



## TERMS AND CONDITIONS OF SALE





1. Definitions
  - 1.1 **“Approved Clients”** means a Client nominated by the Seller who can pay the Price to the Seller as set out in clause 5.4(b).
  - 1.2 **“CCA”** means the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law set out in schedule 2 of that Act).
  - 1.3 **“Change of Control”** means in relation to a party that is not a natural person, the occurrence of an event or series of events that result in a person or persons:
    - (a) that did not have Control of that party before the event or series of events, having Control of that party following that event or series of events; or
    - (b) that had Control of that party before the event or series of events ceasing to have Control of that party.
  - 1.4 **“Client”** means the person/s buying the Goods and/or Services as specified in any invoice, document or Purchase Order, and if there is more than one Client, is a reference to each Client jointly and severally.
  - 1.5 **“Confidential Information”** means confidential information, trade secrets, know-how, scientific, technical, product, market or pricing information relating to the Goods and/or Services or the Seller's business.
  - 1.6 **“Consumer Guarantee”** means the guarantees contained in sections 51 to 62 of the CCA.
  - 1.7 **“Consequential Loss”** means any loss, damage or costs incurred by a party or any other person that is indirect or consequential, as well as loss of revenue; loss of income; loss of business; loss of profits; loss of production; loss of or damage to goodwill or credit; loss of business reputation, future reputation or publicity; loss of use; loss of interest; losses arising from claims by third parties; loss of or damage to credit rating; loss of anticipated savings and/or loss or denial of opportunity.
  - 1.8 **“Contract”** means the contract of purchase of Goods and/or Services between the Seller and the Client which comprises the Credit Application (if any), these Terms and Purchase Orders placed by the Client and accepted by the Seller.
  - 1.9 **“Credit Application”** means an application for commercial credit completed by the Client, in a form approved by the Seller.



- 1.10 “Defective Goods” means Goods that are defective, damaged or do not comply with any specifications included in an accepted Purchase Order.
- 1.11 “Defective Services” means Services that are defective in performance or do not comply with any specifications included in an accepted Purchase Order.
- 1.12 “Delivery” means delivery of the Goods as set out in clause 6.1.
- 1.13 “Goods” means all goods supplied by the Seller to the Client at the Client’s request from time to time.
- 1.14 “Insolvency Event” means the happening of any of these events:
- (a) a party suspends payment of its debts generally, is or becomes unable to pay its debts when they are due, or is or becomes unable to pay its debts within the meaning of the Corporations Act 2001 (Cth);
  - (b) a party enters into, or resolves to enter into, any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
  - (c) a receiver, receiver and manager, liquidator, provisional liquidator, administrator, trustee or similar official is appointed over any of the assets or undertakings of a party, an application or order is made for the winding up or dissolution of a party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a party, except for the purpose of an amalgamation or reconstruction which has the other party’s prior consent;
  - (d) a party goes bankrupt; or
  - (e) a party ceases, or threatens to cease, to carry on business;
- 1.15 “Intellectual Property Rights” means:
- (a) inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment, products, technology, processes, methods or techniques;
  - (b) copyright (including future copyright) throughout the world in all literary works, artistic works, computer software and any other works or subject matter in which copyright subsists and may in the future subsist;
  - (c) confidential information and trade secrets;



- (d) trade and service marks (whether registered or unregistered), business names, trade names, domain names, logos and get-up; and
  - (e) proprietary rights under the Circuit Layouts Act 1989 (Cth).
- 1.16 “Loss” means any losses, liabilities, damages, costs, interest, charges, fines, penalties or expenses (including lawyer’s fees and expenses on a full indemnity basis) whether direct, indirect, special, consequential or otherwise.
- 1.17 “Proposal” means a formal proposal issued by the Seller to the Client in the name of the Seller and numbered with a Proposal Number;
- 1.18 “Purchase Order” means the document which sets out details of the Goods and/or Services the Client wishes to purchase from the Seller.
- 1.19 “Price” means the Price payable for the Goods and/or Services as agreed between the Seller and the Client in accordance with clause 5 below.
- 1.20 “Seller” means Aqua-Tec Fluid Systems Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Aqua-Tec Fluid Systems Pty Ltd.
- 1.21 “Seller Site” means the site or sites nominated by Seller, from time to time for collection of the Goods noted in the Purchase Order.
- 1.22 “Services” means all services supplied by the Seller to the Client at the Client’s request from time to time.
- 1.23 “Supply Agreement” means a separate agreement for the supply of Goods and/or Services between the Seller and the Client which expressly includes these Terms.
- 1.24 “Terms” means these Terms and Conditions.

