

KATANA FOUNDATIONS - TERMS OF SALE**MADE BETWEEN****KATANA FOUNDATIONS AUSTRALIA PTY LTD ABN 67 163 915 786 ("KATANA FOUNDATIONS")**

AND

The Customer**DEFINITIONS**

The following definitions apply to these Terms of Sale:

"Account Customer" means a Customer who holds a Current Credit Account.**"Balance"** means the Price less any Deposit.**"Commercial Customer"** means a Customer using Equipment in relation to commercial, public or industrial building works, including but not limited to multiple home, apartment or unit constructions.**"Contract"** means the contract that forms between KATANA FOUNDATIONS and the Customer on the terms and conditions of these Terms of Sale each time that the Customer places an order with KATANA FOUNDATIONS for the supply of Products and/or Services to the Customer.**"Current Credit Account"** means a credit account granted by KATANA FOUNDATIONS to the Customer that is governed by the General Credit Terms.**"Customer"** means any person that orders, purchases or is otherwise supplied with any Products and/or Services by KATANA FOUNDATIONS, including but not limited to persons who accept a Quotation.**"Deposit"** means the deposit specified in the Quotation.**"Event of Default"** means any of the following events:-

- (i) the Customer fails to pay for any Products and/or Services;
- (ii) the Customer breaches these Terms of Sale;
- (iii) the Customer ceases or threatens to cease carrying on business; or
- (iv) if the Customer is a Company: an order is made or a Resolution is effectively passed for Winding Up of the Customer, or the Customer resolves to appoint a Receiver or Provisional Liquidator or an Administrator, or a Receiver or Provisional Liquidator or an Administrator is appointed, or the Customer goes into Liquidation or makes an Assignment or an arrangement or composition with the Customer's creditor, or the Customer stops payment or is deemed unable to pay the Customer's debts within the meaning of the *Corporations Act 2001 (Cth)*; if the Customer is a natural person: an order is made for the Customer's Bankruptcy, or the Customer dies or becomes mentally or physically incapable of managing his or her affairs, or an Order is applied for or made to place the assets and affairs of the Customer under Administration.

"General Credit Terms" means the General Credit Terms of KATANA FOUNDATIONS.**"Intellectual Property Rights"** means all present and future intellectual property rights anywhere in the world including, but not limited to, trade marks, logos, domain names, patents, designs, trade secrets, eligible layout rights, moral rights, processes, inventions, specifications, databases, confidential information, know how, research data, discoveries and similar rights and any other intangible proprietary rights whether registered or unregistered, together with all improvements to, and applications for, the protection of those rights.**"KATANA FOUNDATIONS"** means Katana Foundations Pty Ltd ACN 163 915 786.**"Katana Pile Product"** means Building piles of metal, including blade piles and screw piles; building piers of metal, including blade piers and screw piers; building foundation supports of metal; components, accessories and assemblies for the aforesaid in this class; building components, accessories and assemblies of metal.**"Non-account Customer"** means a Customer that does not have a Current Credit Account.**"Officer"** means each director, secretary, credit manager and authorised representative of KATANA FOUNDATIONS.**"person"** includes but is not limited to a natural person, body corporate, corporation, partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority.**"PPSA"** means the *Personal Property Securities Act 2009 (Cth)* as amended.**"Price"** means the total price payable to KATANA FOUNDATIONS under the Contract and/or Quotation.**"Products"** means any goods supplied by KATANA FOUNDATIONS.**"Quotation"** means a quotation for Products and/or Services issued to the Customer by KATANA FOUNDATIONS.**"Related Body Corporate"** has the meaning given to that term by the *Corporations Act 2001 (Cth)*.

“**Services**” means any works or services supplied by KATANA FOUNDATIONS, including but not limited to the installation of Products.

“**Site**” means any place to which the Customer requests the supply of Products and/or Services by KATANA FOUNDATIONS in accordance with these Terms of Sale.

“**works**” refers to Services.

OPERATIVE PART

1. Incorporation of these Terms of Sale:-

- (a) KATANA FOUNDATIONS and the Customer agree that these Terms of Sale are and shall be incorporated into each and every Contract made between them;
- (b) KATANA FOUNDATIONS may, at KATANA FOUNDATIONS complete discretion change, modify, add or remove portions of these Terms of Sale at any time;
- (c) the Customer acknowledges and agrees that their continued contracting with KATANA FOUNDATIONS following changes to these Terms of Sale is to be construed as deemed acceptance by the Customer of those changes;
- (d) previous dealings between KATANA FOUNDATIONS and the Customer shall not have any effect on the Contract;
- (e) trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract; and
- (f) no terms and/or conditions of the Customer apply to any agreement between the Customer and KATANA FOUNDATIONS.

2. Quotations: All Quotations provided by KATANA FOUNDATIONS will, subject to clauses 3 and 4 of these Terms of Sale, remain current for the period stated in the Quotation. If no period is stated, a Quotation will, subject to clauses 3 and 4 of these Terms of Sale, remain current for 30 days from the date of the Quotation.

3. Escalation and Price Variation: KATANA FOUNDATIONS may increase or decrease the Price of Products and Services during the term of the Contract where it incurs an increase or decrease in its costs of supplying the Products and Services. KATANA FOUNDATIONS reserves the right to charge additional administration fees as determined by KATANA FOUNDATIONS from time to time.

