

Elsafe Australia Pty Ltd
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New South Wales 2103
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ABN 11 003 042 957

1. APPLICATION

1.1 **Application:** These Terms apply to the supply of all Goods by Elsafe to the Purchaser from the date the Purchaser accepts these Terms.

1.2 **Acceptance:** The Purchaser accepts these Terms when:

- (a) the Purchaser submits an Order or accepts Elsafe's Quotation (whether in writing, verbally or by continuing to instruct Elsafe to supply the Goods); or
- (b) the Purchaser accepts delivery of any, or any part, of the Goods pursuant to an Order; or
- (c) the Purchaser makes payment, or partial payment, for any Goods supplied by Elsafe; or
- (d) when the Purchaser signs a Quotation or these Terms, whichever occurs first.

1.3 **Inconsistency:** The following documents comprise the contract between Elsafe and the Purchaser, and to the extent of any inconsistency, the following order or priority will apply:

- (a) these Terms;
- (b) Order Confirmation;
- (c) Quotation;
- (d) Proof of delivery.

2. QUOTATIONS AND ORDERS

2.1 **Providing a Quotation:** Any Quotation given by Elsafe in relation to the potential supply of Goods will be subject to any conditions and assumptions specified. The Purchaser acknowledges that Elsafe relies upon the accuracy and completeness of any Relevant Information provided by the Purchaser in relation to a Quotation and/or an Order.

2.2 **Validity of Quotation:** Elsafe reserves the right to withdraw a Quotation at any time before an Order becomes binding. A Quotation is valid until the date that is 30 days after the Quotation was given, unless withdrawn earlier.

2.3 **Placing an Order:** Acceptance of a Quotation must be made in writing by the Purchaser. Subject to clause 3, an Order for supply of Goods becomes binding when Elsafe provides (in its absolute discretion) the Purchaser with an Order Confirmation.

2.4 **Conditions:** The terms on which Elsafe will supply the Goods set out in the Order Details may be subject to any additional terms as specified, including an obligation for you to make a deposit for the Order in accordance with clause 4.2.

2.5 **Changes:** Any changes in scope of the Quotation including, quantities, re-design, delivery dates must be provided to Elsafe in writing immediately to allow Elsafe to requote the work.

2.6 **Discrepancies:** If the terms of the Purchaser's Order differ in any way from these Terms or the Quotation, then such acceptance shall only bind Elsafe should the said counteroffer be expressly accepted by Elsafe and confirmed in writing. Unless otherwise agreed by us in writing, these Terms will prevail over, and Elsafe will not be bound by, any conditions (express or implied) added or provided by the Purchaser at any time.

3. PRICE

3.1 **Price payable:** Unless varied in accordance with clauses 3.2 and 3.3, the prices for supply of Goods will be as specified in a Quotation and will become binding upon issue of the Order Confirmation.

3.2 **Variation of price:** While the price in the Quotation will be based on the current best estimate of the applicable prices for the relevant Goods, prices are based on multiple factors including the current cost prevailing and the specifications supplied at the time of the Quotation. Subject to clause 13 and the Purchaser's rights under applicable law

including the Australian Consumer Law, Elsafe reserves the right to vary the price payable for the Goods if:

- (a) there is any movement in the cost to Elsafe of supplying the Goods specified in the Quotation (at any time before or after the Quotation is given);
- (b) the third-party costs incurred by Elsafe in connection with supply of the Goods (including material costs and freight costs) increase;
- (c) the Goods specified in the Order are varied from the Goods specified in Elsafe's Quotation;
- (d) the Purchaser's instructions change or further information is provided or it becomes apparent to Elsafe that the Order or Quotation is not accurate;
- (e) Elsafe incurs any additional costs or expense due to any delay in performance caused or contributed to by the Purchaser or its employees, offices, agents or contractors; or
- (f) otherwise as provided in these Terms, and Elsafe will notify the Purchaser of the varied price pursuant to clause 3.3.

