-purchaser provided that such disposals are in the ordinary course of the Purchaser's business.
- 7.4. It is agreed that by the disposal of such Goods, the Purchaser assigns to SMARTSTONE AUSTRALIA PTY LTD (the assignment being absolute and not by way of security) all monetary proceeds received by or on behalf of the Purchaser in respect to the Goods and holds such proceeds on trust for the absolute benefit of SMARTSTONE AUSTRALIA PTY LTD.
- 7.5. The Purchaser must observe the following fiduciary obligations with respect to any disposal of Goods to a sub-purchaser authorised by this clause 7:
  - 7.5.1. the Purchaser must maintain records of all disposals of the Goods and must permit inspection of these records by SMARTSTONE AUSTRALIA PTY LTD promptly upon request; and
  - 7.5.2. the Purchaser must hold the assigned proceeds on trust for SMARTSTONE AUSTRALIA PTY LTD. The total debts owing by the Purchaser to SMARTSTONE AUSTRALIA PTY LTD will be reduced by the proceeds once such monies are received by SMARTSTONE AUSTRALIA PTY LTD in cleared funds.
- 7.6. Subject to clause 7.3, the Purchaser must comply with all of the following conditions:
  - 7.6.1. keep the Goods in its possession and control;
  - 7.6.2. keep the Goods in good repair and condition, excluding fair wear and tear;
  - 7.6.3. keep the Goods stored separately and marked so that the Goods are clearly and easily identifiable as SMARTSTONE AUSTRALIA PTY LTD's property and inform SMARTSTONE AUSTRALIA PTY LTD of the location of the Goods, if requested;
  - 7.6.4. not sell (except in accordance with clauses 7.3, 7.4 and 7.5), assign or let the Goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them;
  - 7.6.5. maintain and allow SMARTSTONE AUSTRALIA PTY LTD to inspect records which do any of the following:
    - (a) Identify any unpaid Goods owned by SMARTSTONE AUSTRALIA PTY LTD.
    - (b) Detail third parties to whom the Customer sells or otherwise disposes of the unpaid Goods.
    - (c) Detail payments made by such parties for the unpaid Goods.
- 7.7. The Purchaser indemnifies SMARTSTONE AUSTRALIA PTY LTD against any claim, action, damage, loss, liability, cost or expense that SMARTSTONE AUSTRALIA PTY LTD suffers, incurs or is liable for in respect of SMARTSTONE AUSTRALIA PTY LTD's exercise of its rights under this clause 7.

**8. Insurance**

- 8.1. The Purchaser must keep the Goods insured for their full insurable value with a reputable insurer against loss and damage and all other risks for Goods of that kind from time the risk in the Goods passes to the Purchaser until the time title in the Goods passes to the Purchaser. The insurance is to be in the name of the Purchaser with the interest of SMARTSTONE AUSTRALIA PTY LTD noted thereon.
- 8.2. The Purchaser holds the proceeds of that insurance on trust for SMARTSTONE AUSTRALIA PTY LTD up to the amount it owes SMARTSTONE AUSTRALIA PTY LTD in respect of those Goods, and must keep such proceeds in a separate account until the liability to SMARTSTONE AUSTRALIA PTY LTD is discharged and must immediately pay that amount to SMARTSTONE AUSTRALIA PTY LTD.
- 8.3. The Purchaser shall if requested provide proof of such insurance to SMARTSTONE AUSTRALIA PTY LTD upon request.

**9. PPSA**

- 9.1. The Purchaser acknowledges that any Agreement and these terms & conditions of trade constitute a security agreement in favour of SMARTSTONE AUSTRALIA PTY LTD for the purposes of section 20 of the PPSA and that a security interest exists in:

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- 9.1.1. Goods (and their proceeds) previously supplied by SMARTSTONE AUSTRALIA PTY LTD to the Purchaser (if any)
- 9.1.2. All Goods (and their proceeds) to be supplied by SMARTSTONE AUSTRALIA PTY LTD to the Purchaser in the future
- 9.1.3. All of the Purchaser's present and after-acquired property in which Goods or materials supplied or financed by SMARTSTONE AUSTRALIA PTY LTD have been attached or incorporated.
