Pumping Irrigation & Machinery Services – Terms & Conditions of Trade

1. Definitions

1.1 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
(d) includes the Client's executors, administrators, successors, and permitted assigns.

1.2 **"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.

1.3 **"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.

1.4 **"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 Client does not wish to allow Cookies to operate in the background when using the Seller's website, then the Client 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.**

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

1.6 **"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 Seller and the Client in accordance with clause 6 below.

1.8 **"Seller"** means PIMS Enterprises Pty Ltd (ACN: 140 518 912) ATF PIMS Unit Trust (ABN: 36 748 967 821) T/A Pumping Irrigation & Machinery Services, its successors and assigns or any person acting on behalf of and with the authority of PIMS Enterprises Pty Ltd (ACN: 140 518 912) ATF PIMS Unit Trust (ABN: 36 748 967 821) T/A Pumping Irrigation & Machinery Services.

2. Acceptance

2.1 The parties acknowledge and agree that:
(a) they have read and understood the terms and conditions contained in this Contract; and
(b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.

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

2.5 In the event that the supply of Goods requested exceeds the Client's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse delivery.

2.6 The Client acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, the Seller reserves the right to vary the Price with alternative Goods as per clause 6.2, subject to prior confirmation and agreement of both parties. The Seller also reserves the right to halt all Services until such time as the Seller and the Client agree to such changes. The Seller shall not be liable to the Client for any loss or damage the Client suffers due to the Seller exercising its rights under this clause.

2.7 Where applicable, should this Contract be conditional upon the Client obtaining finance or a loan from a financial institution then they must provide the Seller with written confirmation of the finance or loan approval before the Seller will order any Goods or provide Services.

2.8 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.

3. Errors and Omissions

3.1 The Client acknowledges and accepts that the Seller 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 Seller 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 Seller in respect of the Services.

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

4. Change in Control

4.1 The Client shall give the Seller 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, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Seller as a result of the Client's failure to comply with this clause.

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5. Trade-In

5.1 In the event that the Seller accepts a trade-in as part payment of purchases, then the Client acknowledges and warrants that they own the said property and that it is not in any subject to any security, charge, lien or hire purchase agreement.

6. Price and Payment

6.1 At the Seller's sole discretion, the Price shall be either:
(a) as indicated on any invoice provided by the Seller to the Client upon placement of an order for Goods; or
(b) the Seller'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 Seller 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) if during the course of the Services, the Goods are not or cease to be available from the Seller's third party supplier, then the Seller reserves the right to provide alternative Goods (or components of the Goods); or
(d) 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, obscured site defects which require remedial work, hard rock barriers below the surface, incorrect or inaccurate plans/specifications provided by the Client, changes to the excavation works, prerequisite work by any third party not being completed) which are only discovered on commencement of the Services; or
(e) in the event of increases to the Seller in the cost of labour or Goods (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 Seller's control.

6.3 Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing, and shown as variations on the Seller's invoice. The Client shall be required to respond to any variation submitted by the Seller within ten (10) working days. Failure to do so will entitle the Seller 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.

6.4 At the Seller's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by the Seller or as notified to the Client prior to the placement of an order for Goods.

6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Seller, which may be:
(a) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
(b) the date specified on any invoice or other form as being the date for payment; or
(c) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by the Seller.

6.6 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 Client and the Seller.

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

6.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Seller 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 Client must notify the Seller in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Seller investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Seller placing the Client's account into default and subject to default interest in accordance with clause 17.1.

6.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Seller an amount equal to any GST the Seller must pay for any supply by the Seller 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.

7. Delivery

7.1 Subject to clause 7.2 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.

7.2 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Seller's control, including, but not limited to, any failure by the Client to:
(a) make a selection; or
(b) have the site ready for the Services; or
(c) notify the Seller that the site is ready.

7.3 The cost of Delivery will be payable by the Client in accordance with the quotation provided by the Seller to the Client, or as otherwise notified to the Client prior to the placement of an order for Goods.

7.4 The Client shall ensure that the Seller has clear and free access to the site at all times to enable them to undertake the Services. The Seller 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 Seller.

7.5 The Client must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.

7.6 Any time specified by the Seller for Delivery of the Goods is an estimate only and the Seller will not be liable for any loss or damage incurred by the Client because 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 Seller is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.

