

**Terms and Conditions of Trade as displayed on [www.jamesglen.com](http://www.jamesglen.com)**
**1. Definitions**

1.1 In these Terms and Conditions of Sale:

In these Terms:

"ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act;

"Agreement" means any agreement for the provision of goods or services by the Supplier to the Customer;

"Consumer" is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

"Customer" means the person, firm or corporation, jointly or severally if more than one, acquiring goods or services from the Supplier;

"Goods" means goods supplied by the Supplier to the Customer;

"GST" means the Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999 as amended;

"SO" means a Special Order for any Product that has been specially ordered in for a Customer and includes products made to order and exceptionally large volumes of standard Products;

"Order" means an offer by a Customer to purchase Products or Services from the Supplier  
 "PPSA" means the Personal Property Securities Act 2009 and Personal Property Securities Regulations 2009;

"PPS Act" means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as varied from time to time;

"PPSR" refers to Personal Property Securities Register established under the PPS Act;

"Services" means services supplied by the Supplier to the Customer;

"Supplier" means James Glen Pty. Ltd. (ABN 96 118 412 892); and

"Terms" means these Terms and Conditions of Sale as varied from time to time.

**2. Basis Of Agreement**

2.1 Unless otherwise agreed by the Supplier in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other conditions, including the Customer's terms and conditions of purchase (if any).

2.2 The Supplier may but shall not be required nor responsible to notify the Customer of the existence or content of any variations of the Terms. Any variations will apply to orders placed after the date of variation.

2.3 Any Order submitted to the Supplier by a Customer shall be deemed to be made pursuant to the Terms.

2.4 Any Order made or placed by the Customer for the purchase of Products or Services shall be an irrevocable offer and shall constitute an unqualified acceptance by the Customer of the Terms.

2.5 The Supplier reserves the right to substitute Products that are not available for comparable Products of equal or higher specification (unless the Customer's Order stipulates that the Products are "not to be substituted").

2.6 Pricing and any quotation provided by the Supplier for the proposed supply of goods or services is:

- (1) an invitation to treat only; and
- (2) only valid if in writing.

2.7 Any terms in the Supplier's quotations form part of the Terms, and if inconsistent with the Terms, the terms of the quotation will prevail.

2.8 An Agreement is accepted by the Supplier when the Supplier accepts in writing, fax or by electronic means an offer from the Customer or provides the Customer with the goods or services.

2.9 The Supplier has absolute discretion to refuse to accept any offer.

2.10 The Supplier may accept an Order in whole or in part by providing confirmation of the Order. Acceptance may be verbal or in writing at the Suppliers discretion. Accepted Orders may not be varied or cancelled by the Customer without the Supplier's written consent and (subject to the conditions set out in the Terms) there is no right of return and where consent is provided may be subject to additional charges.

**3. Pricing**

3.1 Prices quoted for the supply of goods or services, whether by written quotation, verbally or on the Supplier's website exclude GST and any other taxes or duties imposed on or in relation to the goods or services. In addition to payment of the price of goods or services, the Customer must pay any GST and any other taxes or duties imposed on the goods or services.

3.2 The price of the Products shall be as agreed in writing between the parties or where there is no agreed price such amount as indicated on invoices provided by the Supplier to the Customers regarding Products ordered.

3.3 If the Customer requests any variation to the Agreement, including but not limited to changes in the method of delivery or packaging, the Supplier may increase the price to account for the variation.

3.4 If there is any change in the costs incurred by the Supplier in relation to the goods or services, the Supplier may vary its price to take account of the change, by notifying the Customer.

3.5 The Supplier may charge in addition to the price of the Products the recovery rate for delivery, freight and handling at rates dependent on distance and volume of Products supplied. Such rates are subject to change without notice.

3.6 The Supplier is a wholesaler and as such the minimum Order amount for Orders placed with the Supplier is \$150.00. Where the total value of a single Order is less than \$150.00, the total invoice amount will be \$150.00.

**4. Product Information, drawings and Images**

4.1 The Product range on the Supplier website may vary from printed catalogues. Product information and Images may differ from the actual Products. Customers are advised to read the labels on the Products carefully before using the Products. Drawings and images are for illustration purposes only.

