

Terms & conditions

Australian Smart Lighting Technology

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1. Definitions

- 1.1 "Company" shall mean Australian Smart Lighting Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Australian Smart Lighting Pty Ltd.
- 1.2 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Company to the Customer.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer.
- 1.5 "Services" shall mean all Services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between the Company and the Customer in accordance with clause 8 of this contract.

- 2. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")
- 3. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

4. Design

- 4.1 Where the Supplier is requested by the Buyer to provide design services, the terms and conditions contained in this clause 12 shall apply.
- 4.2 The Buyer acknowledges and agrees:
 - a. the lighting plan provided as part of any design specifications is for lighting purposes only and should not be used for construction purposes;
 - b. the lighting plan is designed to be integrated into the construction set drawings;
 - c. if the lighting fixtures are not supplied by the Supplier then the Buyer must supply all relevant IES/LDT files for lux level calculations;
 - d. the Supplier will not be liable for any incorrect IES/LDT files supplied by the Buyer's preferred lighting supplier or for lux level calculations;
 - e. it is the Buyer's responsibility to ensure all relevant IES/LDT files are accurate and correspond with the requirements specified by their lighting supplier;
 - f. it is the Buyer's responsibility to ensure all drawing files, data, information and design specifications provided to the Supplier, are accurate, to metric scale and correct;
 - g. the Buyer is responsible for converting all imperial dimensions to metric dimension and providing scaled drawings;
 - h. the Supplier will not be liable for any discrepancies or inaccuracies on any drawing files, data, information and design specifications or any incorrect dimensions or scaling of drawings provided;

- i. once a lighting plan has been approved by the Buyer, should the Buyer make additional changes to the specifications and supplied light fittings, any additional costs incurred shall be at the Buyer's sole expense;
- j. any design brief documents filled out by the architect or Buyer and agreed to by the Supplier must only be amended with the prior written consent of the Supplier. Any changes made prior to the lighting plan being approved or supplied but without the consent of the Supplier shall be at the sole expense of the Buyer;
- k. the Supplier will not be liable for any changes to the lighting plan or fittings caused due to a change in site conditions. Any changes to the plan or fitting shall be at the sole expense of the Buyer.

5. Custom Designs

- The following terms apply to any custom designs, fittings, specifications, finish and dimensions (Custom Designs) ordered by the Buyer from the Supplier:
- (a) all Custom Designs must be signed off and approved by the Buyer prior to commencement of any work; and
 - (b) once approved, should the Buyer alter the approved Custom Designs, any additional costs incurred will be at the sole expense of the Buyer.

6. Deposit

- 6.1 This clause 3 does not apply to an approved Buyer permitted to purchase goods and Services on credit by the Supplier, except in the case of custom jobs where a 50% prepaid deposit is payable.
- 6.2 The Buyer shall pay a 50% deposit to the Supplier upon confirmation of an order by the Supplier.
- 6.3 Upon receipt of the deposit the Supplier will commence preparing the goods and the provision of the Services. If the Buyer cancels the contract within 10 days of payment of the deposit, the balance of the deposit less reasonable costs already incurred by the Supplier shall be refunded to the Buyer. Should the contract be cancelled after more than 10 days, no refund will be paid by the Supplier.
- 6.4 Should the deposit not cover the reasonable costs incurred up to the date of cancellation, the deposit shall be forfeit and all reasonable costs incurred by the Supplier in excess of the deposit shall be payable on demand.

7. Acceptance

- 7.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 7.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 7.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Company.
- 7.4 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any

other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.

- 7.5 Goods are supplied by the Company only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 7.6 In the event that the Company is required to provide Services outside their normal business hours (7.00am-6.00pm, Monday to Friday) then the Company reserves the right to charge the Customer additional labour costs (penalty rates), unless otherwise agreed between the Company and the Customer.
- 7.7 The Customer accepts and acknowledges that in the event that the Company is denied access to the worksite on the agreed start date, then the Company reserves the right to charge the Customer for all costs incurred by the Company (including, but not limited to, any loss of profits, employee wages, mileage), if such down time cannot be mitigated by scheduling alternative Services.

