

# TERMS AND CONDITIONS

## END USER LICENCE AGREEMENT (EULA) – QUOTEC LIVE & QUOTEC NOW

### 1. INTRODUCTION

- 1.1 These terms and conditions of use (Terms) govern the agreement between you the user of the Services (User) and Quotec Systems Pty Ltd ACN 135 753 552 (Quotec).
- 1.2 By subscribing to the Services, the User acknowledges and agrees that it has had a sufficient chance to read and understand these Terms and agrees to be bound by them.
- 1.3 This Agreement commences on the Commencement Date.

### 2. SUBSCRIPTION SERVICES – QUOTEC LIVE, KIT, QUOTEC LIVE BOM AND QUOTEC NOW

- 2.1 Quotec will provide the Services to the User for the Term subject to these Terms and the policies and guidelines of Quotec published from time to time.
- 2.2 The provision of Services by Quotec will depend on the Subscription Level chosen by the User:
  - (a) the Subscription Levels are as set by Quotec from time to time and advised to the User;
  - (b) each Subscription Level may contain a variety of different features or uses;
  - (c) Quotec reserves the right to vary the features of a Subscription Level in accordance with these Terms;
  - (d) a User may change its Subscription Level provided the User follows Quotec's processes for changing the Subscription Level and the User pays the appropriate fee for that Subscription Level and any variation fee that may be applicable. The Subscription Level may also be changed as set out in this Agreement.
- 2.3 A User agrees to promptly provide Quotec with the following (as may be reasonably requested by Quotec) to enable Quotec to perform the Services:
  - (a) access to and authorisation to use all and any data, information, material and content as reasonably required by Quotec;

- (b) authority to communicate with the User's third-party suppliers and provide information provided by the User to Quotec to such third parties including but not limited a User's company information, financial information and sales information and the User consents to Quotec providing such information for the purposes of these Terms and providing the Services (if required); and
  - (c) such other information, authorisation and items as may be reasonably requested by Quotec.
- 2.4 Where the User provides Quotec with information, the User agrees and warrants that any and all information supplied by the User is true, accurate, current and complete and the User either owns or has right to supply the information supplied.
- 2.5 The User acknowledges that failure to promptly provide the above may restrict Quotec's ability to provide the Services in accordance with these Terms. Quotec will not be liable in any respect where any failure to provide the Services is due to a delay of the User (or a third party) to provide the required information or the User (or a third party) providing incorrect or inaccurate information.
- 2.6 The User further agrees to cooperate with, act reasonably and follow the reasonable directions of Quotec in connection with the use of the Software and this Agreement.

### 3. FEES

- 3.1 During the Term, the User will pay the following (as may be applicable):
- (a) the Subscription Fee (for the agreed Subscription Level) in accordance with Quotec's current payment requirements for the Subscription Fee;
  - (b) Any property address look-up fee in excess of the quota set by Quotec from time to time (as at the date of these Terms the quota is one hundred (100) per calendar month); and
  - (c) Any other fees for Additional Services (see clause 8 below).
- 3.2 Quotec may increase the Fee in the following circumstances:
- (a) where there has been a change in the Subscription Level or type at the request of the User;
  - (b) annually by a maximum amount of five percent (5%) to reflect any actual increases in costs of offering the Services. The User will be notified in writing of any increase to the Fee.

- 3.3 If Quotec has not received any payment required in accordance with these Terms, in addition to any other rights and remedies of Quotec, Quotec may without liability to the User:
- (a) suspend the provision of the Services to the User while any payment due and owing to Quotec remains outstanding;
  - (b) disable the User's access to all or part of the Services and Quotec will be under no obligation to provide any or all of the Services while any payment due and owing to Quotec remains outstanding.
- 3.4 Where there has been a failure to pay pursuant to the terms of this Agreement, Quotec is under no obligation to commence, recommence or reinstate the Services even if requested by the User. Any commencement, recommencement or reinstatement will be at Quotec's sole discretion (acting reasonably).
- 3.5 The User agrees that in the event of any action being taken by Quotec to recover any overdue amount due and owing by the User pursuant to these Terms, any costs incurred by Quotec in recovering the debt (including without limitation any legal expenses on a solicitor/client basis, collection agency charges (if permissible by law) or any other reasonable associated costs) are payable by the User to Quotec and shall be recoverable by Quotec as a separate debt.
- 3.6 On termination of this Agreement, all outstanding Fees will become payable by the User to Quotec.
- 3.7 All amounts and fees stated or referred to in this Agreement:
- (a) are exclusive of GST (unless specified otherwise);
  - (b) will be in Australian dollars; and
  - (c) are (subject to these Terms) non-refundable.
- 3.8 If there is a debt or other moneys due from the User to Quotec or Quotec has a claim to money against the User whether for damages or otherwise, arising out of or in any way in connection with this Agreement or on any other legal or equitable basis, then Quotec may withhold, deduct or set-off the debt or other moneys due or claim against any sum which the User is or may be entitled to arising out of or in any way in connection with this Agreement. Nothing in this clause affects or restricts the right of Quotec to recover from the User the whole of the debt or claim or any balance that may remain owing.

## 4. THE SERVICES

- 4.1 Subject to the User's Subscription Level and this Agreement, Quotec will provide the Services for the Term.

- 4.2 The User acknowledges and agrees that Quotec, at all times retains all right and title to all the data, materials and content contained within the Software, excluding any User Data.
- (a) The User is granted a non-exclusive, revokable license for the period of this Agreement to access the Software in accordance with the User's chosen Subscription Level and such license is personal to the User, cannot be transferred and is limited by the terms of this Agreement.
  - (b) The User is not authorised to copy or reproduce the Software in any way without the prior written consent of Quotec.
  - (c) Quotec will not be responsible in any respect for any action or inaction of the User based on the User's analysis or interpretation of the Software or the results produced from the Software.
- 4.3 The User must not add to, remove or vary any of the Software unless permitted by Quotec.
- 4.4 The User acknowledges and agrees that Quotec is not responsible in any respect for any User Data provided by or for the User in its use of the Software.
- 4.5 The User is responsible for maintaining (and updating) the accuracy of any User Data on the Software.
- 4.6 Quotec acknowledges and agrees that the User at all times retains all right and title to the User Data.
- (a) Quotec does not, unless required as part of the relevant Subscription Level or provision of Services, analyse or interpret the User Data for and on behalf of the User.
  - (b) The User irrevocably grants Quotec a perpetual, world-wide, non-exclusive, royalty free and transferable license to use the User Data for the purpose of enabling the User access to the Software.
  - (c) Quotec will not be responsible in any respect for any action or inaction of the User based on the User's analysis or interpretation of the User Data.
- 4.7 The User acknowledges and agrees that:
- (a) upon Quotec consenting to any grant of access by the User to the Software, the User will be issued, within a reasonable period of time of such grant, a username providing the User access to the relevant Services. The User is responsible for creating its own password associated with the Software;

- (b) the User is responsible for ensuring the security of the User's computer and devices and maintaining the security and confidentiality of any username and password;
- (c) the User must notify Quotec immediately if the User becomes aware of any unauthorised use of the User's username and/or password;
- (d) the User's use of the Software is the User's responsibility and is entirely at the User's own risk and the User accepts full responsibility for all and any information that the User transmits via the User's access to the Software. For example, if the User or a User's Customer design a shed and order the components only to find the shed will not fit where intended, or is not allowed by the local council, that is the User or User Customer's responsibility, not Quotec's;
- (e) the User will educate its employees on the correct use of the Software;
- (f) the User must not use the Software in a way that breaches this Agreement or any laws, regulations, standards or codes as enacted or modified from time to time;
- (g) the User must not use, reproduce, sell, resell or otherwise exploit any of the Software or any part of it for commercial purposes other than in accordance with these Terms;
- (h) the User must not modify, copy, adapt, distribute, translate or create derivative works of any kind whatsoever of any of the Software or any of the Services;
- (i) Quotec retains complete editorial control over the Software and may change, modify, alter, amend, delete any of the Software (or any component or feature of the Software) or cease the operation of the Software at any time in its sole discretion;
- (j) the Software may not operate on a continuous basis, and may be unavailable from time to time (including for maintenance purposes) – see clause 77.3 for further information;
- (k) neither the Software and/or the Services will be error free and Quotec does not guarantee that the Software and/or the Services will be free from external intruders (hackers), virus or worm attack, denial of service attack, or other persons having unauthorised access to the Software and/or the Services; and
- (l) The User is responsible for acquiring and maintaining all equipment, services and software (whether through third parties or otherwise) necessary to access the Software. The User is responsible for all

telecommunication fees or charges incurred as a result of connecting to the Software.

