

Town & Country Timber Flooring - Terms & Conditions of Trade

<p>1. Definitions</p> <p>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.</p> <p>1.2 "Supplier" means Silvatawn Pty Ltd ATF Tucker Family Trust /TA Town & Country Timber Flooring, its successors and assigns or any person acting on behalf of and with the authority of Silvatawn Pty Ltd ATF Tucker Family Trust /TA Town & Country Timber Flooring.</p> <p>1.3 "Client" means the persons, entities or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:</p> <p>(a) if there is more than one Client, is a reference to each Client jointly and severally; and</p> <p>(b) if the Client is a partnership, it shall bind each partner jointly and severally; and</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>1.4 "Goods" means all Goods or Services supplied by the Supplier 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).</p> <p>1.5 "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 6.1 applications, credit history) and pricing details.</p> <p>1.6 "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 ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable cookies on the website, prior to ordering Goods via the website.</p> <p>1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 6 below.</p> <p>1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>2. Acceptance</p> <p>2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions when the Client places an order for or accepts Delivery of the Goods.</p> <p>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.</p> <p>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.</p> <p>2.4 None of the Supplier's agents or representatives are 6.4 authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Seller in writing nor is the Supplier bound by any such unauthorised statements.</p> <p>2.5 The Client acknowledges and accepts that:</p> <p>(a) the supply of Services on credit shall not take effect until the Client has completed a credit application with the Supplier and it has been approved with a credit limit established for the account; and</p> <p>(b) in the event that the supply of Services request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Supplier reserves the right to refuse delivery; and</p> <p>(c) 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 Supplier reserves the right to substitute comparable Goods (of a comparable quality and value to the Price as per clause 6.2. In all such cases the Supplier will notify the Client in advance of any such substitution, and also reserves the right to place the Client's order and/or Services on hold, as per clause 7.1 until such time as the Supplier and the Client agree to such changes.</p> <p>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 (insert year) or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>2.7 These terms and conditions may be meant to be read in conjunction with the Supplier's Hire Form, and:</p> <p>(a) where the context so permits, the terms 'Services' or 'Goods' shall include any supply of Equipment, as defined therein; and</p> <p>(b) if there are any inconsistencies between the two documents then the terms and conditions contained 6.9 therein shall prevail.</p> <p>3. Errors and Omissions</p> <p>3.1 The Client acknowledges and accepts that the Supplier shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):</p> <p>(a) resulting from an inadvertent mistake made by the Supplier in the formation and/or administration of this Contract; and/or</p> <p>(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Supplier in respect of the Services.</p> <p>3.2 In the event such an error and/or omission occurs, in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of the Supplier; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.</p> <p>4. Change in Control</p> <p>4.1 The Client shall give the Supplier not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.</p> <p>5. On-Line Ordering</p> <p>5.1 The Client acknowledges and agrees that:</p>	<p>(a) The Supplier does not guarantee the website's 7.4 performance;</p> <p>(b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Supplier;</p> <p>(c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;</p> <p>(d) there are inherent hazards in electronic distribution, and as such the Supplier cannot warrant against delays or errors in transmitting data between the Client and the Supplier including orders, and you agree that to the maximum extent permitted by law, the Supplier will not be liable for any losses which the Client suffers as a result of on-line-ordering not being available or for delays or errors in transmitting orders;</p> <p>(e) when making a transaction through the website, the Client's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by the Supplier and/or displayed on the website. The encryption process ensures that the Client's information cannot be read by or altered by 8.1 outside influences;</p> <p>(f) if the Client is not the cardholder for any credit card being used to pay for the Goods, the Supplier shall be entitled to reasonably assume that the Client has received permission from the cardholder for use of the credit card for the transaction.</p> <p>5.2 The Supplier reserves the right to terminate the Client's order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Supplier's business, or violated these terms and conditions.</p> <p>6. Price and Payment</p> <p>At the Supplier's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Supplier to the Client; or</p> <p>(b) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>The Supplier reserves the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be supplied is requested; or</p> <p>(b) 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, safety considerations, availability of machinery, prerequisite work by any third party not being completed, preparation of the floor, rotten floor boards, subfloor condition, cleaning, extra rooms, additional Goods required, take-up and disposal of old floor coverings etc.) which are only discovered on commencement of the Services; or</p> <p>(c) in the event of increases to the Supplier in the cost of labour or materials which are beyond the Supplier's control.