3.3 **Price confirmation:** If the price for the Goods in the Order Confirmation is different than the price set out in the Quotation, Elsafe will inform you of the varied price in the Order Confirmation (**Confirmed Price**). The Confirmed Price will become binding if the Purchaser does not notify Elsafe of its rejection of the Confirmed Price within 5 Working Days of receiving the Order Confirmation. If the Purchaser rejects the Confirmed Price within that period, the Purchaser's Order and the contract for supply of the Goods will be rescinded and cancelled.

3.4 **Additional costs:** If Elsafe is requested to supply additional and/or alternative Goods and which fall outside an existing Order or specifications contained in a Quotation or otherwise, Elsafe will either (as reasonably practicable):

- (a) provide a further Quotation for the additional Goods in writing; or
- (b) apply the prices previously provided in a Quotation to the additional Goods.

4. TERMS OF PAYMENT

4.1 **Payment terms:** Elsafe may require you to pay for the Goods upfront, which you may do via EFT or credit card. Otherwise, payment must be made in full within thirty (30) days of the end of the month of date of invoice.

4.2 **Deposit:** Elsafe reserves the right to charge the Purchaser a deposit, which must be paid prior to the manufacture of any special orders for Goods are not a part of Elsafe's standard range of products.

4.3 **Credit:** The extension of credit to the Purchaser and the terms upon which it is provided shall be always at the sole discretion of Elsafe and Elsafe retains the right to withdraw credit facilities at any time prior to the delivery of Goods.

4.4 **Interest:** Elsafe reserves the right to charge interest on invoices not paid within the timeframe stated in clause 4.1, at the rate of 9.2% per month (and any part of a month) on a compounding basis during the period the amount is outstanding and until paid in full.

4.5 **Costs:** If you do not pay within the timeframe stated in clause 4.1, the Purchaser must pay Elsafe all:

- (a) legal costs (on a solicitor/client basis); and
- (b) amounts paid by Elsafe to its mercantile or collection agents or solicitors, incurred by Elsafe in connection with the Purchaser's failure to make payment.

5. GST AND OTHER IMPOSTS

5.1 **GST additional:** Goods and Services Tax (GST) and other Government imposts, when applicable, will be added to the invoice provided to the Purchaser and shown as a separate line within the invoiced amount.

5.2 **Application:** If any payment by the Purchaser to Elsafe under these Terms constitutes consideration for a taxable supply for the purposes of GST, the amount to be paid by the Purchaser for the supply will be increased so that the net amount retained by Elsafe after payment of the GST is the same as if Elsafe was not liable to pay GST in respect of that supply.

6. DELIVERY

6.1 **Dispatch date:** Elsafe will use reasonable endeavours to dispatch the Goods for Delivery as per the timelines indicated in the Order Confirmation. Elsafe will inform the Purchaser of any changes to the dispatch date as soon as reasonably practicable.

6.2 **Delivery fee:** Elsafe reserves the right to charge a fee for Delivery of the Goods, at its sole discretion. Any fee for Delivery will be listed on the Order Confirmation and will be to be deemed accepted by the Purchaser unless the Purchaser notifies Elsafe prior to the dispatch date indicated on the Order Confirmation.

6.3 **Dispatch and delivery delays:** Notwithstanding clause 6.1, Elsafe will not in any circumstances be liable for any Loss, arising directly or indirectly, from delays in or failure to dispatch or Deliver the Goods for any cause or reason including logistics delays, manufacturing delays, unavailability or restriction in availability of componentry, customs issues, inclement weather, effects of Force Majeure and/or labour disputes. In the event of any of the foregoing or an event of Force Majeure, Elsafe will seek to collaborate with the Purchaser and keep them informed of new dispatch dates, to the extent known by Elsafe.

6.4 **Risk:** Risk of the Goods shall pass to the Purchaser on the earlier of:

(a) pickup of the Goods by the Purchaser or their representative from any Elsafe's premises, including its warehouse or office; or

(b) Delivery of the Goods, as evidenced by the proof of delivery.

