

Terms & Conditions of Trade



1. Definitions

1.1. "Supplier" means Aussie Lifts Pty Ltd ACN 618 522 277, its successors and assigns or any person acting on behalf of and with the authority of Aussie Lifts Pty Ltd ACN 618 522 277.

1.2. "Client" means the person/s buying the Goods as specified in any invoice, document or order, and if there is more than one Client is a reference to each Client jointly and severally.

1.3. "Delivery" of the Goods is taken to occur at the time that:

- the Client (or the Client's) nominated carrier takes possession of the Goods at the Supplier's address; or
- 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.

1.4. "Goods" or "Services" 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).

1.5. "Major Service" means a replacement of seals in the rams for water lifts only.

1.6. "Price" means the Price payable for the Goods as agreed between the Supplier and the Client in accordance with clause 5 below.

1.7. "Payment Details" means the Payment Details agreed between the Supplier and the Client under the Supply and Installation Proposal & Agreement.

1.8. "Supply and Installation Proposal & Agreement" means the Supply and Installation Proposal & Agreement agreed between the Supplier and the Client.

2. Acceptance

2.1. The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.

2.2. These terms and conditions may only be amended with the Supplier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.

2.3. The Client accepts that a lead time may apply to the supply of finished Goods.

3. Electronic Transactions (Queensland) Act 2001

Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Change in Control

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

5. Price and Payment

5.1. The Price shall be as indicated in the Supply and Installation Proposal & Agreement.

5.2. The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as poor weather conditions, limitations to accessing the site, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to the Supplier in the cost of materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.

5.3. At the Supplier's sole discretion, a non-refundable deposit may be required.

5.4. 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:

- on delivery of the Goods;
- before delivery of the Goods;
- by way of instalments/progress payments in accordance with the Payment Details;
- twenty-eight (28) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- the date specified on any invoice or other form as being the date for payment; or
- 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.

5.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two and a half percent (2.5%) of the transaction), or by any other method as agreed to between the Client and the Supplier.

5.6. 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.

6. Delivery of Goods

6.1. At the Supplier's sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.

6.2. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

6.3. The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.4. Any time or date given by the Supplier to the Client is an estimate only. The Client must still accept delivery of the Goods even if late and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.

7. Risk

7.1. Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

7.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the 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.

7.3. 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.

7.4. The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical or other connections are of suitable capacity to handle the Goods once installed.

8. Dimensions, Plans and Specifications

8.1. All customary building industry tolerances shall apply to the dimensions and measurements of the Goods unless the Supplier and the Client agree otherwise in writing.

8.2. The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client.

8.3. All Goods shall conform to AS71735 requirements where required.

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9. Specifications of Goods

The Client acknowledges that:

- a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the manufacturer's or Supplier's fact sheets, 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;
- b) while the Supplier may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Contractor has given these in good faith, and are estimates based on prescribed industry estimates.

9.2. The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.

10. Title

10.1. 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.

10.2. 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.

10.3. It is further agreed that:

- a) until ownership of the Goods passes to the Client in accordance with clause 10.1 that the Client is only a bailee of the Goods and must return the Goods to the 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.
- 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.

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

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

11.2. Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.

11.3. The Client undertakes to:

- a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the 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 11.3a(i) or 11.3a(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 and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;
- e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.

11.4. 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.

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

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

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

11.8. The Client must unconditionally ratify any actions taken by the Supplier under clauses 11.3 to 11.5.

11.9. The Client agrees to execute all documents and do all acts, matters and things which the Supplier reasonably requires to more effectively secure its rights pursuant to the security interest created under this Agreement.

11.10. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA

12. Security and Charge

12.1. In consideration of the Supplier agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

12.2. 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.

12.3. The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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

13.1. 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.

13.2. 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).

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

13.4. 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

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the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.

13.5. 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.

13.6. 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.

13.7. 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:

- limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
- limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
- otherwise negated absolutely.

13.8. Subject to this clause 13, returns will only be accepted provided that:

- the Client has complied with the provisions of clause 13.1; and
- the Supplier has agreed that the Goods are defective; and
- the parts are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- the parts are returned in as close a condition to that in which they were delivered as is possible.

13.9. Notwithstanding clauses 13.1 to 13.8 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:

- the Client failing to properly maintain or store any Goods;
- the Client using the Goods for any purpose other than that for which they were designed;
- 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;
- the Client failing to follow any instructions or guidelines provided by the Supplier;
- fair wear and tear, any accident, or act of God.