</p> <p>6.3 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.</p> <p>At the Supplier's sole discretion, a non-refundable deposit may be required.</p> <p>6.8 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 Supplier, which may be:</p> <p>(a) Delivery of the Goods;</p> <p>(b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;</p> <p>(c) for certain approved Clients, due either fourteen (14) or thirty (30) days following the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) the date specified on any invoice or other form as being the date for payment; or</p> <p>(e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.</p> <p>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 Supplier.</p> <p>The Supplier may in its discretion allocate any payment received from the Client towards any invoice that the Supplier determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Supplier may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Supplier, payment will be deemed to be allocated in such manner as preserves the maximum value of the Supplier's Purchase Money Security Interest (as defined in the PPSA) in the Goods.</p> <p>The Client shall not be entitled to set off against, or 8.12 deduct from, the Price, any sums owed or claimed to be owed to the Client by the Supplier, nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p>7. Delivery of Goods</p> <p>The Services' commencement date will be put back and the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Client to:</p> <p>(a) make a selection; or</p> <p>(b) have the site ready for the Services; or</p> <p>(c) notify the Supplier that the site is ready.</p> <p>8. Delivery of the Goods is taken to occur at the time that:</p> <p>(a) the Client or the Client's nominated carrier takes possession of the Goods at the Supplier's address; 8.17 or</p> <p>(b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.</p> <p>8.18 At the Supplier's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.</p> <p>The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>Any time specified by the Supplier for Delivery of the Goods is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p>Furthermore, where the Client requests the Supplier to store the Goods temporarily for an unspecified timeframe, then the Client will be responsible to arrange suitable insurance over the Goods themselves whilst the finished Goods are stored on the Supplier's premises and all costs in respect of said storage shall be borne by the Client.</p> <p>9. Risk</p> <p>Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.</p> <p>If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.</p> <p>If the Client requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.</p> <p>While the Supplier makes every effort to ensure the suitability of the sub-floor at the time of laying, it cannot be held liable for subsequent changes to the moisture content, sub-floor ventilation, vermin infestation, or the structural instability arising after that time. The Supplier will not be held responsible for any breakdown, movement or fault of any description whatsoever in the sub-floor or surface upon which the material is installed or for damage not directly resulting from the Supplier's workmanship.</p> <p>Unless specifically quoted for, the use of floor preparations and underlay are for the purpose of providing a suitable surface on which to lay floor coverings and does not allow for the levelling, stabilizing, 8.26 repairing or waterproofing of the sub-floor.</p> <p>The Supplier shall be entitled to rely on the accuracy of any plans, specifications or other reports and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications, reports or other information.</p> <p>In the event that the Client provides information relating to measurements and quantities of the Goods required to complete the Services, it is the Client's responsibility to verify the accuracy of the measurements and quantities, before the Client or the Supplier places an order based on these measurements and quantities. The Supplier accepts no responsibility for any loss, damages, or costs however resulting from the Client's failure to comply with this clause.</p> <p>Where the Client has supplied materials for the Supplier to complete the Services, the Client acknowledges and accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Client shall not be responsible for any defects in the materials, any loss or damage to the Services (or any part thereof), however arising from the use of materials supplied by the Client.</p> <p>The Client acknowledges and accepts that:</p> <p>(a) skirting boards/kick boards may exhibit some markings on these surfaces due to the necessity of high speed sanding equipment to be operated right up to the skirting to achieve the best possible result; and</p> <p>(b) gaps between boards may cause 'quilting'; and</p> <p>(c) swirling marks from rotary equipment is a normal part of the sanding process and can be visible under certain lighting; and</p> <p>(d) cupping of timber can occur after sanding and polishing due to moisture levels in timber; and</p> <p>(e) edge bonding is a consequence of timber shrinkage and the boards been stuck together with the polyurethane and is not a result of the services provided by the Supplier.</p> <p>The Supplier is not responsible for floorboard joints showing through hardboard underlay.</p> <p>Hard board underlay is used to minimise the number of floorboard joints but it is not possible to eliminate all and some may show through the hard board underlay joints.