6.5 **Inspection:** All Goods must be receipted and inspected immediately on pickup or Delivery, and Elsafe must be notified in writing within 2 Working Days of any Goods that were damaged, faulty or incorrect at the time of supply to ensure replacement goods or claims can be provided in a timely manner in accordance with this clause 6. The Purchaser must provide supporting visual images of the goods in their received state.

6.6 **Failure to give notice:** Subject to clause 9 and the Purchaser's rights under law including the ACL, if the Purchaser fails to give Elsafe notice of damaged, faulty or incorrect Goods in accordance with clause 6.5, the Goods will be conclusively presumed to be in all respects in accordance with the Purchaser's Order and free from any defects.

7. TITLE

7.1 **Title:** Elsafe will retain absolute title over the Goods until receipt of full payment for the Goods.

7.2 **Insurance:** From the time when risk of the Goods passes to the Purchaser under clause 6.4, the Purchaser must insure and keep the Goods insured against all insurable risks in the name of the Purchaser as purchaser, and Elsafe as an unpaid vendor, for their full insurable value.

7.3 **Conditions:** Until title in the Goods passes to the Purchaser in accordance with clause 7.1, the Purchaser acknowledges and agrees that it shall possess the Goods as bailee only and subject to the following conditions:

(a) the Purchaser hold the Goods as fiduciary, bailee and agent for Elsafe and must keep the Goods physically separate from all other of the Purchaser's goods and clearly identified as owned by Elsafe;

(b) if an Event of Default occurs in relation to the Purchaser, then without prejudice to Elsafe's other rights, Elsafe may without notice to the Purchaser enter any premises occupied by the Purchaser or any other place where the Goods may be and recover possession of those Goods including by removing Goods from their installed position; and

(c) if the Goods are resold while payment for those Goods is owed to Elsafe, the Purchaser must hold the entire proceeds of such sales in trust for Elsafe and in a separate account and not mix them with any other funds.

8. PRODUCT RETURNS FOR CREDIT

8.1 **Change of mind:** Other than in respect of Goods returned pursuant to the rights set out in clauses 9 and/or 13 below or that have been wrongly supplied or oversupplied, no Goods will be accepted for return due to change of mind and for credit without the prior written

consent of Elsafe (in its sole discretion) and otherwise than in accordance with this clause 8.

8.2 **Timing:** Upon receipt of Goods, it is the responsibility of the receiver to ensure the goods meet the requirements for the desired solution and are in accordance with the Order. The Purchaser must notify Elsafe of any Goods it wishes to return for change of mind. Elsafe will either approve the return (and issue a Returned Materials Authorisation (RMA)) or reject the return.

8.3 **Eligibility:** Goods may not be returned for change of mind if more than 60 days has elapsed since the Goods were dispatched from Elsafe's premises, unless otherwise agreed by Elsafe.

8.4 **Returning Goods:** Goods returned for change of mind must be delivered to Elsafe within 5 Working Days after Elsafe approves return of the Goods in accordance with clause 8.2.

8.5 **Conditions:** Other than in respect of Goods returned pursuant to the rights set out in clauses 9 and/or 13 below or that have been wrongly supplied or oversupplied, the following conditions apply to return of Goods:

(a) Goods may only be returned in exchange for Elsafe credit.

(b) All transport costs for return of Goods for change of mind are at the expense of the Purchaser. Failure to package and protect the product from damage may result in the return being rejected.

(c) Goods must be in good condition, unused and in the original packaging, accompanied by an RMA.

(d) Special products made and/or delivered to customer's specification may only be returned for credit if the Goods do not meet the "validated" drawing or specification, or the Goods are defective or otherwise falls within the express warranty provisions detailed in clause 9 or there is a statutory right to return the Goods as set out in clause 13.

(e) Return of Goods will only be accepted once the Goods have passed Elsafe's QC inspection. At such time the Elsafe credits team will inform the Purchaser of Elsafe's intent to accept the return and apply a credit for the Purchaser, or reject the return and resend the Goods back to the Purchaser.

(f) Elsafe reserves the right to charge restocking fee at its sole discretion.

9. EXPRESS WARRANTY

9.1 **Definitions:** For the purposes of this clause 9, 'Acceptable quality' has the same meaning as provided in the Australian Consumer Law.

