

Verge Safety Barriers Pty Ltd – Terms & Conditions of Trade

<p>1. Definitions</p> <p>1.1 "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.</p> <p>1.2 "Supplier" means Verge Safety Barriers Pty Ltd ATF Stephen Wiggins Family Trust T/A Verge Safety Barriers Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Verge Safety Barriers Pty Ltd ATF Stephen Wiggins Family Trust T/A Verge Safety Barriers Pty Ltd.</p> <p>1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in 6.3 any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.4 "Goods" means all Goods or Services supplied by the Supplier 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).</p> <p>1.5 "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.</p> <p>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.</p> <p>1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 5 below.</p> <p>1.8 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>2. Acceptance</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.</p> <p>2.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse Delivery.</p> <p>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 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>2.7 These terms and conditions may be meant to be read in conjunction with the Supplier's Hire Form, and:</p> <p>(a) where the context so permits, the terms 'Services' or 'Goods' shall include any supply of Equipment, as defined therein; and</p> <p>(b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.</p> <p>3. Errors and Omissions</p> <p>3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.</p> <p>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 willful misconduct of the Supplier, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>4. Change in Control</p> <p>4.1 The Client shall give the Supplier 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, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.</p> <p>5. Quotation Exclusions</p> <p>5.1 Unless expressly stated by the Supplier, the quoted Price shall not include:</p> <p>(a) any alterations or rectifications to ceilings; or</p> <p>(b) any alterations to existing building services; or</p> <p>(c) any work outside normal working hours; or</p> <p>(d) any associated engineers fees; or</p> <p>(e) any allowance for drawing up or submission of drawings to the council or Government authority; or</p> <p>(f) any provision for alteration or installation of lighting, power-points, electronic installations, sprinkler systems, plumbing or air-conditioning.</p> <p>In the event the Client requires any of the above, the Price will be adjusted accordingly to include the Services and shall be invoiced as a variation in accordance with clause 6.2.</p> <p>6. Price and Payment</p> <p>6.1 At the Supplier's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Supplier to the Client; or</p> <p>(b) the Supplier'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.</p> <p>6.2 The Supplier reserves the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be provided is requested (including due to inaccuracies in quantities or dimensions or other information supplied to the Supplier for quotation purposes); or</p> <p>(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or</p> <p>(c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inclement weather,</p>	<p>observed site defects, required prerequisite work not completed, hard rock barriers below the surface, iron reinforcing rods in concrete, or hidden pipes and wiring/cabling, etc.) which are only discovered on commencement of the Services; or</p> <p>(d) as a result of an increase in the Supplier's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services, increases to the Supplier in the cost of labour or Goods or due to relevant industry awards (e.g. site allowance and severance pay), which are outside the control of the Supplier.</p> <p>Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier 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.</p> <p>The Client's sole discretion, a non-refundable deposit may be required.</p> <p>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 Supplier, which may be:</p> <p>(a) on or before delivery of the Goods;</p> <p>(b) by way of progress payments in accordance with the Supplier's specified progress payment schedule. Such progress payment claims may include the reasonable value of authorised variations and the value of any Goods delivered to the site but not yet installed;</p> <p>(c) the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;</p> <p>(e) the date specified on any invoice or other form as being the date for payment; or</p> <p>(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.</p> <p>Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (including Visa, Mastercard and Amex, plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.</p> <p>The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.</p> <p>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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other Contract 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.</p> <p>Delivery of Goods</p> <p>Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods at the Supplier's address; or</p> <p>(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.</p> <p>At the Supplier's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.</p> <p>The Supplier 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.</p> <p>Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this Contract.</p> <p>The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that:</p> <p>(a) such discrepancy in quantity shall not exceed five percent (5%); and</p> <p>(b) the Price shall be adjusted pro rata to the discrepancy.