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## Signs Plus Brisbane Pty Ltd – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 "Agreement" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.2 "Contractor" means Signs Plus Brisbane Pty Ltd ATF Orr Trust T/A Signs Plus Brisbane Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Signs Plus Brisbane Pty Ltd ATF Orr Trust T/A Signs Plus Brisbane Pty Ltd.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by the Contractor to the Client at the Client's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Agreements, 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.
- 1.6 "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 Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Contractor and the Client in accordance with clause 5 below.
- 1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or Agreement between the Client and the Contractor.
- 2.3 Any advice, recommendation, information, assistance or service provided by the Contractor in relation to Goods or Services supplied is given in good faith, is based on the Contractor's own knowledge and experience and shall be accepted without liability on the part of the Contractor and it shall be the responsibility of the Client to confirm the accuracy and reliability of the same in light of the use to which the Client makes or intends to make of the Goods or Materials.
- 2.4 All literature, samples, specifications, submitted with this quotation is expressly illustrative and is by way of a general description of Goods only in accordance with industry standards. Any descriptions, dimensions or specifications contained in catalogues and other advertising material while being as accurate as possible but may not necessarily be identical with Goods and Services the Contractor is to supply. The Contractor will not accept liability to the Client for quality of Goods which comply with accepted industry standards.
- 2.5 The Contractor reserves the right not to supply any Goods, or refuse the acceptance of any instructions, at any time for any reason (including where such, in the Contractor's opinion is or may be unlawful, offensive, contains Prohibited Content, or is otherwise inappropriate), and the Contractor shall not be liable to the Client for any such action.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Contractor 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 Contractor in the formation and/or administration of this Agreement; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor 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 Contractor; the Client shall not be entitled to treat this Agreement as repudiated nor render it invalid.

### 4. Change in Control

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

### 5. Price and Payment

- 5.1 At the Contractor's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Client; or
  - (b) the Price as at the date of delivery of the Goods according to the Contractor's current price list; or
  - (c) the Contractor's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 The Contractor reserves the right to change the Price:

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- (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, safety considerations, prerequisite work by any third party not being completed etc) which are only discovered on commencement of the Services; or
  - (d) in the event of fluctuations in foreign currency rates of exchange, taxes, levies, and/or international freight and insurance charges or increases to the Contractor in the cost of labour or Goods which are beyond the Contractor's control.
- 5.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor 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.
- 5.4 At the Contractor's sole discretion, a non-refundable deposit may be required.
- 5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Goods;
  - (b) before delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with the Contractor's payment schedule;
  - (d) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Contractor.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other Agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client 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.
- 6. Delivery of Goods**
- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at the Contractor's address; or
  - (b) the Contractor (or the Contractor's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At the Contractor's sole discretion, the cost of delivery is included in the Price.
- 6.3 The Contractor 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.
- 6.4 Any time specified by the Contractor for delivery of the Goods is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result 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. In the event that the Contractor is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Risk**
- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Contractor is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance proceeds without the need for any person dealing with the Contractor to make further enquiries.
- 7.3 If the Client requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 7.4 The Client acknowledges that it is their responsibility to ensure that all Services or Goods which the Contractor is to supply (or are to connect any of its Services to) are of the correct type, size, standard, quality, colour and finish and are as specified in the specifications, drawings and plans upon which the Contractor based the quotation on and therefore, the Client agrees to indemnify the Contractor against any costs incurred by the Contractor in rectifying such errors if required.
- 7.5 Where Contractor is required to install the Goods, the Client:
- (a) warrants that the structure of the site or equipment in or upon which the Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto, and the Contractor shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto;
  - (b) must, prior to the commencement of the installation of the Goods, advise the Contractor of the precise location of all services on the site and clearly mark the same. The mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site. Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per this sub-clause (b).

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- 7.6 Where this Agreement does not include installation of Goods by the Contractor, the Goods must be installed by a certified installer and the Contractor shall not be liable for any defect or damage resulting from incorrect or faulty installation.
- 7.7 Where the Client has supplied materials for the Contractor to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Contractor shall not be responsible for any defects in the materials, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 7.8 The Client acknowledges that the Contractor is only responsible for parts that are replaced by the Contractor, and in the event that other parts/Goods, subsequently fail, the Client agrees to indemnify the Contractor against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 7.9 The Client acknowledges that Goods supplied may:
- (a) exhibit variations in shade, colour, texture, surface, finish, markings; and
  - (b) may fade or change colour over time; and
  - (c) expand, contract or distort as a result of exposure to heat, cold, weather; and
  - (d) mark or stain if exposed to certain substances; and
  - (e) be damaged or disfigured by impact or scratching.
- 8. Access**
- 8.1 The Client shall ensure that the Contractor has clear and free access to the work site at all times to enable them to deliver the Services. The Contractor shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
- 9. Samples and Proof Reading**
- 9.1 The Contractor is under no obligation to provide samples of the Goods ordered other than by virtual (computerised) sample. Whilst every effort will be taken by the Contractor to match virtual colours with physical colours, the Contractor will take no responsibility for any variation between virtual samples and the supplied Goods. Should a physical sample be required, this will be provided on request by the Client and will be charged for as an extra in accordance with clause 5.
- 9.2 Whilst every care is taken by the Contractor to carry out the instructions of the Client, it is the Client's responsibility to undertake a final proof reading of the Goods, which will be sent to the Client and will be deemed accepted if no response is received by the Client within forty-eight (48) hours of the Contractor's submission thereof. The Contractor shall be under no liability whatever for any errors not corrected by the Client in the final proof reading, and should the Client's alterations requires additional proofs this shall be invoiced as an extra in accordance with clause 5.
- 10. Accuracy of Client's Plans and Measurements**
- 10.1 The Contractor shall be entitled to rely on the accuracy of any designs, specifications, measurements and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Contractor accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate designs, specifications, measurements or other information.
- 11. Title**
- 11.1 The Contractor and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Contractor all amounts owing to the Contractor; and
  - (b) the Client has met all of its other obligations to the Contractor.
- 11.2 Receipt by the Contractor 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 Client in accordance with clause 11.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Contractor on request;
  - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Client 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 Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;
  - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;
  - (e) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods;
  - (f) the Contractor may recover possession of any Goods in transit whether or not delivery has occurred;
  - (g) the Client 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 Contractor;
  - (h) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
- 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 Client 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 and/or collateral (account) – being a monetary

