

ALL PURPOSE PUMPS PTY LTD - TERMS & CONDITIONS OF TRADE

1. Definitions

- 1.1. "Supplier" means All Purpose Pumps Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of All Purpose Pumps Pty Ltd.
- 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. "Goods" means all Goods supplied by the Supplier to the Client at the Client's request from time to time.
- 1.4. "GST" means Goods and Services Tax as defined within *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.5. "PPSA" means the Personal Property Securities Act 2009 (Cth) (PPS Act) and any regulation made under the PPS Act (as amended from time to time) and any amendment made to any other legislation as a consequence of the PPS Act.
- 1.6. "Price" means the Price payable for the Goods and/or Services as agreed between the Supplier and the Client in accordance with clause 5 below.
- 1.7. "Services" means all services provided by the Supplier to the Client from time to time.

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 Goods or Services, accepts delivery of the Goods, or accepts provision of the Services.
- 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 agrees that the Supplier may amend these terms and conditions at any time and from time to time. If the Supplier makes a change to these terms and conditions, then that change will take effect 30 days 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 or Services to the Client or the Client otherwise continues to accept and/or receive Goods or Services thereafter.
- 2.4. These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on the Supplier's website. If there are any inconsistencies between the two documents, then the terms and conditions contained in this document shall prevail.
- 2.5. Any electronic signature of either party shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the *Electronic Transactions (Victoria) Act 2000* or any other applicable provision 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 to 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 any agreement between them; and/or
 - b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect to the Goods and/or Services.
- 3.2. In the event that such an error and/or omission occurs in accordance with clause 3.1 and is not attributable to the negligence and/or wilful misconduct of the Supplier; the Client shall not be entitled to treat any agreement or contract between them as repudiated nor invalid.

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. At the Supplier's sole discretion, the Price shall be either:
 - a) as indicated on any invoice provided by the Supplier to the Client; or
 - b) the Price as at the date of delivery of the Goods or the provision of the Services according to the Supplier's current price list; or
 - c) the Supplier's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2. 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) 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, hard rock barriers below the surface, safety considerations, prerequisite work by any third party not being completed, etc) which are only discovered on commencement of the Services; or
 - d) in the event of increases to the Supplier in the cost of labour or 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) which are beyond the Supplier's control.
- 5.3. At the Supplier's sole discretion, a deposit may be required.
- 5.4. Time for payment for the Goods and/or Services 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 the provision of the Services;
 - b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - 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.
- 5.5. Payment may be made by cash, electronic/on-line banking, credit card, or by any other method as agreed to between the Client and the Supplier.
- 5.6. The Client is not 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 all or any part of that invoice is in dispute.
- 5.7. 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. 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.
- 6.2. At the Supplier's sole discretion, the cost of delivery is in addition to the Price.
- 6.3. 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.

- 6.4. 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.
- 6.5. Any time or date given by the Supplier to the Client is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.
- 6.6. The Client must 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.
- 6.7. In the event that the Supplier is unable to supply the Goods as agreed solely due to any action or inaction by the Client, then the Supplier is entitled to charge a reasonable fee for re-delivery and/or storage of the Goods.

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.

8. Product Specifications

- 8.1. The client acknowledges that:
 - a) All descriptive specifications, illustrations, drawings, data, dimensions, rates 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 nor do these materials form part of these terms and conditions, 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 or Services, the Client acknowledges that the Supplier has given these in good faith and are estimates based on industry prescribed estimates under optimal operating conditions.

9. Access

- 9.1. The Client shall ensure that the Supplier has clear and free access to the work site at all times to enable them to deliver the Goods or provide the Services. 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 grassed areas) unless due to the negligence of the Supplier.
- 9.2. It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks or other equipment as may be deemed necessary by the Supplier.

10. Underground Locations

- 10.1. Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all underground services on the site and clearly mark the same. The underground mains & services include without limitation, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2. 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 clause 10.1.

