

Thompson Cooling Pty. Ltd. – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contractor” means Thompson Cooling Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Thompson Cooling Pty. Ltd.
- 1.2 “Customer” means the person/s or any person acting on behalf of and with the authority of the Customer requesting the Contractor 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 part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by the Contractor 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).
- 1.4 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between the Contractor and the Customer in accordance with clause 5 below.
- 1.5 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

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 These terms and conditions may only be amended with the consent of both parties in writing and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and the Contractor.
- 2.3 These terms and conditions may be meant to be read in conjunction with the Contractor’s quotation or invoice in respect to the Services, and:
- (a) where the context so permits, the terms ‘Goods’ or ‘Services’ shall include any supply of Equipment, as defined therein; and
 - (b) if there are any inconsistencies between the documents then the terms and conditions contained therein shall prevail.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 Unless otherwise stipulated within any document provided by the Contractor to the Customer, the Price has been calculated on the Services being completed during normal working hours, with suitable and safe access to all equipment covered under the quotation/invoice. Where the Contractor provides work outside of these hours, penal rates and other associated charges may be passed onto the Customer and shown as a variation as per clause 5.2.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that the Contractor 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 Contractor 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 Contractor 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 willful misconduct of the Contractor; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give the Contractor 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, email address, changes of trustees or business practice). The Customer shall be liable for any loss incurred by the Contractor as a result of the Customer’s failure to comply with this clause.

5. Price and Payment

- 5.1 At the Contractor’s sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to the Contractor’s current price list; or
 - (c) the Contractor’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 Contractor 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, availability of machinery, safety considerations, prerequisite work by any third party not being completed, change of design, hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
 - (d) in the event of increases to the Contractor in the cost of labour or materials which are beyond the Contractor’s control.
- 5.3 Variations will be charged for on the basis of the Contractor’s quotation, and will be detailed in writing, and shown as variations on the Contractor’s invoice. The Customer shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor 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.
- 5.4 At the Contractor’s sole discretion, a non-refundable deposit may be required.
- 5.5 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 Contractor, which may be:
- (a) before delivery of the Goods;
 - (b) on delivery of the Goods;
 - (c) by way of instalments/progress payments in accordance with the Contractor’s invoice and/or payment schedule;

- (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 Contractor.
- 5.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (as approved and accepted by the Contractor – a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Contractor.
- 5.7 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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 The Customer must pay any applicable GST, taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6. Provision of the Services**
- 6.1 Subject to clause 6.2 it is the Contractor's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 6.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Contractor claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Contractor's control, including but not limited to any failure by the Customer to:
- (a) make a selection; or
(b) have the site ready for the Services; or
(c) notify the Contractor that the site is ready.
- 6.3 At the Contractor's sole discretion, any incurred costs, as a result of (a), (b) or (c) of clause 6.2 will be passed to the Customer in the form of a price variation and in accordance with clause/s 5.2 and 5.3.
- 6.4 The Contractor 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 specified by the Contractor for the delivery of the Goods is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Customer as a result of the 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. In the event that the Contractor is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Contractor shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 7. Cancellation of the Services**
- 7.1 Any request by the Customer for the cancellation of Services must be submitted in writing to the Contractor
- 7.2 Services cannot be cancelled without the prior written consent of the Contractor
- 7.3 Should any rescheduling of the Services be required as a result of the Customer's acts or omissions, then the Contractor is entitled to charge a reasonable fee for any rescheduling of the Services and/or for the storage of any associated materials and equipment.
- 8. Risk**
- 8.1 If the Contractor retains ownership of the Goods under clause 12 then:
- (a) where the Contractor is supplying Goods only, all risk for the Goods shall immediately pass to the Customer on delivery and the Customer must insure the Goods on or before delivery. Delivery of the Goods shall be deemed to have taken place immediately at the time that either;
- (i) the Customer or the Customer's nominated carrier takes possession of the Goods at the Contractor's address; or
(ii) the Goods are delivered by the Contractor or the Contractor's nominated carrier to the Customer's nominated delivery address (even if the Customer is not present at the address).
- (b) where the Contractor is to both supply and install Goods then the Contractor shall maintain appropriate insurance until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer.
- 8.2 Notwithstanding the provisions of clause 8.1, if the Customer specifically requests the Contractor to leave Goods outside the Contractor's premises for collection or to deliver the Goods to an unattended location then such materials shall always be left at sole risk of the Customer and it shall be the Customer's responsibility to ensure that the Goods are insured adequately or at all. In the event that such Goods are lost, damaged or destroyed, then replacement of the Goods shall be at the Customer's expense.
- 8.3 All installation 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 standards.
- 8.4 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to accommodate the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing), the Contractor reasonably forms the opinion that the Customer's premises is not safe for the installation of Goods to proceed then the Contractor shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.2 above) until the Contractor is satisfied that it is safe for the installation to proceed.
- 8.5 Should the Contractor find any pre-existing default that requires remedial repairs or replacement of parts to enable installation of the Goods to occur, the Contractor shall notify the Customer and submit a Price for such additional work as per clause 5.2. Should the Customer fail to sign any authority for this additional work to be completed then the contract shall be deemed to be at an end and the Customer shall pay the Contractor for all Goods and Services supplied to date.
- 8.6 Where the Customer has supplied materials for the Contractor to complete the Services, the Customer acknowledges that and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Contractor shall not be responsible for any defects in the materials, any loss or damage to the Goods (or any part thereof), howsoever arising from the use of materials supplied by the Customer.
- 8.7 The Customer acknowledges that the Contractor is only responsible for parts that are replaced by the Contractor, and in the event that other parts/Goods, subsequently fail, the Customer agrees to indemnify the Contractor against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 8.8 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Customer shall be responsible for any and all costs involved.

