

TERMS AND CONDITIONS

1. Definitions used in these Terms

- 1.1 **CCA** means the *Competition and Consumer Act 2010* (Cth.).
- 1.2 **CRB** means credit reporting body.
- 1.3 **Dispute** means a dispute or difference of opinion between You and Us regarding the construction of these Terms, Your or Our rights or obligations under these Terms, or the performance or non-performance of these Terms.
- 1.4 **Dispute Notice** means a notice given under clause 18.2.
- 1.5 **Force Majeure Event** means an event or circumstance including any natural disaster, interruption to essential services, epidemic or pandemic, act of terrorism, deliberate vandalism, riot, civil disturbance, industrial dispute or strike, to the extent that such event or circumstance is outside the reasonable control of the person claiming the event or circumstance has occurred.
- 1.6 **Goods** means goods supplied by Us to You.
- 1.7 **Insolvency Event** means, in relation to a person, being in liquidation or provisional liquidation or under administration, having a controller or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act 2001* (Cth.) to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, the taking of any step that could result in the person becoming an insolvent under administration, entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event under the law of any applicable jurisdiction.
- 1.8 **Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names and inventions, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable.
- 1.9 **Invoice** means an invoice issued by Us relating to Goods and Services provided by Us to You.
- 1.10 **Loss** means any liability, loss, damage, cost or expense.
- 1.11 **Material** means any literature, catalogue or other advertising material, sample, example, specification, dimension, measurement or description.
- 1.12 **Non-Excluded Guarantee** means a guarantee or warranty (including the statutory guarantees under the CCA) which under applicable State, Territory or Commonwealth law (including the CCA) is implied into these Terms.
- 1.13 **PPSA** means the *Personal Property Securities Act 2009* (Cth.).
- 1.14 **PPSR** means the Personal Property Securities Register under the PPSA.
- 1.15 **Price** means the price payable (plus any GST where applicable) for Goods and Services as agreed between Us and You in accordance with clause 6.
- 1.16 **Quote** means a quote issued by Us relating to Goods and Services proposed to be provided by Us to You. A Quote will ordinarily be in writing, but it may take a different form.
- 1.17 **Security of Payment Act** means the *Building and Construction Industry Security of Payment Act 2002* (Vic.).
- 1.18 **Services** means services provided by Us to You.
- 1.19 **Terms** means these standard terms and conditions of service as they exist from time to time.
- 1.20 **We, Us or Our** means Van Wyk Electric, its successors and assigns or any person acting on behalf of and with the authority of Van Wyk Electric.
- 1.21 **You** means the person receiving the Goods and Services as specified in any quote, invoice or other relevant document, and if there is more than one such person, each of them jointly and severally.

2. Interpretation

- 2.1 In these Terms headings and bold type are included for convenience only and do not affect interpretation, and:
 - (a) a reference to a word includes the singular and the plural of the word;
 - (b) a reference to a gender includes any gender;
 - (c) if a word or phrase is defined, then other parts of speech and grammatical forms of that word or phrase have a corresponding meaning;
 - (d) a reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
 - (e) a reference to a statute or regulation or a provision of a statute or regulation is a reference to that statute, regulation or provision as amended or replaced, and a reference to a statute includes all regulations issued under that statute;
 - (f) a reference to Goods and Services means either or both of them;
 - (g) no provision in these Terms will be construed adversely to a person solely on the ground that the person was responsible for the preparation of these Terms or that provision;
 - (h) a monetary reference is a reference to Australian currency;
 - (i) a word or term defined in the *Corporations Act 2001* (Cth) has the same meaning in these Terms;
 - (j) a word or term defined in the PPSA has the same meaning in these Terms where used in connection with the security interest registration regime under that Act; and
 - (k) a word or term defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in these Terms where used in connection with the GST imposed under that Act.
- 2.2 Specifying anything in these Terms after the words **including, includes, for example** or a similar expression does not limit what else is included unless there is express wording to the contrary.

3. Acceptance

- 3.1 You agree to these Terms upon accepting a Quote issued by Us. Acceptance can be communicated in writing (including by giving Us an acceptance of quote or You issuing a purchase order), verbally, or by conduct.