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8. Risk

8.1 If the Seller retains ownership of the Goods under clause 12.1 then:
(a) where the Seller is supplying Goods only, all risk for the Goods shall immediately pass to the Client on delivery and the Client 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 Client or the Client's nominated carrier takes possession of the Goods at the Seller's address; or
(ii) the Goods are delivered by the Seller or the Seller's nominated carrier to the Client's nominated delivery address (even if the Client is not present at the address).
(b) where the Seller is to both supply and install Goods then the Seller shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Client.

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

8.3 The Seller shall be entitled to rely on the accuracy of any designs, specifications (including, but not limited to CAD drawings), measurements and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information or data provided by the Client is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate designs, specifications, data, measurements or other information. Any additional costs associated with inaccurate information will be invoiced to the Client as a variation in accordance with clause 6.2.

8.4 In the event the Seller is only supplying Goods and not installing the Goods, the Seller shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.

8.5 The Client acknowledges that the Seller is only responsible for Goods that are supplied/repaired by the Seller, and in the event that other components subsequently fail, the Client agrees to indemnify the Seller against any loss or damage to the Goods, or caused by the components, or any part thereof howsoever arising.

8.6 Any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith to the Client, or the Client's agent and is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller. Where such advice or recommendations are not acted upon then the Seller shall require the Client or their agent to authorise commencement of the Services in writing. The Seller shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services. Accordingly, the Seller offers no warranty in regard to the aforementioned.

9. Specifications

9.1 The Client acknowledges that:
(a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Seller'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 such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Seller; and
(b) while the Seller may have provided information or figures to the Client regarding the performance and/or sustainability of the Goods, the Client acknowledges that the Seller has given these in good faith, and are estimates based on industry prescribed estimates.

10. Dial Before You Dig

10.1 Location of underground services by a licensed service locator is mandatory prior to commencement of any Services. "Dial Before You Dig" must be consulted and any potential underground services marked on site. Whilst the Seller will take all care to avoid damage to any underground services the Client agrees to indemnify the Seller 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. If the Client requests the Seller to engage the service locator then this shall be in addition to the Price.

11. Compliance with Laws

11.1 The Client and the Seller 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, any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

11.2 The Client shall obtain (at the expense of the Client) all licenses, engineers' reports, certification and approvals that may be required for the Goods.

11.3 All bores will be tested in accordance of Australian Standard AS2368-1990.

12. Title

12.1 The Seller and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid the Seller all amounts owing to the Seller; and
(b) the Client has met all of its other obligations to the Seller.

12.2 Receipt by the Seller 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 Client in accordance with clause 12.1:
(a) the Client is only a bailee of the Goods and must return the Goods to the Seller on request;
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Seller and must pay to the Seller the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
(c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand;
(d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of the Seller and must sell, dispose of or return the resulting product to the Seller as it so directs;
(e) the Client irrevocably authorises the Seller to enter any premises where the Seller believes the Goods are kept and recover possession of the Goods;

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(f) the Seller may recover possession of any Goods in transit whether or not Delivery has occurred;
(g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Seller; and
(h) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Seller to the Client, and the proceeds from such Goods.
13.3 The Client undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller 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 13.3(a)(i) or 13.3(a)(ii);
(b) indemnify, and upon demand reimburse, the Seller 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 Seller;
(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 Seller;
(e) immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
13.4 The Seller and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
13.7 Unless otherwise agreed to in writing by the Seller, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
13.8 The Client must unconditionally ratify any actions taken by the Seller under clauses 13.3 to 13.5.
13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

14.1 In consideration of the Seller agreeing to supply the Goods and/or provide its Services, the Client grants the Seller a security interest by way of a floating charge (registerable by the Seller pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit the Seller to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
14.2 The Client indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.
14.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 12.1,13.2 and 14.1 as applicable, is deemed insufficient by the Seller to secure the repayment of monies owed by the Client to the Seller, the Client hereby grants the Seller a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money.

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

15.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Seller 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 Seller 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 Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
15.5 If the Client is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by section 64A of Schedule 2.
15.6 If the Seller is required to replace the Goods under this clause or the CCA, but is unable to do so, the Seller may refund any money the Client has paid for the Goods.
15.7 If the Client is not a consumer within the meaning of the CCA, the Seller'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 Client by the Seller at the Seller's sole discretion;
(b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
(c) otherwise negated absolutely.
15.8 Subject to this clause 15, returns will only be accepted provided that:

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(a) the Client has complied with the provisions of clause 15.1; and
(b) the Seller has agreed that the Goods are defective; and
(c) the Goods are returned within a reasonable time at the Client'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.