4. Extras are not included in the Price: Unless stated in the Quotation, the Price is solely for the supply of the Product and does not include any other goods or services, such as assembly of Products, delivery of oversized loads or provision of vehicle escorts, additional pile lengths, on-Site scheduling, on-Site accommodation, survey plans, dowel bars, load pile testing, soil testing, provision of traffic control or any other item(s) specified in the Quotation as excluded.

5. Acceptance of Quotations: All Quotations are only capable of acceptance by the Customer in writing.

6. Packaging and Tolerances: The Customer agrees that:-

- (a) Products will be delivered in accordance with KATANA FOUNDATIONS standard packaging, loading, bracing and shipping procedures;
- (b) the Customer may request additional packaging requirements which, if accepted by KATANA FOUNDATIONS, will incur additional charges specified by KATANA FOUNDATIONS; and
- (c) Products are supplied by KATANA FOUNDATIONS to quantity, weight, dimension and chemical composition (within acceptable tolerances as to variations) as specified by KATANA FOUNDATIONS or if not, specified in accordance with accepted industry practice.

7. Warranty against defects: KATANA FOUNDATIONS does not, under these Terms of Sale, offer any warranty against defects in respect of the Products. If a warranty against defects (“**Warranty**”) is offered when the Products are supplied to the Customer:-

- (a) that Warranty is separate to these Terms of Sale;
- (b) the Customer’s right to bring a claim under the Warranty is governed by its terms, not the terms of these Terms of Sale; and
- (c) any claim under the Warranty must be made against the entity that offers the Warranty (as specified by its terms).

8. Payment: The Customer must pay for all Products and Services supplied by KATANA FOUNDATIONS as follows:-

- (d) **Account Customers:** within 14 days from Invoice in which KATANA FOUNDATIONS invoiced the Customer for the relevant Products and/or Services or within any alternative period granted in writing by KATANA FOUNDATIONS; and
- (e) **Non-Account Customers:** on a cash sale basis 100% upfront prior to delivery.

9. Interest: KATANA FOUNDATIONS are entitled to charge the Customer interest on amounts not paid on or before the due date specified by KATANA FOUNDATIONS at a rate equivalent to 3% more than the business overdraft commercial interest rate of KATANA FOUNDATIONS principal bankers per annum from the invoice date until the payment of the debt.

10. GST: Each amount payable by the Customer in respect of a Taxable Supply by KATANA FOUNDATIONS is a GST exclusive amount and on receipt of a tax invoice the Customer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply. “Taxable Supply” and “GST” have the meanings set out in the *New Tax System (Goods and Products and Services) Act 1999* (Cth).

11. Expenses: The Customer must pay to KATANA FOUNDATIONS any costs, charges and expenses (including without limitation, all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by KATANA FOUNDATIONS in connection with any supply by KATANA FOUNDATIONS to the Customer, the exercise or attempted exercise of any power, right or remedy under these Terms of Sale and/or the failure of the Customer to comply with these Terms of Sale.

12. Provision of Information: The Customer acknowledges and agrees that it must provide KATANA FOUNDATIONS with all information reasonably necessary (including without limitation all necessary plans, specifications, engineering requirements, details, and/or special

instructions) to enable supply and/or performance by KATANA FOUNDATIONS of the Products and Services requested by the Customer before the commencement of supply and/or performance. The Customer acknowledges and agrees that:-

- (a) if the necessary information is not provided by the Customer, KATANA FOUNDATIONS may refuse or suspend supply of its Products and Services to the Customer until the information is provided;
- (b) KATANA FOUNDATIONS is not liable for any loss, damage, cost or expense incurred by the Customer due to a suspension or cancellation of supply by KATANA FOUNDATIONS of its Products and Services as a result of the Customer's failure to supply necessary information; and
- (c) if errors occur as a result of documents supplied to KATANA FOUNDATIONS by the Customer or a third party, the Customer must pay for the costs of rectification.

13. Changes to Customer Requirements: The Customer acknowledges and agrees that where, the Customer proposes any variations, substitutions, additions and/or deletions to plans, specifications, engineering requirements or special instructions, including without limitation any changes to Product dimension, finish, or quantities required (collectively referred to in this clause as "variations") after a Quotation has been accepted by the Customer and/or an Order placed with KATANA FOUNDATIONS:-

- (a) the Customer must obtain KATANA FOUNDATIONS' written consent to the variations;
- (b) the provision of KATANA FOUNDATIONS consent or otherwise is at KATANA FOUNDATIONS' complete discretion. KATANA FOUNDATIONS is not liable for any loss, damage, cost or expense incurred by the Customer as a result of any refusal by KATANA FOUNDATIONS of consent;
- (c) the Customer must pay KATANA FOUNDATIONS for any expenditure commitment, work done, and material provided under the Contract up to the date that KATANA FOUNDATIONS is notified in writing of any proposed variation; and
- (d) if the variations are accepted by KATANA FOUNDATIONS, the Customer must pay KATANA FOUNDATIONS for any increase(s) in the Price of Products and Services supplied and the date of delivery or completion of work by KATANA FOUNDATIONS will be extended to any date nominated by KATANA FOUNDATIONS.

14. Site measurement: KATANA FOUNDATIONS does not carry out Site measurements. The Customer acknowledges and agrees that, where a Customer requests a Site visit by KATANA FOUNDATIONS to check Site measurements, KATANA FOUNDATIONS may charge the Customer for travel time and time spent on Site by a KATANA FOUNDATIONS representative at an hourly rate. The Customer is responsible for supplying site plans showing underground services.