11. Title

- 11.1. The Supplier and the Client agree that ownership of the Goods shall not pass until:
- the Client has paid the Supplier all amounts owing to the Supplier in full and on all accounts between the Client and the Supplier; and
 - 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 that the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;
 - 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;
 - 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;
 - 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;
 - the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;
 - the Supplier may recover possession of any Goods in transit whether or not delivery has occurred;
 - 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
 - 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**
- In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- Security for Goods Supplied*
- 12.1. The Client acknowledges and agrees that, to secure payment for any Goods supplied by the Supplier, these terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in any Goods supplied by the Supplier from time-to-time and any proceeds of the sale or supply of the Goods ("**Security Interest**").
- 12.2. Each sale or supply of Goods by the Supplier under these terms is subject to the Security Agreement for the purposes of the PPSA.
- 12.3. The Supplier may lodge a financing statement on the Personal Property Securities Register ("**PPSR**") in respect of the Security Interest in the Goods and the proceeds of the sale or supply of the Goods, including as a purchase money security interest (as defined in the PPSA) ("**PMSI**") pursuant to these terms.
- General Security Agreement for Services Supplied*
- 12.4. For the purpose of any general security agreement ("**General Security Agreement**", "**Collateral**" means all the Client's present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which the Client has at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in the Client's own right or as trustee of a trust.
- 12.5. The Client acknowledges and agrees that:
- In addition to any other Security Interest created by these terms, these terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in the Client's Collateral to secure payment for the Services supplied ("**Security Interest**");
 - Each supply of Services by the Supplier under these terms is subject to the General Security Agreement for the purposes of the PPSA; and
 - the Supplier may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these terms.
- Assurances*
- 12.6. The Client must do all things, provide all information and sign all documents that are necessary and reasonably required to enable the Supplier to acquire a perfected Security Interest in the Goods and/or Collateral (as the case may be) including for the purposes of:
- Ensuring that any Security Interest created by these terms:
 - Attaches to the Goods and/or Collateral that is intended to be covered by that Security Interest; and
 - Is enforceable, perfected and otherwise effective; and
 - Has the priority required by the Supplier;
 - Enabling the Supplier to prepare and register a financing statement or financing change statement;
 - Enabling the Supplier to register a PMSI pursuant to the PPSA (where applicable);
 - Enabling the Supplier to register an ALLPAAP pursuant to the PPSA (where applicable); and
 - Enabling the Supplier to exercise and maintain any of the Supplier's rights or powers in connection with any such Security Interest.
- 12.7. If the Client disposes of the Goods or the Collateral, the Client must:
- Immediately pay any proceeds to the Supplier in reduction of all amounts owing by the Client to the Supplier, which the Supplier may apply towards amounts owing by the Client to the Supplier in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified in writing; and
 - Not allow any other charge or security interest to exist over those proceeds without the Supplier's written consent if that security interest could rank ahead of the Supplier' Security Interest.
- 12.8. If a higher-priority security interest does arise in the Goods, the Collateral and/or their proceeds of sale despite the Client's obligations under this section, the Client must:
- Ensure that the Client receives cash proceeds for the Goods and/or Collateral of at least equal to the market value; and
 - Immediately pay those proceeds to the Supplier in reduction of all amounts owing by the Client to the Supplier, which the Supplier may apply towards amounts owing by the Client in such order as the Supplier sees fit.
- 12.9. The Client must not change its name, structure, status or partnership, or assign or sell the Client's business to another party, initiate any change to any registered documentation, or act in any other manner which would impact on the Supplier' registered Security Interest without the Supplier' prior written consent. The Client agrees that the Client's liability under these terms is not affected by such an event until a new application for credit in the Client's new entity name as restructured or changed is made and approved by the Supplier in writing.
- Exclusion of Notices and Other Obligations*
- 12.10. To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
- the Supplier does not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - Sections 142 and 143 are excluded;
- 12.11. For the purposes of section 115(7) of the PPSA, the Supplier does not need to comply with sections 132 and 137(3).
- 12.12. To the extent permitted by law, the Client agrees to waive:
- The Client's rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- 12.13. If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).
- Provision of Information*
- 12.14. The Client agrees not to exercise the Client's rights to make any request of the Supplier under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- 12.15. The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
- Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
 - the Supplier discloses information of a kind mentioned in section 275(1) of the PPSA to the extent that the Supplier is not doing so in response to a request made by an "**interested person**" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- 12.16. Notwithstanding the obligations of this section, the Client shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if the Supplier approves such disclosure or request for information in writing.
- 12.17. Nothing in this part prevents any disclosure of information by the Supplier that it believes is reasonably necessary to comply with any other obligations that the Supplier may have under the PPSA.
- Other*
- 12.18. If the Client defaults in the timely performance of any obligation owed to the Supplier, the Supplier may enforce the Security Interest by exercising all or any of the Supplier' rights under these terms and conditions, the general law and the PPSA.
- 12.19. Nothing in this part limits or is limited by any other provision of these terms and conditions or any other agreement between the parties.
- 12.20. 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 Services, 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 and wheresoever situated, to better secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money) or otherwise on any account or in respect of any agreement or contract between them.
- 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.
- 13.3. 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 13 including, but not limited to, signing any document for and on the Client's behalf.
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1. The Goods and/or Services come with a warranty is set out in the Warranty Statement, which is available on the Supplier's website.