- 9.2. The Purchaser acknowledges that the security interest granted by the Purchaser to SMARTSTONE AUSTRALIA PTY LTD pursuant to clauses 4.7 and 7.2 of these terms & conditions of trade shall constitute a purchase money security interest as defined in section 14 of the PPSA.
- 9.3. Until ownership of the Goods passes to the Purchaser in accordance with these terms & conditions of trade, the Purchaser waives its rights under Chapter 3 of the PPSA to receive a notice of intention of removal of an accession (section 95).
- 9.4. Until ownership of the Goods passes to the Purchaser in accordance with these terms & conditions of trade, the Purchaser waives its rights under the following provisions of Chapter 4 of the PPSA:
- 9.4.1. to receive a notice that SMARTSTONE AUSTRALIA PTY LTD decides to enforce its security interest in accordance with land law (section 118);
- 9.4.2. to receive a notice on enforcement action against liquid assets (section 121(4));
- 9.4.3. to receive a notice of disposal of Goods by SMARTSTONE AUSTRALIA PTY LTD purchasing the Goods (section 129);
- 9.4.4. to receive a notice of a proposal to dispose of Goods (section 130);
- 9.4.5. to receive a statement of account following disposal of Goods including details of payment to other secured parties (section 132(3)(d));
- 9.4.6. to receive a statement of account if no disposal of Goods for each 6-month period (section 132(4));
- 9.4.7. to receive notice of any proposal of SMARTSTONE AUSTRALIA PTY LTD to retain Goods (section 135);
- 9.4.8. to object to any proposal of SMARTSTONE AUSTRALIA PTY LTD to either retain or dispose of Goods (section 137(2));
- 9.4.9. to redeem Goods (section 142);
- 9.4.10. to reinstate the security agreement (section 143).
- 9.5. The Purchaser further agrees that where SMARTSTONE AUSTRALIA PTY LTD has rights in addition to those under Part 4 of the PPSA, those rights will continue to apply.
- 9.6. Until ownership and title of the Goods passes to the Purchaser in accordance with these terms & conditions of trade, the Purchaser must not give to SMARTSTONE AUSTRALIA PTY LTD a written demand or allow any other person to give SMARTSTONE AUSTRALIA PTY LTD a written demand requiring SMARTSTONE AUSTRALIA PTY LTD to register a financing change statement under the PPSA or enter into or allow any other person to enter into the register of personal property securities a financing change statement under the PPSA.
- 9.7. The Purchaser acknowledges that it has received value as at the date of first delivery of the Goods and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to SMARTSTONE AUSTRALIA PTY LTD under these terms & conditions of trade.
- 9.8. In addition to any other rights under these terms & conditions of trade or otherwise arising, the Purchaser irrevocably grants to SMARTSTONE AUSTRALIA PTY LTD the right, without notice to the Purchaser, to exercise any and all remedies afforded to it as a Secured Party under Chapter 4 of the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Purchaser, to search for and seize, dispose of or retain those goods in respect to which the Purchaser has granted a Security Interest to SMARTSTONE AUSTRALIA PTY LTD. The Purchaser shall indemnify SMARTSTONE AUSTRALIA PTY LTD from any Claims made by any third party as a result of such exercise.