</p> <p>Any time specified by the Supplier for delivery of the Goods is an estimate only and the Supplier 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 Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>Risk</p> <p>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.</p> <p>If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.</p> <p>If the Client requests the Supplier to leave Goods outside the Supplier'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.</p> <p>The Supplier is not responsible for the strength of structural condition of the floors or foundations upon which the construction works are erected and makes no representation and gives no warranty that such floors or foundations are suitable for the construction works thereon and shall not be liable for any damage or injury howsoever arising from defects in or any structural movement, collapse, subsidence or failure of the said floors or foundations.</p> <p>If the giving of an estimate or quotation for the supply of Goods involves the Supplier estimating measurements and quantities, it shall be the responsibility of the Client to verify the accuracy of the Supplier's estimated measurements and quantities, before the Client places an order based on such estimate or accepts such quotation.</p> <p>The Client acknowledges that Goods supplied may:</p> <p>(a) exhibit variations in shade, colour, texture, surface, finish, markings and may contain natural fissures, occlusions, lines, indentations and may fade or change colour over time; and</p> <p>(b) expand, contract or distort as a result of exposure to heat, cold, weather; and</p> <p>(c) mark or stain if exposed to certain substances; and</p> <p>(d) be damaged or disfigured by impact or scratching.</p> <p>The Supplier reserves the right to change the materials used in manufacture of the Goods in order to take advantage of any technical developments, improvements or modifications the Supplier considers desirable.</p> <p>Where the Supplier is required to install the Goods the Client warrants that the structure of the premises or equipment in or upon which these goods are to be</p>	<p>installed or erected is sound and will sustain the installation and work incidental thereto and the Supplier 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.</p> <p>The Client shall be liable for any loss or damage whatsoever caused in the event that the Goods are fitted, serviced or operated incorrectly, or adapted for use other than the purpose that the Goods were intended for, or any part thereof howsoever arising.</p> <p>The Supplier shall accept no responsibility for work undertaken by any third party contractor employed by the Supplier. If the Client believes that they have any claim in relation to works undertaken by that third party then said claim must be made against the third party contractor in the first instance.</p> <p>Access</p> <p>The Client shall ensure that the Supplier has clear and free access to the worksite at all times to enable them to undertake the Services. It is the Client's responsibility to remove any non-fixed and/or fragile items from the worksite as the Supplier shall not be liable for any loss or damage to the Client's property, (including but not limited to fixtures or furnishings or pathways, driveways and concreted or paved or grassed areas) caused by unforeseen circumstances, acts of third parties or acts of God, unless due to the negligence of the Supplier.</p> <p>Hidden Services</p> <p>Prior to the Supplier commencing the Services the Client must advise the Supplier of the precise location of all hidden services on the site and clearly mark the same. The hidden 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.</p> <p>Whilst the Supplier will take all care to avoid damage to any hidden services the Client agrees to indemnify the Supplier 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 10.1.</p> <p>Compliance with Laws</p> <p>The Client and the Supplier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.</p> <p>The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.</p> <p>Title</p> <p>The Supplier and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid the Supplier all amounts owing to the Supplier; and</p> <p>(b) the Client has met all of its other obligations to the Supplier.</p> <p>Receipt by the Supplier 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. It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 12.1:</p> <p>(a) the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.</p> <p>(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 Supplier and must pay or deliver the proceeds to the Supplier on demand.</p> <p>(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 Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.</p> <p>(e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.</p> <p>(f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.</p> <p>(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 Supplier.</p> <p>(h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>Personal Property Securities Act 2009 ("PPSA")</p> <p>In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>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 obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.</p> <p>The Client undertakes to:</p> <p>(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 Supplier may reasonably require to;</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Supplier 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;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;</p> <p>(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 Supplier;</p> <p>(e) immediately advise the Supplier 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.</p> <p>The Supplier 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.</p> <p>The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p>
--	---	--