- 3.2 These Terms may be amended:
- (a) by Us where We consider the amendment is not materially or unfairly adverse to Your interests, in which case the amended Terms will be made available on Our website (but a failure to do so does not affect the validity of the amendment); or
 - (b) otherwise – by agreement in writing between You and Us, each person acting reasonably.
- 3.3 These Terms prevail to the extent of any inconsistency with any other document or agreement, other than an inconsistency specified in the 'Additional terms' (or equivalent) section of any relevant Quote.
- 3.4 You warrant that all information given by or on behalf of You to Us in relation to these Terms and any application for credit, has been true, complete, correct, and not misleading or deceptive in any material way, and You undertake to notify Us if any such information becomes materially untrue, incomplete, incorrect, or misleading or deceptive.
- 3.5 If You are acting as trustee of a trust in agreeing to these Terms, You warrant and agree that You:
- (a) have the power to agree to these Terms, and that in doing so, You will be bound by them as trustee;
 - (b) are permitted to comply with these Terms under the trust deed of the relevant trust; and
 - (c) are entitled to be indemnified out of the relevant trust assets for your liabilities under these Terms.

4. Delivery of Goods and provision of Services

- 4.1 Delivery of Goods is taken to occur at the time that We or Our nominated carrier delivers those Goods to Your nominated address even if that is not Your address or You are not present at that address at the time of delivery.
- 4.2 Unless otherwise specified in the relevant Quote, the cost of delivery of Goods in accordance with Our usual delivery practices is included in the Price, but any special or additional packaging or delivery arrangements requested by You, may be invoiced by Us in addition to the Price.
- 4.3 Subject to clause 4.4, the nature of the relevant Services, and any other agreement between us, We must commence the provision of Services as soon as reasonably practicable.
- 4.4 The commencement date for Services and/or the completion date for Services will be delayed or extended (as appropriate) by whatever time We reasonably nominate by written notice to You where a Force Majeure Event causes a delay in the provision of those Services, including a delay caused by any failure by You to:
- (a) make a selection or notify Us of something;
 - (b) have all relevant premises ready for the provision of those Services; or
 - (c) notify Us that the premises are ready for the provision of those Services.
- 4.5 We may deliver Goods in separate instalments. Each separate instalment must be invoiced and paid for in accordance with the relevant Quote and these Terms.
- 4.6 Any time specified by Us for delivery of Goods is an estimate only and We are not liable for any Loss suffered or incurred by You as a result of delivery being later than the time specified. However, You and We agree to use all reasonable endeavours to enable Goods to be delivered at the time and to the place anticipated.
- 4.7 If We are unable to supply Goods as anticipated solely due to Your conduct, We may charge a reasonable fee for redelivery and storage.
- 4.8 You acknowledge and agree that the supply of Goods is subject to availability and if, for any reason, particular Goods are not available, or become unavailable, We may (acting reasonably) source substitute Goods and then vary the Price to reflect the substitution.
- 4.9 You acknowledge and agree that any Material that We provide to You prior to any Quote or in a Quote is illustrative only and may only be by way of a general description of a type of goods which accord with relevant industry standards. We must use reasonable efforts to ensure Material that We provide to You is reasonably accurate, but We are not required to ensure that Goods and Services provided are identical with goods and services in any Material.
- 4.10 Subject to law, We are not liable for Goods provided they comply with generally accepted industry standards.
- 4.11 If You provide Us with any Material relating to Goods or Services, We will rely on the accuracy of all such Material. You acknowledge and agree that in the event that any such Material is inaccurate, incomplete, misleading or otherwise defective, We have no liability or responsibility for any Loss suffered or incurred by You as a result.
- 4.12 You acknowledge and agree that it is Your responsibility to ensure that all of Your buildings, fixtures, plant, equipment and other fittings which are involved in the provision of Goods and Services by Us:
- (a) are of the correct type, size, rating, standard, quality, colour and finish;
 - (b) conform with all relevant Australian standards and local statutory requirements, including health and safety regulations; and
 - (c) are as specified in the specifications, drawings, plans and other material upon which We based the relevant Quote.
- 4.13 You must ensure that We and Our personnel have clear, timely and free access to every premises and worksite required to provide the Goods and Services as envisaged. We are not liable for any loss or damage to any premises or worksite (including damage to pathways, driveways and concreted, paved or grassed areas) except to the extent such loss or damage is caused by Our negligence.