## 2. Acceptance

- 2.1 Each:
- (a) Purchase Order for any Goods and/or Services placed by the Client with the Seller;
  - (b) Sale of any Goods and/or Services by the Seller to the Client; and
  - (c) Purchase of any Goods and/or Services by the Customer from the Seller, is on and subject to:



- (i) these Terms;
  - (ii) any written special conditions, Supply Agreement, or similar document expressly agreed to in writing by the Seller; and
  - (iii) each invoice for Goods and/or Services issued by the Seller to the Client.
- 2.2 Subject to clause 13.1, the documents described in clauses 2.1(c) constitute the entire agreement between the Seller and the Client governing the ordering, sale, supply and purchase of Goods and/or Services from time to time.
- 2.3 Except as expressly agreed otherwise in writing by the Seller and the Client, approval of the Credit, is not to be taken as an agreement or undertaking:
  - (a) by the Seller to sell and supply to the Client; or
  - (b) by the Client to order and buy from the Seller,  
any Goods and/or Services at any time, or Goods and/or Services with a total price or value up to any approved credit limit or other amount.
- 2.4 The Seller and the Client acknowledge and agree that other than as set out in the Supply Agreement, these Terms take precedence over all other conditions of supply including specifically a Purchase Order, and applies to the exclusion of all other documents, prior discussions, representations, understandings and arrangements (written or oral, express or implied) and other representations (contractual or otherwise), whether or not endorsed or delivered with or referred to in any Purchase Order or other documents delivered by the Client to the Seller.
- 2.5 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by the Contract if the Client provides the Seller with a Purchase Order for the Goods and/or Services or accepts Delivery of the Goods and/or the performance of the Services.



2.6 The Client acknowledges that the matters set out in the schedule are a true description of the purposes for which the Goods and/or Services purchased by the Client are to be applied in respect of work required to be performed by the Goods and/or Services and that the Client may forfeit any rights the Client may have against Seller for the supply of the Goods and/or Services if they are applied to any other use. The Client forfeits any right or claim against the Seller if any alteration to the Goods sold or quoted is carried out without the Seller's written consent. These Terms may only be amended with the Seller's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Seller.

### 3. Change in Control

The Client shall give the Seller not less than fourteen (14) days prior written notice of any proposed Change of Control 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 number/s, or business practice). The Client shall be liable for any Loss incurred by the Seller as a result of the Client's failure to comply with this clause.

### 4. Ordering Process

- 4.1 All Purchase Orders for the Goods and/or Services submitted by the Client must comply with any requirements for Purchase Orders notified by the Seller to the Client from time to time (which are consistent with these Terms).
- 4.2 The Seller may, in its absolute discretion, either accept or reject a Purchase Order placed by the Client, whether in whole or in part by providing confirmation in writing and without giving reasons.
- 4.3 The Client may not, without the Seller's prior written consent, change or cancel a Purchase Order after that Client has placed a Purchase Order. If the Seller consents to the cancellation of a Purchase Order, the Client will be liable for any costs incurred by the Seller up to the time of cancellation.

### 5. Price and Payment



- 5.1 At the Seller's sole discretion the Price of the Goods and/or Services shall be either:
- (a) as indicated on the Seller's published current price list, as at the date that the Purchase Order is placed; or
  - (b) the Seller's quoted Price (subject to clause 5.2) which shall be binding upon the Seller provided that the Client shall accept the Seller's quotation in writing within thirty (30) days. Quotations are subject to withdrawal, correction, or alteration at any time before acceptance of the Client's Purchase Order by the Seller unless stated otherwise.
- 5.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation (including, but not limited to, variations as a result of changes in details, sizes, quantities, Delivery instructions or any other matter or item on which the quotation was based).
- 5.3 The Client is required to pay the Seller a deposit in the amount set out in a Proposal or if the Seller has not submitted a Proposal and if the Seller has not issued a Proposal, the deposit shall be 1/3 of the Price .
- 5.4 Unless otherwise specified in writing, the Client must pay to the Seller the Price for the Goods and/or Services to the Seller, without deduction or set off in accordance with the payment terms set out in any relevant Proposal and if the Seller has not issued a Proposal, or the Proposal does not include payment terms, in accordance with the following:
- (a) if the Client has a commercial credit account, pursuant to a Credit Application with the Seller that has not been terminated or suspended, by no later than the last day of the month after the month in which the Goods are Delivered to or collected by, the Client or its Representative, or the Services are provided to the Client;
  - (b) otherwise, at or before the time when the Client places a Purchase Order, subject to the Seller granting instalment payment terms for Approved Clients, who may pay by instalments in accordance with the Seller's payment schedule.
- 5.5 The Seller may withhold Delivery of the Goods and/or the performance of Services until the Client has paid for them, in which event payment shall be made before the Delivery date.





