Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Safe Workplace Solutions Pty Ltd and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

_____ ("the Client") [***Insert Company Name In Box Provided***]

I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:

1. **GUARANTEE** the due and punctual payment to the Supplier of all monies which are now owing to the Supplier by the Client and all further sums of money from time to time owing to the Supplier by the Client in respect of goods and services supplied or to be supplied by the Supplier to the Client or any other liability of the Client to the Supplier, and the due observance and performance by the Client of all its obligations contained or implied in any contract or agreement with the Supplier, including but not limited to the Terms & Conditions of Trade signed by the Client and annexed to this Guarantee and Indemnity. If for any reason the Client does not pay any amount owing to the Supplier, the Guarantor will immediately on demand pay the relevant amount to the Supplier. In consideration of the Supplier agreeing to supply the goods and/or services to the Client, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under this Guarantee and Indemnity (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to the Supplier registering any interest so charged. Furthermore, it is agreed by both parties that where the Guarantor is acting in the capacity as a trustee for a trust, then the Guarantor agrees to charge all its right title and interest in any land realty, or other assets capable of being charged in its own capacity and in its capacity as trustee and shall be subject to the PPSA Registration as stated above. The Guarantor irrevocably appoints the Supplier and each director of the Supplier as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Supplier may reasonably require to:
   (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
   (b) register any other document required to be registered by the PPSA or any other law; or
   (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Supplier on demand as a separate obligation against any liability (including but not limited to damages, costs, losses, and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Supplier in connection with:
   (a) the supply of goods and/or services to the Client; or
   (b) the recovery of monies owing to the Supplier by the Client including the enforcement of this Guarantee and Indemnity, and including but not limited to the Supplier's nominees contract default fee and legal costs; or
   (c) monies paid by the Supplier with the Client's consent in settlement of a dispute that arises or results from a dispute between, the Supplier, the Client, and a third party or any combination thereof, over the supply of goods and/or services by the Supplier to the Client.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT

3. **I/We have received, read, and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until all monies owing to the Supplier by the Client and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence, or neglect to sue on the Supplier's part (whether in respect of the Client or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Client's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
6. The liability under this Guarantee and Indemnity shall not be discharged, abrogated, prejudiced, or affected by:
   (a) any alteration, modification, variation or addition to any contract or agreement in respect of the supply of goods and/or services;
   (a) the liquidation, receivership, administration, bankruptcy, dissolution, compromise or scheme of arrangement in respect of the Client;
   (b) any other act, omission, or event which, but for this provision, might operate to discharge, impair, or otherwise affect any obligations under this Guarantee and Indemnity of any of the rights, powers or remedies conferred by this Guarantee and Indemnity or by law.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean, and refer to each of them individually and all of them together unless the context otherwise requires, the obligations and agreements on the part of the Guarantor, shall include the Guarantor's executors, administrators, successors and permitted assignments (where applicable) contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Client to the Supplier.**
9. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
10. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

For and on behalf of the Client I/We confirm I/We have read, understood, and accept the terms of this Guarantee and Indemnity, and I/We agree to be bound by this Guarantee and Indemnity.

GUARANTOR-1

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

GUARANTOR-2

SIGNED: _____

FULL NAME: _____

HOME ADDRESS: _____

DATE OF BIRTH: _____

SIGNATURE OF WITNESS: _____

NAME OF WITNESS: _____

OCCUPATION: _____

PRESENT ADDRESS: _____

EXECUTED as a Deed this day of 20____

Note: 1. If the Client is a proprietary limited company, the Guarantor(s) must be the director(s) of the company.
2. If the Client is a limited partnership, the Guarantor(s) must be the general partners.
3. If the Client is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).
4. If the Client is a club or incorporated society the Guarantor(s) should be the president and secretary or another committee member.

WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT

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Safe Workplace Solutions Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 **"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 any proposal, quotation, order, invoice, or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
(d) includes the Client's executors, administrators, successors, and permitted assigns.