5. Risk

- 5.1 Risk of damage to or loss of Goods passes to You when delivery occurs under clause 4.1, and You should consider insuring Goods prior to their delivery to You.
- 5.2 If any Goods are damaged or destroyed following delivery to You but prior to title passing to You under clause 6, We are entitled to receive all insurance proceeds payable in respect of those Goods. The production by Us of these Terms and Your acceptance of the relevant Quote, is sufficient evidence of Our right to receive the insurance proceeds without the need for any insurer or other person dealing with Us to make further enquiries.
- 5.3 If You request that We leave Goods outside Our premises for collection, or deliver Goods to an unattended location, such Goods are at Your sole risk when left or delivered.

6. Title

- 6.1 Title in particular Goods does not pass to You:
- (a) until You have paid all amounts owing to Us in relation to those Goods and associated Services provided; and
 - (b) at the relevant time You have fully complied with all of Your other obligations under these Terms.
- 6.2 Until title in particular Goods passes to You under clause 6.1:
- (a) You are only a bailee of those Goods and must promptly return them to Us upon request;

- (b) You hold the benefit of Your insurance of those Goods on trust for Us and must pay to Us the proceeds of any insurance claim in the event of those Goods being lost, damaged or destroyed;
- (c) You must not sell, dispose of, or otherwise part with possession of those Goods other than in the ordinary course of business, and in any case, for no less than full market value. If You sell, dispose of or otherwise part with possession of those Goods, You must hold the proceeds of any such conduct on trust for Us and must promptly pay the proceeds to Us on demand;
- (d) You may only convert or process those Goods or intermix them with other goods when absolutely necessary, and if You do so, You hold the resulting product on trust for Us and must promptly sell, dispose of or return the resulting product to Us as We direct;
- (e) You irrevocably authorise Us and/or our nominated representatives to enter any premises where We believe those Goods to be kept and to recover possession of those Goods, and You must provide all reasonable assistance in this regard;
- (f) We may recover possession of those Goods in transit whether or not delivery to You has occurred;
- (g) You must not charge or grant any encumbrance over those Goods, nor grant nor otherwise give away any interest in those Goods; and
- (h) We may commence proceedings to recover the Price for those Goods when sold despite title not yet having passed to You.

7. Price and payment

- 7.1 Subject to these Terms, the Price for relevant Goods and Services is, at Our absolute discretion:
- (a) as set out in the relevant Invoice; or
 - (b) as set out in the relevant Quote.
- 7.2 We may, acting reasonably, vary a Price:
- (a) if a variation to the Goods which are to be provided is requested by You;
 - (b) where substitute Goods are sourced under clause 4.8;
 - (c) if a variation to the Services originally proposed is requested by You;
 - (d) where additional Services must be provided where hidden or unidentifiable difficulties (including availability of machinery, work by any third party not being completed, or a change of design) become apparent after the provision of the Services has commenced; or
 - (e) where Our costs in providing the Goods and Services (including the cost of labour or materials, foreign exchange rate changes, domestic or international freight or insurance charges, or additional requests from You) increase beyond Our control.
- 7.3 A variation to a Price must be detailed in writing and may be shown as a variation on the relevant Invoice.
- 7.4 At our discretion, We may:
- (a) require a deposit before providing any Goods or Services commences; and
 - (b) specify that all or part of such a deposit is non-refundable.
- 7.5 Time for payment is of the essence, and a Price is payable by You on the date determined by Us, which may be:
- (a) by way of instalments or progress payments in accordance with any specification in the relevant Quote; or
 - (b) no later than 30 days following the end of the month in which the relevant Invoice is posted or emailed to Your address (whether or not You see the Invoice upon it being posted or emailed),
- but if no determination is made by Us, by the date which is 14 days following the date the relevant Invoice is given to You by Us.
- 7.6 Payment may be made by cheque, electronic funds transfer, or by any other method expressly agreed between You and Us.
- 7.7 In addition to the Price, You must pay any surcharge or similar amount applicable to Your payment method (including any credit card surcharge).
- 7.8 Other than where You pay cash, payment to Us is not regarded as having been made until the other form of payment has been honoured, cleared or otherwise recognised, such that We have actually received the payment.
- 7.9 You must not:
- (a) set-off against or deduct from, a Price, any sum owed or claimed to be owed to You by Us; or
 - (b) withhold payment of all or part of any Invoice because all or part of that Invoice is in dispute.
- 7.10 No allowance is made in a Price for the deduction of retentions. In the event that retentions are made, We may treat any retention deducted as placing Your account into default.
- 7.11 Unless otherwise stated, a Price does not include GST. In addition to a Price, You must pay Us an amount equal to any GST We must pay for any supply by Us under these Terms or any other agreement for the provision of the Goods and Services. You must pay GST without deduction or set-off of any other amounts, at the same time and on the same basis as You pay the relevant Price.
- 7.12 You must pay any other taxes, duties and levies that are applicable in relation to Goods or Services provided (or their provision itself) in addition to a Price, except where they are expressly included in that Price.