- 5.6 The Seller reserves the right to offer certain Clients a discount for settlement of accounts by a specified date.
- 5.7 The Seller reserves the right to withdraw credit terms and at any time without notice apply or vary a credit limit.
- 5.8 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus any charges that may be applicable), or by direct credit, or by any other method as agreed to between the Client and the Seller.
- 5.9 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5.10 The Price and any rates or prices included in the Contract are subject to adjustment for rise and fall by reason of fluctuations in exchange rates or changes in the cost of labour and materials, or for any other matter.

## 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 Seller’s address; or**
  - (b) **the Seller (or the Seller’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 Seller’s sole discretion the cost of Delivery is either included in the Price or is in addition to the Price as stated by the Seller under clause 5.1.**
- 6.3 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Client is unable to take Delivery of the Goods then the Seller shall be entitled to charge a reasonable fee for associated transport and delivery charges and/or storage fees to the invoice for the relevant Goods.
- 6.4 The Seller may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions of these Terms.



- 6.5 Any time or date given by the Seller to the Client is an estimate only. The Client must still accept Delivery of the Goods or performance of the Services even if late and subject to clause 13.3 and the extent permitted by law, the Seller will not be liable for any Loss or damage incurred by the Client as a result of the Delivery being late.
- 6.6 The Client must, and must ensure that each of its carriers or Representatives who attend any Seller Site comply with:
- (a) any lawful directions given by the Seller as to the loading of the Goods onto the Client's, its carriers' or Representatives' vehicles at the Seller's Site; and
  - (b) all occupational health and safety standards and rules applicable to the Seller's Site, as notified by or on behalf of the Seller to the Client or to the Client's carriers or Representatives.

## 7. Access

The Client shall ensure that the Seller has clear and free access to the work site at all times to enable them to deliver the Goods and/or perform the Services. The Seller 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 and to the extent due to the negligence of the Seller.



## 8. Underground Locations

- 8.1 Prior to the Seller commencing any work the Client must advise the Seller of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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.
- 8.2 Whilst the Seller will take all care to avoid damage to any underground services the Client agrees to indemnify the Seller 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 clause 8.1.

## 9. Risk

- 9.1 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, as set out in clause 6.1.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to title passing to the Client, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these Terms 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.
- 9.3 **If the Client requests the Seller to leave Goods outside the Seller's Site for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.**
- 9.4 The Client further accepts sole responsibility for any damage or injury to property or persons caused by using the Goods to pump or transfer hazardous or toxic fluids or substances.

## 10. Title



10.1 The Seller and the Client agree, that even though risk in the Goods may have passed to the Client, title in the Goods remains with the Seller and will not pass to the Client until:

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

10.2 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.

10.3 It is further agreed that:

- (a) until title of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to the Seller on request;
- (b) **the Client holds the benefit of the Client'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 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 Seller and must pay or deliver the proceeds to the Seller 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 Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
- (e) the Client 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 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 Seller; and



- (h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that title in the Goods has not passed to the Client.

## 11. Personal Property Securities Act 2009 (“PPSA”)

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

11.2 Upon assenting to these Terms in writing the Client acknowledges and agrees that these Terms 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 Client.

11.3 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 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
  - (iii) correct a defect in a statement referred to in clause 11.3(a)(i) or 11.3(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 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 the nature of proceeds derived from such sales.
- 11.4 The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by the Seller under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary nothing in these Terms is intended to have the effect of contracting out of any of the provisions the PPSA.