#### 4.8 Other

- (a) The User agrees to abide Quotec's minimum software requirements for the use of the Software. The minimum software requirements can be found at the following [LINK](#). The minimum software requirements may change from time to time as advised by Quotec (with the exception of such changes which are not reasonably known to Quotec and are out of Quotec's control such as third party updates).
- (b) The User's access and use of the Software and/or the Services through the user's nominated device is at the User's own risk and Quotec accepts no responsibility for any interference, loss, damage or disruption to the User's business or otherwise which arises in connection with the Users chosen access and use of the Software and/or the Services. The User must take its own precautions to ensure that the process which the User employs to obtain access to, and use, the Software and/or the Services does not expose the User to the risk of viruses, malicious computer code or other forms of interference which may damage the User's devices or otherwise cause the User or any person loss, damage or corruption.

4.9 The User acknowledges that it has reviewed the terms of Quotec's Privacy Policy and Disclaimer as set out in its website as amended from time to time.

4.10 The User grants to Quotec permission to publicise that the User is a user of Quotec.

## 5. QUOTEC NOW

If the User has a Subscription to Quotec Now, the following provisions apply in addition:

- 5.1 The User consents to the inclusion of the Portal on the User's existing retail website as an add-on feature to the Platform.
- 5.2 The User acknowledges that Quotec will not be responsible for the initial installation of the Portal on the User's existing retail website. This is a matter for the User.
- 5.3 The User warrants that the User's existing retail website meets the following minimum set up requirements:
  - (a) website is accessible via the hosting account or through a website editor;
  - (b) website software is up-to-date and will remain up to date;

- (c) website is mobile friendly;
  - (d) an SSL Certificate is installed and up-to-date, and will remain up to date; and
  - (e) such other specifications that may be advised by Quotec to the User from time to time.
- 5.4 In the event that Quotec provides support for installation of the Portal, the User agrees to provide Quotec access to the User's existing website, the User's content management platform and any other program or system of the User as reasonably required by Quotec to provide the Portal.
- 5.5 Notwithstanding that Quotec always retains all right and title to all the data, materials and content comprising the Software, Quotec grants to the User a limited rights to white label the Portal in accordance with the provisions of this clause 5.
- 5.6 Quotec grants to the User a non-exclusive revocable licence for the Term of this Agreement to use the Portal in a white labelled format as follows:
- (a) The Portal may be customised with the User's branding features as approved by Quotec (**Rebranded Portal**).
  - (b) Branding features included trade names, trademarks, logos or other distinct features of the User approved by Quotec (**Branding Features**).
  - (c) Quotec will integrate the Portal with the Platform only.
  - (d) The User is not authorised to incorporate any Branding Features into any of the Software other than as permitted by Software or without the prior consent of Quotec.
  - (e) The User warrants that it owns or has the right to use the Branding Features.
  - (f) Quotec does not acquire any rights to the User's intellectual property in any of the Branding Features.
  - (g) Other than the Branding Features, the User agrees that it will not represent the Portal and Platform as being owned by the User's.
  - (h) On termination of the Agreement, the User's access to the Portal will be removed by Quotec.
- 5.7 The User must:
- (a) include its own terms and conditions for the use of Rebranded Portal by a User Customer;

- (b) ensure the User Customer agrees to the terms and conditions for the use of the Rebranded Portal;
  - (c) ensure that its terms and conditions do not conflict in any way with these Terms;
  - (d) to the extent permitted by law, ensure that the User and the User Customer acquire all products quoted using the Rebranded Portal are acquired through Quotec or its related party and not through any third party software supplier quoting platform.
- 5.8 Where Quotec provides example supply terms and conditions for the User to use, Quotec provides these by way of example only and the User must obtain its own legal advice on such terms and conditions before use. The User indemnifies and holds Quotec harmless in respect of any use of any example terms and conditions provided by Quotec to the User.

## 6. USER OBLIGATIONS

- 6.1 The User will ensure that at all times there is a User Representative who:
- (a) may exercise all of the powers of the User under this Agreement; and
  - (b) may by notice in writing to Quotec, delegate any of the User Representative's powers, except the power to delegate.
- 6.2 The User must name any person acting as its User Representative by notice in writing to Quotec. The appointment of the person named in the notice as the User Representative will be effective from the date that notice is given to Quotec.
- 6.3 The User must replace its User Representative:
- (a) if Quotec, acting reasonably, requests the User to replace its User Representative; or
  - (b) if the User Representative ceases to be engaged by the User at which time the User will disable the User Representative's account.
- 6.4 The User must adhere to the Minimum Purchase Requirements under this Agreement, failing which, Quotec may terminate this Agreement in accordance with clause 18.
- 6.5 The User must not:
- (a) access, store, distribute through the Services any material, data or content that:
    - (i) Quotec deems to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene,

- fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically offensive or otherwise objectionable;
- (ii) constitutes, encourages or provide instructions for a criminal offence, violate the rights of any party, or that would otherwise create liability or violate any local, state, national or international law;
  - (iii) depicts sexually explicit images;
  - (iv) promotes unlawful violence;
  - (v) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; and/or
  - (vi) causes damage or injury to any person or property;
- (b) distribute or transmit through the Services any material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; and Quotec reserves the right, without liability, to disable the User's access to the Services, with or without notice, should such occur.
- 6.6 The User will use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services. The User will immediately notify Quotec in writing in the event of any such unauthorised access or use.
- 6.7 Except as permitted by law or under this Agreement, the User will not (nor grant any other person or entity the right to):
- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services (as applicable) in any form or media or by any means;
  - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services;
  - (c) access all or any part of the Services in order to build a product or service which competes with the Services;
  - (d) use the Services to provide services to third parties, other than the User Customer, without Quotec's prior written consent;
  - (e) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit or otherwise make the Services available to any third party;

- (f) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this Agreement;
- (g) without the prior written consent of Quotec, be involved or interested, either directly or indirectly, in the development, manufacture, production, importation, sale or advertisement of any other platform, which is like or comparable to the Services or the Software in any manner which might compete, conflict or interfere in any way with the use of the Services or the Software;
- (h) independently publish data generated from the Services without consultation with and approval from Quotec; or
- (i) assign, sub-licence, transfer, charge or deal with, in any manner, any of its rights under this Agreement without the prior written consent of Quotec.

6.8 The User agrees that it will not:

- (a) use automated scripts to collect information from or otherwise interact with the Software and any Quotec application;
- (b) take any action that imposes or may impose an unreasonable or disproportionately large load on the Software, any Quotec application or the infrastructure of Quotec; or
- (c) impersonate any person or entity, or falsely state or otherwise misrepresent itself, its age or its affiliation with any person or entity.

6.9 The User agrees to observe and comply with all reasonable directions and instructions given by Quotec in relation to the Users use of the Services.

6.10 The User agrees to abide any policy relevant to the Services that may be implemented by Quotec from time to time and advised to the User.

## 7. QUOTEC OBLIGATIONS

7.1 Notwithstanding any other term of this Agreement, Quotec does not guarantee the continuous availability of the Services. Quotec will use reasonable endeavours to provide a consistent availability of the Services. For the purpose of these Terms availability:

- (a) means the ability of the Services to perform their required functions;
- (b) will be determined by Quotec in its sole discretion; and
- (c) will not be measured with reference to any unavailability caused by any third-party.

- 7.2 Quotec will inform the User if the Services or any part of them is unavailable at any time due to maintenance, update or any other foreseeable factor or cause.
- 7.3 Quotec is not responsible for any delays, delivery failures, or any other loss or damage resulting from:
- (a) the acts or omissions of third party providers engaged by the User or otherwise;
  - (b) the failure of a User's system or third party application not in control of Quotec; or
  - (c) the transfer of data over communications networks and facilities, including the internet, and the User acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities, systems and third party providers.
- 7.4 This Agreement shall not prevent Quotec from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 7.5 Quotec will obtain and maintain, with a reputable insurer, appropriate insurance relevant to the provision of the Services for the duration of this Agreement.
- 7.6 Quotec warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

## 8. SUPPORT AND ADDITIONAL SERVICES

- 8.1 During the Term, Quotec will, subject to the User's Subscription Level, provide the following support services as part of the Services:
- (a) support for day to day operation of the Services by the User;
  - (b) reasonably requested configuration changes; and
  - (c) outage management.
- 8.2 Where the User requires Quotec to perform services that are additional to the services being provided by Quotec under these Terms including but not limited to the supply of Goods to the User (called **Additional Services**), any Additional Services will be provided by Quotec:
- (a) as agreed between Quotec and the User in writing;
  - (b) at Quotec's current charge rates for the provision of such Additional Services; and

- (c) on the same terms and conditions as set out in this Agreement (as applicable) unless agreed otherwise.

8.3 For Additional Service Fees please [CLICK HERE](#) for payment structures.

8.4 Quotec may implement policies around support and service levels as may be appropriate to the Services from time to time.