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- obligation of the Client to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
- 12.3 The Client 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 Contractor 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
    - (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 Contractor 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 Contractor;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
  - (e) immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 12.4 The Contractor and the Client 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 Client 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 Client 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 Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Client must unconditionally ratify any actions taken by the Contractor 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 Contractor agreeing to supply the Goods, the Client 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 Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 13.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 13.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client'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 Client's behalf.
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Client must inspect the Goods on delivery and must within three (3) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor 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 Contractor 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 Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Goods.
- 14.7 If the Client is not a consumer within the meaning of the CCA, the Contractor'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 Client by the Contractor at the Contractor's sole discretion;
  - (b) limited to any warranty to which the Contractor is entitled, if the Contractor 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 Client has complied with the provisions of clause 14.1; and
  - (b) the Contractor has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Client'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 Contractor 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 Client failing to properly maintain or store any Goods;
  - (b) the Client using the Goods for any purpose other than that for which they were designed;
  - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

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- (d) the Client failing to follow any instructions or guidelines provided by the Contractor;
  - (e) fair wear and tear, any accident, or act of God.
- 14.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Contractor as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Contractor has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 14.10.
- 14.11 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor 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 Client's specifications are not acceptable for credit or return.

### 15. Intellectual Property

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

### 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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 16.3 Further to any other rights or remedies the Contractor may have under this Agreement, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Agreement.
- 16.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
  - (c) the Client 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 Client or any asset of the Client.

### 17. Cancellation

- 17.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 17.2 The Contractor may cancel any Agreement 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 Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 In the event that the Client cancels delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor 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 Client's specifications, or for non-stocklist items, will definitely 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 Contractor is Personal Information, as defined and referred to in clause , and therefore considered Confidential Information. The Contractor 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 IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements where a Contractor is from an European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Contractors Personal Information, held by the Contractor that may result in serious harm to the Contractor, the Contractor will notify the Contractor 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 Contractor by written consent, unless subject to an operation of law.

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- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Contractor in respect of Cookies where transactions for purchases/orders transpire directly from the Contractor's website. The Contractor 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 Client'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 Contractor when the Contractor sends an email to the Contractor, so the Contractor may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Contractor's website.
- 18.3 The Contractor agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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) about the Contractor in relation to credit provided by the Contractor.
- 18.4 The Contractor agrees that the Contractor may exchange information about the Contractor with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Contractor; and/or
  - (b) to notify other credit providers of a default by the Contractor; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Contractor is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Contractor including the Contractor's repayment history in the preceding two (2) years.
- 18.5 The Contractor consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 18.6 The Contractor agrees that personal credit information provided may be used and retained by the Contractor 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 Contractor'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 Contractor; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 18.7 The Contractor may give information about the Contractor 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 Contractor including credit history.
- 18.8 The information given to the CRB may include:
- (a) personal information as outlined in 18.1 above;
  - (b) name of the credit provider and that the Contractor is a current credit provider to the Contractor;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Contractor'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, 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 Contractor no longer has any overdue accounts and the Contractor 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 Contractor, the Contractor has committed a serious credit infringement;
  - (h) advice that the amount of the Contractor's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.9 The Contractor shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the information about the Contractor retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
  - (b) that the Contractor does not disclose any personal information about the Contractor for the purpose of direct marketing.
- 18.10 The Contractor will destroy personal information upon the Contractor's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.
- 18.11 The Contractor can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Contractor is not satisfied with the resolution provided, the Contractor can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 19. Unpaid Seller's Rights**
- 19.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any monies owing to it by the Client, the Contractor shall have, until all monies owing to the Contractor are paid:
- (a) a lien on the item; and
  - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 19.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any monies owing to the Contractor having been obtained against the Client.

**20. Service of Notices**

- 20.1 Any written notice given under this Agreement 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 Agreement;
  - (c) by sending it by registered post to the address of the other party as stated in this Agreement;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Agreement (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 Client at any time upon or subsequent to entering in to the Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the Agreement extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client 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.
  - (c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client 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. Dispute Resolution**

- 22.1 If a dispute arises between the parties to this Agreement then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
  - (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

**23. General**

- 23.1 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.
- 23.2 These terms and conditions and any Agreement to which they apply shall be governed by the laws of Queensland, the state in which the Contractor has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in Queensland.
- 23.3 Subject to clause 14, the Contractor shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Agreement without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of the Contractor.
- 23.6 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Agreement by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 23.7 The Client agrees that the Contractor may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Goods to the Client.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.