1.2 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.3 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.4 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using the Supplier's 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 making enquiries via the website.**

1.5 **"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).

1.6 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

1.7 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 6 below.

1.8 **"Supplier"** means Safe Workplace Solutions Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Safe Workplace Solutions Pty Ltd.

2. Acceptance

2.1 The parties acknowledge and agree that:
(a) they have read and understood the terms and conditions contained in this Contract; and
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.

2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

2.4 The Client acknowledges and accepts 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.

2.5 In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery.

2.6 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Supplier's own knowledge and experience and shall be accepted without liability on the part of the Supplier. Where such advice or recommendations are not acted upon then the Supplier shall require the Client or their agent to authorise commencement of the Services in writing. The Supplier shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services. Accordingly, the Supplier offers no warranty in regard to the aforementioned.

2.7 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Supplier reserves the right to vary the Price with alternative Goods as per clause 6.2, subject to prior confirmation and agreement of both parties. The Supplier also reserves the right to halt all Services until such time as the Supplier and the Client agree to such changes. The Supplier shall not be liable to the Client for any loss or damage the Client suffers due to the Supplier exercising its rights under this clause.

2.8 These terms and conditions may be meant to be read in conjunction with the Supplier's Hire Form, and where the context so permits, the terms 'Services' or 'Goods' shall include any supply of Equipment, as defined therein.

2.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 7 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.

3.2 In circumstances where the Client is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Client Error**"). The Client must pay for all Goods it orders from the Supplier notwithstanding that such Goods suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take Delivery of such Goods. The Supplier is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

4. Change in Control

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, change of trustees, 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.

5. Credit Card Information

5.1 The Supplier will:
(a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by the Supplier;
(b) not disclose the Client's credit card details to any third party; and
(c) not unnecessarily disclose any of the Client's personal information, except is accordance with the Privacy Act (clause 18) or where required by law.

5.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Client which were not known at the time of the return of the Equipment, the Supplier is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

6. Price and Payment

6.1 At the Supplier's sole discretion, the Price shall be either:
(a) as indicated on any invoice provided by the Supplier to the Client upon placement of an order for Goods; or
(b) the Price as at the date of Delivery of the Goods according to the Supplier's current price list, as previously disclosed to the Client upon the Client's placement of an order for Goods; or
(c) 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.

6.2 The Supplier reserves the right to change the Price:
(a) if a variation to the Goods which are to be supplied is requested; or
(b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
(c) if during the course of the Services, the Goods are not or cease to be available from the Supplier's third party suppliers, then the Supplier reserves the right to provide alternative Goods; or
(d) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, poor weather conditions, limitations to accessing the site, obscured site/building defects, health hazards and safety equipment, hidden pipes and wiring in walls, delays in shipment etc.) which are only discovered on commencement of the Services; or
(e) in the event of increases to the Supplier in the cost of labour or materials (including, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Supplier in the cost of taxes, levies, freight and insurance charges which are beyond the Supplier's control.

6.3 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.

6.4 At the Supplier's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by the Supplier or as notified to the Client prior to the placement of an order for Goods.

6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
(a) on delivery of the Goods; or
(b) by way of instalments/progress payments in accordance with the Supplier's payment schedule; or
(c) the date specified on any invoice or other form as being the date for payment; or
(d) 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.

6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.

6.7 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.

6.8 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. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Supplier in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Supplier investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Supplier placing the Client's account into default and subject to default interest in accordance with clause 16.1.

6.9 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 agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

7.1 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 Supplier's address; or
(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.

7.2 The cost of Delivery will be payable by the Client in accordance with the quotation provided by the Supplier to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods.

7.3 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 because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If the 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.

8. Risk

8.1 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.

8.2 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.

8.3 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.

8.4 Any telecommunications connection required for the installation and/or maintenance of the Goods will be arranged and paid for by the Client unless otherwise agreed in writing.

8.5 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 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.