Please note that a larger print version of these terms and conditions is available from the Supplier on request.

Verge Safety Barriers Pty Ltd – Terms & Conditions of Trade

- 13.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 17.4 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of the Supplier 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).
- 14.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in 18.1 exercising the Supplier's rights under this clause.
- 14.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Supplier 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 18.3 defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Goods.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without 18.4 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**).
- 15.3 The Supplier acknowledges that nothing in these terms and conditions purports to 19.1 modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non- 19.1 Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is 19.1 limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is 19.1 unable to do so, the Supplier may refund any money the Client has paid for the Goods.
- 15.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability 19.1 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 Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not 19.2 manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 15.1; and
 - (b) the Supplier 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 19.1 is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, the Supplier shall not 19.1 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 19.3 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 Supplier;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 In the case of second hand Goods, unless the Client is a consumer under the CCA, 19.4 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 Supplier 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 Supplier 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 15.10.
- 15.11 The Supplier may in its absolute discretion accept non-defective Goods for return in 19.5 which case the Supplier may require the Client to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 15.12 Notwithstanding anything contained in this clause if the Supplier is required by a law 19.6 to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 16. Intellectual Property**
- 16.1 Where the Supplier has designed, drawn or developed Goods for the Client, then the 19.7 copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 16.2 The Client warrants that all designs, specifications or instructions given to the 19.7 Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 16.3 The Client agrees that the Supplier may (at no cost) use for the purposes of 19.7 marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.
- 17. Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes 19.7 due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from 19.7 and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Supplier may have under this Contract, if 19.7 a Client has made payment to the Supplier, 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 Supplier under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 19.9 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion 19.10 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 Supplier;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes 19.11 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 19.11 appointed in respect of the Client or any asset of the Client.
- Cancellation**
- 18.1 Without prejudice to any other remedies the Supplier may have, if at any time the 20.1 Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 18.2 The Supplier may cancel any contract to which these terms and conditions apply or 20.2 cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.2 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 Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21.1 Cancellation of orders for Goods made to the Client's specifications, or for non-21.1 stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- Privacy Policy**
- 19.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. The Supplier 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 21.2 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 Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients' 22.1 Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier will notify the Client 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 Client by written consent, unless subject to an operation of law.
- Notwithstanding clause 19.1, privacy limitations will extend to the Supplier in respect 22.1 of Cookies where transactions for purchases/orders transpire directly from the Supplier's website. The Supplier 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 Supplier when the Supplier sends an email to the 22.1 Client, so the Supplier may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, 22.1 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 Supplier's website.
23. The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a 23.1 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 23.2 applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.
- The Client agrees that the Supplier may exchange information about the Client with 23.1 those credit providers and with related body corporates 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 24.1 account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment 24.2 history in the preceding two (2) years.
- The Client consents to the Supplier being given a consumer credit report to collect 24.1 overdue payment on commercial credit.
- The Client agrees that personal credit information provided may be used and retained 24.1 by the Supplier 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 Client's credit, payment and/or status in 24.3 relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit 24.4 facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- The Supplier may give information about the Client to a CRB for the following 19.7 purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client 24.5 including credit history.
- The information given to the CRB may include:
- (a) Personal Information as outlined in 19.3 above;
 - (b) name of the credit provider and that the Supplier is a current credit provider to 24.6 the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. 24.8 date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or 24.9 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 Client no longer has any overdue 24.10 accounts and the Supplier 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 Supplier, the Client has committed a 24.8 serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than 24.8 one hundred and fifty dollars (\$150).
- The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the Personal Information about the Client retained by the Supplier and 24.8 the right to request that the Supplier correct any incorrect Personal Information; and
 - (b) that the Supplier does not disclose any Personal Information about the Client for 24.8 the purpose of direct marketing.
- The Supplier will destroy Personal Information upon the Client's request (by e-mail) 24.8 or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- The Client can make a privacy complaint by contacting the Supplier via e-mail. The 24.8 Supplier 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- Unpaid Seller's Rights**
- Where the Client has left any item with the Supplier for repair, modification, exchange 24.8 or for the Supplier to perform any other service in relation to the item and the Supplier has not received or been tendered the whole of any monies owing to it by the Client, the Supplier shall have, until all monies owing to the Supplier 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 24.8 any legislation applicable to the sale or disposal of uncollected goods.
- The lien of the Supplier shall continue despite the commencement of proceedings, or 24.8 judgment for any monies owing to the Supplier having been obtained against the Client.
- Service of Notices**
- Any written notice given under this Contract shall be deemed to have been given and 24.8 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 24.8 Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in 24.8 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.
- Any notice that is posted shall be deemed to have been served, unless the contrary is 24.8 shown, at the time when by the ordinary course of post, the notice would have been delivered.
- Trusts**
- If the Client at any time upon or subsequent to entering into the Contract is acting in 24.8 the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or 24.8 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 24.8 the Contract 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 Supplier (the Supplier will not 24.8 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.
- Building and Construction Industry Security of Payments Act 1999**
- At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods 24.8 and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- Nothing in this Contract is intended to have the effect of contracting out of any 24.8 applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- General**
- Any dispute or difference arising as to the interpretation of these terms and conditions 24.8 or as to any matter arising hereunder, shall be submitted to, and settled by, arbitration in accordance with the Commercial Arbitration Act 2010 or its replacement(s).
- The failure by either party to enforce any provision of these terms and conditions 24.8 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 24.8 impaired.
- These terms and conditions and any contract to which they apply shall be governed 24.8 by the laws of New South Wales the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Newcastle Courts in that state.
- Subject to clause 15 the Supplier shall be under no liability whatsoever to the Client 24.8 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which 24.8 under no circumstances shall exceed the Price of the Goods).
- The Supplier may licence and/or assign all or any part of its rights and/or obligations 24.8 under this Contract without the Client's consent.
- The Client cannot licence or assign without the written approval of the Supplier.
- The Supplier may elect to subcontract out any part of the Services but shall not be 24.8 relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- The Client agrees that the Supplier may amend their general terms and conditions for 24.8 subsequent future contracts with the Client by disclosing such to 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 Supplier to provide Goods to the Client.
- Neither party shall be liable for any default due to any act of God, war, terrorism, 24.8 strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- Both parties warrant that they have the power to enter into this Contract and have 24.8 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.