13.10. In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Supplier has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 13.10.

13.11. 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 twenty percent (20%) of the value of the returned Goods plus any freight costs.

13.12. If the Client is a consumer for the purposes of the CCA the following statement applies:

Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled to:

- cancel your service contract with us; and
- to a refund for the unused portion, or to compensation for its reduced value.

13.13. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done, you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage for a failure in the goods or service.

14. Warranty

14.1. As an Australian based manufacturer, the Aussie Lifts team takes immense pride in the quality of our products, by incorporating quality materials and a thorough quality control process. We are pleased to offer the following warranty on our products:

- 1st Year full comprehensive Warranty, including labour and parts during normal working hours. For this Warranty to apply and for optimum performance, reliability and long-term use, the Client must service the lift at least every 12 months (6 months for commercial lifts) by an approved Aussie Lifts technician within 30 days (either way) of anniversary of Delivery of lift.
- Plus: an additional year on parts. This Warranty is subject to servicing being carried out by an approved Aussie Lifts technician within 30 days (either way) of anniversary of Delivery of lift (every 12 months for residential lifts and every 6 months for commercial lifts). In addition to this, Water Hydraulic lifts require a Major Service every 4 years. Aussie Lifts can provide a fixed price service agreement upon request. The additional two-year warranty excludes these items:
 - Any damages caused by normal wear and tear, pests and vermin, misuse, negligence, builder's onsite defects, faulty electrical supply, or acts of nature including random earth movement
 - Batteries
 - Automatic door operators
 - EM-Phones (as per manufacturer's warranty)
 - Door lock adjustments due to the movement of structure/slab
 - Corrosion/rust due to environmental factors
 - Hydraulic Control Valves

Aussie Lifts technician within 30 days (either way) of anniversary of Delivery of lift.

14.2. No Assignment

The Client may not assign the Client's rights under clause 14 to another person. The warranty is offered only to the Client whilst the Client remains the owner of the building. The warranty is not transferrable to future owners of the building.

14.3. Warranty claim procedure

- If the Client wishes to make a claim under the warranty during the period of the warranty, the Client must give written notice of such claim to the Supplier incorporating full details of the claim under the warranty including invoice number.
- If the Client makes a claim under the warranty, the Client must give the Supplier and the Supplier's representatives access to the building at any time nominated by the Supplier (acting reasonably) to enable the Supplier or its representatives to inspect the lift and building, and to determine whether the Client has made a proper claim under the warranty.
- If the Supplier is satisfied as to the accuracy of the claim and accepts the Client's claim under the warranty, it will do so by giving notice in writing to the Client. Any conversations or discussions with the Supplier's staff or representatives should not be interpreted by the Client as an acceptance by the Supplier of a warranty claim.
- If the Supplier decides to reject the claim from the Client, the Supplier may (but is not obliged to) provide reasons for that rejection.
- The Client is liable for its own expenses in respect of making a claim under the warranty.

14.4. Limit of warranty

Notwithstanding anything in this Warranty or any other rights which the Client may have, the Supplier's liability under this Warranty for repair and replacement is limited to a maximum amount of equal to the original Price (inclusive of GST) in the aggregate.

14.5. Warranty claim disputes

In the event of any dispute arising out of or in relation to the terms of the warranty or a claim made by a Client, before any party commences any legal action, the Supplier and the Client must, for a period of at least 30 days, negotiate in good faith to determine if the claim or dispute can be settled on mutually agreed terms. If, at the end of the 30-day period, the Supplier and the Client cannot agree on the terms on which any claim or dispute should be settled, then either party may commence proceedings in any appropriate forum.

14.6. Incidental and consequential damages

Nothing in the warranty gives the Client any claim against the Supplier for incidental or consequential damages which, to the greatest extent possible are disclaimed and excluded by the Supplier. For the purpose of the warranty, incidental or consequential damages includes property damage not covered by the warranty, loss of use, loss of revenue or profits, loss of opportunity or benefit, costs of capital, costs of substitute equipment, additional costs incurred by the Client other than

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those specifically covered by the warranty and any other incidental, special or indirect or consequential damages howsoever occurring.

14.7. **Standard of repairs**
Any repairs by the Supplier will be performed to match, as close as is reasonably possible, the existing fit, finish and appearance.

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.

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 incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Client basis, the Supplier's contract default fee, and bank dishonour fees).

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 Agreement.

16.4. Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.

16.5. 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:

- 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;
- 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
- 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. The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

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

18. Privacy Act 1988

18.1. 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, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.