15. Fitness for Purpose:

The Customer agrees that if the Customer is aware, or should be aware, that the Products the subject of a Contract are for a particular purpose or are required to possess uniform or special characteristics, the Customer will clearly notify KATANA FOUNDATIONS in writing of that purpose or those characteristics. The Customer agrees that, unless expressly agreed otherwise by KATANA FOUNDATIONS in writing, it has made its own enquiries in relation to the suitability of the Products and does not rely upon any representations made by KATANA FOUNDATIONS in relation to their suitability for a particular purpose or any particular steps which must be taken in respect of the use of the Products.

Special conditions in respect of use and installation of Katana Pile Products

If KATANA FOUNDATIONS supplies a Product to the Customer that is a Katana Pile Product:

- (a) KATANA FOUNDATIONS will use reasonable endeavours to deliver the Katana Pile Product by the delivery date (if any) specified on the Quotation (unless otherwise agreed in writing by KATANA FOUNDATIONS, it will not supply the Katana Pile Product within any less than five business days from the date that KATANA FOUNDATIONS receives a purchase order from the Customer);
- (b) the foundation system in which the Katana Pile Product is to be incorporated must be designed by a suitably qualified and licensed engineer recognised by the Australian Institute of Engineers with previous experience in the design of steel blade piles;
- (c) it is the responsibility of the Customer to inform itself of the most appropriate procedure for the installation of the Katana Pile Product for the application for which the Customer proposes to use the Katana Pile Product;
- (d) the Customer represents and warrants that it will obtain and rely upon its own independent engineering advice as to whether the Katana Pile Product is fit for the purpose for which the Customer proposes to use the Katana Pile Product;
- (e) additional lengths of piles (beyond the tender depth) will be charged as per the schedule of rates specified in the Quotation, measured in a minimum increment of one metre rounded up to the nearest metre;
- (f) the Customer is responsible for the survey cost relating to the positioning of the foundation/slab which will sit upon the foundation system;
- (g) unless otherwise agreed in writing by KATANA FOUNDATIONS, an order for the Katana Pile Product that has been accepted by KATANA FOUNDATIONS may not be cancelled by the Customer (if such an accepted order is cancelled, the Customer is liable for any loss or damage that may be suffered or incurred by KATANA FOUNDATIONS if it agrees to the cancellation);
- (h) the Customer must have adequate work, health and safety compliant unloading equipment and facilities at the point of delivery (KATANA FOUNDATIONS may refuse to unload if it deems the delivery point to be unsafe or if unauthorised lifting methods are proposed);
- (i) the Katana Pile Product must not be core-filled;
- (j) where an installation manual is published or made available in respect of the Katana Pile Product that is not written or authored by KATANA FOUNDATIONS (such as by independent engineering contractors):
 - (i) the Customer acknowledges and agrees that the contents of the manual has not been developed by KATANA FOUNDATIONS and that KATANA FOUNDATIONS does not endorse the content of the installation manual or make any representation or recommendation that the Customer or its engineers rely on the content of the manual;

- (ii) KATANA FOUNDATIONS may provide installation manuals for the Customer solely to assist it to make its own assessment on how to install the Katana Pile Product for the application for which the Customer proposes to use the Katana Pile Product; and
 - (iii) KATANA FOUNDATIONS does not warrant, guarantee or represent that the procedures for installation set out in any such a third-party installation manual is free from error or is appropriate to the application for which the Customer proposes to use the Katana Pile Product;
- (k) the Customer releases KATANA FOUNDATIONS and each of its respective officers, employees, agents and contractors from all liability in connection with any loss or damage suffered by the Customer, howsoever caused (including as a result of the negligence), in connection with the installation of the Katana Pile Product or any reliance placed by the Customer on the procedures or recommendations set out in any installation manual.

16. Provision of Services:

- (a) If the Customer has engaged KATANA FOUNDATIONS to install the Katana Pile Product the Customer acknowledges and agrees that:-
- (i) the Customer must ensure that the Site is cleared and ready for installation of the Katana Pile Product before KATANA FOUNDATIONS starts installation. The Customer acknowledges and agrees that it will be liable to KATANA FOUNDATIONS and its contractors for any loss, costs or damage which they may suffer or incur by reason of the Customer's failure to carry out its obligations in this respect including without limitation, loss, damages or costs of delay due to the site not being cleared and ready, and that these amounts will be charged to the Customer. The customer is responsible for the cost of any ground materials to be removed;
 - (ii) the Price of installation by KATANA FOUNDATIONS is provided on the basis that there are no latent ground conditions or obstructions, including any underground services, harder than anticipated soil layers, existing footings and pile caps, boulders or rubble or that may impede the installation of the Katana Pile Product (if any of the aforementioned latent conditions or obstructions are encountered, the Customer must (unless otherwise agreed in writing by KATANA FOUNDATIONS) arrange for its removal and KATANA FOUNDATIONS may vary the Price by notice to the Customer to account for any additional work performed by KATANA FOUNDATIONS or its contractors in connection with such latent conditions or obstructions);
 - (iii) the Customer must ensure sufficient horizontal and vertical clearances and space at the Site to enable KATANA FOUNDATIONS to complete its installation works;
 - (iv) KATANA FOUNDATIONS will supply a Form 16 signed by a suitably qualified and licensed engineer recognised by the Australian Institute of Engineers engaged by KATANA FOUNDATIONS upon the installation services being completed and the Customer making full payment to KATANA FOUNDATIONS of all invoices payable in connection with the installation services;
 - (v) all existing underground services and any new underground services must be identified by precise position and depth on building plans that must be supplied by the Customer to KATANA FOUNDATIONS and made available to the KATANA FOUNDATIONS site crew when on-Site. KATANA FOUNDATIONS accepts no responsibility or liability for damaging any underground services or to any finished services (eg damage to asphalt);
 - (vi) any additional cost involved in deviations between drawings or data supplied by the Customer and actual on-Site requirements for installation of Equipment will be charged to and payable by the Customer;
 - (vii) any additional costs incurred by KATANA FOUNDATIONS or its contractors due to delays caused by denial of access to the site, obstruction by other trades or curtailment of electric power or other matters beyond the reasonable control of KATANA FOUNDATIONS and its contractors will be charged to the Customer; and
 - (viii) the Customer must not interfere with the Katana Pile Product once installed unless in a way approved by KATANA FOUNDATIONS in writing and the work is carried out by suitably qualified persons.
- (b) KATANA FOUNDATIONS will use all reasonable endeavours to perform the Services in a competent, proper and workmanlike manner, exercising a reasonable standard of skill and diligence, but is not liable for any inaccuracy, error or omission arising from performance of the Services.