8. Price And Payment

- 8.1 At the Company's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
 - (b) the Company's current price at the date of delivery of the Goods according to the Company's latest quotation; or
 - (c) the Company's quoted Price (subject to clause 8.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days. All quotes provided are based on published Australian Standards at the time of tender.
- 8.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of 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 Company's in the cost of materials and labour) will be charged for on the basis of the Company'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.
- 8.3 At the Company's sole discretion a deposit may be required.
- 8.4 At the Company's sole discretion:
 - (a) payment shall be due on delivery of the Goods; or
 - (b) payment shall be due before delivery of the Goods; or
 - (c) payment for approved Customers shall be made by instalments in accordance with the Company's payment schedule; or

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- (d) payment for approved Customers shall be due either fourteen (14) or thirty (30) days following the date of the invoice.
- 8.5 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 8.6 Payment will be made by cash, or by cheque, or by credit card (plus a surcharge of up to three and one half percent (3.5%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Company.
- 8.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 9. Delivery Of Goods**
- 9.1 The Buyer will either collect the goods or, if the goods are to be delivered by the Supplier, the Buyer must pay all delivery charges incurred by the Supplier for delivery of the goods to the address nominated by the Buyer.
- 9.2 At the Company's sole discretion delivery of the Goods shall take place when the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by the Company or the Company's nominated carrier).
- 9.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 9.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 9.5 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 9.6 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Company.
- 10. Indemnity**
- The Buyer fully indemnifies and releases the Supplier, its directors, employees, servants agents and representatives (**Indemnified Parties**) from all Liability and Claims (including legal costs on a full indemnity basis), whether caused by the negligence of the Indemnified parties, or otherwise in relation to:
- breach by the Buyer of any of its obligations under this Agreement;
 - the provision of goods and Services or their resale;
 - cancellation of orders;
 - the Supplier exercising its right of entry;
 - maintenance and repair of goods or if not capable of maintenance or repair, the full replacement value of the goods;
 - the costs of locating, recovering and repairing goods;
 - any unplanned storage and redelivery of goods;
 - any issue arising from dangerous or hazardous goods; and
 - disposal, destruction, abandonment or rendering harmless any goods,
- and acknowledges that the Buyer will be liable for all Claims to the maximum extent allowable by law, regardless of the existence of an insurance policy which may cover all or partially any liability. The Buyer will pay on demand all costs indemnified against under this indemnity.
- 11. Risk**
- 11.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 11.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 11.3 The Customer acknowledges that in the event asbestos or any other toxic substances are discovered at the Worksites that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify the Company against any costs incurred by the Company as a consequence of such discovery. Under no circumstances will the Company handle removal of asbestos product.
- 12. Access**
- 12.1 The Company shall not be liable for any loss or damage caused in accessing the work site beyond reasonable control of the Company (including, ceiling tiles and panels, face brickwork and rendered masonry services) which the Company may have to break into or disturb in performance of the Works), unless due to the negligence of the Company.
- 13. Title**
- 13.1 The Company and the Customer agree that ownership of the Goods shall not pass until:
- the Customer has paid the Company all amounts owing for the particular Goods; and
 - the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 13.2 Receipt by the Company 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 and until then the Company's ownership or rights in respect of the Goods shall continue.
- 13.3 It is further agreed that:
- where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
 - until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Customer, or any premises as the invitee of the Customer, where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Company for the Goods, on trust for the Company; and
- (f) the Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
- (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.
- 14. Defects**
- 14.1 The Customer shall inspect the Goods on delivery and shall within seven (7) days of delivery (time being of the essence) notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods except where the Customer has acquired Goods as a consumer within the meaning of the Trade Practices Act 1974 (CWLth) or the Fair Trading Acts of the relevant state or territories of Australia, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 14.2 Goods will not be accepted for return other than in accordance with 14.1 above.
- 15. Warranty**
- 15.1 In addition to any applicable manufacturer's warranty, the Supplier warrants all goods or Services supplied by the Supplier will be free from defects in workmanship and in good working order for a period of 1 year from installation, unless an extended warranty period has been granted by the Supplier in its absolute discretion (Warranty Period).
- notwithstanding the above, our goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Buyer is entitled to a replacement or refund for a major failure and