8. Compliance with laws and testing

- 8.1 We and You must comply with each law, bylaw and regulation of government, local and other public authorities to the extent applicable to the provision of the Goods and Services.
- 8.2 You must obtain (at Your expense) each licence and approval that is required in relation to the provision of the Goods and Services.
- 8.3 You must ensure that every premises and worksite at which Goods and Services are provided complies at all times with all workplace and occupational health and safety laws, building/construction site regulations and any other relevant safety standards, laws and regulations.
- 8.4 You must ensure that all personnel, other than Our personnel, at each premises or worksite at which Goods and Services are provided comply with all applicable laws, including bullying, discrimination and harassment laws.
- 8.5 All work undertaken by Us will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under applicable electrical safety regulations. All cabling work will comply with relevant Australian and New Zealand Wiring rules.
- 8.6 If You require any additional testing to be carried out at a premises or worksite at which Goods and Services are provided, or at Our premises, all costs associated with such testing must be paid by You and We may include them in the relevant Invoice.

9. PPSA

- 9.1 You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA and create a security interest in all Goods and/or collateral (account) (being a monetary obligation of You to Us for Services) that have previously been supplied and that will be supplied in the future by Us to You.
- 9.2 You must:
- (a) promptly sign any further documents and provide any further information which We reasonably require to:
 - (1) register a financing statement or financing change statement in relation to a security interest on the PPSR;
 - (2) register any other document required to be registered by the PPSA; or
 - (3) correct a defect in a statement or document referred to in clause 9.2(a)(1) or 9.2(a)(2);
 - (b) indemnify, and upon demand reimburse, Us for any expenses incurred by Us in registering a financing statement or financing change statement on the PPSR or releasing any charged Goods;
 - (c) not register, or permit to be registered, a financing change statement in respect of a security interest without Our prior written consent;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to any Goods and/or collateral (account) in favour of any third party without Our prior written consent; and
 - (e) immediately advise Us of any material change in Your business practices of selling Goods which would or may result in a change in the nature of proceeds derived from such sales.
- 9.3 You and We agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 9.4 You waive Your rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.5 You waive Your rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.6 Unless otherwise agreed in writing by Us, You waive Your right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.7 You must unconditionally and promptly ratify any action taken by Us under this clause 9.
- 9.8 Subject to any express provision to the contrary in these Terms (including this clause 9) nothing in these Terms has, or is intended to have, the effect of contracting out of any of the provisions of the PPSA.

10. Security and charge

- 10.1 In consideration of Us agreeing to provide the Goods and Services, You charge all of Your right, title and interest (whether joint or several) in any land or other assets capable of being charged, owned by You either now or in the future, to secure the performance by You of Your obligations under these Terms (including the payment of any money).
- 10.2 You irrevocably appoint Us and each director of Us as Your attorney to undertake any conduct to give effect to this clause 10 including signing any document on Your behalf.

