

## Mason Mercer Holdings Pty Ltd – Terms & Conditions of Trade

### 1. Definitions

- 1.1 **"Buyer"** means the person/s, entities or any person acting on behalf of and with the authority of the Buyer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Buyer, is a reference to each Buyer jointly and severally; and
  - (b) if the Buyer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Buyer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
  - (d) includes the Buyer's executors, administrators, successors, and permitted assigns.
- 1.2 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.4 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Buyer does not wish to allow Cookies to operate in the background when using the Seller's website, then the Buyer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.5 **"Goods"** means all Goods or Services supplied by the Seller to the Buyer at the Buyer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between the Seller and the Buyer in accordance with clause 6 below.
- 1.8 **"Seller"** means Mason Mercer Holdings Pty Ltd ATF Mason Mercer Holdings Unit Trust T/A Mason Mercer Holdings Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Mason Mercer Holdings Pty Ltd ATF Mason Mercer Holdings Unit Trust T/A Mason Mercer Holdings Pty Ltd.

### 2. Acceptance

- 2.1 The Buyer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Buyer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Buyer acknowledges that the supply of Goods on credit shall not take effect until the Buyer has completed a credit application with the Seller and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Buyer's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), Section 9 of the Electronic Communications Act 2000 (SA), Section 9 of the Electronic Transactions Act 2001 (ACT), Section 9 of the Electronic Transactions (Victoria) Act 2000, Section 9 of the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA), Section 226 of the Contract Commercial Law Act 2017 (NZ) (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Buyer acknowledges and accepts that the Seller shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Seller in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Seller in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Seller; the Buyer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 3.3 In circumstances where the Buyer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Buyer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Buyer Error**"). The Buyer must pay for all Goods it orders from the Seller notwithstanding that such Goods suffer from a Buyer Error and notwithstanding that the Buyer has not taken or refuses to take Delivery of such Goods. The Seller is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Buyer Errors.

### 4. Change in Control

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

**5. Credit Card Information**

- 5.1 The Seller will:
- (a) keep the Buyer's personal details, including credit card details for only as long as is deemed necessary by the Seller;
  - (b) not disclose the Buyer's credit card details to any third party; and
  - (c) not unnecessarily disclose any of the Buyer's personal information, except in accordance with the Privacy Act (clause 18) or where required by law.
- 5.2 The Buyer expressly agrees that, if pursuant to this Contract, there are any unpaid charges or other amounts due, then the Seller is entitled to immediately charge the Buyer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Buyer pursuant to the terms of this Contract.

**6. Price and Payment**

- 6.1 At the Seller's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Buyer; or
  - (b) the Seller's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Seller reserves the right to change the Price if a variation to the Seller's quotation is requested. Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Buyer shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.3 At the Seller's sole discretion, a non-refundable deposit may be required.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Buyer on the date/s determined by the Seller, which may be:
- (a) on or before delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with the Seller's payment schedule;
  - (c) thirty (30) days Nett;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Buyer by the Seller.
- 6.5 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Buyer and the Seller.
- 6.6 The Seller may in its discretion allocate any payment received from the Buyer towards any invoice that the Seller determines and may do so at the time of receipt or at any time afterwards. On any default by the Buyer the Seller may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Seller, payment will be deemed to be allocated in such manner as preserves the maximum value of the Seller's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.7 The Buyer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Buyer must notify the Seller in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Seller investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Seller placing the Buyer's account into default and subject to default interest in accordance with clause 16.1.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Buyer must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller under this or any other agreement for the sale of the Goods. The Buyer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Buyer pays the Price. In addition, the Buyer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**7. Delivery of Goods**

- 7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
- (a) the Buyer or the Buyer's nominated carrier takes possession of the Goods at the Seller's address; or
  - (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Buyer's nominated address even if the Buyer is not present at the address.
- 7.2 At the Seller's sole discretion, the cost of Delivery is in addition to the Price.
- 7.3 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 The Buyer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 7.5 Any time specified by the Seller for Delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Buyer because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If the Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Buyer, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

**8. Risk**

- 8.1 Risk of damage to or loss of the Goods passes to the Buyer on Delivery and the Buyer must insure the Goods on or before Delivery.
- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 8.3 If the Buyer requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Buyer's sole risk.

**9. Product Specifications**

9.1 The Buyer acknowledges and accepts that all descriptive specifications, illustrations, drawings, data, dimensions, ratings, and weights stated in the Seller's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Buyer shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by the Seller.