## 9. THIRD PARTIES

9.1 The User acknowledges and agrees that the Services may:

- (a) contain or comprise applications owned and operated by third parties; or
- (b) be subject to the terms and conditions of use and operation of applications owned and operated by third parties.

9.2 Quotec is not responsible for the content, operation and/or reliability of any such applications and makes no representation as to the accuracy of any material contained in such applications.

9.3 Quotec, to the maximum extent possible, excludes liability for any loss suffered as a result of use of these third-party applications. The terms and conditions, terms of use and privacy policies of those third-party applications may apply to the User's use of these applications within the Services.

9.4 The Software may include a list of default suppliers and their prices and the User acknowledges and agrees as follows:

- (a) Supplier prices will be accurate on the day the User receives access to the Platform. The User is responsible for updating any price changes. Quotec will use best endeavours to communicate price changes of suppliers from time to time, however, it is the responsibility of the User to check prices with the relevant supplier prior to relying on such prices.
- (b) If the User chooses its own suppliers, the User will have the ability through the administration panel to input their details including order codes and prices. It is the User's responsibility to set up its supplier information and order processes, update supplier order codes and update supplier price information if that data changes.
- (c) Price calculation errors generated because the User has failed to update its supplier data is the User's responsibility.
- (d) The User must also ensure that any freight costs applicable to materials purchased from the User's choice of suppliers are correctly calculated. Any error in calculation of freight costs is the User's responsibility.

- (e) The User is responsible for ensuring that any Bill of Materials is accurate and making any alterations if so required. Quotec does not accept any liability for any errors contained within any Bill of Materials.
- 9.5 A User has the option of:
- (a) specifying a specific site property address as part of a design in the Software (**Site Address**); or
  - (b) not specifying a Site Address as part of a design.
- 9.6 If a User specifies a Site Address the following applies:
- (a) the Software will apply specific Site Address data for the Site Address which will include a site specific wind speed for the Site Address (**Applied Wind Speed**); and
  - (b) provided that the User does not change the Applied Wind Speed, a Form 15 Compliance Certificate for Building Design - Queensland or other state equivalent will be provided for that design, at that Site Address.
- 9.7 If a User does not specify a Site Address:
- (a) the Software will not apply specific Site Address data for the Site Address;
  - (b) no wind speed will be applied by the Software and the User is solely responsible for the nomination of the wind speed for its site and its design;
  - (c) no Form 15 Compliance Certificate for Building Design - Queensland or other state equivalent will be provided.
- 9.8 The User acknowledges that it has been provided with the opportunity to seek independent engineering advice regarding any windspeed results (including Applied Wind Speed) and calculations.
- 9.9 If a User purchases engineering drawings through the Software, these drawings will:
- (a) be standard drawings (**engineering drawings**) only; and
  - (b) sent by Quotec to an independent third-party engineer nominated by Quotec for certification purposes and the following will apply:
    - (i) the User is responsible for the cost of any engineering certification (which are usually included in the Fees unless non-standard drawings are required);

- (ii) the User is responsible for the accuracy and completeness of any information, data or content they provide to Quotec and/or the engineer engaged for certification purposes;
- (c) The engineer will:
  - (i) assess the standard drawings as provided by Quotec having regard to the Site Address and any local/terrain category publicly identified as relevant to that Site;
  - (ii) not be responsible for any details relevant to the Site Address not advised by the User to Quotec including but not limited to special soil types and other specific Site matters not known to Quotec or the engineer;
  - (iii) assess the standard drawings as provided by Quotec and certify them, or not, as the engineer deems appropriate;
- (d) The User authorises Quotec to act as the User's authorised agent in placing the request for engineering certification;
- (e) The agreement for certification is between Quotec as agent for the User and the certifying engineer;
- (f) The engineer's details will be included in any certified engineering drawings and any questions or concerns about the engineering certification must be made by the User to Quotec;
- (g) All consequences arising from certification, changes, variations or modifications to the design or the site not advised prior to certification or a failure to have drawings certified by the engineer is the User or User Customer's responsibility and liability;
- (h) The User acknowledges and agrees that Quotec shall not be held liable for any inaccuracies, errors or omissions arising from any information provided by the User or to any party nor any changes, variations or modifications to any design made by the User either before certification and not communicated to Quotec or the engineer or after certification;
- (i) The User must not use, reproduce, sell, resell or otherwise exploit the engineering drawings or any part of it for commercial purposes other than in accordance with these Term;
- (j) Quotec makes make no representation, warranty or guarantee that any design and/or drawings provided under this Agreement will be certified, are suitable for the User or the User Customer's anticipated purpose, proposed site (including site location on the User Customer's premises)

are fit for any purpose as this is not something that is within Quotec's knowledge.

## 10. EXCLUSIONS

- 10.1 The User acknowledges and agrees that Quotec:
- (a) is not responsible and does not provide any authority, local council or other required building certifications or approvals;
  - (b) does not provide installation services;
  - (c) does not provide engineering services;
  - (d) is not responsible for any of the User or User Customer requirements as these are a matter for the User and the User Customer;
  - (e) does not provide engineering drawings unless they are requested and paid for by the User or the User Customer pursuant to clause 9;
  - (f) does not check the items that have been ordered by the User. These items are the User's or the User Customer's responsibility and Quotec accepts no liability for these matters;
  - (g) does not have any information on the suitability of the engineer drawings and/or design for the User or User Customer's anticipated purpose or proposed site (including site location on the User Customer's premises) are fit for any purpose.
- 10.2 The User (must satisfy itself as to the suitability, stability, adequacy and legality of the site, the location of any building or proposed use of the building to be constructed from any engineering designs. Quotec accepts no responsibility or liability for the structural competency of any building produced as a result of designs generated by the Software.
- 10.3 The User acknowledges and agrees that all dimensions shown in the drawings are to be considered nominal and not absolute, including, but not limited to, the main door opening clearance heights.

## 11. SECURITY

- 11.1 The parties expressly recognise that it is impossible to maintain flawless security.
- 11.2 Each party shall use best endeavours to ensure that each party's data and Confidential Information is protected at all times during the Term of this Agreement from unauthorised access or use by third parties and from physical misuse, damage or destruction by any person.

- 11.3 The User is responsible for protecting its passwords and files and shall be responsible for any damage caused by unauthorised access to the Services.
- 11.4 If either party becomes aware of unauthorised access or use by third parties, physical misuse, damage or destruction of the Software or any Quotec application by any person then that party will immediately notify the other party and will take all reasonable measures to ensure such unauthorised access immediately ceases.

## 12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Quotec warrants and represents that:
  - (a) it owns or has the right to use the Software and provide the Services; and
  - (b) in supplying the Services, Quotec will not infringe the Intellectual Property Rights of any person.
- 12.2 Nothing in these Terms constitutes a transfer of any Intellectual Property Rights to a party.

## 13. WARRANTIES

- 13.1 The User represents and warrants to Quotec that:
  - (a) it has full authority and power to enter into and perform its obligations under this Agreement and can do so without the consent of any other person;
  - (b) it has taken all action which is necessary to authorise the performance of this Agreement in accordance with its terms;
  - (c) it is solvent;
  - (d) it has not entered or taken steps to enter and does not propose to enter into any arrangement, compromise or assumption with or assignment for the benefit of its creditors or any class of them; and
  - (e) the User's Representative is authorised by the User as the agent of the User to act on behalf of the User in connection with this Agreement and it authorised to sign and execute documents on behalf of the User.
- 13.2 Quotec makes no representations or assurances and gives no warranties:
  - (a) as to the outcomes, analysis, vulnerabilities, issues or safety requirements that may be identified and/or obtained from use of the Services;
  - (b) as to any increase in revenue, profit or goodwill that may be obtained as a consequence of using the Services;

- (c) that the provision of the Services will result in any improvement to the User or its business;
- (d) that the Services or any software used to provide the Services will be uninterrupted, error free or not subject to delays (technical or otherwise);
- (e) that the Services will be free from external intruders, virus or worm attack, denial of service attack, or other persons having unauthorised access to the services or systems of Quotec;
- (f) as to the accuracy, currency, suitability, completeness or relevance of any information contained or accessed through the Software (Information);
- (g) the currency, accuracy, completeness or relevance of the Information or for programming bugs or computer viruses, faults or errors in the Software, any Quotec application or the Information; and
- (h) that any information downloaded or otherwise transmitted to the User from use of the Services is free from viruses, faults or errors.