9.2 **Express Warranty:** Elsafe agrees for a period twelve (12) months from the date of purchase to make good, by repair or replacement, any defects in the Goods which, under proper use and in accordance with any instructions issued by Elsafe, result in the Goods being of unacceptable quality because of faulty design, material, or workmanship by Elsafe, provided that:

(a) the defect/s are not due to normal wear and tear.

(b) the defect/s are not a result of improper installation or use of the goods.

(c) the defect/s are not the result of negligent damage to the goods.

(d) the defect/s are not the result of accident.

(e) the defect/s are not the result of insect or vermin infestation.

(f) the defect/s are not the result of use outside of the Goods' rated specifications.

(g) the defect/s are not the result of a power surge or overvoltage; and

(h) the defect/s are not the result of modification or alteration to the Goods;

(i) the defect/s are not the result of liquid ingress;

(j) the defect/s are not the result of adverse environmental conditions; and

(k) there is no evidence of tampering, hereinafter, the "Express Warranty".

9.3 **Claim:** To enquire about claiming under the Express Warranty set out in clause 9.2 above, the Purchaser should follow these steps:

(a) carefully check the operating instructions, user manual and the terms of this warranty;

(b) have the consignment number of Goods available;

- (c) have the proof of purchase (e.g., an invoice) available; and
- (d) call the telephone number set out in clause 9.4 below.

9.4 **Warranty provider:** The Express Warranty is given by:

Elsafe Australia Pty Ltd
2/11-17 Wilmette Place, Mona Vale, NSW 2103. Australia
Tel: +61 2 9454 7500

9.5 **Conditions:** If any of the conditions set out in clause 9.2 are not satisfied, the Express Warranty will be void and of no effect.

9.6 **Statutory rights:** The benefits to the Purchaser (consumer) of the Express Warranty are in addition to other rights and remedies of the purchaser (consumer) under a law in relation to the Goods to which this warranty relates.

9.7 **Consumer law:** Our goods come with guarantees that cannot be excluded under the ACL. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if goods fail to be of acceptable quality and the failure does not amount to a major failure.

9.8 **Geographic scope:** The Express Warranty contained in this clause 9 only applies to goods purchased and used in where Elsafe has offices of operation and is in addition to (and does not exclude, restrict, or modify in any way) any non-excludable statutory warranties or consumer guarantees in Australia.

9.9 **Costs of shipping:** In the event the Express Warranty under clause 9.2 is exercised, the Purchaser agrees that:

- (a) they will bear the cost of transportation, travel, and delivery of the Goods; and
- (b) if the Purchaser resides outside of the service area, they will bear the cost of:
 - (i) travel of an authorised representative.
 - (ii) transportation and delivery of the Goods to and from the place of purchase.

9.10 **Risk:** In all instances, unless the Goods are transported by Elsafe or its authorised representative, whilst in transit to and from Elsafe the Goods are at the Purchaser's cost and risk.

9.11 **Proof of purchase:** Proof of purchase is required before the Purchaser can make a claim under the Express Warranty.

9.12 **Inspection:** Elsafe reserves the right for a qualified OE Group technician to inspect and test all goods that have had a claim under the Express Warranty placed against them, before replacing any of or all goods associated with the Express Warranty claim.

10. INTELLECTUAL PROPERTY

10.1 **Intellectual Property:** All:

- (a) patents, goods specifications, operation manuals, knowledge and other forms of Intellectual Property directly or indirectly associated with the Goods; and
- (b) Intellectual Property Rights in and relating to the production, development and supply of the Goods, including drawings, 3D Models, illustrations, specifications, and other related literature (excluding Materials licensed to us pursuant to clause 10.2), remains the property of Elsafe and shall not be transferred, assigned, licensed, reproduced, disclosed or otherwise given to any other person by the Purchaser without Elsafe's prior written consent.

