Lincoln Investments Pty Ltd T/A Hot and Cold Shop – Terms & Conditions of Trade

1. Definitions

1.1 "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.

1.2 "Company" means Lincoln Investments Pty Ltd T/A Hot and Cold Shop, its successors and assigns or any person acting on behalf of and with the authority of Lincoln Investments Pty Ltd T/A Hot and Cold Shop.

1.3 "Customer" means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Company to provide the Goods and/or Equipment on hire 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 a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Customer's executors, administrators, successors and permitted assigns.

1.4 "Goods" means all Goods or Services supplied by the Company 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).

1.5 "Equipment" means all Equipment including any accessories supplied on hire by the Company to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Company to the Customer.

1.6 "Intended Use" means a product and the use thereof, for which the product is intended to be, or is reasonably likely to be, associated with the Services.

1.7 "Non-Conforming Building Product" means building products that are regarded as Non-Conforming for an Intended Use if, when associated with a building:
(a) the product is not, or will not be, safe; or
(b) does not, or will not, comply with the relevant regulatory provisions; or
(c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.

1.8 "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.

1.9 "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 ordering from the 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 ordering Goods via the website.**

1.10 "Price" means the Price payable (plus any GST where applicable) for the Goods and/or Equipment hire as agreed between the Company and the Customer in accordance with clause 5 below.

1.11 "GST" means Goods and Services Tax (GST) 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/Equipment.

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

2.5 In the event that the supply of Goods/Equipment request exceeds the Customers credit limit and/or the account exceeds the payment terms, the Company reserves the right to refuse Delivery.

2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable 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 Company 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 Company 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 Company 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 Company; 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 Company 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 Company as a result of the Customer's failure to comply with this clause.

5. Price and Payment

5.1 At the Company's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by the Company to the Customer; or
(b) the Price as at the date of delivery of the Goods/Equipment according to the Company's current price list; or
(c) the Company'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 Company 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, obscured building defects, presence of asbestos, hidden pipes and wiring in walls, floor, ceiling etc) which are only discovered on commencement of the Services; or
(d) in the event of increases to the Company in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Company's control.

5.3 The Company reserves the right to change the Price if a variation to the Company's quotation is requested. Variations will be charged for on the basis of the Company's quotation, and will be detailed in writing, and shown as variations on the Company's invoice. The Customer shall be required to respond to any variation submitted by the Company within ten (10) working days. Failure to do so will entitle the Company 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 Company's sole discretion a non-refundable deposit may be required, the deposit amount or percentage of the Price will be stipulated at the time of the order of the Goods/Services and shall become immediately due and payable. **Upon payment of the agreed deposit it shall constitute the Customer's acceptance of the Company's terms and conditions**.

5.5 Time for payment for the Goods/Equipment being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
(a) on delivery of the Goods/Equipment;
(b) by way of instalments/progress payments in accordance with the Company's payment schedule;
(c) thirty (30) days following the date of any invoice given to the Customer by the Company;
(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 Company.

5.6 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 Customer and the Company. AMEX and Diners Card will not be accepted.

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

5.8 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

5.9 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.

6.

6.1 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Company an amount equal to any GST the Company must pay for any supply by the Company under this or any other contract for the sale of the Goods/hire of the Equipment. 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.

Delivery of Goods/Equipment

6.2 Delivery ("**Delivery**") of the Goods/Equipment is taken to occur at the time that:
(a) the Customer or the Customer's nominated carrier takes possession of the Goods/Equipment at the Company's address; or
(b) the Company (or the Company's nominated carrier) delivers the Goods/Equipment to the Customer's nominated address even if the Customer is not present at the address.

6.3 At the Company's sole discretion the cost of delivery is included in the Price.

6.4 The Company may deliver the Goods/Equipment in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.

6.5 Subject to clause 6.5 it is the Company's responsibility to ensure that the Services start as soon as it is reasonably possible.

6.6 The Services commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Company claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Company'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 Company that the site is ready.

Any time specified by the Company for delivery of the Goods/Equipment is an estimate only and the Company 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/Equipment to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to supply the Goods/Equipment as agreed solely due to any action or inaction of the Customer, then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

7.1 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.

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

7.3 If the Customer requests the Company to leave Goods outside the Company'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.