## 12. Security and Charge

- 12.1 In consideration of the Seller 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 (including, but not limited to, the payment of any money).
- 12.2 **The Client 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.**
- 12.3 The Client irrevocably appoints the Seller and each director of the Seller as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.



### 13. Defective Goods and Services, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 13.1 Except only for those rights and remedies that the Customer has in respect of the Goods which cannot be lawfully excluded, restricted or modified and to the extent permitted by law:
- (a) Seller excludes all liability to the Customer for any Consequential Loss howsoever caused;
  - (b) all conditions, implied terms and warranties, whether statutory or otherwise, are excluded in relation to the Goods and/or Services; and
  - (c) the Seller is not liable to the Customer for any loss, howsoever caused, which the Customer suffers, incurs or is liable for in connection with supply of the Goods under the Contract, except in accordance with clauses 13.2 and 13.3.
- 13.2 **If the Client is not a Consumer, the Seller's liability for any defect or damage in the Goods and/or Services is:**
- (a) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
  - (b) in the case of Services is limited to the remedies in clause 13.3 (even if the Client is not a Consumer );
  - (c) otherwise negated absolutely.
- 13.3 **If the Client is a Consumer, to the extent permitted by law the Seller's liability to the Client, is limited:**
- (a) in respect of Goods to:
    - (i) the repair or replacement of the Goods or the supply of equivalent Goods;
    - (ii) pay the cost of replacing or repairing the Goods or of acquiring equivalent Goods; or
  - (b) in respect of Services to:
    - (i) provide the Services again;
    - (ii) pay the cost of having the Services provided again; or



- 13.4 The Client must inspect the Goods on Delivery and must within seven (7) 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 Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident.
- 13.5 If the Client gives the Seller notice under clause 13.4, the Client must:
- (a) preserve the Goods in the state in which it was delivered for 7 days after it gives the Seller the notice; and
  - (b) **during that period, allow the Seller access to the Client's premises to inspect the Goods;** or
  - (c) **at the Seller's request return the Goods, at the Seller's cost within 7 days** after the Delivery date in the condition in which they were delivered and will ensure all packaging material in as new condition as is reasonably possible in the circumstances.
- 13.6 Notwithstanding clauses 13.1 to 13.5 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 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;
  - (d) the Client failing to follow any instructions or guidelines provided by the Seller;
  - (e) fair wear and tear, any accident, or act of God.
- 13.7 Other than as set out in this agreement and as required by law, the Seller is not obliged to accept the return of any Goods.
- 13.8 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. Intellectual Property

- 14.1 Where the Seller has designed, drawn or developed Goods for the Client, then the Intellectual Property Rights in any designs and drawings and documents shall remain the property of the Seller.
- 14.2 The Client warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any Intellectual Property Rights of a third party and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 14.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings (or other Intellectual Property Rights of the Client) or Goods which the Seller has created for the Client.
- 14.4 The parties agree that any Intellectual Property Rights created or developed under or in connection with the Contract or in the course of supplying the Goods and/or Services are owned by the Seller.

## 15. Default and Consequences of Default

15.1 The Client will be in default under these Terms if it:

- (a) breaches these Terms in a material respect and, in the reasonable opinion of the Seller, the breach cannot be remedied; or
- (b) can be remedied, but is not remedied by the Client within 7 days after Seller gives the Client notice of the breach; or
- (c) suffers an Insolvency Event.

(Client Default)

15.2 If a Client Default occurs:

- (a) the Client must immediately pay all amounts it owes to the Seller, whether due at that time or not;
- (b) the Seller will be entitled to cancel all or any part of any of the Client's Purchase Orders placed with the Seller which remain unfulfilled;**



(c) the Seller may request payment in advance for all Goods and/or Services the Client has ordered from the Seller, in which case the Client must make the advance payment(s); and

(d) the Seller may, by written notice to the Client, terminate:

(i) the supply of Goods and/or Services to the Client and/or the Client's commercial credit account pursuant to its Credit Application;

(ii) any Purchase Order placed by the Client; or

(iii) the Contract in its entirety.

15.3 The Client must, within 7 days after the date of expiry or termination:

(a) pay the Seller all amounts it owes the Seller, whether due at that time or not; and

(b) return all Confidential Information to the Seller.

