

Katana Foundations Australia Pty Ltd - Terms of Trade (“Terms”)

1 Application of Terms

- 1.1 These Terms govern our supply of Goods and Services to you, including supplies on a cash basis.
- 1.2 If you wish to negotiate these Terms with us then you should respond to this document, marking up these Terms and drawing those changes to our attention and obtain our agreement in writing.
- 1.3 It is not our practice to otherwise review terms and conditions on documents that you issue to us.
- 1.4 Unless we otherwise agree in writing, we do not accept, and will not be bound by, any terms or conditions included in, attached to, or referenced in, any other document you give to us like a purchase order or works order.

2 Quotations

- 2.1 Each quotation that we issue:
 - (a) is not an offer or obligation to supply any Goods or to perform any Services;
 - (b) is exclusive of GST;
 - (c) may include the costs of delivering Goods;
 - (d) remains valid for acceptance for a period of thirty (30) days from the date of quotation, unless withdrawn by us before a contract for supply is formed;
 - (e) is subject to price change in accordance with agreed variations made pursuant to clause 2.4, unless the quotation states otherwise.
- 2.2 Quotations provided orally are subject to written confirmation.
- 2.3 A quotation may include additional terms or conditions, which will supplement these Terms.
- 2.4 You acknowledge and agree that any variations, substitutions, additions and / or deletions to plans, specifications, engineering requirements or special instructions, requested changes to the Goods or Services, delivery services, packaging or other such changes to each Order or quotation that we issue must be agreed in writing between the parties.
- 2.5 Should you wish to have services performed outside Business Hours please let us know as additional charges may apply.

3 Formation of contract

- 3.1 We are not obliged to supply any Goods or provide Services until after a contract for supply is formed.
- 3.2 A contract for supply is formed and you have accepted these Terms, when:
 - (f) you have placed an Order with us; and
 - (g) we have received any deposit we have required from you in respect of the Order before progressing it; and either we have:
 - (h) accepted your Order in writing; or
 - (i) supplied you with any Goods or performed any Services following receipt of your Order.
- 3.3 If you revoke an Order:
 - (a) prior to the formation of a contract for supply then:
 - (i) we will refund you any deposit you have paid in respect of that Order; and
 - (ii) you will not be required to pay any fee for the cancellation of the Order; or alternatively
 - (b) after the formation of a contract for supply then unless we are in breach of the contract for supply:
 - (iii) you must pay all our reasonable costs associated with fulfilment of your Order; and
 - (iv) we may apply any deposit you have paid towards those costs.

4 Price

- 4.1 The price payable for the Goods or Services will be:
 - (a) the price agreed in writing; or alternatively
 - (b) the price by our prevailing price list/rates as when

you place your Order, or as set out in our quotation.

- 4.2 We may vary our price or rates by notice to you if you request:
 - (a) the Goods or Services be rendered outside Business Hours;
 - (b) different Goods or Services to be supplied to the contract for supply; or
 - (c) that we delay provision of the Goods or Services for thirty (30) days or more.
- 4.3 The parties acknowledge that any agreed variation made to a quotation or Order may incur a change in the price of the Goods or Services.
- 4.4 We reserve our right to increase the price of the Goods or Services to reflect any increase in the cost of the Goods or Services that is due to any factor beyond our control (such as, without limitation, any foreign exchange fluctuation, currency regulation of duties, significant increases in the cost of labour, materials or other costs of manufacture or transport).
- 4.5 Where we vary the price or rates payable for the Goods or Services pursuant to clauses 4.2 and/or 4.4, we will notify you of the new price/rates. Thereafter you may reject the new price/rates within seven (7) days and terminate the contract for supply without any cost or penalty to you, otherwise you agree that the price/rates will apply to the contract.
- 4.6 Unless stated in your Order, the price for the Goods does not include any other Goods or Services, including but not limited to, assembly of the Goods, delivery of oversized loads, provision of vehicle escorts, additional pile lengths, on-Site scheduling, on-Site accommodation, survey plans, dowel bars, load pile testing, soil testing or provision of traffic control.

