BJ's Timber Flooring – Terms & Conditions of Trade

1. Definitions

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

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

1.3 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. If the Customer does not wish to allow Cookies to operate in the background when using the Supplier**'s website, then the** Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.

1.4 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:

(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and

(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and

(c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and

(d) includes the Customer's executors, administrators, successors, and permitted assigns.

1.5 "Goods" means all Goods or Services supplied by the Supplier to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).

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

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

1.8 "Supplier" means Provide Holdings Pty Ltd ATF A J Evans Trust T/A BJ's Timber Flooring, its successors and assigns or any person acting on behalf of and with the authority of Provide Holdings Pty Ltd ATF A J Evans Trust T/A BJ's Timber Flooring.

2. Acceptance

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

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

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

2.4 Where applicable, the Supplier may, at its discretion use or recommend contracted installers to install the Goods. The Supplier takes care to ensure that these installers are competent, trained and independently insured. Should the Customer need to make any claim in regards to damage, loss, the performance or conduct of such an installer then the Customer agrees to make such claim direct to the installer in the first instance and shall only involve the Supplier in such a claim if the Customer is unable to resolve the issue with the installer.

2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

3.1 The Customer acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.

3.2 In the event 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 Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

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

4. Change in Control

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

5. Credit Accounts

5.1 The Customer acknowledges and accepts that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Supplier and it has been approved with a credit limit established for the account.

5.2 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery and/or request an alternative payment method.

5.3 Any payments tendered by the Customer to the Supplier where the Customer is in default of their obligations of payment shall be applied as follows:

(a) firstly, as reimbursement for any contract default fee incurred by the Supplier;

(b) secondly, in payment of any interest changes; and

(c) thirdly, in satisfaction or part satisfaction of the oldest portion of the Customer's outstanding account.

5.4 The Supplier shall reserve the right to withdraw any credit facility provided to the Customer or to increase or decrease the limit (if any) at any given time by providing the Customer with seven (7) days' written notice.

5.5 Either party may give seven (7) days' written notice of the intention to close the account with any outstanding balance becoming immediately due and payable.

5.6 Accounts that have not been used for a period of twelve (12) months or more, shall at the Supplier's sole discretion, be closed.

6. Price and Payment

6.1 At the Supplier's sole discretion, the Price shall be either:

(a) as indicated on any invoice provided by the Supplier to the Customer; or

(b) the Price as at the date of Delivery of the Goods according to the Supplier's current price list; or

(c) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2 The Supplier reserves the right to change the Price 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 change in Customer's and/or site requirements, 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. The Customer shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

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

6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Supplier, which may be:

(a) before Delivery of the Goods;

(b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;

(c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;

(d) the date specified on any invoice or other form as being the date for payment; or

(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Supplier.

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

6.6 Notwithstanding clause 5.3, the Supplier may in its discretion allocate any payment received from the Customer towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

6.7 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute then the Customer must notify the Supplier in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Supplier investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Supplier placing the Customer's account into default and subject to default interest in accordance with clause 15.1.

6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer 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 Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Delivery of Goods

7.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:

(a) the Customer or the Customer'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 Customer's nominated address even if the Customer is not present at the address.

7.2 At the Supplier's sole discretion, the cost of Delivery is in addition to the Price.

7.3 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.

7.4 Any time specified by the Supplier for Delivery of the Goods is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If the Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.

8. Risk

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

8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.

8.3 If the Customer 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 Customer's sole risk.

8.4 Timber is a:

(a) natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations. Whilst the Supplier will make every effort to match sales samples to the finished Goods the Supplier accepts no liability whatsoever where such samples differ to the finished Goods supplied; and

(b) hygroscopic material subject to expansion and contraction, therefore the Supplier will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods.

8.5 The Customer acknowledges and accepts that:

(a) Goods supplied may:

(i) fade or change colour over time;

(ii) expand, contract or distort as a result of exposure to heat, cold, weather;

(iii) mark or stain if exposed to certain substances; and

(iv) be damaged or disfigured by impact or scratching.

(b) if a length of timber is unavailable, then the Supplier shall supply the nearest longer length and charged for accordingly; and

(c) in accordance with Timber Industry Standards and Grading Rules, there may be up to a five percent (5%) downgrading in the Goods supplied.

9. Access

9.1 The Customer shall ensure that the Supplier has clear and free access to the Delivery site at all times to enable them to deliver the Goods. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to kerbs, pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Supplier.

10. Title

10.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:

(a) the Customer has paid the Supplier all amounts owing to the Supplier; and

(b) the Customer 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, until ownership of the Goods passes to the Customer in accordance with clause 10.1:

(a) the Customer is only a bailee of the Goods and must return the Goods to the Supplier on request;

(b) the Customer holds the benefit of the Customer'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 Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer 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 Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer 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 Customer 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 Customer 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 Customer.

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

11.3 The Customer 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 11.3(a)(i) or 11.3(a)(ii);

(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of the Supplier;

(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.