8.6 In the event that the Supplier discovers asbestos/hazardous materials whilst undertaking any Services the Supplier shall immediately advise the Client of the same and shall be entitled to suspend the Services pending a risk assessment in relation to those materials. The Client shall be liable for all additional costs (howsoever arising) incurred by the Supplier as a result of the discovery of asbestos/hazardous materials and/or any suspension of Services in relation thereto.

8.7 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.

8.8 The Client acknowledges that:
(a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Supplier's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the Contract, unless expressly stated as such in writing by the Supplier; and
(b) while the Supplier may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Supplier has given these in good faith, and are estimates industry prescribed estimates under optimal operating conditions; and
(c) it shall be the Client's responsibility to:
(i) ensure the fire protection system equipment is tested and maintained to full operational condition; and
(ii) ensure all electronically protected areas are free from obstacles which may impair the operation of the system.

8.9 The Client accepts that electronic systems, smoke, heat and like detectors installed to / at their premises:
(a) are for monitoring and detection purposes and should not be seen as a lifesaving device;
(b) does not guarantee the site will be free from malicious damage or losses caused by attack, break and/or enter; and
(c) do not guarantee that the site will be free from any water damage as a result of said equipment being used either in a correct manner or not, or damage or loss caused by fire or smoke.

9. Client's Responsibilities

9.1 Prior to the Supplier commencing the Services the Client must advise the Supplier of the precise location of all services on the site and clearly mark the same. The mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the site. Whilst the Supplier will take all care to avoid damage to any underground 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 this clause 9.1.

9.2 It is the Client's responsibility to:
(a) ensure that the Supplier has clear and free access to the site at all times to enable them to deliver the Goods. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grass areas) unless due to the negligence of the Supplier;
(b) remove any furniture or personal items from the vicinity of the Services, and agrees that the Supplier shall not be liable for any damage caused to those items through the Client's failure to comply with this clause; and
(c) supply electricity, temporary lighting, toilet, eating and first aid facilities if so required.

10. Compliance with Laws

10.1 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 Goods/Services including any work health and safety (WHS) laws relating to the site and any other relevant safety standards or legislation.

10.2 Unless otherwise agreed in writing, the Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.

11. Title

11.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid the Supplier all amounts owing to the Supplier; and
(b) the Client has met all of its other obligations to the Supplier.

11.2 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.

11.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 11.1:
(a) the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
(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;
(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;
(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;
(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;
(f) the Supplier 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 Supplier; and
(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.

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

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

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

12.3 The Client undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
(ii) register any other document required to be registered by the PPSA; or
(iii) correct a defect in a statement referred to in clause 12.3(a)(i) or 12.3(a)(ii).
(b) indemnify, and upon demand reimburse, the 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;
(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of the Supplier; and
(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.

12.4 The 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.

12.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

12.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

12.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 12.3 to 12.5.

12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. Security and Charge

13.1 In consideration of the Supplier agreeing to supply the Goods and/or provide its Services, the Client grants the Supplier a security interest by way of a floating charge (registerable by the Supplier pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit the Supplier to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).

13.2 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 exercising the Supplier's rights under this clause.

Please note that a larger print version of these terms and conditions is available from the Supplier on request. #26866 © Copyright – EC Credit Control 1999 - 2025

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13.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 11.1,12.2 and 13.1 as applicable, is deemed insufficient by the Supplier to secure the repayment of monies owed by the Client to the Supplier, the Client hereby grants the Supplier a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money.

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

14.1 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 defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Goods.

14.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

14.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the 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.

14.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.

14.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.

14.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:
(a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods; and/or
(c) otherwise negated absolutely.

14.8 Subject to this clause 14, returns will only be accepted provided that:
(a) the Client has complied with the provisions of clause 14.1; and
(b) the 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 is not significant); and
(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Supplier 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 Supplier; and/or
(e) fair wear and tear, any accident, or act of God.

14.10 The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.

14.11 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return, then the Supplier will only accept a return on the conditions imposed by that law.

14.12 Subject to clause 14.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

15. Intellectual Property

15.1 Where the Supplier has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.

15.2 The Client warrants that all designs, specifications, or instructions given to the 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.