10.2 **Purchaser intellectual property:** If the Purchaser provides Elsafe with Material to be used in the supply of the Goods:

- (a) the Purchaser warrant and represent to Elsafe that its use of any Materials will not infringe the Intellectual Property Rights of any third party; and
- (b) the Purchaser indemnifies and will keep Elsafe indemnified from and against any and all claims, liabilities, obligations, expenses or damages which Elsafe may incur if clause 10.2(a) is untrue or breached.

10.3 **Licence over Materials:** The Purchaser grants to Elsafe a non-exclusive royalty-free license to use all Intellectual Property Rights in all Materials for so long as necessary or convenient for the production of the Goods and the matters contemplated regarding the delivery of the relevant Goods.

11. COMPATIBILITY

11.1 Elsafe does not warrant or guarantee the performance or compatibility of the Goods with any other products not supplied by Elsafe (**Third Party Products**), unless otherwise expressly agreed in writing by Elsafe.

11.2 The Purchaser acknowledges and agrees that:

- (a) Elsafe products (including the Goods) must not be used in conjunction with the mating party of any Third Party Products, as it may invalidate compliance with national or international safety standards and compliance certification;
- (b) there are risks associated with using the Goods in conjunction with Third Party Products, including in relation to:
 - (i) possible mismatched current ratings and inferior quality electrical contact with the pins and sockets, which may result in high contact resistance and increased temperature rise or voltage drop issues; and
 - (ii) different mechanical mating and locking mechanisms, which may affect connection integrity; and
- (c) using the Goods in conjunction with Third Party Products is entirely at the risk of the Purchaser;
- (d) any Loss which the Purchaser or its client may suffer due to the use of the Goods with Third Party Products, including damage to property, will be the sole responsibility of the Purchaser.

11.3 This clause 11 is subject to clause 13.

12. EXCLUSIONS AND LIMITATIONS

12.1 **ACL exception:** The exclusions and limitations in this clause 12 are subject to clause 13.

12.2 **Excluded rights:** All express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), relating to these Terms, that are not contained in it, are excluded to the fullest extent permitted by law.

12.3 **Indirect loss:** Elsafe will not be liable for any Consequential Loss suffered by the Purchaser or any other person resulting from any act or omission by Elsafe (including breach, termination or non-observance of the terms of an Order or agreement which incorporates these Terms).

12.4 **Total liability:** Elsafe's total liability for breach of these Terms or breach of its contractual obligations or duties at law or in equity (however arising) is limited at Elsafe's option to:

- (a) the replacement of the Goods; or
- (b) the repair or rectification of the Goods.

12.5 **No reliance:** The Purchaser acknowledges and agree that:

- (a) the Purchaser has and will make its own assessment of the fitness for purpose and suitability of any products supplied by Elsafe (including the Goods);
- (b) the Purchaser does not and will not rely on Elsafe's skill or judgment nor that of any person by whom any prior arrangements regarding the acquisition of any Goods were or will be made; and
- (c) unless Elsafe agrees in writing to provide design services in relation to any Goods, the Purchaser has not made nor will the Purchaser make known to Elsafe (directly or indirectly) the particular purpose for which the Purchaser acquires Goods.

13. STATUTORY RIGHTS

13.1 **Statutory rights:** Certain statutory guarantees, warranties and rights may apply to the Purchaser's purchase of Goods from Elsafe as provided by relevant laws but subject to these Terms as applicable and where permitted by relevant laws.

13.2 **No restriction:** Nothing in these Terms excludes, restricts or modifies any condition, warranty, statutory guarantee, right or remedy implied or imposed by common law, statute or regulation which cannot be lawfully excluded, restricted or modified.

13.3 **Unfair contract:** If section 23 of the Australian Consumer Law applies to any provisions in these Terms, any such provision(s) shall be void to the extent it is unfair within the meaning of section 24 of the ACL.

14. TAKE OFFS AND 3D MODELS

14.1 **Take offs:** Unless otherwise agreed in writing, any material or quantity take offs prepared by Elsafe on behalf of any client or the

Purchaser represents an estimate and suggestion only for the Purchaser's review and consideration.