17. Site Access: The Customer acknowledges and agrees that provision of clear, adequate and unobstructed access to the Site for semi-trailers, delivery vehicles and body trucks is the sole responsibility of the Customer. The Customer acknowledges and agrees that all costs incurred by KATANA FOUNDATIONS or its contractors for, amongst other things and without limitation:-

- (a) recovery of bogged vehicles;
- (b) local Council fines issued to KATANA FOUNDATIONS, its Contractors or the Customer; and
- (c) delays to KATANA FOUNDATIONS vehicles once on-Site resulting in increased costs,

that is caused whether directly or indirectly by difficulties associated with access to the Site will be charged to the Customer.

The Customer acknowledges and agrees that, where KATANA FOUNDATIONS provides the Customer with Services for the installation of Katana Pile Products:-

- (a) the Customer must ensure that KATANA FOUNDATIONS has uninterrupted access to the site or other structure upon which the Products are to be installed from the Commencement Date until the work has been completed;
- (b) all Quotations issued to the Customer by KATANA FOUNDATIONS were based on the premises that uninterrupted access would be provided; and
- (c) all costs incurred by KATANA FOUNDATIONS for any delays because of incomplete ground work or other trades will be charged to the Customer.

18. Engineering Certificates for Katana Pile: Final engineering certificates will only be released to the Customer on receipt by KATANA FOUNDATIONS of payment in full of all amounts invoiced to the Customer for Products and Services supplied.

19. Property:- The parties acknowledge and agree that:

- (a) where Products are to be supplied by way of sale, title in the Products does not pass until the Customer has paid all moneys owing to KATANA FOUNDATIONS in full. Risk in the Products passes to the Customer at the time of delivery;
- (b) the Customer holds the Products as fiduciary bailee and agent for KATANA FOUNDATIONS and must keep the Products physically separate from all other goods of the Customer, and clearly identified as owned by KATANA FOUNDATIONS until payment of all moneys owed by the Customer to KATANA FOUNDATIONS where the Products are supplied by way of sale;
- (c) if an Event of Default occurs then, without prejudice to KATANA FOUNDATIONS other rights, KATANA FOUNDATIONS may without notice to the Customer enter any premises occupied by the Customer or any other place where the Products may be and recover possession of the Products;
- (d) if the Customer sells any of the Products supplied by way of sale while money is owed to KATANA FOUNDATIONS, the Customer must keep the proceeds of the sale in a separate account and not mix them with any other funds;
- (e) if the Customer uses the Products in some manufacturing or construction process of its own or of some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as relates to such Products in trust for KATANA FOUNDATIONS. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to KATANA FOUNDATIONS and at the time of payment of such proceeds the Customer's obligation to pay the amount owed for such Products will be discharged; and
- (f) if the Products are resold, or goods and services using the Products are manufactured and resold by the Customer, the Customer holds the entire book debts owed in respect of such sales and proceeds of such sales in trust for KATANA FOUNDATIONS. Such part of the book debts and proceeds will be deemed to equal in dollar terms to the amount owed by the Customer to KATANA FOUNDATIONS at the time of the receipt of such book debts. The Customer must not assign or grant a security interest in respect of such book debts without KATANA FOUNDATIONS prior written consent.

20. Personal Property Securities Act:

"Financing statement", "financing change statement", "security interest", "purchase money security interest", "attached", "attachment", "perfected", "accession", "commingled" and all related terms have the meaning given to them by the PPSA.