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- compensation for any other reasonably foreseeable loss or damage. The Buyer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. The Supplier does not warrant the operation of goods or Services, the Buyer must read and follow all instruction manuals and instructions. If the Buyer fails to do so it may invalidate this warranty. This warranty does not apply to any third party goods or services not provided by the Supplier. During the Warranty period the Supplier will replace or repair any defective goods or Services provided by the Supplier without charge, so long as the damage does not arise from:
- (a) improper use, adjustment or operation of the goods or Services by the Buyer or any other third party not engaged by the Supplier;
 - (b) continued use of any goods after a defect becomes apparent or should have become apparent to a reasonably prudent operator or user;
 - (c) the use of accessories or equipment including hardware not authorised by the Supplier in writing;
 - (d) any contamination or foreign materials caused or induced by the Buyer;
 - (e) any modification of the goods or Services which is not authorised by the Supplier including tampering or any attempt to disassemble the goods or Services;
 - (f) any misuse of the goods or Services by the Buyer or anyone for who the Buyer has legal responsibility;
 - (g) any use of the goods or Services outside the specifications for those goods or Services including electrical power, temperature, humidity or dust;
 - (h) failure for any reason to follow the directions for use in any instructions or manual;
 - (i) inadequate or improper maintenance or storage of the goods or Services; and
 - (j) normal wear and tear including from cleaning, accidents, acts of god, force majeure event, theft, vandalism or misuse beyond the reasonable control of the Supplier.
- 15.2 For a period of one (1) year from date of shipment, Australian Smart Lighting Pty Ltd will provide field repairs by a qualified contractor for any product. For the second through fifth year following the date of shipment, all parts deemed to be defective will be replaced at no charge to the Customer. However, the Customer is solely responsible for the labor or related cost associated with the removal and reinstallation of such parts. No labor costs will be reimbursed during years 2 to 5 of the limited warranty period.
- 15.3 All warranty claims must be made in accordance with Australian Smart Lighting Pty Ltd's Return and Repair Procedures as outlined within this document. All warranty claims and or questions are to be directed to your Australian Smart Lighting Pty Ltd representative (see our website www.aslt.com.au for list). If deemed necessary and at Australian Smart Lighting Pty Ltd's sole discretion, a Return Goods Authorization (RGA) number could be issued, in which case the following will be required:
- (a) Australian Smart Lighting Pty Ltd will advise which components should be returned for inspection
 - (b) All products or components that are authorized for return to Australian Smart Lighting Pty Ltd must be shipped freight prepaid (standard ground service).
 - (c) Each component or product must be packaged carefully so as to prevent damages in shipment.
 - (d) The RGA number must be included on both the packing slip of the component or product being returned and on the outside of the box. (Include your name and email address on the packing slip so that Australian Smart Lighting Pty Ltd can contact you easily.)
 - (e) Obtain a proof of delivery to ensure that the material is received.
- 15.4 If, upon inspection, Australian Smart Lighting Pty Ltd determines that the product has breached the terms of its limited warranty, Australian Smart Lighting Pty Ltd will reimburse all freight costs but only up to the amount of standard non-expedited ground service charges. If Australian Smart Lighting Pty Ltd determines that it shall repair or replace a product that has breached the terms of its limited warranty, Australian Smart Lighting Pty Ltd will execute such repair or replacement at its sole discretion within a time frame determined by based on standard lead times and availability of parts at time of repair. Australian Smart Lighting Pty Ltd shall be responsible for shipping costs and charges and all Taxes only up to the amount of standard non-expedited ground service charges to the Customer's original destination.
- 15.5 If, upon inspection, Australian Smart Lighting Pty Ltd determines that the product has not breached the terms of its limited warranty, Australian Smart Lighting Pty Ltd shall inform the Customer the reason for this determination. If repairs or a replacement is required, Australian Smart Lighting Pty Ltd will issue a quote to the Customer to repair or replace the product. If the Customer accepts the quoted charges to repair or replace the product, the Customer shall issue a purchase order to Australian Smart Lighting Pty Ltd. All freight charges shall be at the Customer's expense. If the Customer declines the quoted charges, Australian Smart Lighting Pty Ltd shall return the product to the Customer at the Customer's expense.
- 15.6 Please note that in the event the returned component or product is not found to be defective, you may be subject to a labour charge for the evaluation process.
16. **Default & Consequences of Default**
- 16.1 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Company.
- 16.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 16.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 16.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer 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
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
17. **Force Majeure**
- If the Supplier is prevented or delayed (directly or indirectly) from carrying out an obligation or making delivery of the goods or Services or any part thereof, either in whole or in part by reason of force majeure or any cause outside its control or by reason of strike, lockout, labour dispute or shortage, trade dispute, fire, breakdown, flood, serious inclement weather, cyclone, natural disaster, earthquake, lightning, explosion, accident, road or rail closure, rail derailment, wharf delays, act or omission of air traffic control, act of god, acts of war, acts of public enemies, terrorist acts, sabotage, epidemic, quarantine restriction, riots or civil commotion, the Supplier's obligations will be suspended and the Supplier will be under no liability whatsoever to the Buyer and the Supplier is be entitled at its option either to cancel the contract or to extend the time for its performance of the contract.
18. **Termination**
- The Supplier may terminate this Agreement at any time by giving the Buyer 7 days' notice in writing. The Supplier may terminate this Agreement immediately by written notice to the other party if the Buyer:
- is in default under the terms of this Agreement and, if the default is capable of remedy but the Buyer does not remedy that default within 14 days of notice requiring it to do so;
 - goes into liquidation or provisional liquidation, has an administrator or controller appointed to it or any of its property, fails to comply with a statutory demand, is unable to pay its debts or otherwise becomes insolvent; or
 - any of its personnel, servants or employees are convicted by a court of law of any criminal act in relation to the goods or Services supplied under this Agreement.
- on termination of this Agreement the Buyer must immediately:
- (a) pay all outstanding amounts due to the Supplier; and
 - (b) return all goods that have not been paid for by the Buyer but may be in the possession of the Buyer to the Supplier.
19. **Security And Charge**