- 9.9. The Purchaser agrees and undertakes to:
- 9.9.1. sign any further documents, provide any further information (which information the Purchaser warrants to be complete, accurate and up-to-date in all respects) and do such further acts which SMARTSTONE AUSTRALIA PTY LTD may reasonably require to enable registration of the security interest granted to SMARTSTONE AUSTRALIA PTY LTD under these terms & conditions of trade and/or any Agreement on the Personal Property Securities Register ("PPSR");
- 9.9.2. give SMARTSTONE AUSTRALIA PTY LTD not less than 14 days written notice of any proposed change in the Purchaser's name and/or any other changes in the Purchaser's details (including but not limited to changes in the Purchaser's address, facsimile number, email address, trading name or business practice);
- 9.9.3. pay all costs incurred by SMARTSTONE AUSTRALIA PTY LTD in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these terms & conditions of trade including executing subordination agreements.
- 9.9.4. be responsible for the full costs incurred by SMARTSTONE AUSTRALIA PTY LTD (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and
- 9.10. The Purchaser waives any rights it may have under any section of the PPSA listed in section 115(1) of the PPSA upon enforcement of any security interest by SMARTSTONE AUSTRALIA PTY LTD.
- 9.11. Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by SMARTSTONE AUSTRALIA PTY LTD, the Purchaser waives the right to receive a verification statement.
- 9.12. The Purchaser agrees that immediately on request by SMARTSTONE AUSTRALIA PTY LTD the Purchaser will procure from any persons considered by SMARTSTONE AUSTRALIA PTY LTD to be relevant to its security position such agreement and waivers as SMARTSTONE AUSTRALIA PTY LTD may at any time require.
- 9.13. Pursuant to section 275(6) of the PPSA, the Purchaser agrees it will not disclose to an interested person information pertaining to SMARTSTONE AUSTRALIA PTY LTD's security interest without prior approval of SMARTSTONE AUSTRALIA PTY LTD.
- 9.14. This clause 9 will survive the termination of any Agreement to the extent permitted by law.
- 10. Intellectual Property**
- 10.1. The supply of Goods or services to the Purchaser does not constitute a transfer of any intellectual property rights (including but not limited to any patent, utility model, trade mark, design or copyright) in the Goods or services or any part thereof and all such rights are to be expressly reserved to the true and lawful owners. The Purchaser shall not do anything inconsistent with or in infringement of such intellectual property rights including but not limited to the decompilation, disassembly and/or re-engineering thereof.
- 10.2. SMARTSTONE AUSTRALIA PTY LTD does not warrant that the supply by it and the use by the Purchaser of the goods and services does not and will not infringe the intellectual property rights of any third party whether such rights take the form of letters patent, registered designs, copyright, trade mark, or any other similar right.
- 10.3. Where SMARTSTONE AUSTRALIA PTY LTD provides the goods or services to the Purchaser's design and/or specifications the Purchaser agrees to indemnify and keep indemnified SMARTSTONE AUSTRALIA PTY LTD and its related corporations against all Claims that SMARTSTONE AUSTRALIA PTY LTD and/or its related corporations may incur or suffer as a result of any allegation by a third party that the manufacture and sale by SMARTSTONE AUSTRALIA PTY LTD of the goods or any part thereof or the provision of the services infringes any intellectual property right of such third party.
- 10.4. The Purchaser shall indemnify SMARTSTONE AUSTRALIA PTY LTD in respect of any such infringement or alleged infringement of any intellectual property rights and shall be responsible for all losses, damages and expenses suffered or incurred by SMARTSTONE AUSTRALIA PTY LTD as a result of any such infringement relating to the subject of any Agreement between the Purchaser and SMARTSTONE AUSTRALIA PTY LTD. In case of any dispute and/or claim arising in connection with any such infringement, SMARTSTONE AUSTRALIA PTY LTD reserves the right at its discretion to terminate, and make null and void any Agreement and the Purchaser shall be responsible for any loss or expense caused to SMARTSTONE AUSTRALIA PTY LTD thereby.
- 11. Smartstone Australia Pty Ltd's Obligations**
- 11.1. Notwithstanding any other provision of these terms & conditions of trade if the Purchaser breaches a term of any Agreement SMARTSTONE AUSTRALIA PTY LTD shall not be bound to perform its obligations under that Agreement until the breach is remedied by the Purchaser.
