

TERMS & CONDITIONS FOR THE SUPPLY OF GOODS & SERVICES

1. Contract

1.1 A **Contract** is entered into between the Business & the Customer when the Customer accepts the Business's quotation. If not accepted in writing, then the quotation is deemed accepted upon receipt of the Customer's instructions to proceed (whether oral, written by email or text message or any other form of electronic communication or otherwise).

1.2 These terms & conditions are incorporated into each Contract.

2. Price and Payment

2.1 The Price shall be the price stated in the Business's quotation.

2.2 The Price shall be increased by the amount of GST & other taxes & duties that may be applicable except to the extent that the quotation states that the price is "inclusive of GST & taxes".

2.3 Time for payment stated in the quotation shall be of the essence. If no time is stated, then payment is due 7 days after date of invoice.

2.4 Payment will be made by the due date, without set-off, counterclaim or deduction.

3. Delivery and Risk

3.1 Any goods delivered by the Business to premises stipulated by the Customer are at the sole risk of the Customer when the goods leave the Business's premises.

3.2 The Services may, at the discretion of the Business, be made available independently of the supply of goods.

3.3 The costs of delivery & insurance of the goods will be paid by the Customer to the Business unless otherwise stipulated in the quotation.

3.4 The Business may deliver the goods by separate deliveries or aggregate all goods into one delivery & delivery dates & times shall only be approximate.

3.5 The Business reserves the right to defer or delay the date of delivery of goods or performance of the Services or to cancel the Contract where it is prevented from or delayed in the carrying on of its business due to the site not being ready or an event of Force Majeure. If the event of Force Majeure continues for a continuous period in excess of 90 days, either party shall be entitled to give notice in writing to the other party to terminate this contract without penalty. An event of Force Majeure includes such circumstances beyond the reasonable control of the Business including without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, inclement weather, epidemic, lock outs, strikes or other labour disputes (whether or not relating to either party's workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

4. Exclusions

Except if & to the extent applicable law requires otherwise, the Customer agrees that the Customer has relied on his, her or its own knowledge & expertise in selecting the goods &/or Services & their fitness for purpose. Any advice or assistance or suggestion by the Business is not "expert" advice.

5. Defects and Claims

5.1 The Customer shall, as soon as possible, inspect the goods & Service upon delivery & installation & shall no later than fourteen (14) days from completion of installation notify the Business in writing of any alleged defect, claim, shortage in quantity or damage.

5.2 All claims must refer to the order number & date & state the detailed reason for the claim.

6. Credit and Creation of Security Interest

6.1 The Business may, at its absolute discretion, grant to the Customer a credit facility. The Business reserves the right to withdraw any such credit facility at any time, without any liability to the Customer or any other party, & to demand immediate payment of all amounts owed by the Customer.

6.2 The Customer irrevocably authorises the Business to make such enquiries from time to time as the Business may deem necessary to obtain information &/or to investigate the creditworthiness of the Customer including enquiries with persons nominated as trade references, bankers of the Customer, any other credit provider, any credit reporting agency, any I & titles office, the ASIC, ITSA &/or any similar body &/or related information service ("Sources") & including personal credit & consumer credit information & any property, business &/or solvency information. The Customer by this clause irrevocably authorises the Sources to disclose anything about the Customer which is in the Sources' possession & the Customer agrees that the Business may disclose any information it has about the Customer to any interested person (subject only to any obligations the Business may have under the Privacy Act 1988 (Cth)).

6.3 This clause is applicable in the event that payment of the price is deferred & where the goods & Services have been delivered installed or provided to the Customer prior to the receipt of payment in full or the Customer is indebted to the Business as a result of previous supplies.

6.4 The Customer acknowledges that these terms & conditions constitute a security agreement which creates a Security Interest in favour of the Business over:

(a) all goods previously supplied by the Business to the Customer;

(b) all after acquired goods supplied by the Business to the Customer,

as continuing security for payment of the price & all of the Customer's outstanding debts & obligations to the Business from time to time & this Security Interest shall extend to Proceeds & Accessions & continue until all of the Customer's debts & obligations are discharged.