5 Packaging and tolerances

- 5.1 The parties acknowledge and agree that:
 - (a) the Goods will be delivered in accordance with our standard packaging, loading, bracing and shipping procedures;
 - (b) you may request additional packaging requirements pursuant to clause 2.4; and
 - (c) any Goods that we supply are supplied in accordance with quantity, weight, dimension, chemical composition (within acceptable tolerances as to variations) specifications provided by us or in accordance with accepted industry practice.

6 Delivery and risk

- 6.1 We will use reasonable endeavours to deliver the Goods at the time and place agreed for delivery. You will make arrangements necessary to take delivery of the Goods.
- 6.2 A minimum order lead time of five (5) business days will apply from the time of our receipt of any Orders from you.
- 6.3 You acknowledge and agree that:
 - (a) unless the contract for supply expressly states otherwise, time in respect of delivery is not of the essence; and
 - (b) any timeframe or date for delivery is an estimate only and is not a contractual commitment.
- 6.4 Risk of loss, damage, or deterioration to the Goods passes to you, and delivery is deemed to occur, at the time:
 - (a) you or any third party on your behalf collect the Goods from us;
 - (b) we or our nominated carrier deliver the Goods to the delivery location stated in your Order (or to such other location as agreed in writing); or
 - (c) your nominated carrier takes possession of the Goods.
- 6.5 It is your responsibility to provide suitable, practical, and safe means of access and agrees to the place agreed for delivery. If the site is deemed unsuitable or unsafe (at the delivery driver's sole discretion), then the delivery driver may:
 - (a) refuse to deliver the Goods and return the Goods to the point of despatch (in which case an additional delivery fee will apply to any subsequent delivery attempt); or
 - (b) deliver the Goods to the location nearest to the agreed place for delivery where delivery can be

- safely effected.
- 6.6 You agree to sign our delivery docket or consignment note or that of our nominated carrier as confirmation that you have received the Goods, and if appropriate, certify that you have received the Goods in apparent good order and condition in the quantity or volume you have ordered.
- 6.7 If you authorise us to deliver the Goods to an unattended location or to leave them outside the agreed place for delivery, we may deliver the Goods as requested at your risk.
- 6.8 Where we have agreed to the Goods being collected, you acknowledge and agree that we will hold the Goods for up to five (5) days from the agreed collection date.
- 6.9 Where we have agreed that you, or your agent or representative may enter our premises for the purpose of collecting stored Goods, you acknowledge and agree to comply with all directions given by us, or with notices or signage on our premises, and that you may be required to complete an induction as a condition of entry to our premises.
- 6.10 If delivery or collection of the Goods is deferred:
- (a) at your request; or
- (b) due to you being unable or unwilling to accept delivery of the Goods (other than as a result of the Goods delivered not being in accordance with the contract for supply);
- in circumstances where:
- (a) we are ready to deliver the Goods and a delivery date has not been agreed; or
- (b) the Goods are due to be delivered or collected on an agreed delivery date,
- then you will pay to us:
- (a) reasonable daily storage charges (which will continue to accrue until such time as the Goods are delivered or collected); and
- (b) any costs associated with us or our nominated carrier attempting to re-deliver the Goods (where we or our nominated carrier has previously attempted to deliver the Goods).
- 6.11 You acknowledge and agree that we may deliver the Goods in one or more lots and may invoice you for pro rata progress in respect thereof.