14.2 3D Models: 3D Models produced by Elsafe in respect of Goods are a three-dimensional representation of the object and are provided solely as an informational tool to assist customers. 3D Models must not be treated as accurate indications of the measurements, specifications or design of Goods. If the Purchaser requires accurate information regarding OE Elsafe products, please contact:

sales@oeelsafe.com.au.

14.3 Conditions of use of 3D Models: All 3D Models provided by Elsafe to the Purchaser (whether received via email or downloaded from the OE Elsafe website) are subject to the following terms and conditions:

- (a) the 3D Model and its design is the property of Elsafe and is protected by the *Copyright Act 1968* (Cth) and/or the *Designs Act 2003* (Cth);
- (b) the 3D Model must not be copied or otherwise reproduced without the express written consent of Elsafe; and
- (c) once received or downloaded from the website, 3D Models must not be passed on to third parties, sold, or otherwise used for any purpose other than to allow the Purchaser to consider whether to Order the Goods.

14.4 No reliance: Subject to clause 13, the Purchaser acknowledges and agrees that:

- (a) it has and will make its own assessment of the fitness for purpose and suitability of any Goods supplied by Elsafe and the items, quantities and materials specified in any Quotation will meet and satisfy the needs of the works required by the Purchaser;
- (b) the Purchaser does not and will not rely on Elsafe's skill or judgment nor that of any person by whom any prior negotiations or arrangements in relation to the acquisition of any Goods were conducted or have been or will be made;
- (c) the Purchaser has not made nor will make known to Elsafe or a manufacturer of goods (directly or via any person and whether expressly or impliedly) the particular purpose for which the Purchaser acquire Goods;
- (d) Elsafe accepts no responsibility for any omissions, errors, shortfalls, changes in dimensions or type of materials required as a result of a failure of the Purchaser to check that a Quotation and any take offs included in it are correct; and
- (e) any Loss which the Purchaser or its client may suffer, due to the client not reviewing and understanding its Order for Goods will be the sole responsibility of the Purchaser.

14.5 Variations: Any changes to the Order, request for return for credit, cancellations, or warranty claims will be subject to those other conditions referred to elsewhere in these Terms, irrespective of whether related to take-offs, 3D Models or otherwise.

14.6 Variation of design and product range: Elsafe reserves the right to discontinue the sale of Goods and to modify designs and change specifications of any of its Goods included in its price list without notice and without obligation to inform the Purchaser. OE Elsafe reserves the right to change/modify or withdraw all 3D Models without prior notice.

15. CONFIDENTIAL INFORMATION

15.1 The purchaser must keep confidential all information that is used by or relates to Elsafe or relates to the manufacture, sale, storage, and delivery of the Goods that is not public knowledge.

16. INDEMNITY

16.1 The purchaser hereby indemnifies and keeps indemnified Elsafe against all costs, damages, claims, losses, and liabilities whatsoever paid or incurred by Elsafe in respect of a breach by the Purchaser of these Terms.

17. DEFAULT

17.1 It is an event of default (**Event of Default**) of these Terms if:

- (a) any of these Terms are not fully complied with and either the breach is not capable of remedy or (if capable of remedy) it is not remedied within 5 days of a written request by the non-breaching party to remedy the breach; or

(b) either the Purchaser or Elsafe becomes Insolvent.

17.2 Each party must give notice to the other party in writing if it contends that an Event of Default has occurred.

18. TERMINATION

18.1 If on Event of Default occurs and the default is not capable of being remedied, or if capable of being remedied is not remedied within 25 days after notice is given under this cause in accordance with clause 19, then the non-defaulting may terminate the contract for supply of Goods that is based on these Terms.

19. NOTICES

19.1 **Form:** Any notice under these Terms may be served by physical delivery (in person or by post) or by any other form of communication to the address or number of the recipient most recently notified by the recipient to the sender.

19.2 **Email:** Any notice to Elsafe under these Terms given electronically must be given in writing via email from the Purchaser or (if a corporate entity) their authorised officer.

20. VARIATION OF TERMS

20.1 **Variation:** These Terms as they apply in respect of an outstanding or completed Order for Goods may only be varied by agreement in writing between Elsafe and the Purchaser.