- 14.2. The Client must inspect the Goods and/or Service 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 as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect.
- 14.3. 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**).
- 14.4. The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.5. 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 and/or Services. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.6. The Supplier may in its absolute discretion accept non-defective Goods for return in which case a minimum restocking fee of twenty percent (20%) at the Supplier's sole discretion plus any freight costs. Non-stock and special manufactured items are non-returnable.
- 14.7. 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.
- 15. Intellectual Property**
- 15.1. Where the Supplier has designed, drawn, or developed Goods and/or Services 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 or 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 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 collection agency costs, and bank dishonour fees).
- 16.3. In addition to any other rights or remedies the Supplier may have under these terms and conditions, 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 these terms and conditions.
- 16.4. Without prejudice to any other rights or remedies the Supplier may have under these terms and conditions or at law, if at any time:
- the Client is in breach of any obligation under these terms and conditions;
 - 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
- the Supplier may suspend or terminate the supply of Goods and/or Services to the Client or cancel all or any part of any order of the Client.
- 16.5. In the event that the supplier suspends or terminates the supply of Goods and/or Services in accordance with clause 16.4:
- All amounts owing to the Supplier shall, whether or not due for payment, become immediately payable; and
 - 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 clause 16.4.
- 17. Cancellation**
- 17.1. The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods or the provision of the 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.
- 17.2. In the event that the Client cancels delivery of Goods or provision of the Services, the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a result of the cancellation (including, but not limited to, any loss of profits).
- 17.3. Cancellation of orders for Goods made to the Client's specifications, or for non-stock list items, will not be accepted once production has commenced, or an order has been placed.
- 18. Privacy Act 1988**
- 18.1. The Client agrees that the Supplier may obtain a credit report from a credit reporting agency containing personal credit information about the Client (including by not limited to the Client's/Client's director's name, address, date of birth, credit history) 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 either named as trade referees by the Client or named in a credit report issued by a credit reporting agency 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 years.
- 18.3. The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988*.
- 18.4. The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) of the *Privacy Act 1988*).
- 18.5. The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other purposes as shall be agreed between the Client and Supplier or required by law from time to time):
- the provision of Goods and/or Services;
 - the marketing of Goods and/or Services by the Supplier, its agents or distributors;
 - analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods and/or Services;
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods and/or services.
- 18.6. The Supplier may give information about the Client to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Client;
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 18.7. The information given to the credit reporting agency may include:
- personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Client's application for credit or commercial credit and the amount requested;
 - advice that the Supplier is a current credit provider to the Client;
 - 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;
 - that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of the Supplier, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once; and
 - that credit provided to the Client by the Supplier has been paid or otherwise discharged
- 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 no received or been tendered the whole of any moneys owing to it by the Client, the Supplier shall have, until all moneys 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 the applicable legislation in respect 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 moneys owing to the Supplier having been obtained against the Client.
- 20. Service of Notices**
- 20.1. Any written notice given under these terms and conditions shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
 - by leaving it at the address of the other party as stated in the order or tax invoice;
 - by sending it by registered post to the address of the other party as stated in order or tax invoice;
 - 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 into the contract is acting in the capacity of trustee of any trust ("**Trust**") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:

- a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- 21.2. The Client will not 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;
- a) the removal, replacement or retirement of the Client as trustee of the Trust;
 - b) any alteration to or variation of the terms of the Trust;
 - c) any advancement or distribution of capital of the Trust; or
 - d) any resettlement of the trust property.

22. General

- 22.1. The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that 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.
- 22.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 22.3. Subject to clause 14, 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 and/or Services).
- 22.4. The Supplier may license or subcontract all or any part of its rights and obligations without the Client's consent. The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under these terms and conditions by doing so. Furthermore, the Client agrees and understands that they have no authority to give instructions or directions to any of the Supplier's subcontracts without the consent of the Supplier.
- 22.5. The Client cannot licence or assign any part of its rights and obligations without the written approval of the Supplier.
- 22.6. 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.
- 22.7. The Client warrants that it has the power to enter into these terms and conditions and place the orders, and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that these terms and conditions creates binding and valid legal obligations on it.