7 Provision of Services

- 7.1 You must ensure that Site amenities required by our Personnel, including water, electricity (i.e. 240 volt), and sanitary accommodation (i.e. serviced toilet facilities) are made available for our Personnel's use (at no cost to us or our Personnel). If you fail to make such amenities available, we will be entitled to invoice you any additional costs we incur in procuring or providing such amenities.
- 7.2 You must, prior to us commencing the Services:
- (a) obtain, at your expense, all relevant approvals;
- (b) engage a licensed service locator to clearly mark the location of all services above and below ground, including drains, pipes, sewers, mains, and telecommunications and electricity cables;
- (c) restrict any animals and non-Personnel from accessing the Site;
- (d) provide us with such information and documentation that we reasonably require to perform the Services;
- (e) inform us of any special requirements pertaining to the installation (such as Site-specific policies or safety requirements);
- (f) obtain, at your expense, and provide us with an asbestos clearance certificate (or equivalent); and
- (g) provide us with sufficient survey markers and information to set out the location of the piles.
- 7.3 You acknowledge and agree that:
- (a) unless the contract expressly states otherwise:
- (i) time in respect of completion of the Services is not of the essence; and
- (ii) while we will take reasonable endeavours to complete the Services by the estimated date for completion, any timeframe or date for completion is an estimate only and is not a contractual commitment; and
- (b) all Services carried out outdoors are contingent on

- suitable weather conditions; and
- (c) we may suspend or cease performance of the Services at any time by notice to you if, in our opinion (acting reasonably), we determine the Site to be unsafe.
- 7.4 If the commencement or the completion of the Services is delayed due to any event beyond our reasonable control, such as:
- (a) Goods unavailability;
- (b) your failure to:
- (i) have the Site ready for us to perform the Services; or
- (ii) notify us the Site is ready for us to commence the Services.

then you agree we may extend the time for commencement or completion of the Services (as the case may be) by a period of time equal to the delay.

- 7.5 You must at all reasonable times during the performance of the Services permit our Personnel, semi-trailers, delivery vehicles, body trucks, and other such vehicle or machinery, to have free, clear, and unrestricted access to the site, including ensuring that there is sufficient horizontal and vertical clearances, where the Services are to be performed to enable us to fulfil our obligations without unreasonable interruption, impediment, delay, or obstruction.
- 7.6 If you make available access to the Site, you warrant that the Site is safe and that it complies with all relevant work health and safety laws and standards.
- 7.7 You warrant and represent to us that the Site has no latent ground conditions or obstructions, including any underground services, harder or softer than anticipated soil layers, existing footings and pile caps, boulders, rubble, or mineral deposits that may impede the installation of the Katana Pile Product.
- 7.8 You warrant and represent to us that the Site is not located on an Aboriginal heritage or sacred site and has no latent ground conditions resultant from previous mining or exploration activity, including excavated tunnels, adits or shafts.
- 7.9 If we form a reasonable view that latent conditions or obstructions exist on-Site, you acknowledge and agree to arrange for the removal of any latent conditions or obstructions that impede the installation of Katana Pile Products, unless otherwise agreed in writing between the parties.
- 7.10 We will supply you with State-appropriate certification signed by a suitably qualified and licensed engineer upon completion of the installation services and us receiving full payment of all invoices payable in connection with the Service.
- 7.11 Where we encounter any additional costs involved in deviations between drawings or data supplied by you, additional or unanticipated on-Site requirements for installation of the Goods, or other such reasonable costs to us completing the Services, the parties agree to negotiate in good faith any changes or variations to the Goods and / or Services in accordance with clause 2.4.
- 7.12 You acknowledge and agree that you or your representatives or agents must not interfere with Katana Pile Products once installed, unless the parties agree in writing.
- 7.13 You acknowledge and agree:
- (a) to notify us in writing upon becoming aware of any of mistake or errors made by us or third parties during delivery or provision of the Goods or Service; and
- (b) you must not fix, attempt to fix, or cause to be fixed any mistakes or errors unless otherwise agreed by us in writing.
- 7.14 Upon receiving notice under clause 7.13 we will use reasonable endeavours to remedy or correct the mistake or error within reasonable time or as agreed by us.
- 7.15 Where we are unable to remedy or correct any mistakes or errors in accordance with clause 7.14 you must obtain our consent (not to be unreasonably withheld) before you engage a third party to remedy or correct the relevant mistakes or errors, or to otherwise engage in any necessary or required remedial works.