11. Defects, warranties, returns and the CCA

- 11.1 You must inspect Goods on their delivery and must within 7 days of delivery notify Us in writing of any evident defect or damage, shortage in quantity, or failure to comply with the relevant description or Quote. You must also notify Us in writing of any other alleged defect in Goods as soon as reasonably practicable after such defect becomes evident. Upon such notification You must allow Us to inspect the relevant Goods.
- 11.2 Under applicable State, Territory and Commonwealth law (including the CCA), the Non-Excluded Guarantees are implied into these Terms. Nothing in these Terms does or purports to modify or exclude any Non-Excluded Guarantee.
- 11.3 Except as expressly set out in these Terms, or by virtue of the Non-Excluded Guarantees, We do not give any warranty or make any representation under these Terms or otherwise including in relation to the quality or suitability of the Goods and Services. Our liability in respect of Goods and Services under any warranty or representation is hereby limited to the fullest extent permitted by law.
- 11.4 If You are a consumer within the meaning of the CCA, Our liability for any defect or damage in the Goods or Services is limited to the extent permitted by section 64A of Schedule 2 of the CCA.
- 11.5 If We must replace Goods under this clause 11 or the CCA, but We are unable to do so, We may refund any money You have paid for the relevant Goods.
- 11.6 If You are not a consumer within the meaning of the CCA, Our liability for any defect or damage in the Goods or Services is:
- (a) limited to the value of any express warranty provided to You by Us at Our sole discretion;
 - (b) limited to any warranty to which We are entitled, if We did not manufacture the relevant Goods; and
 - (c) otherwise negated absolutely.
- 11.7 Subject to this clause 11, returns will only be accepted if:
- (a) You have complied with clause 11.1;
 - (b) We have agreed that the Goods or Services are defective;
 - (c) relevant Goods are returned within a reasonable time at Your cost (if that cost is not significant); and
 - (d) relevant Goods are returned in as close a condition as is possible to that in which they were delivered.
- 11.8 Notwithstanding clauses 11.1 to 11.7 but subject to the CCA, We are not liable for any defect or damage to the extent it was caused by, or arose as a result of:
- (a) You failing to properly maintain or store any Goods;
 - (b) unauthorised works or modifications undertaken by You, at Your direction or with Your consent;
 - (c) You using Goods for any purpose other than that for which they were designed;
 - (d) You continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (e) You failing to follow any instructions or guidelines provided by Us; or
 - (f) fair wear and tear, any accident, or act of God.
- 11.9 Notwithstanding anything in this clause 11, if We are required by a law to accept a return then We will only accept a return on the conditions, and in the manner, imposed by that law.
- 11.10 Nothing in this clause 11 limits anything else in clause 11, by implication or otherwise.

12. Intellectual Property Rights

- 12.1 Where We have designed, created or developed Goods for You, or provided Services, all Intellectual Property Rights created in doing so are and remain Our property. No such Intellectual Property Rights may be used by You without Our prior written consent.
- 12.2 You irrevocably appoint each of Our directors and officers severally to execute any document to effect an assignment of Intellectual Property Rights to Us to give effect to clause 12.1.
- 12.3 You warrant that all Intellectual Property Rights given to Us by You in relation to the Goods or Services will not cause Us or our personnel to infringe any Intellectual Property Rights of any other person or the moral rights of any person as conferred by the *Copyright Act 1968* (Cth).
- 12.4 You irrevocably licence Us to use Your name and logo, and permit Us to describe the work We undertake for You, for the purposes of Our marketing or the entry into of any competition.