15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, the Seller 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 Client failing to properly maintain or store any Goods;
(b) the Client using the Goods for any purpose other than that for which they were designed;
(c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
(d) the Client failing to follow any instructions or guidelines provided by the Seller;
(e) fair wear and tear, any accident, or act of God.

15.10 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller may require the Client to pay handling fees of up to thirty percent (30%) of the value of the returned Goods plus any freight costs.

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

16. Intellectual Property

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

16.2 The Client warrants that all designs, specifications, or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.

16.3 The Client agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Client.

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 Seller's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

17.2 If the Client owes the Seller any money, the Client shall indemnify the Seller from and against all costs and disbursements:
(a) incurred; and/or
(b) which would be incurred and/or
(c) for which by the Client would be liable;
in regard to legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under these terms and conditions, internal administration fees, the Seller'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.

17.3 Further to any other rights or remedies the Seller may have under this Contract, if a Client has made payment to the Seller, 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 Seller under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

17.4 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
(a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by the Seller;
(c) 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
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

18.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions **("the Breaching Party")** the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.

18.2 If the Seller, due to reasons beyond the Seller's reasonable control, is unable to deliver any Goods and/or Services to the Client, the Seller may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Client. On giving such notice the Seller shall repay to the Client any money paid by the Client for the Goods and/or Services. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.

18.3 The Client may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels Delivery in accordance with this clause 18.3, the Client will not be liable for the payment of any costs of the Seller, except where a deposit is payable in accordance with clause 6.4. Failure by the Client to otherwise accept Delivery of the Goods and/or Services shall place the Client in breach of this Contract.

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

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19. Privacy Policy

19.1 All emails, documents, images, or other recorded information held or used by the Seller is Personal Information, as defined and referred to in clause 19.4, and therefore considered Confidential Information. The Seller 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 Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Seller that may result in serious harm to the Client, the Seller will notify the Client 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 Client by written consent, unless subject to an operation of law.

19.2 Notwithstanding clause 19.1, privacy limitations will extend to the Seller in respect of Cookies where the Client utilises the Seller's website to make enquiries. The Seller 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 Client'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 Seller when the Seller sends an email to the Client, so the Seller may collect and review that information ("collectively Personal Information")

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

19.3 The Client agrees for the Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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) about the Client in relation to credit provided by the Seller.

19.4 The Client agrees that the Seller may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

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

19.5 The Client consents to the Seller being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

19.6 The Client agrees that personal credit information provided may be used and retained by the Seller 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 Client'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 Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.

19.7 The Seller may give information about the Client 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 Client including credit history.

19.8 The information given to the CRB may include:

(a) Personal Information as outlined in 19.4 above;
(b) name of the credit provider and that the Seller is a current credit provider to the Client;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults (provided the Seller 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 Client no longer has any overdue accounts and the Seller 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 Seller, the Client has committed a serious credit infringement;
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

19.9 The Client shall have the right to request (by e-mail) from the Seller:

(a) a copy of the Personal Information about the Client retained by the Seller and the right to request that the Seller correct any incorrect Personal Information; and
(b) that the Seller does not disclose any Personal Information about the Client for the purpose of direct marketing.

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

19.11 The Client can make a privacy complaint by contacting the Seller via e-mail. The Seller will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

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20. Unpaid Seller's Rights

20.1 Where the Client has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any monies owing to it by the Client, the Seller shall have, until all monies owing to the Seller are paid:
(a) a lien on the item; and
(b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

20.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any monies owing to the Seller having been obtained against the Client.

21. Service of Notices

21.1 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.

21.2 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.

22. Trusts

22.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Seller may have notice of the Trust, the Client covenants with the Seller as follows:
(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
(b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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, the trustees and 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;
(c) the Client will not during the term of the Contract without consent in writing of the Seller (the Seller will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
(i) the removal, replacement or retirement of the Client 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 fund or trust property.

23. General

23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.

23.2 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, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

23.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of Queensland, and are subject to the jurisdiction of the courts in that state. These terms prevail over all terms and conditions of the Client (even if they form part of the Client's purchase order).

23.4 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.

23.5 The Client cannot licence or assign without the written approval of the Seller.

23.6 The Seller 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 Client agrees and understands that they have no authority to give any instruction to any of the Seller's sub-contractors without the authority of the Seller.

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

23.8 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. This clause does not apply to a failure by the Client to make a payment to the Seller, once the parties agree that the Force Majeure event has ceased.

23.9 Both parties warrant that they have the power to enter 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.

23.10 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, for the purpose of, implementing any transaction under this Contract.

23.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.

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