8 Supply Only (no installation)

- 8.1 This clause applies where we may agree to supply Katana Pile Products to you on a supply-only basis without installation. For example, where you may be a reseller or you may intend to arrange your own installation of the Katana Pile Products.
- 8.2 You acknowledge and agree that:
- (a) you must refer to and take into consideration our technical information found at <https://katanafoundations.com.au/technical/>;
 - (b) you will obtain and rely upon your own independent engineering advice as to whether the Katana Pile Product is fit for the purpose for which you propose to use the Katana Pile Product;
 - (c) notwithstanding clauses 8.2(a) and 8.2(b), it remains your responsibility to inform yourself of the most appropriate procedure for the installation of the Katana Pile Product for the application for which you propose to use the Katana Pile Product. If you are unsure as to any such matters, you must seek independent engineering advice;
 - (d) you must obtain State-appropriate certification from a suitably qualified and licensed engineer to certify the installation of the Katana Pile Product;
 - (e) we are not responsible for the installation of the Katana Pile Product and we will not be obliged to provide any of the Services contemplated in clause 7 of these Terms; and
 - (f) you have read and acknowledge that clause 28 of these Terms applies.
- 8.3 You indemnify and release us in respect of any loss, damage, costs and claims caused by your failure to comply with the requirements in this clause 8.

9 Payment terms

- 9.1 Unless you have a Credit Facility with us which is not in default:
- (a) deposits we have requested must be paid before we commence providing Goods and Services;
 - (b) you must pay for all Goods before they are despatched (in cash or cleared funds); and
 - (c) you must pay for all Services before they are performed (in cash or cleared funds).
- 9.2 Payment may be made by cash or electronic funds transfer. We reserve the right to change the payment methods that we accept at any time.
- 9.3 We may charge a payment surcharge for applicable payment transactions equal to our reasonable cost of acceptance.
- 9.4 You agree to pay GST on all taxable supplies upon us issuing you a tax invoice relating to the taxable supply.
- 9.5 You agree to pay sums due to us free of any set off or counterclaim and without deduction or withholding.
- 9.6 Unless otherwise agreed, any work performed or Goods delivered prior to any variation of a quotation made in accordance with clause 2.4 becomes payable due and payable immediately.
- 9.7 We will not request or impose retention payments for delivery or provision of the Goods or Services.

10 Claims

- 10.1 Clause 10.2 to 10.4 only apply if the contract for supply is not a Consumer Contract and not a Small Business Contract.
- 10.2 You must, within five (5) business days of the date of delivery:
- (a) give us notice in writing, with particulars, of any Claim that the Goods delivered are not in accordance with the contract for supply (including any Claim for shortfall, incorrect supply, or damage to the Goods); and
 - (b) at our request, provide us with photographic evidence (to our satisfaction) of any alleged damage to the Goods.
- 10.3 You must notify us in writing of any Claim for non-delivery within five (5) business days of the date of the invoice which relates to the Goods the subject of your Claim.

- 10.4 If you fail to notify us in accordance with clause 10.2 and 10.3, then, to the extent permitted by law, the Goods are deemed to have been delivered in good condition and in accordance with the contract for supply.

11 Returns

- 11.1 We will accept the return of any Goods if:
- (a) the Goods supplied do not conform with the contract for supply;
 - (b) the Goods are defective; or
 - (c) we are required by law to accept the return of the Goods.
- 11.2 At our discretion, we may accept the return of Goods if you change your mind if:
- (a) you agree to:
 - (i) pay the lesser of a handling and administration charge of 20% of the purchase price of the returned Goods; and
 - (ii) reimburse us for all costs we incur in connection with the return of those Goods (except for Goods we have incorrectly supplied or we agree are defective);
 - (b) the Goods are in substantially the same condition to the condition in which they were delivered; and
 - (c) the Goods were not specifically produced or procured at your request.
- 11.3 You indemnify and release us from any damage that occurs to any Goods in return transit. You should ensure that any returned Goods are insured against such damage.