- 8.9 The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.
- 8.10 In the event that any refrigerant lines (piping) and/or electrical wiring is required to be re-positioned at the request of any third party contracted by the Customer then the Customer agrees to notify the Contractor immediately upon any proposed changes. The Customer agrees to indemnify the Contractor against any additional costs incurred with such a relocation of the refrigerant lines (piping) and/or electrical wiring. All such variances shall be invoiced in accordance with clause 5.2.
9. **Access**
- 9.1 The Customer shall ensure that the Contractor has clear and free access to the worksite at all times to enable the Contractor to undertake the Services or deliver Equipment. The Contractor 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 Contractor.
10. **Underground Locations**
- 10.1 Prior to the Contractor commencing any work the Customer must advise the Contractor of the precise location of all underground services on the site by clearly marking same. The underground mains and services the Customer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 10.2 Whilst the Contractor will take all care to avoid damage to any underground services the Customer agrees to indemnify the Contractor 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. **Compliance with Laws**
- 11.1 The Customer and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 11.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 11.3 The Customer agrees that the site will comply with any occupational health, safety and environment (OHS&E) laws relating to building/construction sites and any other relevant safety standards or legislation.
12. **Title**
- 12.1 The Customer and the Contractor agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Contractor all amounts owing to the Contractor; and
 - (b) the Customer has met all of its other obligations to the Contractor.
- 12.2 Receipt by the Contractor 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.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 12.1.
- (a) the Customer is only a bailee of the Goods and must return the Goods to the Contractor on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Contractor and must pay to the Contractor 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 Contractor and must pay or deliver the proceeds to the Contractor 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 Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs.
 - (e) the Customer irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods.
 - (f) the Contractor may recover possession of any Goods in transit whether or not the 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 Contractor
 - (h) the Contractor may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
13. **Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause all terms have the meaning given to them in the Personal Properties Security Act 2009 (PPSA)
- 13.2 In this clause Property includes all Goods supplied to the Customer by the Contractor, including but not limited to the Goods as described on the relevant Tax Invoice, Quotation, Work Authorisation, Application Form, Job Order (written or verbal), or other form as approved by the Contractor and includes Services relating thereto.
- 13.3 This clause considers Property to be PPSA Retention of Title Property in accordance with Section 51F of the Corporations Act 2001 (Cth)
- 13.4 If the Contractor grants credit terms to the Customer, then to ensure the punctual payment of all amounts owed by the Customer to the Contractor, the Customer grants to the Contractor a security interest over all:
- (a) present and after-acquired property of the Customer in relation to which the Customer can be grantor of a security interest under the PPSA; and
 - (b) Property (including any proceeds of that property) supplied on retention of title terms to the Customer by the Contractor.
- 13.5 The Customer acknowledges that acceptance of these Terms and Conditions of Trade, in accordance with clause 2.1, will;
- (a) constitute a PPSA security agreement;
 - (b) create a security interest in all Goods previously supplied by the Contractor to the Customer; and
 - (c) creates a security interest in all Goods that will be supplied in the future by the Contractor to the Customer.