18.2. 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:

- to assess an application by the Client; and/or
- to notify other credit providers of a default by the Client; and/or
- 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
- to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

18.3. The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

18.4. The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):

- the provision of Goods; and/or
- analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- enabling the collection of amounts outstanding in relation to the Goods.

18.5. The Supplier may give information about the Client to a CRB for the following purposes:

- to obtain a consumer credit report;
- allow the CRB to create or maintain a credit information file about the Client including credit history.

18.6. The information given to the CRB may include:

- personal information as outlined in 18.1 above;
- name of the credit provider and that the Supplier is a current credit provider to the Client;
- whether the credit provider is a licensee;
- type of consumer credit;
- 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);
- advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the 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);
- information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
- advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

18.7. The Client shall have the right to request (by e-mail) from the Supplier:

- a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
- that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.

18.8. 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 in order to fulfil the obligations of this Agreement or is required to be maintained and/or stored in accordance with the law.

18.9. 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 make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

19. Unpaid Supplier'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

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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 lien on the item; and
- 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. Building Industry Fairness (Security of Payment) Act 2017 (Qld) ("the Act")

20.1. At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Act may apply.

20.2. Nothing in this Agreement is intended to have the effect of contracting out of any applicable provisions of the Act, except to the extent permitted by the Act where applicable.

21. Indemnity

The Client agrees to indemnify the Supplier and keep the Supplier indemnified against any claims. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

22. Trustee capacity

22.1. If the Client is the trustee of a trust (whether disclosed to the Supplier or not), the Client warrants to the Supplier that:

- the Client enters into this Agreement in both its capacity as trustee and in its personal capacity;
- the Client has the right to be indemnified out of trust assets;
- the Client has the power under the trust deed to sign this Agreement; and
- the Client will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.

22.2. The Client must give the Supplier a copy of the trust deed upon request.

23. Execution as Agent or Attorney

23.1. If an agent of the Client enters into this Agreement, they warrant and represent that they are a duly authorised agent in accordance with s 126(1) of the *Corporations Act (Cth) 2001*.

23.2. If the Client enters into this Agreement under power of attorney, the person signing under the power of attorney:

- must provide the Supplier with a copy of the power of attorney; and
- warrants, represents and agrees that it has had no notice of revocation of the power of attorney under which it is signing this Agreement.

24. Waiver

A waiver of any provision or breach of this Agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this Agreement by the Client must be made by the Client's authorised officer in writing.

25. Costs and indemnity

25.1. The Client must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Client. The Client must also pay for all stamp duty and other taxes payable on this Agreement (if any).

25.2. The Client must pay, and agrees to indemnify the Supplier and keep the Supplier indemnified against, the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Client, including debt recovery fees and legal costs on an indemnity basis. Such costs and disbursements will be due and payable by the Client to the Supplier, and the Client's indemnification of the Supplier against such costs will have effect, irrespective of whether pursuit of the recovery action, claim or remedy is successful.

25.3. The Client acknowledges and agrees that payments by the Client will be applied by the Supplier as follows:

- firstly, in payment of any and all collection costs and legal costs in accordance with clauses 25.1 and 25.2.
- secondly, in payment of any interest incurred in accordance with clause 25.
- thirdly, in payment of the outstanding invoice(s).

26. Set-off

26.1. All payments required to be made by the Client under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding.

26.2. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Client by the Supplier.

27. Force Majeure

The Supplier is not liable for any loss caused to the Client by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.

28. Jurisdiction

28.1. The Client acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.

28.2. The Client submits to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

29. Independent Advice

Each party has been given the opportunity to seek independent legal advice with respect to the content and effect of this Agreement and has sought such advice as it deems necessary.

30. No Adverse Construction

No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Agreement or any part of it.

31. Severance

31.1. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.

31.2. If any part of this Agreement is invalid or unenforceable, that part is deleted, and the remainder of the Agreement remains effective.

32. Variation

32.1. The Client agrees that these Terms and Conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Client.

32.2. Any proposed variation to these Terms and Conditions by the Client must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.

33. Entire agreement

This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.

34. General

34.1. The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that

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provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

- 34.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which the Supplier has its principal place of business and are subject to the jurisdiction of the courts in Brisbane, Queensland.
- 34.3. Subject to clause 13, the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 34.4. the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 34.5. The Supplier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 34.6. The Client agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Supplier to provide Goods to the Client.
- 34.7. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 34.8. The Client warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this Agreement creates binding and valid legal obligations on it.

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