15.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.

16. Default and Consequences of Default

16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Client owes the Supplier any money, the Client shall indemnify the Supplier from and against all costs and disbursements:
(a) incurred; and/or
(b) which would be incurred and/or
(c) for which by the Client would be liable;
in regard to legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under these terms and conditions, internal administration fees, the Supplier's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.

16.3 Further to any other rights or remedies the Supplier may have under this Contract, if 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 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

16.4 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 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 or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

17. Cancellation

17.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions **("the Breaching Party")** the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

17.2 If the Supplier, due to reasons beyond the Supplier's reasonable control, is unable to deliver any Goods and/or Services to the Client, the Supplier may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services 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 and/or Services. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

17.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order, prior to the Goods being dispatched. If the Client cancels Delivery in accordance with this clause 17.3, the Client will not be liable for the payment of any costs of the Supplier, except where a deposit is payable in accordance with clause 6.4.

17.4 However, cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

18. Privacy Policy

18.1 All emails, documents, images, or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 18.4, 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 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 Client's 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.

18.2 Notwithstanding clause 18.1, privacy limitations will extend to the Supplier in respect of Cookies where the Client utilises the Supplier's website to make enquiries. 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 Client, so the Supplier may collect and review that information ("collectively Personal Information").
If the Client consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Client may manage and control the Supplier's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

18.3 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.

18.4 The Client agrees that the Supplier may exchange information about the Client with 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 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 history in the preceding two (2) years.

18.5 The Client consents to the Supplier being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

18.6 The Client agrees that personal credit information provided may be used and retained 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 relation to the provision of Goods; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.

18.7 The Supplier may give information about the Client to a CRB for the following purposes:
(a) to obtain a consumer credit report;
(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

18.8 The information given to the CRB may include:
(a) Personal Information as outlined in 18.4 above;
(b) name of the credit provider and that the Supplier is a current credit provider to 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. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults (provided the Supplier is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue 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 serious credit infringement; or
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

18.9 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 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 the purpose of direct marketing.

18.10 The Supplier will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

18.11 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Unpaid Seller's Rights

19.1 Where the Client has left any item with the Supplier for repair, modification, exchange 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 any legislation applicable to the sale or disposal of uncollected goods.

19.2 The lien of the Supplier shall continue despite the commencement of proceedings, or judgment for any monies owing to the Supplier having been obtained against the Client.

20. Service of Notices

20.1 Any written notice given under this Contract shall be deemed to have been given and received:
(a) by handing the notice to the other party, in person;
(b) by leaving it at the address of the other party as stated in this Contract;
(c) by sending it by registered post to the address of the other party as stated in this Contract;
(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission; or
(e) if sent by email to the other party's last known email address.

20.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

21. Trusts

21.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a 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 subsequently may have against the Trust, the trustees and the trust fund;
(b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and 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 during the term of the Contract without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
(i) the removal, replacement or retirement of the Client as trustee of the Trust;
(ii) any alteration to or variation of the terms of the Trust;
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust fund or trust property.

22. Building and Construction Industry Security of Payments Act 2009

22.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.

22.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of Tasmania, except to the extent permitted by the Act where applicable.

23. General

23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.

23.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of Tasmania and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).

23.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.

23.5 The Client cannot licence or assign without the written approval of the Supplier.

23.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the 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.

23.7 The Client agrees that the Supplier may amend their general terms and conditions for 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.

23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Supplier, once the parties agree that the Force Majeure event has ceased.

23.9 Both parties warrant that they have the power to enter this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

23.10 This Contract and any subsequent hire agreement between the Supplier and the Client, shall constitute as the entire agreement between the Supplier and the Client, and the Client hereby acknowledges that no reliance is placed on any representation made by the Supplier that is not embodied in this Contract.

23.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.

23.12 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.

Please note that a larger print version of these terms and conditions is available from the Supplier on request. #26866 © Copyright – EC Credit Control 1999 - 2025