13. Default

- 13.1 Interest on overdue Invoices accrues daily from the date when payment became due, until the date of payment, at 2% more than the rate for the time being that the Contractor pays (or would pay if it borrowed money on ordinary prevailing commercial terms) to its bankers, as determined by the Contractor (acting reasonably), and compounds monthly.
- 13.2 We may suspend the provision of Goods and Services during any period in which You are in default of a material provision of these Terms (and each provision under which You are obliged to make a payment to Us is deemed a material provision for these purposes), without any liability to You.
- 13.3 Without prejudice to Our other remedies under these Terms or at law, We may, without any liability to You, cancel all or any part of any order from You which is only partially filled if:
 - (a) any money payable by You to Us under these Terms or otherwise becomes overdue;
 - (b) in Our reasonable opinion, We suspect You will be unable to make a payment under these Terms or otherwise when it falls due;
 - (c) You exceed any applicable credit limit provided by Us; or
 - (d) You experience an Insolvency Event.
- 13.4 Upon any cancellation under clause 13.3, all amounts owing by You to Us, whether or not due for payment, become immediately payable.
- 13.5 We may cancel any contract to which these Terms apply or cancel the provision of any Goods or Services at any time before they are provided by giving written notice to You. On giving such notice We must repay to You any money paid by You for the Goods and Services. We are not liable for any Loss suffered or incurred by You in relation to such a cancellation.
- 13.6 Subject to clause 13.7, You may cancel any contract to which these Terms apply or cancel the provision of any Goods or Services at any time before they are provided by giving written notice to Us. On giving such notice, You become liable for any Loss incurred (whether directly or indirectly) by Us as a result of the cancellation (including any loss of profits). You must promptly pay a sum equal to any such Loss upon request from Us specifying the nature and amount of the Loss.
- 13.7 You may not cancel a contract which involves production of Goods made to Your particular specifications, or for non-stocklist items.
- 13.8 You must immediately advise Us in writing if it appears likely or reasonably possible that You, or a related or affiliated entity of Yours, will experience an Insolvency Event.

14. Privacy

- 14.1 Any privacy policy We have put in place in relation to our collection, storage and use of personal information is available either from Our website, or will be sent to You on request from You.
- 14.2 You consent to Us obtaining a credit report from a CRB containing personal credit information (including the name, address, date of birth, occupation, previous credit applications and credit history) of You or any of your directors, officers and guarantors in relation to any credit provided by Us.
- 14.3 You consent to Us exchanging information about You with credit providers and their related bodies corporate for the following purposes:
 - (a) assessing an application by You;
 - (b) notifying other credit providers of a default by You;
 - (c) exchanging information with other credit providers as to the status of Your credit account with Us, where You are in default with other credit providers; or
 - (d) assessing Your creditworthiness including Your repayment history in the preceding 3 years.
- 14.4 You agree that personal credit information obtained by Us may be used and retained by Us for the following purposes:
 - (a) providing Goods and Services;
 - (b) analysing, verifying and/or checking Your credit, payment and/or other status in relation to the provision of Goods and Services;
 - (c) processing payment instructions, direct debit facilities and/or credit facilities requested by You;
 - (d) enabling the collection of amounts outstanding in relation to Goods and Services;
 - (e) otherwise performing these Terms; and
 - (f) other purposes agreed between You and Us or reasonably determined by Us.
- 14.5 We may give information about You to a CRB for the following purposes:
 - (a) to obtain a consumer credit report; and
 - (b) to allow the CRB to create or maintain a credit information file about You, including credit history.
- 14.6 The information We may give to a CRB includes:
 - (a) personal information as set out in clause 14.1;
 - (b) the name of the credit provider, or that We are a current credit provider to You;
 - (c) whether the credit provider is a licensee;
 - (d) the relevant type of consumer credit;
 - (e) details concerning Your application for credit or commercial credit (including the date of commencement and/or 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 60 days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that You no longer have any overdue accounts and We have been paid or otherwise discharged and all details surrounding that discharge (including dates of payments);
- (g) information that, in Our opinion, You have committed a serious credit infringement; and
- (h) advice that You have or had an overdue payment of more than \$150.

14.7 You may request that We:

- (a) provide You with a copy of any information about You or any of your directors, officers or guarantors, held by Us;
- (b) correct any incorrect information we hold about You or any of your directors, officers or guarantors; and
- (c) not disclose any personal information about You or any of your directors, officers or guarantors, for the purpose of direct marketing.