12 Retention of title

- 12.1 Until such time as you have made payment in full (in cash or cleared funds) for any Goods we have supplied:
- (a) title in the Goods does not pass to you and we retain the legal and equitable title in the Goods;
 - (b) you will hold the Goods as fiduciary and bailee for us and agree to store the Goods in such a manner as to enable them to be readily identifiable as our property;
 - (c) you undertake to not mix the Goods with similar goods;
 - (d) unless and until we notify you to the contrary, you will be entitled to sell the Goods in the ordinary course of your business (provided any such sale is at arm's length and on market terms) and will sell the Goods as our agent and bailee; and
 - (e) you undertake to hold any proceeds derived from the sale of the Goods on trust for us absolutely.
- 12.2 While title in the Goods remains with us, you permit us to enter upon any premises you occupy (or any premises any receiver, receiver and manager, administrator, liquidator, or trustee in bankruptcy of yours occupies) as your invitee to inspect the Goods and, when you are in default of payment of any invoice, to repossess any Goods in your possession, custody, or control.
- 12.3 Where we exercise our right of entry pursuant to clause 12.2, you agree that us doing so will not give rise to any Claim for trespass or similar action against us or our officers, employees, and agents.
- 12.4 Where we have retaken Goods into our possession, we have the right to sell or deal with those Goods, and, if necessary, sell any Goods bearing your name or trade mark, and you hereby grant us an irrevocable licence to do all things necessary to sell those Goods.
- 12.5 For the removal of doubt, our interest under this clause 12 constitutes a purchase money security interest for the purposes of the PPS Act.

13 Security interest

- 13.1 Unless you have obtained our prior written and fully informed consent, you undertake not to:
- (a) register a financing change statement in respect of a security interest in our favour; or
 - (b) create, or purport to create, any security interest in the Goods (or any proceeds derived from the sale of such Goods), nor register, nor permit to be registered, a financing statement or financing change statement in relation to the Goods in favour of any

- third party.
- 13.2 You:
- (a) waive your right to receive a copy of any verification statement in accordance with section 157 of the PPS Act; and
 - (b) agree that, to the extent permitted by the PPS Act:
 - (i) sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132, 134, 135, 142, and 143 of the PPS Act do not apply and are hereby contracted out of; and
 - (ii) you waive your right to receive notices under sections 95, 118, 121(4), 127, 130, 132(3)(d), and 132(4) of the PPS Act.
- 13.3 We need not disclose information of the kind detailed in section 275(1) of the PPS Act, unless required by law.
- 13.4 Where we have rights in addition to those under Part 4 of the PPS Act, those rights continue to apply.

14 Description of Goods

If you require any Goods for a particular purpose, you must advise us of that purpose prior to placing your Order and must obtain a written assurance from us that the Goods will meet your requirements. If you do not advise us of your requirements and we do not expressly warrant in writing that the Goods will be fit for your particular purpose, then you agree that you did not rely upon our skill or judgment in relation to the suitability of the Goods for that purpose.

15 Default

- 15.1 Clauses 15.2 to 15.4 apply if you fail to pay sums to us when they fall due.
- 15.2 We may charge you interest on the outstanding debt (including any judgment debt) at the rate of 3% more than the business overdraft commercial rate of our principal banker per annum from the invoice date until the payment of the debt. Interest accrues daily and compounds daily.
- 15.3 We may suspend or cease the supply of any further Goods or Services to you.
- 15.4 We may require pre-payment in full for any Goods or Services which have not yet been supplied.

16 Indemnity

- 16.1 If you default in the performance or observance of your obligations under any contract of which these Terms form part, then:
- (a) we will take steps to mitigate our loss and act reasonably in relation to any default by you; and
 - (b) we will give you notice requesting payment for loss and damage occasioned in respect of those events and requesting that you remedy any breach within a reasonable time; and
 - (c) if that demand is not met then you indemnify us in respect of loss, damage, costs (including collection costs, bank dishonour fees, and legal costs on an indemnity basis) that we have suffered arising therefrom.
- 16.2 Your liability to indemnify us will be reduced proportionally to the extent that any fraud, negligence, or wilful misconduct by us or a breach of our obligations under contract has contributed to the Claim, loss, damage, or cost which is the subject of the indemnity.
- 16.3 Your liability to indemnify us is a continuing obligation separate and independent from your other obligations and survives the termination or performance of any contract of which these Terms form part.