## 14. INDEMNITIES

14.1 To the extent permitted by Law, the User indemnifies and holds harmless Quotec, its affiliates, successors and assigns, and its and their personnel, directors, officers, and other licensees (each an Indemnified Party), against any Claim, cause of action, debt, expense or Liability (including legal fees and costs on a solicitor-client basis) incurred by an Indemnified Party arising out of or in connection with:

- (a) any breach of this Agreement by the User or its personnel;
- (b) any breach of law by the User or its personnel;
- (c) a representation made by the User or its personnel being incorrect or misleading in any way;
- (d) an act or omission by the User or its personnel which is not required under this Agreement;
- (e) personal injury, death or property damage caused or contributed to by the User or its personnel;
- (f) any infringement of, or claim in regard to, any third party Intellectual Property Right arising as a result of the User or its personnel carrying out its obligations under this Agreement; and
- (g) the User's or its personnel's use of the Software or any Quotec application which is negligent or infringes the rights of any third party.

- 14.2 The User's Liability to indemnify an Indemnified Party under clause 14.1, other than in respect of the indemnity under clause 14.1(f) and clause 14.1(g), will be reduced proportionally to the extent that a negligent act or omission of the Indemnified Party has contributed to the loss, damage, Claim, action, expense, cost or Liability.
- 14.3 It is not necessary for Quotec to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement.

## 15. LIABILITY

- 15.1 The User understands and agrees that Quotec will not have any Liability to the User or others and is not liable or responsible for:
- (a) subject to the Australian Consumer Law, the User or the User Customer's use of the Software in any way that is in breach of these Terms;
  - (b) the payment or reimbursement to the User for any Claims for any expenses incurred by the User from any third party in the performance of the User's functions and duties under these Terms;
  - (c) any acts or defaults of the User, the User's personnel or the User Customer;
  - (d) any unauthorised transactions made using the User's password or account;
  - (e) the use or non-use of the User's services by third parties;
  - (f) the unauthorised use of the User's password or account that could cause the User to incur Liability to both Quotec and other users;
  - (g) the functionality or useability of any design or calculation of a User or a User Customer on or with the Software;
  - (h) the working order or condition of any materials or parts supplied by third parties (not Quotec) to the User or a User Customer ordered through the Services;

The User's liability is reduced proportionally to the extent that Quotec directly caused or contributed to the liability.

- 15.2 Any act or omission which, if it were an act or omission of the User or its personnel, would be a breach of these Terms on its part, is taken to be such an act or omission for which the User is responsible if the act is done or omitted:
- (a) by any corporation or association which is controlled directly or indirectly in any manner by the User, or

(b) by any firm or unincorporated body of which the User is a partner or member;

(c) by any third party contracted by the User.

15.3 To the full extent permitted by law Quotec excludes:

(a) all liability in respect of loss of data, interruption of business or any Consequential Loss; and

(b) all representations, warranties or terms (whether express or implied) other than those expressly set out in these Terms.

15.4 Where warranties are implied by law, the User acknowledges and agrees that the total aggregate liability to Quotec is limited at Quotec's discretion to the provision of the services again, or to a refund equal to the total amount paid by the User for twelve (12) months Subscription Fee the subject of the cause of action, even if at any time access was provided to the User without cost.

15.5 These Terms are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions or obligations.

## 16. GST

16.1 For the purpose of this clause the following definitions apply:

(a) GST means any form of goods and services tax payable under the GST Law;

(b) GST Law means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

16.2 Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

16.3 Unless otherwise specified, all amounts payable under this Agreement are exclusive of GST and must be calculated without regard to GST.

16.4 If a supply made under this agreement is a taxable supply, the recipient of that taxable supply (Recipient) must, in addition to any other consideration, pay to the party making the taxable supply (Supplier) the amount of GST in respect of the supply.

16.5 The Recipient will only be required to pay an amount of GST to the Supplier if and when the Supplier provides a valid tax invoice to the Recipient in respect of the taxable supply.

- 16.6 If there is an adjustment to a taxable supply made under this Agreement then the Supplier must provide an adjustment note to the Recipient.
- 16.7 The amount of a party's entitlement under this Agreement to recovery or compensation for any of its costs, expenses or Liabilities is reduced by the input tax credits to which that party is entitled in respect of those costs, expenses or Liabilities.

## 17. SUSPENSION

- 17.1 Quotec may suspend the Services in the following circumstances:
- (a) pursuant to clause 3.3 (non-payment of the Fee); and/or
  - (b) where the User has breached this Agreement and failed to rectify such breach within ten (10) Business Days after receiving written notice from Quotec to do so.
- 17.2 Quotec will not be liable to the User for any Liability or Claim arising as a result of any suspension of the Services.
- 17.3 After the Services have been suspended:
- (a) Quotec may reinstate the Services but is under no obligation to do so;
  - (b) Quotec will finalise any User or User Customer orders that have been processed but not completed provided it has received payment for these orders.

## 18. TERMINATION

- 18.1 Termination for Breach
- (a) Without prejudice to any other right or remedy that Quotec may have under this Agreement or otherwise, Quotec may by written notice to the User terminate this Agreement with immediate effect if the User:
    - (i) breaches any other agreement it may have with Quotec;
    - (ii) becomes insolvent, bankrupt or subject to any form of external administration;
    - (iii) ceases to carry on business;
    - (iv) brings the reputation of Quotec into disrepute;
    - (v) breaches a material term of this Agreement (including a failure to pay), that in the reasonable opinion of Quotec is not capable of remedy within a reasonable time;

- (vi) breaches a term of this Agreement and fails to remedy the breach within ten (10) Business Days after receiving written notice from Quotec to do so. The User will not be entitled to a refund of any Fee where the Agreement is terminated pursuant to this clause;
  - (vii) breaches a material term of this Agreement on three (3) separate occasions within any consecutive six (6) month period, and notwithstanding if those breaches have been remedied by the User as required in this Agreement.
- (b) The User may by written notice to Quotec terminate this Agreement with immediate effect if Quotec:
- (i) becomes insolvent, bankrupt or subject to any form of external administration; or
  - (ii) ceases to carry on business; or
  - (iii) breaches a material term of this Agreement and fails to remedy the breach within ten (10) Business Days after receiving written notice from the User to do so.

## 18.2 Termination without cause

Either party may terminate this Agreement without cause by giving the other party not less than fourteen (14) days' notice in writing.

## 18.3 Termination for breach of Minimum Purchase Requirements

Quotec may terminate this Agreement within thirty (30) days' notice in writing should the User fail to adhere to the Minimum Purchase Requirements under this Agreement and the User has failed to rectify the breach within the thirty (30) day period.

## 18.4 Effect of termination

On termination of this Agreement:

- (a) Quotec will cease providing the Services. Quotec may at its discretion finalise any User or User Customer orders that have been processed but not completed but is not obliged to do so;
- (b) the User must immediately cease using any Intellectual Property, information, materials or knowledge of Quotec acquired pursuant to these Terms;
- (c) the User must immediately return to Quotec all Intellectual Property, property, information and materials that relate to Quotec, the Services, the

Portal, the Platform or any Quotec application that it holds to the extent that it is possible to do so;

- (d) subject to clause 18.5 each party must return to the other all Confidential Information to the extent that it is possible to do so;
- (e) the User will pay the Fee to Quotec up to and including the date of termination. Where the Fee has been paid in advance and this Agreement has been terminated due to no fault of the User, Quotec will calculate the applicable refund and pay to the User such refund; and
- (f) Quotec will, on written request from the User, received prior to the date of termination provide to the User a copy of any User Data held by Quotec and relevant to the provision of the Services. If such request is received after the date of termination Quotec may charge the User an additional fee for the provision of such data.

#### 18.5 Backup

The User acknowledges and agrees that Quotec may, but is not obliged to, undertake backups of User information obtained through the Services. The User is responsible for the backup of any User Data.

#### 18.6 Consequences of Termination

Termination of this Agreement will not prejudice any right of action or remedy which either party may have accrued prior to termination of this Agreement.

### 19. DISPUTE RESOLUTION

#### 19.1 Notice of dispute

If a dispute between Quotec and the User arises in connection with this Agreement:

- (a) either party may give to the other a notice specifying the nature and details of the dispute; and
- (b) the dispute will be resolved in accordance with the procedure set out in this clause.

#### 19.2 Executive negotiation

A dispute that is the subject of a notice given under clause 19.1.1 must be referred to a senior executive of each party who is authorised to meet with a view to resolving the dispute.

#### 19.3 Mediation

If the senior executives do not resolve the dispute within ten (10) Business Days after notice is given under clause 19.1.1 (or such longer period as the parties may agree), either party may refer the dispute to the Australian Disputes Centre Limited (ADC) for mediation in accordance with clause 19.4.

#### 19.4 Mediation Process

If a dispute is referred to ADC for mediation in accordance with clause 19.3:

- (a) the mediation will be conducted in accordance with ADC's Commercial Mediation Guidelines; and
- (b) each party will bear its own costs of the mediation and share equally in the costs of the mediator and ADC.