15.4 Interest on overdue invoices shall accrue daily, from the date when the 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 judgement.**

15.5 If the Client owes the Seller any money the Client shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor **and own client basis, the Seller's collection agency costs, and bank dishonour fees**).

15.6 The Seller will not be liable to the Client for any Loss the Client suffers because the Seller has exercised its rights under this clause.

## 16. Cancellation

16.1 If the Client cancels Delivery of the Goods or performance of the Services the Client shall be liable for any and all Loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any Loss of profits).

16.2 **Cancellation of Purchase Orders for Goods and/or Services 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.**



## 17. Force Majeure

- 17.1 In this clause 17, Force Majeure means an act of God; war, revolution or any other unlawful act against public order or authority; an industrial dispute including strike or other labour disturbances; a governmental restraint; a shortage or unavailability of materials from a supplier or another party, production capacity or transportation; and any other event not within the reasonable control of the Seller.
- 17.2 Where Force Majeure prevents or delays the Seller from performing any obligation under the Contract, that obligation is suspended as long as the Force Majeure continues.

## 18. Privacy Act 1988

- 18.1 The Client agrees for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Seller.
- 18.2 The Client agrees that the Seller may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client. The Client understands that **the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.**
- 18.3 The Client consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.



- 18.4 The Client agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as shall be agreed between the Client and Seller or required by law from time to time):
- (a) the provision of Goods and/or Services; and/or
  - (b) the marketing of Goods and/or Services by the Seller, its agents or distributors; and/or
  - (c) **analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods and/or Services; and/or**
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) **enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods and/or Services.**
- 18.5 The Seller may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 18.6 The information given to the credit reporting agency may include:
- (a) **personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);**
  - (b) **details concerning the Client's application for credit or commercial credit and the amount requested;**
  - (c) advice that the Seller is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) **that the Client's overdue accounts, loan repayments and/ or any outstanding monies are no longer overdue in respect of any default that has been listed;**



- (f) information that, in the opinion of the Seller, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by the Seller has been paid or otherwise discharged.

## 19. Unpaid Seller's Rights

- 19.1 Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any moneys owing to it by the Client, the Seller shall have, until all moneys owing to the Seller 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 Seller shall continue despite the commencement of proceedings, or judgment for any moneys owing to the Seller having been obtained against the Client.

## 20. Confidential Information

- 20.1 The Client is authorised to use the Confidential Information for the sole purpose of using or selling the Goods supplied under these Terms and must not otherwise use or disclose any Confidential Information.

## 21. Warranty Commencement



- 21.1 Any Warranty period provided by the Seller shall commence once the Goods and/or Services have been delivered, where the delivery of such Goods and/or Services is not delayed by the Purchaser or parties not under the control of the Seller.
- 21.2 Where delivery of the Goods and/or Services has been delayed by the Purchaser or parties not under the control of the Seller, the Seller at its absolute discretion **may issue a 'notice' to the Purchaser (*Contingent Notice*)**, advising the date of commencement of the Warranty period. Such notice may include a list of items and/or services yet to be completed by the Seller.
- 21.3 **Where a 'notice' has been issued by the Seller under clause 21.2**, the Seller shall be entitled to payment in full as if the works have been completed.
- 21.4 **Where a 'notice' has been issued by the Seller under clause 21.2**, the Seller shall be entitled to charge for any additional storage, relocation fees or other costs incurred as a result of the delays.



## 22. General

- 22.1 The failure by the Seller to enforce any provision of these Terms shall not be **treated as a waiver of that provision, nor shall it affect the Seller's right to** subsequently enforce that provision. If any provision of these Terms 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 any contract to which they apply shall be governed by the laws of the state in which the Seller has its principal place of business, and are subject to the jurisdiction of the courts of Victoria.
- 22.3 Subject to clause 13 the Seller 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 Seller of these Terms (alternatively **the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods and/or Services**).
- 22.4 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute.
- 22.5 The Seller may license or sub-contract all or any part of its rights and obligations **without the Client's consent**.
- 22.6 The Client agrees that the Seller may amend these Terms at any time. If the Seller makes a change to these Terms, then that change will take effect from the date on which the Seller notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Seller to provide Goods and/or Services to the Client.
- 22.7 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.
- 22.8 The Client warrants that it has the power to enter into the Contract and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this Contract creates binding and valid legal obligations on it.