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## Robert W & Margaret G Rendell T/A Barg Engineering – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 “Barg Engineering” means Robert W & Margaret G Rendell T/A Barg Engineering, its successors and assigns or any person acting on behalf of and with the authority of Robert W & Margaret G Rendell T/A Barg Engineering.
- 1.2 “Customer” means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3 “Goods” means all Goods (including all transportable buildings, modules and any part thereof) or Services supplied by Barg Engineering to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “Price” means the Price payable for the Goods as agreed between Barg Engineering and the Customer in accordance with clause 4 below.

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with Barg Engineering’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and Barg Engineering.

### 3. Change in Control

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

### 4. Price and Payment

- 4.1 At Barg Engineering’s sole discretion the Price shall be either:
    - (a) as indicated on any invoice provided by Barg Engineering to the Customer; or
    - (b) the Price as at the date of delivery of the Goods according to Barg Engineering’s current price list; or
    - (c) Barg Engineering’s quoted price (subject to clause 4.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
  - 4.2 Barg Engineering reserves the right to change the Price:
    - (a) if a variation to the Goods which are to be supplied is requested; or
    - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
    - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, hard rock barriers below the surface, iron reinforcing rods in concrete, poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed etc) which are only discovered on commencement of the Services; or
    - (d) in the event of increases to Barg Engineering in the cost of labour or Goods which are beyond Barg Engineering’s control.
  - 4.3 At Barg Engineering’s sole discretion a non-refundable deposit may be required.
  - 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by Barg Engineering, which may be:
    - (a) before delivery of the Goods;
    - (b) on delivery of the Goods and/or completion of the Services;
    - (c) by way of progress payments in accordance with Barg Engineering’s specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed; or
    - (d) the date specified on any invoice or other form as being the date for payment; or
    - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by Barg Engineering.
  - 4.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Customer and Barg Engineering.
  - 4.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to Barg Engineering an amount equal to any GST Barg Engineering must pay for any supply by Barg Engineering under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- ### 5. Delivery of Goods
- 5.1 Delivery (“**Delivery**”) of the Goods is taken to occur at the time that:
    - (a) the Customer or the Customer’s nominated carrier takes possession of the Goods at Barg Engineering’s address; or
    - (b) Barg Engineering (or Barg Engineering’s nominated carrier) delivers the Goods to the Customer’s nominated address even if the Customer is not present at the address.
  - 5.2 At Barg Engineering’s sole discretion the cost of delivery is either included in the Price or is in addition to the Price.

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- 5.3 The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then Barg Engineering shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 5.4 Barg Engineering may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.5 Any time or date given by Barg Engineering to the Customer is an estimate only. The Customer must still accept delivery of the Goods even if late and Barg Engineering will not be liable for any loss or damage incurred by the Customer as a result of the delivery being late.

**6. Risk**

- 6.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Barg Engineering is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Barg Engineering is sufficient evidence of Barg Engineering's rights to receive the insurance proceeds without the need for any person dealing with Barg Engineering to make further enquiries.
- 6.3 If the Customer requests Barg Engineering to leave Goods outside Barg Engineering's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
- 6.4 The Customer warrants they will not exceed any specified weights/load limits of the Goods. Barg Engineering shall not be liable for any damage caused to the Goods as a result of the Customer exceeding any specified weights/load limits.

**7. Access**

- 7.1 Barg Engineering shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of Barg Engineering (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas).

**8. Title**

- 8.1 Barg Engineering and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid Barg Engineering all amounts owing to Barg Engineering; and
  - (b) the Customer has met all of its other obligations to Barg Engineering.
- 8.2 Receipt by Barg Engineering of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 8.3 It is further agreed that:
- (a) until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to Barg Engineering on request.
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for Barg Engineering and must pay to Barg Engineering the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for Barg Engineering and must pay or deliver the proceeds to Barg Engineering on demand.
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of Barg Engineering and must sell, dispose of or return the resulting product to Barg Engineering as it so directs.
  - (e) the Customer irrevocably authorises Barg Engineering to enter any premises where Barg Engineering believes the Goods are kept and recover possession of the Goods.
  - (f) Barg Engineering may recover possession of any Goods in transit whether or not delivery has occurred.
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of Barg Engineering.
  - (h) Barg Engineering may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

**9. Personal Property Securities Act 2009 ("PPSA")**

- 9.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by Barg Engineering to the Customer.
- 9.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Barg Engineering may reasonably require to;
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 9.3(a)(i) or 9.3(a)(ii);

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- (b) indemnify, and upon demand reimburse, Barg Engineering for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of Barg Engineering;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Barg Engineering;
  - (e) immediately advise Barg Engineering of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.4 Barg Engineering and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7 Unless otherwise agreed to in writing by Barg Engineering, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8 The Customer must unconditionally ratify any actions taken by Barg Engineering under clauses 9.3 to 9.5.
- 9.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

**10. Security and Charge**

- 10.1 In consideration of Barg Engineering agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 10.2 The Customer indemnifies Barg Engineering from and against all Barg Engineering's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Barg Engineering's rights under this clause.
- 10.3 The Customer irrevocably appoints Barg Engineering and each director of Barg Engineering as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 10 including, but not limited to, signing any document on the Customer's behalf.