- 13.6 The Customer agrees to promptly sign any further documents and/or provide any further information which the Contractor may reasonable require to;
- (a) register a financing statement or financing charge statement in relation to a security interest on the PPSA register;
 - (b) register any other document required to be registered by the PPSA; or
 - (c) correct a defect in a statement referred to in this clause.
- 13.7 The Customer agrees to indemnify, and upon demand, reimburse the Contractor for all expenses incurred in registering a statement, referred to in clause 13.6, on the PPSA register and/or releasing any Goods charges thereby;
- 13.8 The Customer agrees not to register a financing charge statement in respect of a security interest without the prior written consent of the Contractor
- 13.9 The Customer agrees not to register, or permit to be registered, a financing statement interest or a financing charge statement in relation to the Goods in favour of a third party without the prior written consent of the Contractor.
- 13.10 The Customer agrees to immediately advise the Contractor of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.11 The Contractor and the Customer agree to expressly exclude the operation of the following provisions of the PPSA
- (a) Section 96;
 - (b) Section 115; and
 - (c) Section 125 of the PPSA.
- 13.12 The Customer waives its rights to receive notices under;
- (a) Section 95;
 - (b) Section 118;
 - (c) Section 121 (4);
 - (d) Section 130;
 - (e) Section 132 (3)(d); and
 - (f) Section 132 (4) of the PPSA.
- 13.13 The Customer waives its rights to receive a verification statement under Section 157 of the PPSA.
- 13.14 The Customer waives its rights as a grantor/debtor under;
- (a) Section 142; and
 - (b) Section 143 of the PPSA.
- 13.15 The Customer agrees to unconditionally ratify an action taken by the Contractor under this clause 13.
- 14. Security and Charge**
- 14.1 In consideration of the Contractor 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, 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).
- 14.2 The Customer indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own Customer basis incurred in exercising the Contractor's rights under this clause.
- 14.3 The Customer irrevocably appoints the Contractor and each director of the Contractor as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Customer's behalf.
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Customer must inspect the Goods on delivery and must within seven (7) days of delivery notify the Contractor 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 Contractor to inspect the Goods.
- 15.2 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).
- 15.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Contractor is required to replace the Goods under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Customer has paid for the Goods.
- 15.7 If the Customer is not a consumer within the meaning of the CCA, the Contractor'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 Contractor at the Contractor's sole discretion;
 - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 15.8 Subject to this clause 14, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 15.1; and
 - (b) the Contractor has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost; and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.

- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, the Contractor 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 Contractor;
 - (e) fair wear and tear, any accident, or act of God.
- 15.10 The Contractor may in its absolute discretion accept non-defective Goods for return in which case the Contractor may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 15.11 Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only accept a return on the conditions imposed by that law.

16. Intellectual Property

- 16.1 Where the Contractor has designed, drawn or developed Goods and/or Services for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.
- 16.2 The Customer warrants that all designs, specifications or instructions given to the Contractor will not cause the Contractor to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Contractor against any action taken by a third party against the Contractor in respect of any such infringement.
- 16.3 The Customer agrees that the Contractor may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Contractor has created for the Customer.

17. Default and Consequences of Default

- 17.1 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 Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes the Contractor any money the Customer shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Contractor's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Contractor may have under this contract, if a Customer has made payment to the Contractor, 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 Contractor under this clause 17 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.
- 17.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor'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 Contractor;
 - (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.

18. Cancellation

- 18.1 Without prejudice to any other remedies the Contractor 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 Contractor may suspend or terminate the supply of Goods to the Customer. The Contractor will not be liable to the Customer for any loss or damage the Customer suffers because the Contractor has exercised its rights under this clause.
- 18.2 The Contractor 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 Contractor shall repay to the Customer any money paid by the Customer for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocked items, will definitely not be accepted once production has commenced, or an order has been placed.

19. Privacy Act 1988

- 19.1 The Customer agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g.) name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by the Contractor.
- 19.2 The Customer agrees that the Contractor 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.

- 19.3 The Customer consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Customer agrees that personal credit information provided may be used and retained by the Contractor for the following purposes and for other agreed purposes or required by;
- the provision of Goods; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the collection of amounts outstanding in relation to the Goods.
- 19.5 The Contractor may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
 - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 19.6 The information given to the CRB may include:
- personal information as outlined in 19.1 above;
 - name of the credit provider and that the Contractor is a current credit provider to the Customer;
 - whether the credit provider is a licensee;
 - type of consumer credit;
 - 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);
 - advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of the Contractor, the Customer has committed a serious credit infringement;
 - advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Customer shall have the right to request (by e-mail) from the Contractor:
- a copy of the information about the Customer retained by the Contractor and the right to request that the Contractor correct any incorrect information; and
 - that the Contractor does not disclose any personal information about the Customer for the purpose of direct marketing.
- 19.8 The Contractor 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.
- 19.9 The Customer can make a privacy complaint by contacting the Contractor via e-mail. The Contractor 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.
20. **Dispute Resolution**
- 20.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
 - conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
21. **Building and Construction Industry Payments Act 2004**
- 21.1 At the Contractor'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 Payments Act 2004 may apply.
- 21.2 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Payments Act 2004 of Queensland, except to the extent permitted by the Act where applicable.
22. **Service of Notices**
- 22.1 Any written notice given under this contract 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 this contract;
 - by sending it by registered post to the address of the other party as stated in this contract;
 - 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;
 - if sent by email to the other party's last known email address.
- 22.2 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.
23. **Trusts**
- 23.1 If the Customer 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 Contractor may have notice of the Trust, the Customer covenants with the Contractor as follows:
- the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - 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.
 - the Customer will not without consent in writing of the Contractor (the Contractor 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

24. **General**

24.1 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.