14.8 We will destroy personal information about You held by Us upon request by You provided that information is no longer required, unless that information is required to fulfil obligations under these Terms or required or permitted to be maintained and/or stored in accordance with applicable law or Our reasonable record-keeping practices.

14.9 You may make a privacy-related complaint by contacting Us. We will endeavour to respond to that complaint within 7 days and take all reasonable steps to make a decision on the complaint within a further 21 days. In the event that You are not satisfied with the decision, You can make a complaint to the Information Commissioner at www.oaic.gov.au.

15. Unpaid contractor's rights

15.1 Where You have left any item with Us for repair, modification, exchange or for Us to perform any other service in relation to the item and We have not received the whole of any monies owing to Us by You, We have, until all monies owing to Us are received:

- (a) a lien over the item; and
- (b) the right to retain or sell the item, any such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

15.2 Our lien continues despite the commencement of proceedings, or judgment for any monies owing to Us having been obtained against You.

16. Notification of changes

You must give Us not less than 7 days:

- (a) prior written notice of any proposed change of ownership in You (including in any corporate or trust entity); and/or
- (b) notice of any change that has occurred in Your details, including changes to Your name, address, phone or fax number, and email address.

17. Service of notices

17.1 Any notice given under these Terms must be in writing, and is deemed to have been given and received:

- (a) by handing it to the other person, in person;
- (b) by leaving it at the ordinary business address of the other person;
- (c) by sending it by registered post to the ordinary business address of the other person;
- (d) if sent by fax transmission to the ordinary business fax number of the other person – on receipt of confirmation of the transmission; or
- (e) if sent by email to the other person's last known email address – on sending, provided the sender's machine does not, within 1 hour, indicate that the email has not been sent.

17.2 Any notice that is posted is deemed to have been received at the time when the notice would have been delivered in the ordinary course of post.

18. Dispute resolution

18.1 Neither You or We may commence court proceedings in respect of a Dispute unless this clause 18 has been complied with.

18.2 If a Dispute arises, either You or We may give a notice to the other providing reasonable particulars of the Dispute, and we must use our respective reasonable endeavours to resolve the Dispute by negotiation.

18.3 If we are unable to resolve the Dispute by negotiation within 7 days of the date the relevant Dispute Notice was given, either You or We may refer the Dispute to mediation by a mediator:

- (a) agreed on by both of us; or
- (b) failing such agreement within a further 7 days, nominated by Resolution Institute ABN 69 008 651 232 at the request of either You or Us,

and in the event of any such referral both of us are deemed to have agreed to refer the Dispute to mediation.

18.4 Both You and We must comply with reasonable directions given by the Mediator as to the timing and conduct of the mediation.

18.5 The mediation will be held on a without prejudice basis and will not be binding on either of us unless we enter into an agreement to settle the Dispute.

18.6 Both You and We may appear at the mediation, make submissions, and be represented by a qualified legal practitioner.

18.7 Both You and We must bear our own costs in relation to the mediation and the costs of the Mediator must be borne by us in equal shares.

18.8 If the Dispute is not resolved within 14 days from the commencement of mediation, either You or Us may pursue any other dispute resolution process.

19. The Security of Payment Act

19.1 At Our sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Security of Payment Act may apply.

19.2 Nothing in these Terms has, or is intended to have, the effect of contracting out of any applicable provisions of the Security of Payment Act, except to the extent permitted by that Act where applicable.

20. Mutual indemnities and limitation of liability

20.1 You must indemnify Us and at all times keep Us indemnified against:

- (a) each action, proceeding and claim whatsoever that is brought against Us in relation to any injury, loss of life, loss or damage to any property; or

- (b) any other Loss,
suffered or incurred by Us directly in connection with any:
- (c) breach by You of these Terms or of any warranty or representation given by You in these Terms;
- (d) conduct of You or Your personnel (including misleading or deceptive conduct) in relation to the provision of Goods and Services under these Terms;
- (e) action undertaken by Us in rectifying defects in Material provided by You under clause 4.12; or
- (f) debt recovery action against You for non-payment of a sum payable under these Terms,
except to the extent that the particular action, proceeding, claim or Loss is caused by Our gross negligence or wilful default.