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- 19.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 19.1.
20. **Compliance with Laws**
- 20.1 The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the works.
- 20.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring rules AS/NZS 3008 and AS/NZS 3000:2007.
- 20.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the works.
- 20.4 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
21. **Cancellation**
- 21.1 The Company 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 Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 21.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.
22. **Privacy Act 1988**
- 22.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.
- 22.2 The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 22.3 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and Company or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) the marketing of Goods by the Company, its agents or distributors; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 22.4 The Company may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 22.5 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's license number;
 - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
 - (c) advice that the Company is a current credit provider to the Customer;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies
- owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customers credit obligations);
 - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonored more than once;
 - (h) that credit provided to the Customer by the Company has been paid or otherwise discharged.
23. **Building and Construction Industry Security of Payment Act 2002**
- 23.1 At the Company'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 Payment Act 2002 may apply.
- 23.2 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.
24. **Confidentiality and Intellectual property**
- Information is not considered Confidential Information if it is information which:
- i. has become available to the public through no fault or breach of the Buyer;
 - ii. the Buyer rightfully had in its possession prior to this Agreement; or
 - iii. is required to be disclosed by any law.
- The Buyer must not, without the prior written approval of the Supplier in each instance or unless otherwise expressly permitted, use for its own benefit, publish or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of the Supplier, any of the Confidential Information and may only disclose Confidential Information if required by a judicial or governmental request, requirement or order provided that it will take reasonable steps to give the Supplier sufficient prior notice of such request so the Supplier may at its option contest such request, requirement or order.
- The ownership of all rights, including Intellectual property rights, in any Confidential Information, remain the property the Supplier, and no licence or other right to the Confidential Information is granted or implied.
- The Buyer agrees that it will not acquire any ownership or other rights (including Intellectual property and moral rights) over any Confidential Information provided to it by the Supplier.

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25. General

- 25.1 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.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 25.3 The Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 25.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 25.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 25.7 The Customer agrees that the Company may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.