- (a) In consideration of KATANA FOUNDATIONS supplying the Products to the Customer at the request of the Customer, the Customer by signing these Terms of Sale:-
 - (i) grants to KATANA FOUNDATIONS a "Purchase Money Security Interest" ("**PMSI**") in all Products supplied by KATANA FOUNDATIONS to the Customer from time to time as security for payment of the purchase price of the Products;
 - (ii) grants to KATANA FOUNDATIONS a "security interest" ("**SI**") in all Products supplied by KATANA FOUNDATIONS to the Customer from time to time as security for payment of any other amount owed by the Customer to KATANA FOUNDATIONS and as security for the performance by the Customer of the obligations set out in these Terms of Sale;
 - (iii) agrees that any Products or proceeds of sale of the Products coming into existence after the date of these Terms of Sale will come into existence subject to the PMSI and SI granted herein and these Terms of Sale without the need for any further action or agreement by any party;
 - (iv) acknowledges that the Customer has received valuable consideration from KATANA FOUNDATIONS and agrees that it is sufficient; and
 - (v) agrees that the PMSI and SI have attached to all Products supplied now or in the future by KATANA FOUNDATIONS to the Customer and that the attachment of the PMSI has in no way been deferred or postponed.
- (b) KATANA FOUNDATIONS reserves the right to register a financing statement in the Personal Properties Securities Register to perfect the PMSI and/or SI created under these Terms of Sale;
- (c) the costs of registering a financing statement or a financing change statement can be charged to the Customer by KATANA FOUNDATIONS at KATANA FOUNDATIONS complete discretion and may, where applicable, be charged to the Customer's credit account with KATANA FOUNDATIONS;
- (d) the Customer must promptly, on request by KATANA FOUNDATIONS, execute all documents and do anything else reasonably required by KATANA FOUNDATIONS to ensure that the PMSI and SI created under these Terms of Sale constitutes a perfected security interest;
- (e) the Customer must not agree to allow any person to register a financing statement over, any of the Products in which KATANA FOUNDATIONS has any PMSI and/or SI without the prior written consent of KATANA FOUNDATIONS and will immediately notify KATANA FOUNDATIONS if the Customer becomes aware of any person or entity taking steps to register a financing statement in relation to any such Products;
- (f) the Customer must not allow the Products to become accessions or commingled with other goods unless KATANA FOUNDATIONS has first perfected any PMSI or SI that KATANA FOUNDATIONS has in relation to the Products;
- (g) if KATANA FOUNDATIONS perfects any PMSI and/or SI that KATANA FOUNDATIONS has in relation to the Products, the Customer must not do anything that results in KATANA FOUNDATIONS having less than the security or priority granted by the PPSA that KATANA FOUNDATIONS assumed at the time of perfection, subject only to the rights of a mortgagee pursuant to a registered mortgage;
- (h) the Customer irrevocably grants to KATANA FOUNDATIONS the right to enter upon the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party, if KATANA FOUNDATIONS has cause to exercise any of KATANA FOUNDATIONS rights under Chapter 4 of the PPSA, and the Customer will indemnify KATANA FOUNDATIONS for any claims made by any third party as a result of such exercise;
- (i) the Customer acknowledges and agrees that:-
 - (i) nothing in sections 125, 132(3)(d), 142 and 143 of the PPSA will apply to these Terms of Sale; and

- (ii) the Security Agreement created by these Terms of Sale may only be reinstated on the terms considered appropriate by KATANA FOUNDATIONS at its complete discretion.
- (j) the Customer acknowledges and agrees that to the full extent permitted by law and mentioned below, the following provisions of the PPSA will not apply to the enforcement of any PMSI and SI created under these Terms of Sale, and the Customer waives its right to:-
 - (i) not have goods damaged or be inconvenienced no more than necessarily incidental if KATANA FOUNDATIONS removes an accession under s.92 PPSA;
 - (ii) to receive notice of any intention to remove an accession under s.95(1)(a);
 - (iii) to apply to the Court for an order postponing the removal of the accession or to determine the amount payable to KATANA FOUNDATIONS for the retention of the accession under s.97 PPSA;
 - (iv) to receive notice of a decision to enforce the security interest in personal property in the same way as an interest in land which secures the same obligation under s.118(1)(b)(i) PPSA;
 - (v) to receive notice of the enforcement of liquid assets under s.121(4) PPSA;
 - (vi) to receive notice of any proposal to dispose of collateral under s.130(1)(a) PPSA;
 - (vii) to receive a statement of account if no disposal under s.132(4) PPSA;
 - (viii) to receive notice of any proposal to retain collateral under s.135(1)(a) PPSA; and
 - (ix) to receive notice of a verification statement in relation to any registration event (including registration of a financing statement or a financing change statement) relating to the PMSI and SI created under these Terms of Sale under s.157 PPSA.

21. Delivery: KATANA FOUNDATIONS will deliver Products to the Site notified by the Customer subject to the following conditions:-