**10. Compliance with Laws**

10.1 The Buyer and the Seller shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Goods and/or Services.

*Modern Slavery*

10.2 For the purposes of clauses 10.2 to 10.7:

(a) "**Act**" means the *Modern Slavery Act 2018 (cth)*

(b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.

10.3 If the Buyer is a Reporting Entity, it shall comply with all of its obligations under the Act.

10.4 Whether the Buyer is a Reporting Entity or not, the Buyer shall:

- (a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
- (b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
- (c) use its reasonable endeavours to ensure that if at any time the Buyer becomes aware of Modern Slavery practices in its operations and supply chains, the Buyer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
- (d) provide to the Seller a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
- (e) within seven (7) days of the Seller's request (or such longer period as the Seller agrees), provide to the Seller any information or assistance reasonable requested by the Seller;
  - (i) concerning the Buyer's compliance with the Act;
  - (ii) concerning the Buyer's operations and supply chains;
  - (iii) to enable the Seller to prepare a Modern Slavery Statement or otherwise comply with the Act; or
  - (iv) to enable the Seller to assess and address risks of Modern Slavery practices in its operations and supply chains.

10.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and the Seller will be able to terminate the Contract for any breach by the Buyer.

10.6 The Buyer warrants that any information supplied to the Seller is true and accurate and may be relied upon for the purposes of the Act.

10.7 The Buyer shall indemnify the Seller against any loss or liability suffered by the Seller as a result of the Buyer's breach of this clause 10.

**11. Title**

11.1 The Seller and the Buyer agree that ownership of the Goods shall not pass until:

- (a) the Buyer has paid the Seller all amounts owing to the Seller; and
- (b) the Buyer has met all of its other obligations to the Seller.

11.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

11.3 It is further agreed that, until ownership of the Goods passes to the Buyer in accordance with clause 11.1:

- (a) the Buyer is only a bailee of the Goods and must return the Goods to the Seller on request;
- (b) the Buyer holds the benefit of the Buyer's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Buyer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Buyer sells, disposes or parts with possession of the Goods then the Buyer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
- (d) the Buyer should not convert or process the Goods or intermix them with other goods but if the Buyer does so then the Buyer holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
- (e) the Buyer irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;
- (f) the Seller may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Buyer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller;
- (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Buyer.

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

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 Upon assenting to these terms and conditions in writing the Buyer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Buyer, and the proceeds from such Goods.

12.3 The Buyer undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to;
  - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or

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- (iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Seller;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of the Seller;
  - (e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 12.4 The Seller and the Buyer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Buyer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Buyer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by the Seller, the Buyer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Buyer must unconditionally ratify any actions taken by the Seller under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 13. Security and Charge

- 13.1 In consideration of the Seller agreeing to supply the Goods, the Buyer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Buyer either now or in the future, and the Buyer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Seller's security interest over the Buyer on the PPSA, to secure the performance by the Buyer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Buyer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
- 13.3 The Buyer irrevocably appoints the Seller and each director of the Seller as the Buyer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Buyer's behalf.

### 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 14.1 The Buyer must inspect the Goods on Delivery and must within fourteen (14) days of Delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Buyer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Buyer must allow the Seller to inspect the Goods.
- 14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 14.3 The Seller acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Buyer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Buyer has paid for the Goods.
- 14.7 If the Buyer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Buyer by the Seller at the Seller's sole discretion;
  - (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Buyer has complied with the provisions of clause 14.1; and
  - (b) the Seller has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Buyer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Seller shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Buyer failing to properly maintain or store any Goods;
  - (b) the Buyer using the Goods for any purpose other than that for which they were designed;
  - (c) the Buyer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Buyer failing to follow any instructions or guidelines provided by the Seller;
  - (e) fair wear and tear, any accident, or act of God.
- 14.10 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the Buyer to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.
- 14.11 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return, then the Seller will only accept a return on the conditions imposed by that law.
- 14.12 Subject to clause 14.1, customised, or non-stocklist items or Goods made or ordered to the Buyer's specifications are not acceptable for credit or return.

**15. Intellectual Property**

- 15.1 Where the Seller has designed, drawn or developed Goods for the Buyer, then the copyright in any designs and drawings and documents shall remain the property of the Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 15.2 The Buyer warrants that all designs, specifications, or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Buyer's order and the Buyer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 15.3 The Buyer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Buyer.