20.2 **New Terms:** Elsafe may adopt new terms and conditions for the sale of Goods from time-to-time. The new terms and conditions of sale will apply to the supply of Goods after you accept such new terms and conditions pursuant to clause 1.2.

20.3 **Acknowledgement:** By placing an order with Elsafe for Goods the Purchaser warrants and agrees that they have read these Terms and agree to be bound by them.

21. GENERAL

21.1 **Legal capacity:** The Purchaser represents and warrants to Elsafe that it has the legal capacity to enter into and has the power to comply with these Terms.

21.2 **Entire agreement:** Each Order and the supply of Goods by Elsafe pursuant to an Order shall be governed by these Terms. These Terms and the Order constitute the entire agreement between the Purchaser and Elafe in relation to any Goods.

21.3 **Lawful purpose:** The Purchaser must ensure the Goods are used only for lawful purposes and in accordance with applicable laws.

21.4 **Binding:** These Terms bind Elsafe's successors, administrators and permitted assigns and the Purchaser's executors and permitted assigns or the Purchaser's successors, administrators and permitted assigns (as applicable).

21.5 **Assignment:** Elsafe may without notice to the Purchaser assign, transfer and/or sub-contract Elsafe's rights and/or obligations (in whole or in part) under these Terms. The Purchaser may not assign, transfer, hold on trust or otherwise delegate any of the Purchaser rights or obligations under these Terms without Elsafe's prior written consent.

21.6 **Force Majeure:** If a Force Majeure event occurs, Elsafe may:

- (a) totally or partially suspend any Order or any deliveries relating to an Order during any period in which Elsafe may be hindered due to that Force Majeure event; and
- (b) elect to extend at Elsafe's discretion the period for performance of an obligation under these Terms as is reasonable in all the circumstances.

21.7 **Severability:** Each clause in these Terms is severable and if any clause is held to be illegal or unenforceable, then the remaining clauses will remain in full force and effect.

21.8 **Waiver:** No failure, delay, relation or indulgence on Elsafe's part in exercising any power, right or remedy precludes any other or further exercise of that or any other power, right or remedy.

21.9 **Privacy:** By accepting these Terms, the Purchaser acknowledges that it has read and accept the terms in Elsafe's Privacy Policy: <https://www.oeelsafe.com.au/about-us/privacy-policy/>.

21.10 **Governing Law:** These Terms are governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

22. DEFINITIONS AND INTERPRETATION

22.1 **Definitions:** Unless otherwise indicated, where the following words are used in these Terms they will have the following meanings:

- (a) “**3D Model**” means the 3D models described in clause 14.
 - (b) “**Australian Consumer Law**” or “**ACL**” means the Australian Consumer Law as set out in Schedule 2 to the *Consumer and Competition Act 2010* (Cth) as amended.
 - (c) “**Consequential Loss**” means:
 - (i) any direct or indirect loss of overhead costs, administrative expenses, revenue, profits, anticipated savings, business, data and value of equipment (other than direct cost of repair);
 - (ii) any direct or indirect loss of opportunity, expectation loss or delay loss;
 - (iii) any form of consequential, special, punitive or exemplary loss or damages; and
 - (iv) liquidated damages, howsoever it arises or is claimed (including as a result of negligence or by the operation of law).
 - (d) “**Event of Default**” has the meaning given in clause 17.1.
 - (e) “**Elsafe**” means Elsafe Australia Pty Ltd.
 - (f) “**Express Warranty**” has the meaning given in clause 9.2.
 - (g) “**Force Majeure**” means circumstances beyond Elsafe’s reasonable control, which shall include, but not be limited to, compliance with any laws, regulations, orders, acts, instructions or priority request of any government, or any department or agency, civil or military authority, pandemic or epidemic, acts of god, the Purchaser’s acts or omissions, weather, fires, floods, strikes, lockouts, embargoes, wars, labour or material shortages, inability to obtain components or materials, riots, insurrections, defaults of Elsafe’s suppliers or subcontractors, delays in transportation, loss or damage to Goods in transit or instructions or lack of instructions from the Purchaser.
 - (h) “**Deliver**” means the completion of delivery of the Goods at the delivery address set out in the Order Confirmation or the location subsequently advised to Elsafe by the Purchaser, and “**Delivered**” and “**Delivered**” shall have the equivalent meaning.
 - (i) “**Goods**” means all products and goods supplied by Elsafe from time to time, including USB charging, power & data solutions, cable management, desk boxes, power rails, surge protection & floor boxes, but excluding 3D Models of Goods.
 - (j) “**Intellectual Property Rights**” means all forms of intellectual property rights (whether registered or unregistered) in copyright, designs, patents, trade marks, domain names, trade secrets, know-how, confidential information, and all other similar proprietary rights and all extensions and renewals thereof anywhere in the world which currently exist and/or are recognised in the future.
 - (k) “**Liability**” includes any demand or claim (including a demand or claim for direct or indirect Consequential Loss) in respect of any damage, cost (including legal costs), expense, harm, injury or death or any fine or penalty imposed by or under a Law or by any authority.
 - (l) “**Loss**” means any Liability incurred or alleged to have been incurred by the Purchaser or a third party in respect of, arising from or connected with any supply of Goods by Elsafe or by Elsafe’s failure to supply any Goods or of a breach of these Terms, whether arising in law or otherwise.
 - (m) “**Insolvent**” means any of the following in respect of a party:
 - (i) Winding Up commences against the party;
 - (ii) a receiver is appointed to the party;
 - (iii) the party become insolvent, bankrupt or commits an act of bankruptcy;
 - (iv) a mortgagee or their agent enters into possession of any of the party’s assets; or
 - (v) proceedings are commenced or an application is made for the appointment of any persons referred to clauses (i) to (iv) above.
 - (n) “**Material**” means any material in which the Purchaser has Intellectual Property Rights provided by the Purchaser for use by Elsafe in the production, development and supply of the Goods to the Purchaser.
 - (o) “**Order**” means an order for Goods received by Elsafe in writing or otherwise from the Purchaser.
 - (p) “**Order Confirmation**” means the written confirmation of acceptance of the Purchaser’s Order issued by Elsafe.
 - (q) “**Quotation**” means a quotation for the supply of Goods by Elsafe to the Purchaser.
 - (r) “**Purchaser**” means any person or entity that places an Order with Elsafe and agrees by conduct or by virtue of notice or otherwise to be bound by these Terms, including any related company, related party, officer, employee, contractor, agent, successor, assign and authorised person. The action or signature of any such person appearing to have the authority of the Purchaser shall bind the Purchaser.
 - (s) “**Relevant Information**” includes all specifications relating to the Goods and other matters that may affect Elsafe’s ability to supply the Goods or with which the Purchaser ought reasonably to be aware that Elsafe will be bound by contract, law, custom or usage to conform.
 - (t) “**RMA**” has the meaning given in clause 8.2.
 - (u) “**Terms**” means these Sales Terms and Conditions.
 - (v) “**Winding Up**” means commencing to be wound up, or suffering a provisional liquidator, liquidator, official manager or any other administrator of the affairs of insolvent companies to be appointed.
 - (w) “**Working Day**” is a day other than a Saturday, Sunday or a public holiday in New South Wales, Australia.
- 22.2 Interpretation:** In these Terms, the following rules of interpretation apply unless the context requires otherwise:
- (a) headings are for convenience only and do not affect the interpretation of these Terms;
 - (b) the singular includes the plural and vice versa;
 - (c) words that are gender neutral or gender specific include each gender;
 - (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
 - (e) the words ‘such as’, ‘including’, ‘particularly’ and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
 - (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a party includes its successors and permitted assigns;
 - (iii) a document includes all amendments or supplements to that document;
 - (iv) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
 - (v) a reference to a monetary amount in these Terms is in Australian dollars;
 - (g) an agreement on the part of two or more persons binds them jointly and severally; and
 - (h) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of these Terms or any part of it.