</p> <p>The Client also acknowledges and accepts that Goods supplied may exhibit variations in shade, tone, colour, texture, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.</p> <p>The Supplier shall not be liable if the Client does not follow the Supplier's recommendation to have:</p> <p>(a) no foot traffic on the flooring for a minimum of twenty-four (24) hours but preferably seven (7) days; and</p> <p>(b) no furniture to be placed on floor for a minimum of forty-eight (48) hours; and</p> <p>(c) felt to be placed under furniture legs to reduce any damage by impact or scratching.</p> <p>8.14 The Client agrees to indemnify the Supplier from any damage caused by any other tradesmen during and after the completion of the Services. If the Client instructs the Supplier to rectify any damage caused by any other tradesmen, this will become a variation and shall be charged in accordance with clause 6.2.</p> <p>8.15 The Supplier will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds.</p> <p>8.16 Whilst the Supplier will take all due care to avoid contamination of the finished surface, the Supplier accepts no responsibility or contamination by natural contaminants such as dust or hair which may be present at the site.</p> <p>On completion of the Services, the Supplier shall provide the Client with maintenance and cleaning instructions. Failure by the Client to adhere to said instructions may invalidate the warranty.</p> <p>8.18 The Supplier is to be notified within forty-eight (48) hours of the completion of the Services if further coats are</p>	<p>required to cover defects, after this time a further coat maybe required to the cost of the Client.</p> <p>10. Timber Risk</p> <p>Timber is a natural product and as such may exhibit variations in texture, shade, colour, surface, finish, markings, veining, and contain natural fissures, occlusions, and indentations: Whilst the Supplier will make every effort to match sales samples to the finished Goods, the Supplier accepts no liability whatsoever where such samples differ to the finished Goods supplied.</p> <p>8.20 Timber is also a hygroscopic material subject to expansion and contraction; therefore, the Supplier will accept no responsibility for gaps that may appear in the flooring during prolonged dry periods.</p> <p>8.21 The Supplier will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.</p> <p>8.22 Vinyl or Cork Tile Flooring Risk</p> <p>The Client acknowledges and agrees that the Supplier shall not be liable for any loss, damages or costs however arising in the event that:</p> <p>(a) a heavy or sharp object is dropped or falls on the vinyl, as vinyl will show scratches and will get cut as it is a soft and flexible material; or</p> <p>(b) an object is dragged across it as vinyl can rip and tear; or</p> <p>(c) the vinyl discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).</p> <p>8.23 The Supplier does not recommend vinyl to be installed over a floor that is a combination of wood and concrete, or expansion joints in concrete floors, as any movement, joint, seams in joist board, or thin line board will show through the vinyl.</p> <p>8.24 The Client acknowledges and agrees that vinyl will not fully seal a floor around the edges particularly around showers or baths; the Client also agrees water can get underneath and therefore bubble and/or discolour the vinyl. The Supplier shall not be held liable for any loss, damages or costs however arising due to the same.</p> <p>8.25 The Supplier shall advise the Client if the Supplier believes that there are any issues with the sub floor (including, but not limited to, moisture problems which may cause the vinyl to bubble and discolour) however the Client acknowledges that it is not always possible to identify such problems. Therefore the Client agrees that the Supplier shall not be held liable in any way whatsoever should any such issue go undetected causing damage to the Goods.</p> <p>8.26 The Client acknowledges that whilst floor levelling compound and floor preparation may help smooth out rough floors; this will not necessarily level a floor.</p> <p>11. Abandoned/Unclaimed Goods</p> <p>Subject to clause 7.5, where the Goods have been paid for in full but the Goods remain unclaimed (after written notice was issued to the Client for collection) at the end of a twelve (12) month period, then the Supplier shall be entitled to assume that such Goods have been abandoned and the Supplier shall be free to dispose of such Goods and to retain the proceeds thereof, if any, to cover any associated costs for storage.</p> <p>12. Client's Responsibilities</p> <p>It is the Client's responsibility to:</p> <p>(a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and</p> <p>(b) remove all existing floor coverings, tacks and staples; and</p> <p>(c) fully disclose any information that may affect the Supplier's installation procedures (including, but not limited to, any cracks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of concrete over 25mpa); and</p> <p>(d) ensure the sub-floor is adequately ventilated and is structurally sound; and</p> <p>(e) ensure that the levels of the sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness; and</p> <p>(f) remove all fragile items such as glassware, crockery, pot plants, appliances, furniture and ornaments. Breakages and damages are the responsibility of the Client. All care taken but no responsibility accepted by the Supplier in this regard; and</p> <p>(g) provide adequate dust sheets to protect the Client's furniture and décor. The Supplier will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Client, until the coatings are dry; and</p> <p>(h) extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc.; and</p> <p>(i) supply power to within eight (8) metres of the project; and</p> <p>(j) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding work commencing, and are made available for use at no cost for the duration of the project. Any costs incurred by the Supplier will be invoiced to the Client should this requirement not be met; and</p> <p>(k) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Client to adhere to the installation schedule agreed to between the Supplier and the Client, any additional costs will be invoiced to the Client as an extra.