17 Limitation of liability

- 17.1 No party is liable to the other party for any Consequential Loss, including under clause 16, however caused arising out of or in connection with any contract for supply of which these Terms form part.
- 17.2 While we will take reasonable endeavours to meet any estimated delivery date or estimated time for Goods and Services, you acknowledge and agree that we are not liable for any delay associated with meeting those estimated timeframes.

- 17.3 If the contract for supply is not a Consumer Contract or a Small Business Contract then, to the extent permitted by law, our liability is limited to:
- (a) (in the case of a supply of Goods):
 - (i) us repairing or replacing the Goods; or
 - (ii) us paying you the cost of having the Goods repaired or replaced.
 - (b) (in the case of a supply of Services):
 - (i) us supplying the Services again; or
 - (ii) us paying you the cost of having equivalent Services supplied.

18 Intellectual Property Rights

- 18.1 All right, title, and interest in the Intellectual Property Rights in and to all Goods supplied by us are, and will at all times remain, our property or that of the relevant manufacturer.
- 18.2 All improvements, derivatives, and modifications to the Intellectual Property Rights in and to the Goods (**Improvements**) vest in us immediately upon creation. You agree to assign to us all right, title, and interest in the Improvements as soon as they are created and undertake to do all things necessary to give effect to this clause 18.2.
- 18.3 You acknowledge and agree that:
- (a) you have no right to use our Intellectual Property Rights, unless otherwise agreed in writing;
 - (b) you must not deal in or otherwise use our Intellectual Property Rights in any way that infringes upon, or has the effect of degrading, damaging, or causing our intellectual property to lose value (including but not limited to goodwill); and
 - (c) to comply with any reasonable direction that we may give you to assist us in the identification, prosecution, or defence of claims arising from, or in connection to, our Intellectual Property Rights as these pertain to your direct or indirect use of the Goods or Services.

19 Privacy

- 19.1 You must comply with all Privacy Laws, and any reasonable direction of ours, in handling any Personal Information disclosed to or accessed by you in connection with any Contract of which these Terms form part, whether or not you are an organisation bound by the Privacy Laws.
- 19.2 Without limiting your obligations under clause 18.3(a), you must:
- (a) not use or disclose Personal Information other than for the purpose of performing your obligations under any Contract of which these Terms form part, unless required or authorised by Law;
 - (b) upon request, promptly return any Personal Information to us upon termination or performance of any Contract of which these Terms form part; and
 - (c) immediately notify us:
 - (iii) upon becoming aware of any breach of clauses 18.3(a) or 19.2; and
 - (iv) of any data breach affecting, or unauthorised access to or loss of, Personal Information held by you or your personnel.
- 19.3 Clauses 18.3(a) and 19.2 survive the termination or performance of a Contract.

20 Confidentiality

- 20.1 You agree to keep confidential, and not use or disclose, other than for your internal business purposes, any Confidential Information provided to or obtained by you before or after your entry into a Contract.
- 20.2 The obligations of confidence imposed on you by clause 20.1 do not apply to Confidential Information that is required to be disclosed by any applicable Law or under compulsion of a court, Government Authority, or the rules of any securities exchange (as long as you disclose the minimum amount required to satisfy the Law or rules, provide us with prior notice in writing, and take reasonable steps to maintain the confidence of such Confidential Information) or that is in the public domain otherwise than as a result of a breach of these Terms or other obligation of confidence.

20.3 Clauses 20.1 and 20.2 survive the termination or performance of a Contract.

21 Termination

A party may, with immediate effect, terminate any contract for supply of which these Terms form part by notice in writing, if the other party:

- (a) commits a material or persistent breach of these Terms and does not remedy that breach (if capable of remedy) within seven (7) days of the receipt of a notice (or such longer time as specified in the notice) identifying the breach and requiring its remedy; or
- (b) has failed to pay sums due to the party within seven (7) days; or
- (c) has indicated that it is, or may become, insolvent; or
- (d) ceases to carry on business; or
- (e) comprises an entity which is the subject of the appointment of receivers or managers; or
- (f) comprises a natural person who:
 - (i) has committed an act of bankruptcy; or
 - (ii) has been made bankrupt;
- (g) comprises a corporation which:
 - (i) enters into voluntary administration;
 - (ii) is subject to a deed of company arrangement; or
 - (iii) is subject to the appointment of liquidators or provisional liquidators.