**5. Special Order (SO)**

5.1 Any SO Products shall not in any case be eligible for return.

5.2 SO's are to be supplied as per quantities run at time of production that may vary by up to 10% of the total quantity on the SO.

5.3 Where SO Products are held in inventory or under consignment specifically for the Customer and the Customer discontinues normal, regular purchasing of these SO Products from the Supplier, then the Customer must resume regular purchasing or purchase all remaining inventory of the SO Products and make full payment within 30 days of receiving notification under these terms from the Supplier, at the price payable by the customer had the Products been ordered on the date of the notification referred to herein.

**6. Delivery**

6.1 Subject to clause 6.9, the Supplier will arrange delivery of the goods to the Customer's premises.

6.2 Delivery of Products may not be refused by the Customer after an Order has been accepted by the Supplier. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Supplier; or

6.3 The Customer must pay for all costs associated with delivery (or pick up, if applicable), including all packaging or required crating, freight, insurance and other charges arising from the point of despatch of the goods to the Customer's premises.

6.4 The Customer must provide reasonable and proper access to the Customer's premises.

6.5 The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are presented for delivery. In the event that the Customer is unable or unwilling to accept delivery of the Products as arranged, then the Supplier shall be entitled to charge all reasonable costs for the return and redelivery. If delivery is attempted and is unable to be completed, the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.

6.6 Delivery of Products to a third party or place nominated in any way by the Customer is deemed to be delivery to the Customer pursuant to these Terms.

6.7 The Supplier may make part delivery of goods or provision of services, and the Supplier may invoice the Customer for the goods or services provided.

6.8 The Customer indemnifies the Supplier against any loss or damage suffered by the Supplier, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer, and the Supplier has not used due care and skill.

6.9 If agreed that the Customer will collect the goods;

- (1) the Customer must collect the goods within 7 days of being advised they are ready;
- (2) if the Customer does not collect the goods within this time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

6.10 Any period or date for delivery of goods or provision of services stated by the Supplier is an estimate only and not a contractual commitment.

6.11 If the Supplier is unable to supply the Customer's total order, these Terms continue to apply to the goods or services supplied.

6.12 The Supplier will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

6.13 If the Supplier cannot complete the services by any estimated date, it will complete the services within a reasonable time.

6.14 A completed driver's manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods invoiced.

6.15 Delivery of the Products shall be deemed to have taken place when:

- (a) The Products are delivered at the Customer's nominated address (in the event that the Products are delivered by the Supplier or the Supplier's nominated carrier); or
- (c) The Customer's nominated carrier takes possession of the Products in which event the carrier shall be deemed to be the Customer's agent; or
- (a) The Customer takes possession of the Products at the Supplier's address if the Products are collected.

**7. Acceptance**

7.1 The Customer must inspect the goods immediately upon delivery. If the goods are not in accordance with the Agreement, the Customer must, within 7 business days, after delivery give written notice to the Supplier, with full particulars.

7.2 If the Customer fails to give that notice, then, to the extent permitted by statute, the goods are deemed to have been accepted by the Customer and the Customer must pay for the goods in accordance with the provisions of these Terms.

**8. Payment**

8.1 Subject to clause 8.2, the Supplier may accept an Order and allow credit for part or all of its value or may accept an Order and require a deposit or pre-payment as a