- (a) the Products will be delivered to a site nominated by the Customer and delivered during working hours (or otherwise agreed) or where the delivery is not specified, to a delivery point at KATANA FOUNDATIONS discretion. KATANA FOUNDATIONS will be entitled to invoice the Customer for past payment of an order in respect of goods delivered;
- (b) KATANA FOUNDATIONS will endeavour to deliver Products to the Customer when the Customer requires them but will not be responsible for any delays in delivery of any nature. A minimum order lead time of 5 business days will apply from receipt of purchase order from customer. Delivery dates and times provided by KATANA FOUNDATIONS are estimates only. Any delay will not result in a breach of any Contract by KATANA FOUNDATIONS and the Customer shall not be entitled to terminate any order or to any other remedy whatsoever for any delay,
- (c) KATANA FOUNDATIONS will not be liable for any loss or damage to the Products or the liability which arises during the loading or unloading of the Products;
- (d) If the Site is unattended, the delivery docket/manifest signed by the cartage contractor will be prima facie evidence of delivery of the Product to the Customer;
- (e) delivery to carriers' depots is subject to availability of suitable materials handling equipment. Products delivered to, and acceptance at, carrier's depots will be at the Customer's risk upon acceptance of the Products by the nominated carrier;
- (f) the Customer must have adequate and work health and safety compliant unloading means at their designated point of delivery. KATANA FOUNDATIONS may refuse unloading if it is deemed to be unsafe to do so;
- (g) if the Customer fails to accept a delivery agreed to between KATANA FOUNDATIONS and the Customer, the Customer will pay all costs incurred, including without limitation storage costs and the costs of returning the Products to KATANA FOUNDATIONS and any subsequent re-delivery of those Product to the Customer;
- (h) all delivery, freight and other transport costs (including without limitation any insurance of the Products) are at the Customer's expense and will be charged to the Customer, unless KATANA FOUNDATIONS expressly agrees otherwise in writing. Any additional costs associated with particular delivery instructions are at the Customer's expense and will be charged to the Customer even if the cost(s) have been omitted from any Quotation;
- (i) KATANA FOUNDATIONS may, at KATANA FOUNDATIONS complete discretion, deliver Products by instalments. Failure to deliver an instalment will not entitle the Customer to repudiate or terminate the Contract and the Customer cannot reject Products due to late delivery;
- (j) if KATANA FOUNDATIONS delivers only part of the Products and/or Services, then it may invoice the Customer and the Customer must pay for, that part of the Products and/or Services delivered, unless otherwise agreed in writing between the parties;
- (k) where KATANA FOUNDATIONS has agreed to Products being collected, KATANA FOUNDATIONS will hold the Products for up to 5 days from the agreed collection date. Products not collected within such a time may be delivered to the delivery point nominated by KATANA FOUNDATIONS and all costs incurred by KATANA FOUNDATIONS in making such delivery will be charged to and paid by the Customer. KATANA FOUNDATIONS reserves the right to charge the Customer any storage or warehouse fees for Products held past the specified collection date; and
- (l) if the Customer is required to enter a KATANA FOUNDATIONS site to collect or inspect the goods or to review processes. It will comply with all directions given by KATANA FOUNDATIONS and must complete an induction if required by that site. KATANA FOUNDATIONS reserves the right to refuse entry to its site for any reason whatsoever.

22. Supply claims: The Customer will inspect and check all Products received as soon as practicable upon unloading. Any claim by the Customer of a short supply of Products must be notified to KATANA FOUNDATIONS at the time of delivery. The Customer acknowledges and agrees that any claim by the Customer for short supply of Products by KATANA FOUNDATIONS after the time of delivery to the Site is waived. KATANA FOUNDATIONS accepts no liability for any loss, damage, costs or expenses incurred by the Customer in relation to an

alleged short supply of Products notified to KATANA FOUNDATIONS after the time of delivery. All claims must be forwarded to KATANA FOUNDATIONS at the address specified on the front of the Quotation. KATANA FOUNDATIONS will endeavour to rectify any shortages as soon as practicable after receiving notice but is not liable for or in respect of such rectification or short supply.

23. Rectification: Requests by the Customer to KATANA FOUNDATIONS for approval to undertake rectification works in relation to Products or Services supplied to the Customer must:-

- (a) be in writing;
- (b) be made within 28 days of the Products and Services being supplied by KATANA FOUNDATIONS;
- (c) clearly identify the KATANA FOUNDATIONS order number to which the proposed rectification works relate; and
- (d) provide sufficient details of the rectification work proposed to be undertaken by the Customer and the contractor or other party the Customer proposes to engage to undertake the work.

KATANA FOUNDATIONS accepts no obligation or liability to undertake rectification works requested by the Customer in the absence of a written rectification request made in accordance with the requirements of this clause. KATANA FOUNDATIONS accepts no liability for any costs, loss, damage or expense incurred by the Customer associated with rectification works undertaken by the Customer or its agents or contractors without prior written approval from KATANA FOUNDATIONS. KATANA FOUNDATIONS may at its complete discretion approve or refuse a written rectification request made by the Customer.

24. Site Inspection: If the Customer makes a complaint and requests a KATANA FOUNDATIONS representative to visit a Site to inspect Products and/or Services supplied, KATANA FOUNDATIONS will arrange for a representative to attend the Site. In the event that the subject of the complaint is not attributable to the Products and Services supplied by KATANA FOUNDATIONS, KATANA FOUNDATIONS is entitled to charge the Customer for expenses, travel time and time spent on Site by KATANA FOUNDATIONS representative at an hourly rate.

25. Liability: The Customer acknowledges and agrees that:-

- (a) **Non-excludable Rights:** The parties acknowledge that there are statutes which may imply terms, conditions, guarantees and warranties into a contract between KATANA FOUNDATIONS and the Customer for the supply of Products or Services, and also avoid or prohibit the exclusion, restriction or modification of the application of, or exercise of rights conferred under, those terms, conditions, guarantees and warranties, including those under the applicable provisions of the *Competition and Consumer Act 2010 (Cth)* ("Non-excludable Rights"). Nothing in this clause 25 or any other provision of these Terms of Sale intends to have the effect of contracting out of any Non-excludable Rights except to the extent permitted by law;
- (b) **Exclusion of Implied Terms, Conditions and Warranties:** All conditions, warranties, guarantees, undertakings, inducements or representations whether express, implied, statutory or otherwise relating in any way to the Products and/or Services supplied under the Contract are excluded to the full extent permitted by law;
- (c) **Limitation of Liability for Non-Excludable Rights:** To the extent permitted by law, the total liability of KATANA FOUNDATIONS in connection with a supply of Products and/or Services to the Customer is limited, at the option of KATANA FOUNDATIONS, to:-
 - (i) in respect of a supply of Products:
 - A. the replacement of the Products or the supply of equivalent Products;
 - B. the repair of the Products;
 - C. the payment of the cost of replacing the Products or of acquiring equivalent Products; or
 - D. the payment of the cost of having the Products repaired; and
 - (ii) in respect of a supply of Services:
 - A. the re-supply of the Services; or
 - B. the payment of the cost of having the Services re-supplied.
- (d) **Losses:** Subject to clauses 25(a) and 25(c), KATANA FOUNDATIONS is not liable to the Customer in contract, tort including without limitation, negligence or breach of statutory duty, or to otherwise compensate the Customer, for:-
 - (i) any death, injury, loss or damage to any person;
 - (ii) any damage to property or the Products;
 - (iii) any loss of profit, penalties, expenditure, damages or losses (including without limitation any consequential, special, incidental or indirect loss or damages) of the Customer or a third party;