**11. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**

- 11.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify Barg Engineering in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow Barg Engineering to inspect the Goods.
- 11.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 11.3 Barg Engineering acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 11.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, Barg Engineering makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. Barg Engineering's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 11.5 If the Customer is a consumer within the meaning of the CCA, Barg Engineering's liability is limited to the extent permitted by section 64A of Schedule 2.
- 11.6 If Barg Engineering is required to replace the Goods under this clause or the CCA, but is unable to do so, Barg Engineering may refund any money the Customer has paid for the Goods.
- 11.7 If the Customer is not a consumer within the meaning of the CCA, Barg Engineering's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by Barg Engineering at Barg Engineering's sole discretion;
  - (b) limited to any warranty to which Barg Engineering is entitled, if Barg Engineering did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 11.8 Subject to this clause 11, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 11.1; and
  - (b) Barg Engineering has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 11.9 Notwithstanding clauses 11.1 to 11.8 but subject to the CCA, Barg Engineering shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by Barg Engineering;

(e) fair wear and tear, any accident, or act of God.

- 11.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by Barg Engineering as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that Barg Engineering has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 11.10.
- 11.11 Barg Engineering may in its absolute discretion accept non-defective Goods for return in which case Barg Engineering may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs.
- 11.12 Notwithstanding anything contained in this clause if Barg Engineering is required by a law to accept a return then Barg Engineering will only accept a return on the conditions imposed by that law.

## **12. Intellectual Property**

- 12.1 Where Barg Engineering has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of Barg Engineering.
- 12.2 The Customer warrants that all designs, specifications or instructions given to Barg Engineering will not cause Barg Engineering to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify Barg Engineering against any action taken by a third party against Barg Engineering in respect of any such infringement.
- 12.3 The Customer agrees that Barg Engineering may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which Barg Engineering has created for the Customer.

## **13. Default and Consequences of Default**

- 13.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at Barg Engineering's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 13.2 If the Customer owes Barg Engineering any money the Customer shall indemnify Barg Engineering from and against all costs and disbursements incurred by Barg Engineering in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Barg Engineering's collection agency costs, and bank dishonour fees).
- 13.3 Without prejudice to any other remedies Barg Engineering may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions Barg Engineering may suspend or terminate the supply of Goods to the Customer. Barg Engineering will not be liable to the Customer for any loss or damage the Customer suffers because Barg Engineering has exercised its rights under this clause.
- 13.4 Without prejudice to Barg Engineering's other remedies at law Barg Engineering shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to Barg Engineering shall, whether or not due for payment, become immediately payable if:
- any money payable to Barg Engineering becomes overdue, or in Barg Engineering's opinion the Customer will be unable to make a payment when it falls due;
  - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

## **14. Compliance with Laws**

- 14.1 The Customer and Barg Engineering shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 14.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 14.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

## **15. Cancellation**

- 15.1 Barg Engineering may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice Barg Engineering shall repay to the Customer any money paid by the Customer for the Goods. Barg Engineering shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 15.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by Barg Engineering as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 15.3 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

## **16. Privacy Act 1988**

- 16.1 The Customer agrees for Barg Engineering to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by Barg Engineering.
- 16.2 The Customer agrees that Barg Engineering may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:

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- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer.

The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

- 16.3 The Customer consents to Barg Engineering being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.4 The Customer agrees that personal credit information provided may be used and retained by Barg Engineering for the following purposes (and for other purposes as shall be agreed between the Customer and Barg Engineering or required by law from time to time):
- (a) the provision of Goods; and/or
  - (b) the marketing of Goods by Barg Engineering, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 16.5 Barg Engineering may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 16.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that Barg Engineering is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of Barg Engineering, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Customer by Barg Engineering has been paid or otherwise discharged.

**17. Unpaid Barg Engineering's Rights**

- 17.1 Where the Customer has left any item with Barg Engineering for repair, modification, exchange or for Barg Engineering to perform any other service in relation to the item and Barg Engineering has not received or been tendered the whole of any moneys owing to it by the Customer, Barg Engineering shall have, until all moneys owing to Barg Engineering 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.
- 17.2 The lien of Barg Engineering shall continue despite the commencement of proceedings, or judgment for any moneys owing to Barg Engineering having been obtained against the Customer.

**18. Building and Construction Industry Security of Payments Act 1999**

- 18.1 At Barg Engineering 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 Payments Act 1999 may apply.
- 18.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.

**19. General**

- 19.1 The failure by Barg Engineering to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Barg Engineering's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which Barg Engineering has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 19.3 Subject to clause 11 Barg Engineering shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Barg Engineering of these terms and conditions (alternatively Barg Engineering's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).