#### 19.5 Injunctive Relief

Nothing in this clause 19 will prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief in respect of a dispute or any matter arising under this Agreement nor does it affect the obligations of the parties to continue to perform this Agreement.

#### 19.6 Continuation of obligations

Despite the existence of a dispute, each party must continue to comply with its obligations under this Agreement.

## 20. CONFIDENTIALITY

20.1 A party (Recipient) must ensure that it and its personnel:

- (a) use and reproduce Confidential Information of the party disclosing the Confidential Information (Discloser) only to perform its obligations under this Agreement; and
- (b) not disclose or otherwise make available a Discloser's Confidential Information other than to personnel who have a need to know the information to enable them to perform obligations under this Agreement.

20.2 All of a Discloser's Confidential Information will remain the property of the Discloser and all copies or other records containing that Confidential Information (or any part of it) must be returned by the Recipient to the Discloser on termination or expiry of this Agreement.

20.3 The Recipient acknowledges and agrees that a Discloser will be entitled (in addition to any other remedy it may have) to seek an injunction or other equitable relief with respect to any actual or threatened breach by the Recipient

of this clause and without the need on the part of the Discloser to prove any special damages.

20.4 Subject to clause 20.5, each party agrees to treat as confidential all information of or relating to the other party that is provided to it, under this Agreement or otherwise, which the Discloser notifies in writing to the Recipient is confidential.

20.5 Each Discloser hereby consents to the Recipient disclosing any Confidential Information of the Discloser:

- (a) as required by Law; or
- (b) to external consultants and advisers of the Recipient engaged with regard to this Agreement.

## 21. FORCE MAJEURE

21.1 If a party hereto is affected, or likely to be affected, by a Force Majeure Event, it must immediately give the other parties prompt notice of that fact including:

- (a) full particulars of the Force Majeure Event;
- (b) an estimate of its likely duration;
- (c) the obligations affected by it and the extent of its effect on those obligations; and
- (d) the steps being taken to rectify or minimise it.

21.2 The obligations under this Agreement of the party affected by a Force Majeure Event are suspended to the extent to which they are affected by the relevant Force Majeure Event and for as long as the Force Majeure Event continues.

21.3 If the affected party's inability to perform its obligations continues for a period greater than ninety (90) days following the Force Majeure Event, the other parties have the right to immediately terminate this Agreement by written notice.

## 22. VARIATION

22.1 Quotec may change these Terms by giving the User notice. The period of notice given by Quotec depends on the nature of the change (as determined by Quotec in its sole discretion). If:

- (a) The change will benefit the User: The change can be made immediately: Prior notification is not required.
- (b) The change is required by law, a regulatory body or for a technical reason: Three (3) Business Days' prior notice.

(c) The change will have significant and detrimental impact on the User:  
Twenty-one (21) Business Days' prior notice.

(d) All other changes: Ten (10) Business Days' prior notice.

22.2 Notice of a change may be given by email to the User.

22.3 The User may terminate this Agreement in accordance with clause 18.3 if the User does not agree to the variation. Continued use of the Services after expiration of the required notice period will constitute acceptance of the varied terms by the User.

## 23. TERMS OF SUPPLY

23.1 The terms and conditions specified in Annexure A apply where Quotec is the supplier of any Goods or Product to the User or a User Customer as directed by the User.

23.2 Where there is an inconsistency between these Terms of Supply and Annexure A Goods Supply Terms regarding:

(a) the supply of the Goods or Product, Annexure A shall prevail to the extent of the inconsistency;

(b) the supply of the Services, these Terms shall prevail to the extent of the inconsistency.

## 24. NOTICES

24.1 Notices must be in writing and delivered to or sent by pre-paid post or email at the address or email address provided by the parties unless a substitute address or email address has been notified in writing by a party to the other party.

24.2 The parties agree that a notice will be deemed received:

(a) if delivered by hand, on the date of delivery;

(b) if sent by pre-paid post, three (3) Business Days after posting; or

(c) if sent by email, at the time the email leaves the sender's email server, provided the party giving the notice does not receive an automatically generated email response indicating non-receipt by the intended recipient,

provided that any notice personally delivered or electronically after 5.00pm on any Business Day will be deemed to have been validly delivered at 9.00am on the next Business Day.

- 24.3 A notice sent by email will be deemed to be in writing for the purposes of this clause.

## 25. INTERPRETATION

### 25.1 Definitions

For the purposes of this Agreement (including Annexure A):

- (a) **Agreement** means these Terms together with any annexure and/or schedule;
- (b) **Bill of Materials** refers to the building material quantities list provided by Quotec to the User through the Software;
- (c) **Building Materials** all material associated with the physical construction of the end Product;
- (d) **Business Day** means any day other than a Saturday, Sunday, public holiday in Queensland, Australia or 27, 28, 29, 30 and 31 December of each year;
- (e) **Claim** means, in relation to a person, any action, suit, proceeding, claim or demand instituted, made or threatened against the person, however arising and whether present or future, fixed or unascertained, actual or contingent;
- (f) **Commencement Date** means the earlier of the date upon which Quotec confirms to the User that the Services will commence or the date the User makes the first payment of the Fee, whichever is the earlier;
- (g) **Confidential Information** means all information, in any form, written or unwritten, including trade names, trade secrets, domain names, client lists, client information and contact details, logos, methods described in patent applications, software, hardware, source code, methodologies, advice, processes, procedures, inventions, ideas, know-how, technical expertise or concepts, which is provided or made available by a party to this Agreement by another party to this Agreement or its associates (whether orally or in writing) or to a related entity or a related body corporate but excluding information already in the public domain, except where that information has become available by virtue of a breach of this Agreement;
- (h) **Consequential Loss** means any Liability suffered by a party which:
  - (i) is special, indirect or consequential loss or damage within the meaning of the common law;

- (ii) results from a supervening event;
  - (iii) is a loss of revenue, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of interest, damage to credit rating, loss or denial of opportunity or increased overhead costs, loss of use, loss of profits; or
  - (iv) is suffered by a party as a result of a claim upon it by a third party (including third party claims for personal injury or damage to property;
- (i) **Construction** means all elements associated with the physical erection of the building materials to result in a completed and final Product;
  - (j) **Construction Support** refers to any erection advice given by Quotec or the User to the User Customer;
  - (k) **Documentation** means any or all of the following: Bill of Materials engineering certification, Proposal, purchase order;
  - (l) **Employees** means the number of employees (full-time, part-time or casual) employed by the User;
  - (m) **Fee** means the Subscription Fee and any other fee charged by Quotec to the User from time to time;
  - (n) **Force Majeure Event** means any cause unforeseen and arising without fault or negligence on the part of the party affected or otherwise beyond the reasonable control of the party affected, including but not limited to acts of God, civil disorder, war, riots, industrial disturbance, national emergency, material shortages, damage to plant, equipment and or facilities, acts or omissions of public authorities including local, state or federal governments;
  - (o) **Goods** mean:
    - (i) all goods associated with a Kit Order and may include, but are not limited to, sheds, garages, carports, barns, awnings and mezzanine floors, componentry and other types of structures in steel form;
    - (ii) Q-Plates; and/or
    - (iii) Documentation.
  - (p) **GST** means a tax, impost or duty on goods, services or other things imposed by any fiscal, national, state, territory or local authority or entity and whether presently imposed or novel, together with interest or penalties either before or after the date of this Agreement;

- (q) **Improvement** means any variation to the Services or the Intellectual Property, conceived of or developed by either Quotec or the User, which could improve the Services in any way;
- (r) **Insolvency Event** means any of the following events in respect of either party:
- (i) an application is made to a court for an order, or an order is made appointing a liquidator or provisional liquidator in respect of the party (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
  - (ii) proceedings are initiated with a view to obtaining an order for the winding up or similar process of the party or an order is made or any effective resolution is passed for the winding up of the party;
  - (iii) the party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;
  - (iv) a controller is appointed to take over or takes possession of all or a substantial part of the assets or undertakings of the party;
  - (v) the party is or is deemed or presumed by law or a court to be insolvent;
  - (vi) the party takes any step to obtain protection or is granted protection from their creditors under any applicable legislation or an administrator is appointed to the party; and
  - (vii) anything analogous or having a substantially similar effect to any of the events specified above happens in respect of the party under the law of any applicable jurisdiction;
- (s) **Intellectual Property** means:
- (i) all proprietary rights and Intellectual Property Rights (including the right to make application for such rights) which relate, refer or pertain to the Services, the Platform, the Portal and any Quotec application, any Improvements, the Confidential Information or the business of Quotec, which are provided under patent law, copyright law, trademark law, design patent and industrial design law, or any other applicable statutory provision or common law principle, including trade secret law, that may provide a right in ideas, formulae, algorithms, concepts, inventions, know-how, trade

names, trade dress or business reputation, or the expression or use thereof, and including all past, present, and future causes of action, rights of recovery, and claims for damage, accounting for profits, royalties, or other relief;