caused, directly or indirectly, as a result of:-

- (iv) any technical advice given by its employees in connection with the design, installation and use of Products supplied by KATANA FOUNDATIONS;
- (v) the Customer or any person other than KATANA FOUNDATIONS installing the Products;
- (vi) the improper use by the Customer of the Products supplied, incorrect positioning of the Products or the performance of Products supplied;
- (vii) any delay in delivery of the Products or completion of the work;
- (viii) any use of or dealing with the Products whether arising from any defect in the Products or unsuitability for the Customer's purpose;
- (ix) any inaccuracies in weights, measurements, capacities and other particulars of Products specified by KATANA FOUNDATIONS;

- (x) an act or omission (including without limitation, negligent acts or omissions) of KATANA FOUNDATIONS or any of KATANA FOUNDATIONS employees, contractors or agents, or in any other way caused by any fault or negligence by KATANA FOUNDATIONS, its employees, agents or subcontractors in performing the work; or
 - (xi) any failure or omission on the part of KATANA FOUNDATIONS to comply with its obligations under the Contract.
- (e) **Force Majeure:** KATANA FOUNDATIONS is not liable for any failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of:-
- (i) circumstances outside KATANA FOUNDATIONS control;
 - (ii) any failure of KATANA FOUNDATIONS machinery; or
 - (iii) any failure of a supplier to KATANA FOUNDATIONS.
- (f) **Indemnity:** In addition to any other indemnities set out in these Terms of Sale, the Customer indemnifies KATANA FOUNDATIONS and its officers, employees, agents and contractors ("Indemnified Parties") from and against any cost, loss, damage or liability (including without limitation, consequential loss, indirect loss, loss of profits or pecuniary or special damages) suffered or incurred by any of the Indemnified Parties arising from or in connection with:-
- (i) any breach of these Terms of Sale or any Contract by the Customer;
 - (ii) the negligence or wilful misconduct of the Customer or any of its officers, employees, agents or contractors;
 - (iii) any claims made against KATANA FOUNDATIONS by any third party in respect of any loss, damage, death or injury to any person in connection with any Product or Services, except to the extent the liability is directly caused by a negligent act or omission of KATANA FOUNDATIONS;
 - (iv) infringement or alleged infringement of the Intellectual Property Rights of any person relating to the design, installation or use of the Products by the Customer or any person to whom the Customer supplies the Products or in respect of any documents supplied by the Customer or a third party on behalf of the Customer;
 - (v) any installation of the Product or any reliance placed by the Customer on the procedures or recommendations set out in an installation manual that is not authored by KATANA FOUNDATIONS;
 - (vi) any inaccuracy, omission or error in any information, materials or documents supplied by the Customer or a third party on behalf of the Customer to KATANA FOUNDATIONS; and
 - (vii) any act or omission of the Customer or any of its officers, employees, agents or contractors.

For the purpose of obtaining the benefit of the indemnity granted under this clause 25(f), KATANA FOUNDATIONS acts on its own behalf and on behalf of each of its officers, agents, employees and contractors. The Customer releases KATANA FOUNDATIONS from any claim that the Customer may have or make in connection with these Terms of Sale or Contract.

- 26. Intellectual Property Rights:** Nothing in these Terms of Sale assigns or transfers to the Customer any Intellectual Property Rights of KATANA FOUNDATIONS or relating to any Product (including any Intellectual Property Rights subsisting in any promotional literature, technical documents or other information provided by KATANA FOUNDATIONS to the Customer)("Katana IP"). The Customer assigns to KATANA FOUNDATIONS the Intellectual Property Rights in any discoveries, improvements or modifications made by the Customer in connection with any Product as such Intellectual Property Rights are discovered or created (as applicable).

The Customer must:-

- (a) not make any use of any Katana IP other than as specified in these Terms of Sale or as approved in writing by KATANA FOUNDATIONS;
- (b) differentiate between KATANA FOUNDATIONS products and those manufactured by its competitors;
- (c) where practicable, indicate prominently in written form that the Katana IP is used by the Customer under licence from KATANA FOUNDATIONS;
- (d) not represent or pass-off as products made from KATANA FOUNDATIONS, any products not supplied by KATANA FOUNDATIONS;
- (e) provide KATANA FOUNDATIONS with reasonable assistance in identifying, prosecuting and defending claims with respect to the Katana IP;
- (f) not use the Katana IP in any way which would lead to any trade marks comprising the Katana IP to become generic, lose distinctiveness or become liable to mislead the public or in any way which would be materially detrimental to or inconsistent with the name, reputation and/or image of KATANA FOUNDATIONS;
- (g) not use any trade mark or product reference which is substantially identical or deceptively similar to any comprising the Katana IP;
- (h) not register or attempt to register any trade mark, domain name business name, design, emblem, logo or slogan that is substantially identical or deceptively similar to any Intellectual Property Rights comprising the Katana IP; and
- (i) not use any of the Katana IP as part of the Customer's trade name, corporate name, business name or domain name.