- 12. Force Majeure**
- 12.1. Should SMARTSTONE AUSTRALIA PTY LTD be delayed, hindered, or otherwise prevented from complying with the terms of these terms & conditions of trade or any Agreement by reason of events or circumstances beyond the reasonable control of SMARTSTONE AUSTRALIA PTY LTD including but not limited to Acts of God, wars, riots, strikes, lockouts, trade disputes or labour disturbances, breakdown of plant or machinery, accident, storm, fire, flood,

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- difficulties or shortages in obtaining material, fuel, transport or labour, the late receipt of the Purchaser's specifications, requirements or other necessary information or any other circumstances affecting the supply of goods or services, then SMARTSTONE AUSTRALIA PTY LTD shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser whether as a direct or indirect result of any such occurrences.
- 12.2. In the event of any delay resulting from the happening of any event, occurrence or circumstance referred to in clause 12.1 hereof, the Purchaser shall accept a delayed delivery of the Goods and shall not be entitled to cancel or modify the Agreement.
- 13. Delay**
- 13.1. Notwithstanding clause 12 hereof, should any delay exceed 3 months from the proposed original, or any subsequently agreed, delivery date, either party shall have the right to cancel the subject Agreement by written notice to the other party unless the parties have otherwise agreed in writing to acknowledge and agree to the delay.
- 14. Limitation of Liability**
- 14.1. Except as otherwise expressly provided in these terms and conditions of trade and to the extent permitted by law, any Purchaser of Goods or services from SMARTSTONE AUSTRALIA PTY LTD agrees to assume all risks and release, hold harmless and indemnify SMARTSTONE AUSTRALIA PTY LTD from and against all liabilities, claims, damages, losses, costs and expenses of whatsoever nature and howsoever occurring (including indirect or consequential loss or damage) which may be suffered by the Purchaser or by any third party arising out of or in any way connected with:
- 14.1.1. the supply of the Goods or the performance of the services by SMARTSTONE AUSTRALIA PTY LTD;
- 14.1.2. the sale, installation, possession, maintenance, storage or use of Goods, whether singly or in combination with any other thing or process;
- 14.1.3. any breach of any warranty or condition of an Agreement be it express, implied or otherwise;
- 14.1.4. by reason of breach of these terms & conditions of trade or of statutory duty or by reason of tort (including but not limited to negligence).
- 14.2. Except as otherwise expressly provided in these terms & conditions of trade and to the extent permitted by law, all statements, warranties, representations, conditions, promises, undertakings, covenants and provisions, express or implied (and whether implied by law or otherwise) relating to Goods (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) and/or services or their supply, being provisions which might otherwise form part of these terms & conditions of trade or any Agreement are hereby excluded in their entirety and are of no effect whatsoever.
- 14.3. The Purchaser warrants to SMARTSTONE AUSTRALIA PTY LTD that:
- 14.3.1. it has not relied on any representation or statement made by or on behalf of SMARTSTONE AUSTRALIA PTY LTD other than as expressly set out in an Agreement;
- 14.3.2. the Purchaser acknowledges that it relies on its own skill and judgement, and where appropriate on the skill and judgement of qualified and experienced advisors, in relation to Goods and/or services supplied to it by SMARTSTONE AUSTRALIA PTY LTD; and the proposed use/s for which the Goods and/or services supplied, or to be supplied, to it by SMARTSTONE AUSTRALIA PTY LTD and their installation; and
- 14.3.3. The Purchaser is responsible for testing and determining the suitability of the Goods for the purpose for which they are intended to be used and the method of their installation.