</p> <p>10.2 The Supplier is not insured to remove furniture or fittings and will not do so, nor is the Supplier licensed to move gas or electrical appliances.</p> <p>11. Access</p> <p>11.1 The Client shall ensure that the Supplier has clear and free access to the site at all times to enable them to undertake the Services. The Supplier shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Supplier.</p> <p>12. Compliance with Laws</p> <p>12.1 The Client and the Supplier 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.</p> <p>12.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.</p> <p>12.3 The Client 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.</p>
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<p>13. Title</p> <p>13.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:</p> <p>(a) the Client has paid the Supplier all amounts owing to the Supplier; and</p> <p>(b) the Client has met all of its other obligations to the Supplier.</p> <p>13.2 Receipt by the Supplier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>13.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 13.1:</p> <p>(a) the Client is only a bailee of the Goods and must return the Goods to the Supplier on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(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 Supplier and must pay or deliver the proceeds to the Supplier on demand;</p> <p>(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 Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs;</p> <p>(e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods;</p> <p>(f) the Supplier may recover possession of any Goods in transit whether or not Delivery has occurred;</p> <p>(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 Supplier;</p> <p>(h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>14. Personal Property Securities Act 2009 ("PPSA")</p> <p>14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>14.2 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 and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.</p> <p>14.3 The Client undertakes to:</p> <p>(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to:</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) register any other document required to be registered by the PPSA; or</p> <p>(iii) correct a defect in a statement referred to in clause 14.3(a)(i) or 14.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Supplier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;</p> <p>(e) immediately advise the Supplier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>14.4 The Supplier 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.</p> <p>14.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.</p> <p>14.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>14.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>14.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 14.3 to 14.5.</p> <p>14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p>15. Security and Charge</p> <p>15.1 In consideration of the Supplier agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>15.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.</p> <p>15.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.</p> <p>16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>16.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The 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 Supplier to inspect the Goods.</p>	<p>16.2 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).</p> <p>16.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>16.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>16.6 If the Supplier is required to replace the Goods under the clause or the Client, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.</p> <p>16.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;</p> <p>(b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;</p> <p>(c) otherwise negated absolutely.</p> <p>16.8 Subject to this clause 16, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 16.1; and</p> <p>(b) the Supplier has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Client failing to properly maintain or store any Goods;</p> <p>(b) the Client using the Goods for any purpose other than that for which they were designed;</p> <p>(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;</p> <p>(d) the Client failing to follow any instructions or guidelines provided by the Supplier;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>16.10 The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.</p> <p>16.11 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.</p> <p>16.12 Subject to clause 16.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.</p> <p>17. Intellectual Property</p> <p>17.1 Where the Supplier 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 Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.</p> <p>17.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.</p> <p>17.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.</p> <p>18. Default and Consequences of Default</p> <p>18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>18.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).</p> <p>18.3 Further to any other rights or remedies the Supplier may have under this Contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 18 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.