11.4 The Supplier and the Customer 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 Customer 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 Customer 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 Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

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

11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), 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 Customer 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 Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Supplier's security interest over the Customer on the PPSA, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

12.2 The Customer 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 Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer'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 Customer's behalf.

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

13.1 The Customer 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 Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer 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 the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.

13.5 If the Customer 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 Customer has paid for the Goods.

13.7 If the Customer is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:

(a) limited to the value of any express warranty or warranty card provided to the Customer by the Supplier at the Supplier's sole discretion;

(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;

(c) otherwise negated absolutely.

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

(a) the Customer has complied with the provisions of clause 13.1; and

(b) the Supplier has agreed that the Goods are defective; and

(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and

(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

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:

(a) the Customer failing to properly maintain or store any Goods;

(b) the Customer using the Goods for any purpose other than that for which they were designed;

(c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;

(d) the Customer failing to follow any instructions or guidelines provided by the Supplier;

(e) fair wear and tear, any accident, or act of God.

13.10 The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.

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

13.12 Subject to clause 13.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

14. Intellectual Property

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

14.2 The Customer 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 Customer's order and the Customer agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.

14.3 The Customer 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 Customer.

15. Default and Consequences of Default

15.1 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.

15.2 If the Customer owes the Supplier any money, the Customer shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier regarding legal costs on a solicitor and own client basis, internal administration fees, the Supplier's contract fees owing for breach of these terms and conditions, including but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.

15.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Customer has made payment to the Supplier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

15.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:

(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Customer will be unable to make a payment when it falls due;

(b) the Customer has exceeded any applicable credit limit provided by the Supplier;

(c) 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

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Cancellation

16.1 Without prejudice to any other remedies the Supplier may have, if at any time the Customer 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 Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer suffers because the Supplier has exercised its rights under this clause.

16.2 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 Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.

16.3 If the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

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

17. Privacy Policy

17.1 All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Supplier that may result in serious harm to the Customer, the Supplier will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

17.2 Notwithstanding clause 17.1, privacy limitations will extend to the Supplier in respect of Cookies where the Customer utilises the Supplier's website to make enquiries. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

(a) IP address, browser, email client type and other similar details;

(b) tracking website usage and traffic; and

(c) reports are available to the Supplier when the Supplier sends an email to the Customer, so the Supplier may collect and review that information ("collectively Personal Information")

If the Customer consents to the Supplier's use of Cookies on the Supplier's website and later wishes to withdraw that consent, the Customer may manage and control the Supplier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

17.3 The Customer agrees that the Supplier may exchange information about the Customer with those credit providers and with related body corporates 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 including the Customer's repayment history in the preceding two (2) years.

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

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

(a) the provision of Goods; and/or

(b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or

(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or

(d) enabling the collection of amounts outstanding in relation to the Goods.

17.6 The Supplier may give information about the Customer to a CRB for the following purposes:

(a) to obtain a consumer credit report;

(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

17.7 The information given to the CRB may include:

(a) Personal Information as outlined in 17.3 above;

(b) name of the credit provider and that the Supplier is a current credit provider to the Customer;

(c) whether the credit provider is a licensee;

(d) type of consumer credit;

(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

(f) advice of consumer credit defaults (provided the Supplier is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

(g) information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement;

(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars ($150).

17.8 The Customer shall have the right to request (by e-mail) from the Supplier:

(a) a copy of the Personal Information about the Customer retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and

(b) that the Supplier does not disclose any Personal Information about the Customer for the purpose of direct marketing.

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

17.10 The Customer 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

18. Service of Notices

18.1 Any written notice given under this Contract shall be deemed to have been given and received:

(a) by handing the notice to the other party, in person;

(b) by leaving it at the address of the other party as stated in this Contract;

(c) by sending it by registered post to the address of the other party as stated in this Contract;

(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

(e) if sent by email to the other party's last known email address.

18.2 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.

19. Trusts

19.1 If the Customer at any time upon or subsequent to entering in to 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 Customer covenants with the Supplier as follows:

(a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;

(b) the Customer 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 Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;

(c) the Customer 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:

(i) the removal, replacement or retirement of the Customer as trustee of the Trust;

(ii) any alteration to or variation of the terms of the Trust;

(iii) any advancement or distribution of capital of the Trust; or

(iv) any resettlement of the trust property.

20. General

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

20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the Perth Courts in that state. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).

20.3 Subject to clause 13, the Supplier 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 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).

20.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

20.5 The Customer cannot licence or assign without the written approval of the Supplier.

20.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.

20.7 The Customer agrees that the Supplier may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Supplier to provide Goods to the Customer.

20.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc, ("Force Majeure") or other event beyond the reasonable control of either party.

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

20.10 This Contract constitutes the entire agreement between the Supplier and the Customer, and the Customer hereby acknowledges that no reliance is placed on any representation made by the Supplier that is not embodied in this Contract.

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

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