- (ii) all applications, registrations, licenses, sublicenses, agreements, or any other evidence of a right in Quotec, the Services, the Platform and the Portal; and any Improvement to any of the above;
- (t) **Intellectual Property Rights** means any intellectual property rights protected by statute or common law in Australia or elsewhere in the world and whether registered or unregistered and includes copyright, design, patent, trade mark, semiconductor and circuit layout rights;
- (u) **Kit Order** means the order of goods comprising of complete building materials required to construct end product as provided by Quotec through Quotec's third party suppliers pursuant to a Proposal;
- (v) **Law** means any statutes, regulations, ordinances, by-laws, orders, awards, proclamations and any enforceable policy of an Authority, certificates, licences, consents, permits, approvals and requirements of Authorities, applicable codes of practice, applicable standards (including any relevant Australian Standards), obligations under the common law and in equity as well as any fees and charges payable in connection with any of the foregoing;
- (w) **Liability** means all liability, causes of action, Claims, losses, damages (including consequential damages), costs, charges, expenses, penalties and injuries of any kind parties means the parties to this Agreement and party means any of them;
- (x) **Manufacture** refers to the phase where the Kit Order is in Manufacture by Quotec;
- (y) **Minimum Purchase Requirements** means the purchase of at least two (2) separate orders for Goods per calendar month commencing at the end of the two (2) month period from the Commencement Date;
- (z) **personnel** mean subcontractors, employees, agents, advisors and other persons engaged by a party to perform its obligations under this Agreement;
- (aa) **Platform** means the digital platform comprising software and hardware currently known as Quotec LIVE & NOW that provides tools to help a User to design, calculate and engineer sheds, garages, carports, barns, awnings and mezzanine floors and other types of structures in steel form which is used to provide the Services;

- (bb) **Portal** means the dashboard interface delivered through a User’s existing retail website as an add-on feature to the Platform and known as Quotec NOW that enables customers of a User to design, cost and order their own sheds, garages, carports, barns and such other products online;
- (cc) **Price** means the price payable by the User to Quotec for the Goods pursuant to the terms specified in Annexure A. The Price may be comprised of the price for the Kit Order, the price for the Documentation of any Additional Service Fee;
- (dd) **Product** means the end product;
- (ee) **Production** is when the balance of payment for the Kit Order is made and the Kit Order is in Manufacture by Quotec;
- (ff) **Proposal** refers to the proposal or quotation generated by the Software for the User and which is provided by the User to the User Customer;
- (gg) **Quotec application** means any application in addition to the Platform and/or Portal provided by Quotec to the User pursuant to these Terms;
- (hh) **Sub-Contractor** refers to any person contracted to undertake any work associated the sale of Kit Order;
- (ii) **Site** means the geographic location where the Kit Order will be delivered to as confirmed by the User or the User Customer;
- (jj) **Services** mean the provision of the Platform and/or the Portal at the User’s chosen Subscription Level on these Terms;
- (kk) **Software** means the Platform and/or the Portal as updated and modified from time to time;
- (ll) **Subscription** means the subscription for the provision of the Services by Quotec to the User pursuant to these Terms;
- (mm) **Subscription Fee** means the fee set and charged to the User by Quotec for the provision of the Services from time to time and where the context dictates;
- (nn) **Subscription Level** means the category of Services selected by the User as at the Commencement Date and may include the use of the Platform and Portal or the Platform only;
- (oo) **Term** means the period of time applicable to the Subscription commencing on the Commencement Date and ending when this Agreement is terminated by either party;

- (pp) **User** means a third party (i.e. you) who has a Subscription on these Terms;
- (qq) **User Customer** means a customer of a User who uses the Portal under this Subscription;
- (rr) **User Data** means any data inputted into the Platform or Portal by the User or a User's Customer;
- (ss) **User Representative** means any representative, Employee or agent of the User;

## 25.2 Interpretation

The following apply in the interpretation of this Agreement, unless the context requires otherwise:

- (a) a reference to the agreement means this Agreement and includes any variation or replacement of it;
- (b) a reference to a document includes a reference to that document as amended, novated, assigned or otherwise varied;
- (c) a reference to a statute or other law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of it;
- (d) the singular includes the plural number and vice versa;
- (e) a reference to a gender includes a reference to each gender;
- (f) the word "person" includes a firm, corporation, body corporate, unincorporated association or a government department or authority, association or other legal entity;
- (g) a reference to a person includes a reference to the person's legal personal representatives, successors, liquidators, trustees in bankruptcy and the like, and permitted assigns;
- (h) an agreement on the part of, or in favour of, two (2) or more persons binds or is for the benefit of them or any one or more of them together and separately;
- (i) a reference to a party means a person who is named as a party to, and is bound to observe the provisions of, this agreement;
- (j) "includes" (or similar wording) means "includes but without limitation";

- (k) where a word or phrase is given a defined meaning in this Agreement, any other part of speech or grammatical form in respect of such word or phrase has a corresponding meaning;
- (l) a reference to an act includes an omission and a reference to doing an act includes executing a document;
- (m) words not otherwise defined in this agreement but defined in the Corporations Act 2001 (Cth) have the meaning given in that Act;
- (n) a reference to dollars or \$ is to Australian currency. All amounts to be invoiced or paid under this Agreement are to be in Australian currency unless otherwise agreed to by Quotec;
- (o) headings are for reference only and do not affect the meaning or interpretation of this Agreement;
- (p) if any day appointed or specified by this agreement for the payment of any money falls on a day which is not a Business Day, the day so appointed or specified is deemed to be the next day which is a Business Day;
- (q) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) a reference to a day is to be interpreted as the twenty-four (24) hour period ending at midnight at the end of that day; and
- (s) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Agreement.

#### 25.3 Precedence Inconsistencies, errors, ambiguities or discrepancies

- (a) In the event of an inconsistency between these Terms and the terms and conditions of supply of any product by Quotec to the User or a User Customer, these Terms will apply to the extent of any inconsistency.
- (b) If the User discovers any inconsistency, error, omission, ambiguity or discrepancy in this Agreement then the User must promptly give Quotec written notice of the inconsistency, error, omission, ambiguity or discrepancy. Quotec will then direct the User as to the interpretation and construction to be followed, taking into account the order of precedence specified in clause 24.3 of this Agreement.

#### 25.4 Contra proferentem

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Agreement or any part of it.

#### 25.5 Survivorship

The provisions of this Agreement relating to set-off and deductions, warranties, indemnities, confidentiality, termination and dispute resolution survive the termination or expiry of this Agreement.

## 26. GENERAL

- 26.1 Where a term is defined in these Terms and referred to in this Agreement, the definition will, unless otherwise specified, apply to the whole of this Agreement.
- 26.2 This Agreement and its attachments and annexures constitute the entire Agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.
- 26.3 Quotec makes no representation or guarantee as to the effectiveness of the Services.
- 26.4 The User must not assign, sublicense or otherwise deal in any other way with any of the User's rights under this Agreement.
- 26.5 Quotec is not liable for any delays in performing any obligation under these Terms caused by circumstances beyond its reasonable control, including but not limited to catastrophes, fire, internal or external strike, wars, terrorists acts, internal or external breakdowns or failure, and, in general, any failure of a User to act in a timely or appropriate way.
- 26.6 These Terms will, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:
- (a) that provision will, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
  - (b) if the provision or part of it cannot effectively be read down, that provision or part of it will be deemed to be void and severable and the remaining provisions of these Terms will not in any way be affected or impaired and will continue notwithstanding that illegality, invalidity or unenforceability.
- 26.7 A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Failure or delay by a party in exercising a right

does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- 26.8 This Agreement may be assigned or transferred in any manner by Quotec at its sole discretion.
- 26.9 Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Agreement.
- 26.10 This Agreement is governed by the laws of Queensland, Australia and each party submits to the jurisdiction of the courts of Queensland, Australia.

## ANNEXURE A

### GOODS SUPPLY TERMS

These terms and conditions and the Definitions in clause 25.1 will apply to all Goods provided by Quotec to a User.

#### 27. ACCEPTANCE

- 27.1 Quotec supplies the Goods to the User Pursuant to the terms set out in this Annexure A (Goods Supply Terms or Terms).
- 27.2 Goods are supplied by Quotec only on the Goods Supply Terms to the exclusion of anything to the contrary in the terms contained in any order of the User notwithstanding that any such order is placed on terms that purport to override these Goods Supply Terms.
- 27.3 These Terms are subject to the laws of Queensland and any dispute which arises from these Terms will be governed by the laws of Queensland.