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- 19.4 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by Barg Engineering nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.5 Barg Engineering may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.6 The Customer agrees that Barg Engineering may amend these terms and conditions at any time. If Barg Engineering makes a change to these terms and conditions, then that change will take effect from the date on which Barg Engineering notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for Barg Engineering to provide Goods to the Customer.
- 19.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 19.8 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.

**ADDITIONAL CLAUSES APPLICABLE TO FENCING****20. Acceptance**

- 20.1 Where the Customer is requesting or organising Barg Engineering to provide Services and is acting with or on behalf of any third party than that third party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third party does not pay for the Services when due, the Customer acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
- 20.2 Barg shall only be responsible for their performance to the party that contracts them to undertake the Services and shall not be responsible to any third party irrespective of their relationship to the Customer.

**21. Delivery of the Services**

- 21.1 Subject to clause 21.2 it is Barg Engineering's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 21.2 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that Barg Engineering claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond Barg Engineering's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
  - (b) have the site ready for the Services; or
  - (c) notify Barg Engineering that the site is ready.

**22. Risk**

- 22.1 The Customer acknowledges that for all Goods supplied, the manufacturer's maintenance instructions are important and failure to comply with the manufacturer's maintenance instructions will void the product warranty as detailed in the warranty documentation, (for example pool fencing near salt water may result in salt build up resulting in corrosion, if fencing is not hosed regularly).
- 22.2 Where the Customer is to supply Barg Engineering with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. Barg Engineering shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.
- 22.3 Whilst Barg Engineering will take all due care during installation Barg Engineering will not accept any responsibility for tiles or pavers damaged during installation.
- 22.4 Timber is a natural product and as such colour, shade tone, markings, and veining may vary from samples provided. Whilst Barg Engineering will make every effort to match sales samples to the finished Goods Barg Engineering accepts no liability whatsoever where the samples differ to the finished Goods.
- 22.5 The Customer acknowledges that Goods supplied may exhibit variations in shade, colour and may fade or change colour over time and may expand, contract or distort as a result of exposure to heat, cold, weather.

**23. Customer's Responsibilities & Acknowledgements**

- 23.1 The Customer must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the Customer fails to comply with this clause then Barg Engineering accepts no responsibility for installation decisions that need to be made by Barg Engineering in the Customer's absence.
- 23.2 The Customer acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow Barg Engineering clear access along the proposed fence line prior to commencement of work by Barg Engineering unless otherwise agreed in writing between Barg Engineering and the Customer. Under no circumstances will Barg Engineering handle removal of asbestos product.
- 23.3 The Customer shall provide Barg Engineering with a suitable free power source.
- 23.4 Location of underground services by a licensed service locator is mandatory prior to commencement of any works. "Dial Before You Dig" must be consulted and any potential underground services marked on site. Whilst Barg Engineering will take all care to avoid damage to any underground services the Customer agrees to indemnify Barg Engineering in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified. If the Customer requests Barg Engineering to engage the service locator then this shall be in addition to the Price.
- 23.5 Barg Engineering shall not be responsible for digging land out under fence lines nor removal of soil from the work site unless specified at the time of the quotation.

- 23.6 Barg Engineering reserves the right to touch-up all products supplied and installed on the work site.
- 23.7 Where fencing is installed on a retaining wall Barg Engineering shall not be liable for any movement in the fence due to consolidation or the movement of soil or any other component of the retaining wall.

**ADDITIONAL CLAUSES APPLICABLE TO TRANSPORTABLE BUILDINGS**

**24. Delivery Of Goods**

- 24.1 In the event that the Customer supplies their own transport of the Goods then Barg Engineering reserves the right to charge a fee (unless agreed upon at the time of the original quotation) for the loading of the Goods from Barg Engineering' premises. This shall be treated as a variation and shall be detailed separately at the time of invoicing.

**25. Footings and/or Tie-Down Systems**

- 25.1 On request an engineer's certificate specifying the footing and/or tie down requirements will be provided with each Advance Cabin. Unless specified in writing between Barg Engineering and the Customer, it is the responsibility of the Customer to ensure that the footings and/or tie-down requirements are constructed according to these specifications and that other mounting requirements (including but not limited to, such as clearance beneath structure, under floor cross-flow ventilation, termite shields etc.) are adhered to.

**26. Storage**

- 26.1 In the event that the Customer is unable to take delivery of the Goods within the six (6) week period (or the agreed delivery date) from the time Barg Engineering is in receipt of the deposit payment, an additional charge for storage will apply and will be detailed as a variation as per clause 4.2.

**27. Insurance**

- 27.1 It is the Customers responsibility to ensure that the Goods are insured from the time of dispatch up to and including unloading and relocation of the Goods for, unless specified otherwise at the time of quotation.

**28. Warranty**

- 28.1 Any warranty for the Goods offered under clause 11 will be void:
  - (a) if failure to the structure and subframe(s) is a result of being dropped by the Customer during relocation; or
  - (b) if struck by any vehicle; or
  - (c) if lifted and/or shifting not using the using designated lifting points.
- 28.2 To the extent permitted by statute, no warranty is given by Barg Engineering as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. Barg Engineering shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.