22 Trustees

22.1 If you are the trustee of a trust (whether disclosed to us or not), you warrant to us that:

- (a) you enter into the contract for supply in both your capacity as trustee and in your personal capacity;
- (b) you have the right to be reasonably indemnified out of trust assets;
- (c) you have the power under the trust deed to enter into the contract for supply; and
- (d) you will not retire as trustee of the trust nor appoint any new or additional trustee without first notifying us in writing and having the new or additional trustee sign an agreement on terms substantially the same as those governing your Credit Facility (where applicable).

22.2 You must give us a true and complete copy of the trust deed upon request.

23 Variation

We may amend these Terms in the future by notifying you in writing. The amended Terms will thereafter apply to each Order you place unless you earlier give us written notice in advance of placing a further Order.

24 Assignment

A party may only assign its rights under the contract for supply with the written consent of the other party.

25 Conflicts and Inconsistencies

If there is any conflict or inconsistency between any of the documents which together govern the relationship between the parties, it is agreed the order of precedence will be (highest to lowest):

- (a) any additional terms or conditions contained in our quotation applicable to the supply of Goods or Services;
- (b) any terms governing your Credit Facility; and
- (c) these Terms.

26 Severance

If any part or term of our agreement with you (including any Credit Facility) is illegal, invalid, or unenforceable, it will be read down so far as necessary to give it a valid and enforceable operation or, if that is not possible, it will be severed from the contract and the remaining provisions will not be affected, prejudiced, or impaired by such severance.

27 Governing law and jurisdiction

- 27.1 Our relationship is governed by and must be construed according to the law applying in the State of New South Wales.
- 27.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales with respect to any proceedings that may be brought at any time relating to our relationship.

28 Special Conditions

28.1 If we supply Goods to the Customer that primarily subsists of, or includes a Katana Pile Product:

- (a) 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 (or other such suitably authorised or qualified body, as the case may be) with previous experience in the design of steel screw piles;
- (b) 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;
- (c) 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;
- (d) additional lengths of piles (beyond the tender depth) will be charged as per the quotation, measured in a minimum increment of one metre rounded up to the nearest metre;
- (e) the Customer is responsible for all survey costs relating to the positioning of the foundation and / or slab which will sit upon the foundation system;
- (f) the Customer must have adequate work, health and safety compliant unloading equipment and facilities at the point of delivery;
- (g) we may refuse to unload Goods if we reasonably find that the delivery point is unsafe or if you propose unauthorised or unsafe lifting methods;
- (h) where an installation manual is published or made available in respect of a Katana Pile Product that is not written, developed or authored by us (such as by independent engineering contractors) ('**Third Party Materials**'):
 - (i) you acknowledge and agree to notify us in writing of the existence of Third Party Materials; and
 - (ii) you will not use or otherwise rely upon Third Party Materials unless expressly authorised by us in writing.

29 Definitions

In these Terms, unless the context otherwise requires, the following definitions apply.

- 29.1 **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth), as amended.
- 29.2 **Business Hours** means between 09:00am to 5:00pm on a day that is not a Saturday, Sunday, or gazetted public holiday in the place where the Goods or Services are, or are to be, supplied.
- 29.3 **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, or award howsoever arising, whether present, unascertained, immediate, future, or contingent, whether based in contract, tort, pursuant to statute or otherwise and whether involving a third party or a party to a contract for supply.
- 29.4 **Confidential Information** includes:
 - (a) any information relating to our business and affairs;
 - (b) any information that is by its nature confidential;
 - (c) any information which is designated by us as confidential;
 - (d) any information that you know, or ought to know, is confidential; and
 - (e) all financial information, pricing information, and commercially valuable information of ours.
- 29.5 **Consequential Loss** includes any:

- (a) consequential loss;
- (b) loss of anticipated or actual profits or revenue;
- (c) loss of production or use;
- (d) financial or holding costs;
- (e) loss or failure to realise any anticipated savings;
- (f) loss or denial of business or commercial opportunity;
- (g) loss of or damage to goodwill, business reputation, future reputation, or publicity;
- (h) loss or corruption of data;
- (i) downtime costs or wasted overheads; or
- (j) special, punitive, or exemplary damages.