**16. Default and Consequences of Default**

- 16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Buyer owes the Seller any money, the Buyer shall indemnify the Seller from and against all costs and disbursements:
- (a) incurred; and/or
  - (b) which would be incurred and/or
  - (c) for which by the Buyer would be liable;
- in regard to legal costs on a solicitor and own client basis, internal administration fees, the Seller's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 16.3 Further to any other rights or remedies the Seller may have under this Contract, if a Buyer has made payment to the Seller, and the transaction is subsequently reversed, the Buyer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Seller under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Buyer's obligations under this Contract.
- 16.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Buyer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Buyer will be unable to make a payment when it falls due;
  - (b) the Buyer has exceeded any applicable credit limit provided by the Seller;
  - (c) the Buyer 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
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.

**17. Cancellation**

- 17.1 Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Buyer. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
- 17.2 The Seller may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Buyer. On giving such notice the Seller shall repay to the Buyer any money paid by the Buyer for the Goods. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 If the Buyer cancels Delivery of Goods, the Buyer shall be liable for all losses incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 17.4 Cancellation of orders for Goods made to the Buyer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

**18. Privacy Policy**

- 18.1 All emails, documents, images, or other recorded information held or used by the Seller is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Buyer's Personal Information, held by the Seller that may result in serious harm to the Buyer, the Seller will notify the Buyer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Buyer by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Seller in respect of Cookies where the Buyer utilises the Seller's website to make enquiries. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Buyer's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the Seller when the Seller sends an email to the Buyer, so the Seller may collect and review that information ("collectively Personal Information")
- If the Buyer consents to the Seller's use of Cookies on the Seller's website and later wishes to withdraw that consent, the Buyer may manage and control the Seller's privacy controls via the Buyer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 18.3 The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers and with related body corporates for the following purposes:

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- (a) to assess an application by the Buyer; and/or
  - (b) to notify other credit providers of a default by the Buyer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Buyer including the Buyer's repayment history in the preceding two (2) years.
- 18.4 The Buyer consents to the Seller being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 18.5 The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 18.6 The Seller may give information about the Buyer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Buyer including credit history.
- 18.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
  - (b) name of the credit provider and that the Seller is a current credit provider to the Buyer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Buyer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults (provided the Seller is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Buyer no longer has any overdue accounts and the Seller has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of the Seller, the Buyer has committed a serious credit infringement;
  - (h) advice that the amount of the Buyer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.8 The Buyer shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the Personal Information about the Buyer retained by the Seller and the right to request that the Seller correct any incorrect Personal Information; and
  - (b) that the Seller does not disclose any Personal Information about the Buyer for the purpose of direct marketing.
- 18.9 The Seller will destroy Personal Information upon the Buyer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.10 The Buyer can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Buyer is not satisfied with the resolution provided, the Buyer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 19. Other Applicable Legislation

- 19.1 At the Buyer's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Building and Construction Industry (Security of Payment) Act 2021 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act 2004 (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.
- 19.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 19.1 (each as applicable), except to the extent permitted by the Act where applicable.

### 20. Service of Notices

- 20.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 21. Trusts

- 21.1 If the Buyer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Seller may have notice of the Trust, the Buyer covenants with the Seller as follows:
- (a) the Contract extends to all rights of indemnity which the Buyer now or subsequently may have against the Trust and the trust fund;
  - (b) the Buyer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Buyer against the Trust or the trust fund. The Buyer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;

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- (c) the Buyer will not without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Buyer as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

### 22. General

- 22.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the country in which the Goods and/or Services were provided by the Seller to the Buyer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to courts in the state of Victoria, Australia in which the Seller has its principal place of business. These terms prevail over all terms and conditions of the Buyer (even if they form part of the Buyer's purchase order).
- 22.3 Subject to clause 14, the Seller shall be under no liability whatsoever to the Buyer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Buyer's consent.
- 22.5 The Buyer cannot licence or assign without the written approval of the Seller.
- 22.6 The Seller may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Buyer agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.
- 22.7 The Buyer agrees that the Seller may amend their general terms and conditions for subsequent future Contracts with the Buyer by disclosing such to the Buyer in writing. These changes shall be deemed to take effect from the date on which the Buyer accepts such changes, or otherwise at such time as the Buyer makes a further request for the Seller to provide Goods to the Buyer.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Buyer to make a payment to the Seller.
- 22.9 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 22.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.