</p> <p>18.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order to the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;</p> <p>(b) the Client has exceeded any applicable credit limit provided by the Supplier;</p> <p>(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</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.</p> <p>19. Cancellation</p> <p>19.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the</p>	<p>Client suffers because the Supplier has exercised its rights under this clause.</p> <p>The Supplier may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p>20. Privacy Policy</p> <p>All emails, documents, images or other recorded information held or used by the Supplier is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. The Supplier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 (the "Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation ("GDPR") (collectively, "EU Data Privacy Laws"). The Supplier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Supplier that may result in serious harm to the Client, the Supplier 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.</p> <p>Notwithstanding clause 20.1, privacy limitations will extend to the Supplier in respect of Cookies where transactions for purchases/orders transpire directly from the Supplier's website. The Supplier agrees to display reference to such Cookies and/or similar tracking technologies such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:</p> <p>(a) IP address, browser, email client type and other similar details;</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to the Supplier when the Supplier sends an email to the Client, so the Supplier may collect and review that information ("collectively Personal Information")</p> <p>In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via the Supplier's website.</p> <p>The Client agrees for the Supplier 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 Supplier.</p> <p>The Client agrees that the Supplier may exchange information about the Client with those credit providers and/or related body corporates for the following purposes:</p> <p>(a) to assess an application by the Client; and/or</p> <p>(b) to notify other credit providers of a default by the Client; and/or</p> <p>(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</p> <p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.</p> <p>20.5 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>20.6 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or</p> <p>(d) enabling the collection of amounts outstanding in the Station to the Goods.</p> <p>20.7 The Client agrees to provide information about the Client to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the CRB to create or maintain a credit information file about the Client including credit history.</p> <p>The information given to the CRB may include:</p> <p>(a) Personal Information as outlined in 20.3 above;</p> <p>(b) name of the credit provider and that the Supplier is a current credit provider to the Client;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details concerning the Client's application for credit (including commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(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 Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>20.8 The Client shall have the right to request (by e-mail) from the Supplier:</p> <p>(a) a copy of the Personal Information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect Personal Information; and</p>	<p>(b) that the Supplier does not disclose any Personal Information about the Client for the purpose of direct marketing.</p> <p>20.10 The Supplier will destroy Personal Information upon the Client'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.</p> <p>20.11 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>21. Building and Construction Industry Security of Payment Act 2002</p> <p>21.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 may apply.</p> <p>21.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payment Act 2002 of Victoria, except to the extent permitted by the Act where applicable.</p> <p>22. Service of Notices</p> <p>22.1 Any written notice given under this Contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this Contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this Contract;</p> <p>(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;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p>23. Trusts</p> <p>23.1 If the Client at any time upon or subsequent to entering into the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:</p> <p>(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;</p> <p>(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;</p> <p>(c) the Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the removal, replacement or retirement of the Client as trustee of the Trust;</p> <p>(ii) any alteration to or variation of the terms of the Trust;</p> <p>(iii) any advancement or distribution of capital of the Trust; or</p> <p>(iv) any resettlement of the trust property.</p> <p>24. General</p> <p>24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Wodonga Courts in this state.</p> <p>24.3 Subject to clause 16, the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>24.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.</p> <p>24.5 The Client cannot licence or assign without the written approval of the Supplier.</p> <p>24.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.</p> <p>24.7 The Client agrees that the Supplier 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 Supplier to provide Goods to the Client. 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.</p> <p>24.9 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.</p>
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