20.2 We must indemnify You and at all times keep You indemnified against:

- (a) each action, proceeding and claim whatsoever that is brought against You in relation to any injury, loss of life, loss or damage to any property; or
- (b) any other Loss,
suffered or incurred by You directly in connection with any:
- (c) breach by Us of these Terms or of any warranty or representation given by Us in these Terms; or
- (d) conduct of Us or Our personnel (including misleading or deceptive conduct) in relation to the provision of Goods and Services under these Terms,

except to the extent that the particular action, proceeding, claim or Loss is caused by Your gross negligence or wilful default.

- 20.3 Payment under an indemnity in clause 20.1 or 20.2 must be made whether or not legal proceedings are instituted, and if such proceedings are instituted, irrespective of the means, manner or nature of any settlement compromise or determination.
- 20.4 Neither You or We are liable under an indemnity in clause 20.1 or 20.2 for any indirect, special or consequential loss (including loss of profit and loss of reputation).
- 20.5 Subject to law, and notwithstanding anything else in these Terms, Our aggregate liability to You under these Terms is limited to the Price for the relevant Goods and Services provided directly in relation to the circumstances that gave rise to the liability.
- 20.6 To the extent permitted by law, any legislation relating to the apportionment of liability in relation to an action for damages (whether in contract, tort or otherwise) is excluded in relation to these Terms and the provision of Goods and/or Services.

21. Force majeure

21.1 Without limiting clause 4.4, if We or You are prevented in whole or in part from carrying out obligations under these Terms (other than an obligation to pay money) as a result of a Force Majeure Event, the affected person must promptly notify the other person. The notice must:

- (a) specify the obligations that cannot be performed;
- (b) fully describe the Force Majeure Event;
- (c) estimate the time during which the Force Majeure Event will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure Event.

Following this notice, and while Force Majeure Event continues, the obligations which cannot be performed (other than an obligation to pay money) because of the Force Majeure Event, are suspended.

- 21.2 The person that is prevented from carrying out its obligations under these Terms as a result of the Force Majeure Event must remedy the Force Majeure Event to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- 21.3 The person that is prevented from carrying out its obligations under these Terms as a result of the Force Majeure Event must take all action reasonably practicable to mitigate any loss suffered by the other person as a result of its failure to carry out its obligations under these Terms.

22. Trustee limitation of liability

- 22.1 If We contract with You in the capacity as trustee of a trust, a liability of Ours arising under or in connection with these Terms is limited to and can be enforced against Us only to the extent to which it can be satisfied out of the assets of the trust and to the extent to which We are actually indemnified for the liability by the trust. Subject to clauses 22.2 and 22.3, this limitation of Our liability applies despite any other provision of these Terms and extends to all Our liabilities and obligations (of any kind including for negligence, in tort, in equity, or under statute) in any way connected with these Terms or their performance, or any representation, warranty, conduct, agreement or transaction related to these Terms or their performance.
- 22.2 Clause 22.1 does not apply to any obligation or liability of Us to the extent that it is not satisfied because under the trust deed of the trust or by operation of law there is a reduction in the extent, or an extinguishment, of Our indemnification out of the assets of the trust, as a result of Our fraud, gross negligence, or breach of trust or duty (involving wilful default or lack of good faith).
- 22.3 You agree that no act or omission of Us (including any related failure to satisfy any liability or obligation in that capacity) will constitute fraud, gross negligence or breach of trust or duty of Us for the purposes of clause 22.2 to the extent to which the act or omission was caused or contributed to by any failure of You or any of Your personnel to fulfil obligations relating to Us or by any other act or omission of You or any of Your personnel.

23. General

- 23.1 The failure by You or Us to enforce any provision of these Terms shall not be a waiver of that provision, nor shall it affect that person's right to subsequently enforce that provision.
- 23.2 If any provision of these Terms is invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.3 These Terms and any contract to which they apply are governed by the laws of Victoria, and both You and We submit to the non-exclusive jurisdiction of the Courts of Victoria and the Courts that may hear appeals from those Courts.