#### 28. PROPOSAL AND ORDERS

- 28.1 Any Proposal for the supply of Goods provided by Quotec is:
  - (a) not an offer or obligation to sell but an invitation to treat only;
  - (b) is open for acceptance within the period stated in the Proposal or within seven (7) days of the date of the Proposal if no period is stated.
- 28.2 Quotec reserves the right to:
  - (a) accept or reject any order it receives; and/or
  - (b) make any required modifications to the Proposal as based on reasonable and necessary grounds prior to the User's acceptance of any Proposal.
- 28.3 Until Quotec accepts in writing any order submitted by a User and full payment for the Goods is made, Quotec is not obliged to provide any Goods.
- 28.4 If an order for the supply of Goods is accepted by Quotec, and the User cancels the order after the date that the order was accepted by Quotec, the User will forfeit any deposit paid for that order.
- 28.5 Quotec is not responsible to the User for a breach of its obligation to supply the Goods pursuant to an order Quotec has accepted, or for any delay in delivery, if the failure or delay is caused by matters beyond the reasonable control of Quotec (including pursuant to clause 21).

- 28.6 The User accepts full responsibility to ensure that all specifications on the Proposal, including but not limited to, dimensions, colours, products, suitability, Price, Site address and contact details are true and correct.

## 29. PRICE AND PAYMENT

- 29.1 Subject to the terms of the Proposal, the Price will be Quotec's quoted Price contained in its payment window within the Software, on the cost tab within the Software or other summary provided by Quotec (as the case may be).
- 29.2 Quotec will require payment of the Price by the User as follows:
- (a) a non-refundable deposit of at least five percent (5%) of total value of the Price on order;
  - (b) for Kit Orders, the balance Price prior to any order for Manufacture being placed;
  - (c) payment of any balance of the Price by the User either prior to or on delivery of the Goods; and
  - (d) otherwise in accordance with any invoice provided by Quotec to the User.
- 29.3 A Kit Order will only be scheduled for Manufacture once full payment of the Price has been received from the Customer.
- 29.4 For Additional Service Fees please [CLICK HERE](#) for payment structures at the relevant time.
- 29.5 The User acknowledges that Prices are subject to market fluctuations. Should a Price increase occur prior to a full payment of Production instalment, then the User is liable to honour the difference in cost of the Kit Order.
- 29.6 Upon acceptance of any Kit Order by the User, the User agrees any alterations to the Kit Order must be communicated in writing prior to Manufacture, and that any alterations to the Kit Order may incur a difference in Price which the User will be liable to honour.
- 29.7 Time for payment for the Goods will be of the essence.
- 29.8 Interest on overdue invoices will accrue daily from the date when payment becomes due, until the date of payment, at a rate of fifteen percent (15%) per annum.
- 29.9 In the event that the User's payment is dishonoured for any reason, the User will be liable for any dishonour fees incurred by Quotec.
- 29.10 If the User defaults in payment of any invoice when due, the User indemnifies Quotec from and against all costs and disbursements incurred by Quotec in

pursuing the debt including legal costs on a solicitor and own client basis and Quotec's collection agency costs (if permissible by law). If any account remains overdue after three (3) days then an amount of the greater of fifty dollars (\$50.00) or ten percent (10%) of the amount overdue (up to a maximum amount of \$250.00) shall be levied for administration fees which sum shall become immediately due and payable by the User.

- 29.11 Without prejudice to any other remedies Quotec may have, if at any time the User is in breach of any obligation (including those relating to payment) Quotec may suspend or terminate the supply of Goods to the User and any of its other obligations under these Terms, resell or dispose of the Goods. Quotec will not be liable to the User for any loss or damage the User suffers because Quotec has exercised its rights under this clause.
- 29.12 Without prejudice to Quotec's other remedies at law, Quotec will be entitled to cancel all or any part of any order of the user which remains unfulfilled and all amounts owing to Quotec will, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable by the user to Quotec becomes overdue, or in Quotec's reasonable opinion, the User will be unable to meet its payments as they fall due; or
  - (b) the User becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the User or any asset of the User.
- 29.13 In the event that Quotec retains possession or control of the Goods, payment of the Price is due to Quotec and Quotec has made demand in writing of the User for payment of the Price in terms of these Terms and Quotec has not received the Price of the Goods, then, whether title in the Goods has passed to the User or has remained with Quotec, Quotec may dispose of the Goods and may claim from the User the loss to Quotec on such disposal.

## 30. DELIVERY

- 30.1 Delivery of the Goods will take place when the Goods are delivered to the User at the nominated delivery address.
- 30.2 The costs of delivery of the Goods are not included in the Price (unless stated otherwise). The User will bear all costs and expenses of delivery of the Goods (including but not limited to insurance for the Goods).
- 30.3 Quotec may, in its sole discretion, deliver the Goods by separate instalments.

- 30.4 The User accepts responsibility to ensure that:
- (a) delivery address details provided to Quotec are true and correct.
  - (b) Quotec is notified of any alterations to the delivery address in writing prior to scheduled delivery date;
  - (c) the delivery address has practicable access and unloading capacity for delivery purposes;
  - (d) if the delivery is electronic, the receipt of the Goods will be deemed on sending of the Goods by the electronic means.
- 30.5 Should access to the delivery address not be appropriate for delivery purposes, the user accepts full responsibility to honour all additional costs associated with redelivery of Kit Order and/or any other associated Goods.
- 30.6 Where the User expressly requests Quotec deliver the Goods to an unattended location or a location not in the control of the User:
- (a) The Goods will be left at the nominated location at the User's sole risk;
  - (b) the Goods will be deemed delivered and accepted by the User;
  - (c) the transport driver will have full discretion as to where the Goods are positioned in or at closest proximity of the delivery address.
- 30.7 The failure of Quotec to deliver the Goods or any part of the Goods will not entitle either party to treat these Terms as repudiated unless the failure was directly caused by the wilful negligence of Quotec.
- 30.8 Quotec will not be liable for any loss or damage due to failure by Quotec to deliver any of the Goods promptly or at all as a result of circumstances beyond the control of Quotec .
- 30.9 Quotec will not be liable for any losses (including but not limited to theft or damage) associated with theft of any or all of the Goods once delivered.
- 30.10 The User acknowledges that any delivery times provided are estimates only.
- 30.11 Where the User requests a delivery date beyond the scheduled delivery date, Quotec reserves the right to pass on additional storage charges to the User.

## 31. TITLE AND RISK

- 31.1 Ownership of the Goods will not pass until the User has paid Quotec all amounts owing for the Goods and the Customer has met all other obligations due by the Customer to Quotec in respect of all contracts or arrangements between Quotec and the User.

- 31.2 Quotec's title or rights in the Goods will continue until any form of payment by a User has been received, honoured, cleared or acknowledged by Quotec.
- 31.3 All risk in the Goods passes to the User on delivery of the Good's to the User's nominated delivery address.
- 31.4 If any of the Goods are damaged or destroyed following delivery but prior to title passing to the User, Quotec is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms by Quotec is sufficient evidence of Quotec's rights to receive the insurance proceeds without the need for any person dealing with Quotec to make further enquiries.

## 32. DESIGN – KIT ORDERS

- 32.1 The User retains full responsibility to ensure that:
  - (a) prior to purchase/order, the Kit Order meets all the necessary Council and statutory requirements required for any applicable approvals relating to the Product;
  - (b) the details provided in the Proposal are true and correct;
  - (c) no other information, communication or detail has been relied upon pertaining to the Kit Order which is to be supplied;
  - (d) Kit Order is suitable for the Site and the area on the Site in which it is to be constructed.
- 32.2 The User acknowledges that all dimensions pertaining to the Kit Order are to be considered as nominal and not as absolute.
- 32.3 Quotec reserves the right to alter engineering or building material after the Kit Order has been purchased by the User as deemed reasonable and necessary by Quotec without notice to the User, providing that the building materials are of a similar quality and size.