6.5 The Customer shall agree to the registration of a Security Interest by the Business & shall provide all necessary information to facilitate this.

6.6 All capitalised words in this clause shall have the same meaning as the *Personal Property Security Act 2009 (Cth)*.

7. Warranties and The Australian Consumer Law

7.1 Where a law provides that the Business's liability cannot be excluded, then to the maximum extent permitted by law, the Business's liability is limited to:

(a) in the case of goods any of the following as determined by the Business in its sole discretion:

- (i) the replacement of the goods or supply of equivalent goods;
- (ii) the repair of the goods;
- (iii) the payment of the cost of replacing or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired; &

(b) in the case of Service any of the following as determined by the Business in its sole discretion:

- (i) the supply of the Services again; or
- (ii) payment of the cost of having the Services supplied again.

7.2 The Business is not liable to the Customer or any other person for any direct or indirect loss, including without limitation consequential loss, damage to persons or property, & death or injury, caused by any act or omission, including without limitation negligent acts or omissions of the Business or of the Business's employees, servants or agents, except for any liability which cannot be excluded by law.

7.3 Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Australian Consumer Law except to the extent permitted by law.

7.4 If the Customer has any queries or seek to enforce any of the Customer's rights pursuant to the Australian Consumer Law, the Customer is invited to contact the Business at the address & contact details set out in these terms & conditions.

8. Intellectual Property

Where the Business has designed, drawn or written specifications & drawings for the Customer, then the copyright in those designs & drawings shall remain vested in the Business, & shall only be used by the Customer at the Business's discretion. The Business shall also retain the moral right in the copyright in those designs & drawings.

9. Default and Consequences of Default

9.1 If:

- (a) the Customer does not pay an amount owing to the Business when due in the manner required;
- (b) the Customer breaches any material term of this contract;
- (c) any representation or warranty made by the Customer to the Business is not true when made;
- (d) the Customer or any of its officers is or becomes insolvent, bankrupt, commits an act of bankruptcy, in liquidation, in provisional liquidation, in administration, makes any arrangement with or assignment for the benefit of its creditors, or has a receiver or receiver & manager or similar officer appointed in respect of any of its property; or
- (e) any of the matters set out in paragraph (d) above is likely to happen in the opinion of the Business, (each an "Event of Default"), then the Business may do one or more of the following:
 - (i) require immediate payment of all amounts owing by the Customer to the Business;
 - (ii) repossess the goods & resell them & apply the proceeds of sale to any amount owing or payable by the Customer to the Business & for the purposes of enabling the Business to retake possession of the goods, the Business & its representatives are irrevocably authorised to enter during business hours into any premises owned or occupied by the Customer or which the Customer is entitled to access on or in which the goods may be located from time to time, & to recover & do all things necessary to recover the goods;
 - (iii) immediately without notice terminate this contract between the Business & the Customer;
 - (iv) immediately without notice suspend or terminate any supply of goods & Services to the Customer & any of the Business's other obligations to the Customer under this contract;
 - (v) charge the Customer interest on any overdue amounts of 2% above the Penalty Interest Rates Act 1983 (Vic);
 - (vi) charge the Customer for all costs & disbursements incurred by the Business in enforcing any rights pursuant to this Contract & pursuing any

overdue amounts including legal costs on a solicitor & own client basis.

9.2 The Business will not be liable to the Customer for any loss or damage the Customer suffers as a result of the Business's exercise of rights under this clause 10.

10. General

10.1 If any provision of these terms & conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality & enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

10.2 These terms & conditions & any contract to which they apply shall be governed by the laws of Victoria & the parties submit to the jurisdiction of the courts of Victoria.

10.3 Where more than one Customer has entered into this contract, each of the Customers shall be jointly & severally for all obligations under this contract.

10.4 In the interpretation of this contract, no provision of the contract will be construed adversely to a party solely on the grounds that the party was responsible for the preparation of this contract or any part of it

10.5 Any notice required under these terms & conditions shall be in writing addressed to the party to whom it is to be sent at the address or facsimile number or email address from time to time provided by that party in writing to the other party.