7.4 The Customer acknowledges that the Company is only responsible for parts that are replaced by the Company and that in the event that other parts/Goods, subsequently fail, the Customer agrees to indemnify the Company against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.

7.5 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 handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) the Company, its employees or contractors reasonably form the opinion that the Customer's premises is not safe for the installation of Goods to proceed then the Company shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 6.5 above) until the Company is satisfied that it is safe for the installation to proceed. The Company may at its sole discretion agree to bring the premises up to a standard suitable for installation to proceed (including, but not limited to, electrical switchboard modifications or mains power upgrades) but all such Services undertaken and any additional Goods supplied shall be treated as a variation in accordance with clause 5.2 and be charged for in addition to the Price.

7.6 The final location of the wall, window or floor unit must be determined on site by the Customer.

7.7 The location of any Goods being installed is at the final discretion of the Customer; however, a charge may apply (as a variation) as per clause 5.2 if piping distances are increased, or if additional labour time and or materials are required.

7.8 The Company shall upon installation ensure that all installed Goods meet current industry standards applicable to noise levels, however the Company cannot guarantee that noise levels will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.

7.9 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.

7.10 The Customer acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.

7.11 In the event that the 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 Company immediately upon any proposed changes. The Customer agrees to indemnify the Company against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 5.2.

8. Access

8.1 The Customer shall ensure that the Company has clear and free access to the worksite at all times to enable them to undertake the Services. The Company 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 Company.

9. Underground Locations

9.1 Prior to the Company commencing any work the Customer must advise the Company of the precise location of all underground services on the site and clearly mark the same. The underground mains & 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.

9.2 Whilst the Company will take all care to avoid damage to any underground services the Customer agrees to indemnify the Company 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 9.1.

10. Customer's Responsibilities

10.1 The Customer acknowledges that in the event asbestos or any other toxic substances are discovered at the worksite that it is their responsibility to ensure the safe removal of the same. The Customer further agrees to indemnify the Company against any costs incurred by the Company as a consequence of such discovery. Under no circumstances will the Company handle removal of asbestos product.

11. Title To Goods

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

11.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

11.3 It is further agreed that:
(a) until ownership of the Goods passes to the Customer in accordance with clause 11.1 that the Customer is only a bailee of the Goods and must return the Goods to the Company on request.
(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company 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 Company and must pay or deliver the proceeds to the Company 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 Company and must sell, dispose of or return the resulting product to the Company as it so directs.
(e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.
(f) the Company 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 Company.
(h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

12.2 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/Equipment that has previously been supplied and that will be supplied in the future by the Company to the Customer.

12.3 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 Company 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 12.3(a)(i) or 12.3(a)(ii);
(b) indemnify, and upon demand reimburse, the Company 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/Equipment charged thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment in favour of a third party without the prior written consent of the Company;
(e) immediately advise the Company of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.

12.4 The Company 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.

12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

12.7 Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.

12.8 The Customer must unconditionally ratify any actions taken by the Company under clauses 12.3 to 12.5.

12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12.10 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 12 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 12 will apply generally for the purposes of the PPSA.

13. Security and Charge

13.1 In consideration of the Company agreeing to supply the Goods/Equipment, 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).

13.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.

13.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 13 including, but not limited to, signing any document on the Customer's behalf.

Please note that a larger print version of these terms and conditions is available from the Company on request.

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Lincoln Investments Pty Ltd T/A Hot and Cold Shop – Terms & Conditions of Trade

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

14.1 The Customer must inspect the Goods/Equipment on delivery and must within forty-eight (48) hours of delivery notify the Company 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/Equipment as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Company to inspect the Goods/Equipment.

14.2 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**).

14.3 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods/Equipment. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.

14.5 If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.

14.6 If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods.

14.7 If the Customer is not a consumer within the meaning of the CCA, the Company'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 Company at the Company's sole discretion;

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

(c) otherwise negated absolutely.

14.8 Subject to this clause 14, returns will only be accepted provided that:

(a) the Customer has complied with the provisions of clause 14.1; and

(b) the Company 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.

14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, the Company 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/Equipment;

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

(c) the Customer continuing the use of the Goods/Equipment 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 Company;

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

14.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Company has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 14.10.