- condition of delivery. Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery (cash or cleared funds). Where credit approval has been granted to the Customer, all invoices issued by the Supplier are due and payable by the date for payment agreed in writing by the Customer and the Supplier but if no agreement in writing is made then payment for goods or services provided must be made within 30 days from the date of which the goods are invoiced.
- 8.2 The Supplier may require payment in full on delivery of the goods or provision of the services.
- 8.3 Payment is deemed to be made:
- (1) if cash is tendered, on the date it is received by the Supplier; and
  - (2) if a cheque (bank or otherwise) or other negotiable instrument is tendered, on the date upon which the cheque or other negotiable instrument is negotiated and cleared by the Supplier's bankers.
- 8.4 The time for payment is of the essence.
- 9. Default and Credit Policy**
- 9.1 If the Customer defaults in making payment to the Supplier in accordance with these Terms, within the payment terms, or breaches any of the warranties, obligations or agreements, the Customer shall be in default then all money which would become payable by the Customer to the Supplier at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Supplier may, without prejudice to any of its other accrued or contingent rights:
- (1) charge the Customer interest calculated on the portion of the Customer's account overdue at the rate of 2% per month from the date on which the default arose until the date of payment in full; and
  - (2) charge the Customer for, and the Customer must indemnify the Supplier from, all losses, damages, claims, demands, costs and expenses (including without limitation all legal costs, collection agency costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Terms or to recover any goods;
  - (3) cease or suspend supply of any further goods or services to the Customer; and
  - (4) by written notice to the Customer, terminate any uncompleted contract with the Customer.
- 9.2 Clauses 9.1(1) to (4) may also be relied upon, at the Supplier's option, where the Customer has otherwise breached the Terms.
- 9.3 Clauses 9.1(3) and (4) may also be relied upon, at the Supplier's option:
- (1) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
  - (2) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 10. Returns**
- 10.1 Subject to the remainder of this clause 10, if any shortages, claims for damaged goods or non-compliance with the Agreement specifications is notified to and accepted by the Supplier, the Supplier, may at its option provide credit for the returned goods equal to the price charged by the Supplier.
- 10.2 Prior to returning any goods, the Customer must obtain the Supplier's written approval. The Supplier's written approval is valid for 7 days.
- 10.3 The Customer will inspect and check all Products received and within 7 days of receipt notify the Supplier in writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products comply with those Ordered prior to use. After use or expiry of the time stated herein the Product shall be deemed to be free from any default or damage at delivery.
- 10.4 The Customer must return the goods to the Supplier with handling costs, freight and cartage prepaid by the Customer.
- 10.5 Subject to clause 10.1, if the Supplier has given its written approval for the return of goods the Supplier will only give credit for the goods returned if:
- (1) the goods are in a saleable condition,
  - (2) the goods are in an undamaged and unsoiled condition and in the original packaging, unless with the prior written consent of the Supplier; and
  - (3) the goods are accompanied by a copy of the original delivery docket or copy of invoice.
- 10.6 Subject to clause 10.1, the Supplier may charge a handling charge equivalent to 20% of the price of the goods returned.
- 10.7 If the Supplier has given its written approval for the return of goods which are not deemed to have been accepted by the Customer under clause 10.1, the Supplier must refund the freight and cartage to the Customer if the Supplier agrees that the goods are not in accordance with the Agreement.
- 10.8 No credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective and are returned with a valid RM number. The Supplier reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned Products must be returned to the central warehouse or branch of the Supplier from which they were delivered unless written authority is received from the Supplier to return the Products to the closest branch. All freight, handling and other charges in relation to returning Products (other than Products defective or not ordered) are the responsibility of the Customer.
- 10.9 No Return Products include promotional Products, Products with non-standard packaging and SO Products as well as any other Product nominated by the Supplier as a "No Return" Product. No Return Products will be marked "No Return" on the packing slip, invoice or quotation.
- 10.10 If the Customer is a consumer, nothing in this clause 10 limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 11. Cancellations**
- 11.1 If the Supplier is unable to deliver or provide the goods or services, then it may cancel the Customer's order (even if it has been accepted) by written notice to the Customer.
- 11.2 No purported cancellation or suspension of any order or any part thereof by the Customer is binding on the Supplier once the order has been accepted.
- 11.3 The Supplier, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.
- 12. Risk And Insurance**
- 12.1 Goods supplied by the Supplier to the Customer are at the Customer's risk as and from the time that they are in transit from the Supplier to the Customer. The Customer must insure the goods at its own cost from the time of transit from the Supplier to the Customer and until they are paid for in full, against such risks as are prudent for the circumstances, including but not limited to theft and damage, and must note the interest of the Supplier on the policy and produce a certificate to this effect to the Supplier on request.
- 12.2 The goods are sold to the Customer on the basis that the Customer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.
- 12.3 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by the Supplier, unless recoverable from the Supplier on the failure of any statutory guarantee under the ACL.
- 13. Credit Card recovery of costs**
- 13.1 A service fee sufficient to cover the Supplier's administration and banking cost will be added where payment by the Customer is made by way of a credit card.
- 14. Retention Of Title**
- 14.1 Until the Supplier receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to the Supplier by the Customer:
- (1) title and property in all goods remain vested in the Supplier and do not pass to the Customer;
  - (2) the Customer must hold the goods as fiduciary bailee and agent for the Supplier;
  - (3) the Customer must hold the proceeds of any sale of the goods on trust for the Supplier in a separate account with a bank to whom the Customer has not given security however failure to do so will not affect the Customer's obligation as trustee; and
  - (4) in addition to its rights under the PPSA, the Supplier may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Supplier, and for this purpose the Customer irrevocably licences the Supplier to enter such premises and also indemnifies the Supplier from and against all costs, claims, demands or actions by any party arising from such action.
- 15. Passing of Risk**
- 15.1 The Risk, but not title, in respect of Products sold passes to the Customer immediately upon delivery to the customer, the Customer's agent or courier as the case may be.
- 16. Retention of Title to the Products Pending Payment**
- 16.1 Orders are accepted by the Customer on condition that ownership of the Products shall remain with the Supplier and shall not pass to the Customer until the Supplier has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Supplier from the Customer on any credit account with the Supplier or pursuant to these Terms.
- 16.2 Prior to ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of the Supplier.
- 17. Personal Property Security Act**
- 17.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 17.2 For the purposes of the PPSA:
- (1) terms used in clause 17 that are defined in the PPSA have the same meaning as in the PPSA;
  - (2) these Terms are a security agreement, and the Supplier has a Purchase Money Security Interest in all present and future goods supplied by the Supplier to the Customer and the proceeds of the goods;
  - (3) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
  - (4) the Customer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by the Supplier on the Personal Property Securities Register. A certificate of debt signed by a representative of the Supplier shall be prima facie evidence and proof of money owing by the Customer to the Supplier at the time of certificate.