- 14.4. Subject to clause 15.3 but otherwise notwithstanding any other provision of these terms & conditions of trade or any Agreement, if any liability on the part of SMARTSTONE AUSTRALIA PTY LTD arises to or in favour of the Purchaser (whether in contract, tort or otherwise) for any loss, damage, harm or injury arising out of or in any way connected with the supply of or failure in the provision of or the purported supply of Goods and/or services by SMARTSTONE AUSTRALIA PTY LTD, SMARTSTONE AUSTRALIA PTY LTD's liability for all such loss, damage, harm and injury in all and any circumstances shall be limited in aggregate to the payment by SMARTSTONE AUSTRALIA PTY LTD of the sum not exceeding 5 percent of the monies payable to SMARTSTONE AUSTRALIA PTY LTD pursuant to the relevant Agreement.
- 15. Test & Performance**
- 15.1. SMARTSTONE AUSTRALIA PTY LTD does not guarantee the performance limits stated in any quotation, tender or Agreement unless such limits are expressly guaranteed by SMARTSTONE AUSTRALIA PTY LTD in writing.
- 15.2. SMARTSTONE AUSTRALIA PTY LTD will use all reasonable efforts to supply Goods having a material grade consistent with any material grade specified in any relevant quotation, tender or Agreement.
- 15.3. Where SMARTSTONE AUSTRALIA PTY LTD supplies Goods not manufactured by it, the Goods are subject to the chemical, mechanical and physical properties of the Goods as supplied by the original manufacturer. To the extent permitted by law SMARTSTONE AUSTRALIA PTY LTD does not offer any warranty over such Goods, except that, where the Goods are subject to the warranty of the original manufacturer, SMARTSTONE AUSTRALIA PTY LTD will endeavour to pass on the benefit of such warranty to the Purchaser.
- 16. Measures, Drawings, Documentation and Information**
- 16.1. The parties agree that any descriptive and/or shipping specifications, statements, illustrations, drawings, data, dimensions or measurement in relation to the weight, dimensions, size, strength, density, quality, quantity or other characteristic in relation to any Goods or other subject matter of any quotation, tender or Agreement either submitted by SMARTSTONE AUSTRALIA PTY LTD or otherwise provided by SMARTSTONE AUSTRALIA PTY LTD to the Purchaser:
- 16.1.1. Do not form part of any Agreement entered into between SMARTSTONE AUSTRALIA PTY LTD and the Purchaser unless expressly agreed in writing by both parties; and
- 16.1.2. Are illustrative and approximate only and are subject to a tolerance of plus or minus 10 percent in respect of the measurement or other quantification of all characteristics of all Goods unless expressly agreed in writing by SMARTSTONE AUSTRALIA PTY LTD.
- 16.2. If the Purchaser disputes SMARTSTONE AUSTRALIA PTY LTD's assessment of the measurement or other quantification of any characteristic of the Goods or a part thereof, SMARTSTONE AUSTRALIA PTY LTD is will not be liable in respect of such a discrepancy unless the Purchaser complies with clause 17 hereof.
- 16.3. Any drawings or other documents submitted and any information supplied by SMARTSTONE AUSTRALIA PTY LTD to the Purchaser remains the property of SMARTSTONE AUSTRALIA PTY LTD and constitutes confidential information of SMARTSTONE AUSTRALIA PTY LTD (to the extent that it is not in the public domain) and the Purchaser shall keep all such confidential information confidential and shall not use such drawings, documents and information for any purpose other than that stipulated by SMARTSTONE AUSTRALIA PTY LTD nor provide the same to third parties.
- 16.4. Where any drawings or other documents submitted by SMARTSTONE AUSTRALIA PTY LTD with or as a part of a quotation or tender are not incorporated into an Agreement between SMARTSTONE AUSTRALIA PTY LTD and the party to which such quotation or tender was submitted they shall be returned to SMARTSTONE AUSTRALIA PTY LTD within 7 days of expiry of the quotation or tender or otherwise as reasonably required by SMARTSTONE AUSTRALIA PTY LTD.