29.6 **Consumer Contract** has the meaning given to this term in section 23(3) of the Australian Consumer Law.

29.7 **Credit Facility** means an account we have opened for you on which we may, from time to time, extend you with additional time to pay for our Goods and Services and associated charges.

29.8 **Customer, you** means the person or other entity who has placed an Order with us for the supply of Goods or Services (or the person on whose behalf an Order is placed).

29.9 **Goods** means all goods or products supplied by us, as described on our quotation, invoice, or any other form issued by us.

29.10 **Katana Pile Product** means building piles of metal, including screw piles; building piers of metal, including screw piers; foundation supports of metal; components, accessories and assemblies for the aforesaid in this class; building components, accessories and assemblies of metal, and any other Goods.

29.11 **Intellectual Property Rights** means all industrial and intellectual property rights throughout the world, whether present or future, and whether protectable by statute, at common law or in equity, including rights in relation to copyright, trade secrets, know how, trade marks (whether registered or unregistered or whether in word or logo/device form), designs, patents and patentable inventions, including the right to apply for registration of any such rights.

29.12 **Order** means a written or oral order placed by you requesting that we provide Goods or Services.

29.13 **Personal Information** has the meaning given to that term in the *Privacy Act 1988* (Cth).

29.14 **Personnel** means officers, employees, and agents engaged by each party (but does not include the other party) and, in the case of the Supplier, includes its subcontractors (and any employee of those subcontractors).

29.15 **PPS Act** means the *Personal Property Securities Act 2009* (Cth), as amended.

29.16 **Privacy Laws** means:

- (a) the Privacy Act 1988 (Cth);
- (b) any legislation (to the extent that such legislation applies to the Parties or any other recipient of Personal Information) from time to time in force in any:
 - (i) Australian jurisdiction (which includes the Commonwealth of Australia and any state or territory of Australia); or
 - (ii) non-Australian jurisdiction (to the extent that the Customer, the Supplier, or any Personal Information is subject to the Laws of that jurisdiction),

affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of data (including Personal Information); and

any ancillary rules, guidelines, orders, directions, directives, codes of conduct, or other instruments having the force of Law, made or issued thereunder, as amended from time to time.

29.17 **Site** means the location where the Services are to be performed.

29.18 **Services** means all services performed by us, including but not limited to the installation of Goods, as described on our quotation, invoice, or any other form issued by us.

29.19 **Small Business Contract** has the meaning given to this term in section 23(4) of the Australian Consumer Law.

29.20 **Supplier, we, us** means Katana Foundations Australia Pty Ltd (ACN 163 915 786).

30 Interpretation

In these Terms, unless the context otherwise requires:

30.1 A time is a reference to the time zone of Sydney, Australia unless otherwise specified.

30.2 \$, dollar, or AUD is a reference to the lawful currency of Australia.

30.3 A party includes a reference to that person's executors, administrators, successors, substitutes (including a person who becomes a party by novation), assigns, and in the case of a trustee, includes any substituted or additional trustee.

30.4 A right includes a benefit, remedy, authority, discretion, or power.

30.5 The singular includes the plural and vice versa, and a gender includes other genders.

30.6 "In writing" or "written" means any expression of information in words, numbers, or other symbols, which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

30.7 If a word or phrase is given a defined meaning, its other grammatical forms have a corresponding meaning.

30.8 Words such as "includes", "including", and "for example" are not words of limitation and are to be construed as though followed by the words "without limitation".

30.9 A term of an agreement in favour of two or more persons is for the benefit of them jointly and each of them separately.