## 33. CANCELLATION

- 33.1 The User acknowledges and agrees that:
  - (a) there will be no refund of any monies paid where a User cancels a Kit Order after Manufacture has commenced;
  - (b) where Manufacture has not commenced, Quotec agrees to refund ninety five percent (95%) of the Price; and
  - (c) otherwise, as set out in Quotec's refund policy which can be found [HERE](#)

## 34. SUPPLIERS

- 34.1 The User acknowledges and agrees that Quotec is not the manufacturer and/or the Supplier of the building materials required for the Kit Order.
- 34.2 Quotec maintains the right to select in its own discretion the Suppliers for orders for Building Materials.
- 34.3 For Bill of Materials orders:
- (a) Quotec will provide the User with Quotec's selected third party suppliers engaged for manufacture and supply of raw materials (**Default Supplier**).
  - (b) The Default Suppliers are selected by Quotec and may be amended from time to time at Quotec's sole discretion (**Default Supplier Network**). The list of the Default Supplier Network and key contacts can be found here [link to site - <https://quoteclive.scrollhelp.site/qud/default-supplier-configuration>].
  - (c) Quotec will update the pricing schedule upon receiving notice from the relevant Default Supplier to allow a User to deploy the price update to their internal pricing records. Quotec is not responsible for any pricing discrepancies between the price provided by the Default Supplier Network and the User's internal pricing records.
  - (d) Subject to clause 34.4, the User is not obligated to purchase all materials from Quotec's Default Supplier Network. The User may customise and elect their own suppliers to manufacture and supply the materials required (**Custom Supplier**).
  - (e) Where a User elects to use a Custom Supplier, the User is responsible for:
    - (i) engaging with the Custom Supplier;
    - (ii) ensuring that the materials purchased from the Custom Supplier match the data and parameters provided by Quotec for those materials including but not limited to size, calculation and unit of measurement;
    - (iii) obtaining pricing records from the Custom Supplier and maintain ongoing management of the pricing record.
  - (f) Quotec is not responsible for any bespoke calculation errors in connection with materials purchased by the User from a Custom Supplier.
- 34.4 The User acknowledges and agrees that all connections and bracketry materials contained within a Bill of Materials (**Q-Plates**):

- (a) are integral to the stability and quality of the product and its design;
- (b) are subject to exclusive intellectual property licensing arrangements in favour of Quotec;
- (c) are only available for purchase through Quotec (or its nominated supplier/manufacturer) due to the exclusive intellectual property rights granted to Quotec;
- (d) are to be acquired through Quotec as exclusive seller and manufacture of the Q-Plates. Due to these intellectual property rights, Q-Plates cannot be acquired from or manufactured by a Custom Supplier without the prior written consent of Quotec.

## 35. SHORTAGES, ERRORS, DAMAGE, CONSTRUCTION

- 35.1 The User retains full responsibility to ensure that the Goods delivered conform to the Bill of Materials supplied.
- 35.2 Quotec will not accept any liability for any damage to goods delivered unless the User receives written notification of such damage in writing within seven (7) days of delivery of Kit Order and such damage is not caused by the storage or handling of the User, the User Customer or its agents or contractors;
- 35.3 Where a discrepancy is identified between the delivered Goods and the Bill of Materials, it is the responsibility of the User to advise Quotec of any variances within seven (7) days of receipt of delivery. Failure to do so will constitute the acceptance of the Goods as per the information contained in the Bill of Materials.
- 35.4 At no point will Quotec be liable for any additional costs or expenses incurred whatsoever by the User for rectification or building errors during construction of the Product. This includes but is not limited to any loss of time or damage associated with any alleged shortages and errors.
- 35.5 For Kit Orders only, where it has been determined by Quotec that the Goods supplied were of a faulty nature, incorrect size, amount, quality or colour, Quotec will replace the said Goods at Quotec's expense excluding the cost of labour to rectify the fault.
- 35.6 The User acknowledges and agrees as follows:
  - (a) Construction is the responsibility of the User unless otherwise agreed with Quotec;

- (b) drilling, cutting and other modifications to the Product is at the User or User Customer's own risk;
- (c) downpipes are supplied by Quotec to ground level only. It is the User or User Customer's responsibility at its own cost and expense to connect downpipes to stormwater drainage (or other) in order to obtain final council approval of the Product;
- (d) the User is responsible at its own cost and expense for obtaining any soil test. Such cost is in addition to the Price;
- (e) the User is responsible at its cost and expense for the removal of any excess building materials from the site on construction of the Product;
- (f) any Construction Support provided by Quotec is general only and Quotec will not be liable to the User in any respect for any loss, damage or claim occasioned to the User during the construction of the Product or thereafter.

## 36. EXCLUSIONS

36.1 The User acknowledges and agrees that Quotec (unless otherwise agreed in writing):

- (a) is not responsible and does not provide any authority, local council or other required building certifications or approvals;
- (b) does not provide installation services;
- (c) does not provide engineering services;
- (d) does not warrant any requirements provided to the User;
- (e) does not provide engineering drawings unless they are requested and paid for by the User;
- (f) does not check the Goods that have been ordered.

36.2 These items are the User's responsibility and Quotec accepts no liability for these matters. The User must satisfy itself as to the suitability, stability, adequacy and legality of the site or proposed use of the building to be constructed from any engineering designs. Quotec accepts no responsibility or liability for the structural competency of any building produced as a result of designs generated by the Software.

36.3 The User acknowledges and agrees that all dimensions shown in the drawings are to be considered nominal and not absolute, including, but not limited to, the main door opening clearance heights.

## 37. WARRANTIES

37.1 To the extent permitted by law, Quotec does not warrant:

- (a) any of the Goods that are not manufactured by Quotec, and in such case the User will only have the benefit of the warranty (if any) of the manufacturer of those Goods which forms part of the contract between Quotec and the manufacturer;
- (b) any substitute made to any listed in a Bill of Materials by a User without the prior written consent of Quotec;
- (c) normal fair wear and tear in the Goods;
- (d) defects, loss or damage caused directly or indirectly by or as a result of:
  - (i) any defect, deterioration, weakening or collapse of the structure to which the Goods is installed occurring at any time;
  - (ii) any damage to or deterioration in the condition of the Goods occurring in transit by the User's or Quotec's nominated or appointed carrier or occurring after delivery and prior to installation of the Goods;
  - (iii) any additional defect damage or deterioration arising from or attributable to the installation of the Goods after it is known to be defective;
  - (iv) the Goods where the defect, loss or damage is caused directly or indirectly by or as a result of the fitting or installation of the Goods, by the User or any third party engaged by the User (including an engineering or certifier), not strictly in accordance with the installation requirements for that specific Good;
  - (v) inherent defects in steel or other material used in the manufacture of the Goods. Quotec will use best endeavours to procure and assign to the User the benefit of the warranty of the manufacturer of the steel or other material.
  - (vi) defects or deterioration which, in the opinion of Quotec, have been caused by careless or improper handling, negligence, misuse, care or maintenance instructions, alterations or repairs carried out by anyone other than Quotec's authorised representatives, or by fair wear and tear.
- (e) The User acknowledges and agrees that they have had the opportunity to review the variety of Goods offered by Quotec together with their specifications and quality and that unless specifically stated otherwise,

that the Good is fit for use. Quotec will not be liable to the User in any way for any costs, damage or loss of any kind whatsoever (including, without limitation, liability for direct, indirect, special or consequential loss or damage) incurred or sustained by the User or any third party arising from or in connection with the Goods and any damage caused.

- (f) The User warrants that all information provided by the User is true and correct in every respect. Any Proposal is provided on the basis of the information provided by the User and Quotec will not be liable in respect for any claim loss or damaged caused or contributed by a breach of this clause and the User indemnifies Quotec in respect of any loss or damage to Quotec caused or contributed to by such breach.

### **38. COMPETITION AND CONSUMER ACT 2010 (CTH) (CCA) AND LIMITATION OF LIABILITY**

38.1 Subject to Quotec's statutory obligations under the CCA the following provisions apply:

- (a) Quotec's liability for a breach of a condition or warranty implied by Pt 3–2 Div 1 of the CCA is limited to any one (1) or more of the following: the replacement of the Goods or the supply of equivalent goods; the repair of the Goods; the payment of the cost of replacing the Goods or of acquiring equivalent goods; the payment of the cost of having the Goods repaired.
- (b) Subject to Quotec's statutory obligations under the CCA and except as provided in these Terms, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded.
- (c) Quotec is not liable to the User for any physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of any Good or arising out of negligence or in any way whatsoever.

38.2 Quotec's liability under section 274 of the CCA is expressly limited to a liability to pay the User an amount equal to: the cost of replacing the Goods; the cost of obtaining equivalent Goods; or the cost of having the Goods repaired, whichever is the lowest amount

38.3 Quotec is not liable for any loss, damage, injury or death caused to any property or person of the User or any third Party as a result of any direct or indirect defect in the Kit Order.

### **39. PPSA**

- 39.1 In this clause: financing statement, financing change statement and security interest have the meaning given to it by the PPSA; security agreement means the security agreement under the PPSA created between the User and Quotec by these Terms.
- 39.2 The User acknowledges and agrees that these Terms constitute a security agreement for the purposes of the PPSA and create a security interest in all Goods previously supplied and to be supplied in the future by Quotec to the User and a right to any proceeds in the sale of such Goods.
- 39.3 Quotec and the User agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 39.4 Unless otherwise agreed to in writing by Quotec, the User waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 39.5 The User agrees to unconditionally ratify any actions taken by Quotec under this clause.
- 39.6 The User must not register a security interest over Quotec without its prior written consent.