- 17. Claims and Returns**
- 17.1. No claim in relation to damaged Goods, discrepancy in relation to any measurement or other quantification of any characteristic of the Goods or a part thereof or shortage or non-delivery whatsoever may be made unless such claim is made by the Purchaser in writing to SMARTSTONE AUSTRALIA PTY LTD within 7 days of delivery, or advised delivery, of the Goods to the Purchaser.
- 17.2. Subject to clause 17.1, SMARTSTONE AUSTRALIA PTY LTD may, in its discretion, replace or repair such Goods or pay for such Goods to be replaced or repaired.
- 17.3. SMARTSTONE AUSTRALIA PTY LTD is not obliged to accept the return by the Purchaser of any Goods for credit and any acceptance of such a return shall only be by written agreement of SMARTSTONE AUSTRALIA PTY LTD and always at the sole discretion of SMARTSTONE AUSTRALIA PTY LTD. In all cases of return the original invoice must be quoted and return freight must be prepaid by the Purchaser.
- 17.4. SMARTSTONE AUSTRALIA PTY LTD reserves the right to charge a 15 percent restocking fee on Goods accepted for credit.
- 17.5. The Purchaser must obtain SMARTSTONE AUSTRALIA PTY LTD's prior consent before returning Goods for credit or otherwise.
- 17.6. Delivery for return of saleable Goods to SMARTSTONE AUSTRALIA PTY LTD for credit shall be at the cost of the Purchaser.
- 17.7. All Goods returned for credit must be in their original condition and packaging and in re-saleable condition.
- 17.8. Goods specifically manufactured, cut to size, produced, ordered or modified for the Purchaser and not defective will not be accepted for credit.
- 17.9. SMARTSTONE AUSTRALIA PTY LTD reserves the right to impose special conditions on any return of Goods for credit provided the Purchaser has been

- given seven (7) days' notice of these special conditions.
- 17.10. Where the Agreement is for the supply of goods SMARTSTONE AUSTRALIA PTY LTD may at its option repair or replace defective goods at its own expense but SMARTSTONE AUSTRALIA PTY LTD shall have no liability for the cost of delivery to SMARTSTONE AUSTRALIA PTY LTD and/or removal of the defective Goods nor for the cost of reinstallation of the goods.
- 18. Waiver**
- 18.1. The fact that SMARTSTONE AUSTRALIA PTY LTD fails to do, or delays in doing, something that it is entitled to do under these terms & conditions of trade or any Agreement, does not amount to a waiver of its right to do it. Any waiver must be agreed or communicated in writing by SMARTSTONE AUSTRALIA PTY LTD.
- 18.2. Any waiver of these terms & conditions of trade (or a part thereof) by SMARTSTONE AUSTRALIA PTY LTD, shall not prejudice or affect SMARTSTONE AUSTRALIA PTY LTD's rights and remedies in respect of any subsequent breach, non-performance or non-observance by the Purchaser of these terms & conditions of trade or any Agreement.
- 19. Charge**
- 19.1. The Purchaser charges in favour of SMARTSTONE AUSTRALIA PTY LTD all of its estate and interest in any real property that the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 19.2. The Purchaser charges in favour of SMARTSTONE AUSTRALIA PTY LTD all of its estate and interest in any personal property that the Purchaser owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 19.3. The Purchaser appoints as its duly constituted attorney SMARTSTONE AUSTRALIA PTY LTD's company secretary from time to time to execute in the Purchaser's name and as the Purchaser's act and deed any real property mortgage, bill of sale or consent to any caveat SMARTSTONE AUSTRALIA PTY LTD may choose to lodge against real property that the Purchaser may own in any Land Titles Office in any state or territory of Australia, even though the Purchaser may not have defaulted in carrying out its obligations hereunder, upon written notice and demand to the Purchaser (in the event that there is no default by the Purchaser in carrying out its obligations hereunder).