When requested by KATANA FOUNDATIONS the Customer must immediately cease to use the Katana IP and deliver or, at KATANA FOUNDATIONS' request, destroy any materials of KATANA FOUNDATIONS provided to it by KATANA FOUNDATIONS, including but not limited to all marketing and advertising materials, logos, labels and any reproductions of KATANA FOUNDATIONS' brands that are in the possession or control of the Customer.

The Customer must procure that its officers, employees, contractors and agents comply with the provisions of this clause 26.

All goodwill in any Katana IP generated through the use of such right by the Customer enures to the benefit of KATANA FOUNDATIONS.

- 27. Expenses:** The Customer must pay to KATANA FOUNDATIONS any costs, charges and expenses (including without limitation, all stamp duty and legal fees and costs and debt recovery expenses on a full indemnity basis as a liquidated debt) incurred by KATANA FOUNDATIONS in connection with any supply by KATANA FOUNDATIONS to the Customer, the exercise or attempted exercise of any power, right or remedy under these Terms of Sale and/or the failure of the Customer to comply with these Terms of Sale.
- 28. Suspension or Ceasing of Supply:-**
- (a) KATANA FOUNDATIONS may at KATANA FOUNDATIONS complete discretion and without incurring any liability to the Customer, cease or suspend supply of Products and Services to the Customer or amend these Terms of Sale; and
 - (b) without limiting clause 28(a), if an Event of Default occurs, KATANA FOUNDATIONS may, without prejudice to KATANA FOUNDATIONS' other rights, call up moneys owed to KATANA FOUNDATIONS by the Customer, retain all moneys paid on account, or cease further deliveries and recover from the Customer all loss of profits and other costs arising from the Event of Default and/or take immediate possession of any Products and Services for which payment remains outstanding.
- 29. Service of Notices and Documents:** All notices or documents required to be given to KATANA FOUNDATIONS for the purposes of the PPSA must be given in accordance with the PPSA. Any notices or documents required to be given by KATANA FOUNDATIONS to the Customer for the purposes of the PPSA or for any other purposes will be effectively "given", "served" and "delivered" if sent by KATANA FOUNDATIONS to the Customer by pre-paid ordinary post to any one of the following addresses:-
- (a) the last address for the Customer known to KATANA FOUNDATIONS;
 - (b) if the Customer is a Company, the registered office or principal place of business; or
 - (c) if the Customer trades under a registered business name, any address contained on a current business extract for that business name.
- 30. Waiver:** The failure by KATANA FOUNDATIONS to insist upon the compliance with any of these Terms of Sale does not constitute a waiver and KATANA FOUNDATIONS is entitled to insist upon compliance with all provisions of these Terms of Sale at any time.
- 31. Assignment:** The Customer must not assign any of its rights under these Terms of Sale or otherwise transfer the benefit of them or any right or remedy under them without the prior written consent of KATANA FOUNDATIONS. KATANA FOUNDATIONS may assign part or all of its rights under these Terms of Sale without the consent of the Customer.
- 32. Severance:** Each clause, subclause and part of these Terms of Sale is separate and independent. If any clause or subclause or part is found to be invalid or ineffective, the other clauses or subclauses or parts will not be adversely affected.
- 33. Application of Laws:** These Terms of Sale are governed by and are to be construed in accordance with the laws applicable. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction, in any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.
- 34. Miscellaneous:** The parties acknowledge and agree that:-
- (a) any description of Products in a Quotation or elsewhere will be by way of identification only and the use of the description will not create a sale by description. KATANA FOUNDATIONS may at its complete discretion alter the material specifications shown in its promotional material to reflect changes made after the date of publication;
 - (b) the Customer has not relied on any representations made by KATANA FOUNDATIONS, its officers, employees and agents before or after entering into this Contract which have not been stated expressly in this Contract or upon any descriptions or illustrations or specifications contained in any document including without limitation any catalogue or publicity material produced by KATANA FOUNDATIONS;
 - (c) the Products are acquired by the Customer for the purpose of re-supply or for the purpose of using them up or transforming them, in trade or commerce, in the course of a process of production or manufacture or of repairing or treating other Products or fixtures on land;
 - (d) the Customer acknowledges and agrees that it must not enter into, and has not entered into, any agreement with a third party which would prevent the Customer from complying with these Terms of Sale;
 - (e) KATANA FOUNDATIONS may subcontract part or all of its obligations under any Contract without notice to the Customer however any subcontracting of the obligations of the Customer must be with the prior written consent of KATANA FOUNDATIONS;
 - (f) if KATANA FOUNDATIONS receives or recovers money in respect of a debt of the Customer, KATANA FOUNDATIONS may use the money to pay off whichever debt or part of a debt of KATANA FOUNDATIONS that KATANA FOUNDATIONS chooses and is not compelled to apply the money as directed by the Customer or any other person; and
 - (g) KATANA FOUNDATIONS may at any time set-off any amount owed by KATANA FOUNDATIONS to the Customer against amounts owed by the Customer to KATANA FOUNDATIONS.