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

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

15. Intellectual Property

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

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

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

16. Default and Consequences of Default

16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

16.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's contract default fee, and bank dishonour fees).

16.3 Further to any other rights or remedies the Company may have under this contract, if a Customer has made payment to the Company, 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 Company under this clause 14 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.

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

(a) any money payable to the Company becomes overdue, or in the Company'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 Company;

(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.

17. Compliance with Laws

17.1 The Customer and the Company shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

17.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

17.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.

17.4 Where the Customer has supplied materials for the Company to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose and is for their Intended Use, quality and any faults inherent in those materials. However, if in the Company's opinion, it is believed that the materials supplied are Non-Conforming Products as per regulations, then the Company shall be entitled, without prejudice, to halt the Services until the appropriate conforming materials are sourced and all costs associated with such a change to the plans will be invoiced in accordance with clause 5.2.

17.5 The Customer agrees that all materials supplied by the Customer or the Customer's third-party sub-contractors will:

(a) be supplied in accordance with all legislative requirements;

(b) be suitable for their inclusion into the Services.

18. Cancellation

18.1 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the supply of Goods/Equipment to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.

18.2 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Equipment at any time before the Goods/Equipment are due to be delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Goods/Equipment. The Company 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 the Goods/Equipment the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Company as a direct result of the cancellation (including, but not limited to, any loss of profits).

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

19. Privacy Policy

19.1 All emails, documents, images or other recorded information held or used by the Company is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. The Company 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 Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Company that may result in serious harm to the Customer, the Company 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.

19.2 Notwithstanding clause 19.1, privacy limitations will extend to the Company in respect of Cookies where transactions for purchases/orders transpire directly from the Company's website. The Company 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 Company when the Company sends an email to the Customer, so the Company may collect and review that information ("collectively Personal Information")

19.3 In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via the Company's website.

19.4 The Customer agrees for the Company 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 Customer in relation to credit provided by the Company.

19.5 The Customer agrees that the Company 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 years.

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

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

(a) the provision of Goods/Equipment; and/or

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

19.8 The Company 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.

19.9 The information given to the CRB may include:

(a) Personal Information as outlined in 19.3 above;

(b) name of the credit provider and that the Company 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, 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 Company 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 Company, 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).

19.10 The Company shall have the right to request (by e-mail) from the Company:

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

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

19.11 The Company 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.

20. The Customer can make a privacy complaint by contacting the Company via e-mail. The Company 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.

20.1

20.2

21. Unpaid Seller's Rights

21.1 Where the Customer has left any item with the Company for repair, modification, exchange or for the Company to perform any other service in relation to the item and the Company has not received or been tendered the whole of any monies owing to it by the Customer, the Company shall have, until all monies owing to the Company 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.

21.2 The lien of the Company shall continue despite the commencement of proceedings, or judgment for any monies owing to the Company having been obtained against the Customer.

22. Equipment Hire

22.1 Equipment shall at all times remain the property of the Company and is returnable on demand by the Company. In the event that Equipment is not returned to the Company in the condition in which it was delivered the Company retains the right to charge the Customer the full cost of repairing the Equipment. In the event that Equipment is not returned at all the Company shall have right to charge the Customer the full cost of replacing the Equipment.

22.2 The Customer shall:

(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to a lien over the Equipment.

(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by the Company to the Customer.

23.1 The Customer accepts full responsibility for the safekeeping of the Equipment and the Customer agrees to insure, or self insure, the Company's interest in the Equipment and agrees to indemnify the Company against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Customer will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

23. Service of Notices

24.1 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.

24.2 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.

24. Trusts

24.3 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 Company may have notice of the Trust, the Customer covenants with the Company 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 Company (the Company 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.

25. General

25.1 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.

25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Company has its principal place of business, and are subject to the jurisdiction of the Shepparton Courts in Victoria.

25.3 Subject to clause 14, the Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods/Equipment hire).

25.4 The Company may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.

25.5 The Customer cannot licence or assign without the written approval of the Company.

25.6 The Company 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 Company's sub-contractors without the authority of the Company.

25.7 The Customer agrees that the Company 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 Company to provide Goods/Equipment to the Customer.

25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

25.9 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.

Please note that a larger print version of these terms and conditions is available from the Company on request.

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