- 19.4. Where the Purchaser has previously entered into an agreement with SMARTSTONE AUSTRALIA PTY LTD by which the Purchaser has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement. SMARTSTONE AUSTRALIA PTY LTD may, at its discretion and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.
- 20. General**
- 20.1. The Purchaser may not assign any right under this document without the written consent of SMARTSTONE AUSTRALIA PTY LTD.
- 20.2. These terms & conditions of trade and any Agreement to which they apply are governed by and must be interpreted in accordance with the laws of New South Wales.
- 20.3. If a clause or a part of a clause can be read in a way that makes it illegal, unenforceable, void, voidable or invalid, but can also be read in a way that makes it legal, enforceable, not void, not voidable and valid, it must be read in the latter way.
- 20.4. If any clause or part of a clause is illegal, unenforceable, void, voidable or invalid, that clause or part is to be treated as removed from these terms & conditions of trade, but the rest of this document is not affected.
- 20.5. The Purchaser unconditionally and irrevocably submits to the exclusive jurisdiction of the Courts of New South Wales and Federal Courts sitting in New South Wales.
- 20.6. In these terms & conditions of trade, unless contrary to or inconsistent with the context:  
 "Agreement(s)" means all tenders and quotations submitted by, all applications for commercial credit account submitted to, all orders placed with and/or confirmed by, all invoices issued by, and all contracts entered into by SMARTSTONE AUSTRALIA PTY LTD whereby goods and/or services are supplied, provided and/or delivered by SMARTSTONE AUSTRALIA PTY LTD to the Purchaser.  
 "Claims" means all actual or threatened complaints, claims, demands, suits, proceedings, summonses, actions, costs, charges, expenses, liabilities, compensation, losses and damages (including consequential loss and damage) and interest whatsoever.  
 "Goods" means all goods supplied or agreed to be supplied by SMARTSTONE AUSTRALIA PTY LTD to the Purchaser pursuant to any Agreement.  
 "GST" means tax payable on taxable supplies under A New Tax System (Goods & Services Tax) Act 1999 (Cth).  
 "SMARTSTONE AUSTRALIA PTY LTD" means SMARTSTONE AUSTRALIA PTY LTD ACN 149 937 008 and, where applicable, its associated and subsidiary and parent companies inclusive of all divisions.  
 "Order" means an order placed by the Purchaser to SMARTSTONE AUSTRALIA PTY LTD for Goods to be sold and delivered by SMARTSTONE AUSTRALIA PTY LTD to the Purchaser.  
 "PPSA" means the Personal Property Securities Act 2009.  
 "Purchaser" means the person or entity with whom SMARTSTONE AUSTRALIA PTY LTD enters into an Agreement for the sale of Goods and/or the provision of services or credit and includes its successors or assigns.
- 20.7. In these terms & conditions of trade, unless contrary to or inconsistent with the context:  
 20.7.1. headings are for guidance only and do not affect interpretation;  
 20.7.2. the singular includes the plural and vice versa;  
 20.7.3. a reference to these terms & conditions of trade, an Agreement or any other document or to any legislation, rule or regulation includes a variation, novation or replacement of or supplement to any of them from time to time.
- 21. Privacy**
- The Purchaser acknowledges that SMARTSTONE AUSTRALIA PTY LTD may collect, use and disclose personal and credit information in connection with SMARTSTONE AUSTRALIA PTY LTD's dealings with the Purchaser in accordance with SMARTSTONE AUSTRALIA PTY LTD's Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters pursuant to the Credit Reporting Code, the Privacy Act 1988 (Cth), the Privacy (Enhancing Privacy Protections) Act 2012, and the Australian Privacy Principles, and the Purchaser consents to that information being so collected, used and disclosed. A copy of SMARTSTONE AUSTRALIA PTY LTD's Privacy Statement, Privacy Policy, Credit Reporting Policy and Statement of Notifiable Matters will be provided to the Purchaser upon request in writing and can be found at [www.smartstone.com.au](http://www.smartstone.com.au).