- (5) The Customer acknowledges that the Supplier may do anything reasonably necessary, including but not limited to registering any security interest which the Supplier has over the Products or the purchase money security interest (PMSI) in the Products on the PPSR in order to perfect the security interest and comply with the requirement of the PPS Act. The Customer agrees to do all things reasonably necessary to assist the Supplier to undertake the matters set out above. The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a verification statement in relation to any registration on the PPSR.
- 17.3 The security interest arising under this clause 15 attaches to the goods when the goods are collected or dispatched from the Supplier's premises and not at any later time.
- 17.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 17.5 The Supplier and Customer agree to contract out of and nothing in sections 95, 125, 129, 142 and 143 of the PPSA shall apply to these Terms.
- 17.6 To the extent permitted by the PPSA, the Customer agrees that:
- (1) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Supplier will apply only to the extent that they are mandatory, or the Supplier agrees to their application in writing; and
  - (2) where the Supplier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 17.7 The Customer undertakes:
- (1) Promptly to do all things including signing any further documents and providing any further information which the Supplier may reasonably require to enable it to perfect and maintain the perfection of its security interest or PMSI (including by registration of a financing statement or financing change statement on the PPSR and the Customer warrants that any such information the Customer provides will be complete, accurate and up-to-date in all respects);
  - (2) To give the Supplier not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to, changes in its address, facsimile number or trading name).
- 17.8 The Customer must immediately upon the Supplier's request:
- (1) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
  - (2) procure from any person considered by the Supplier to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Supplier may at any time require.
- 17.9 The Supplier may allocate amounts received from the Customer in any manner the Supplier determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Supplier.
- 18. Disputed Charges**
- 18.1 The Customer accepts that minor defects in the Products do not constitute grounds to dispute an invoice or part thereof.
- 18.2 If the Customer objects to any invoiced item, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the invoice is paid in full and notice in writing of the dispute is given to the Supplier, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The Supplier will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the due date will be deemed to be correctly charged and accepted by the Customer and the customer waives all claims against the invoice.
- 19. Recovery**
- 19.1 Notwithstanding any other provision to the contrary, if any amount is not paid by the Customer within the terms for payment, the Supplier reserves the following rights in relation to the Products until all amounts owed by the Customer to the Supplier in respect of the Products and all other Products supplied to the Customer by the Supplier at any time are fully paid:
- (a) Legal and equitable ownership of the Products;
  - (b) To retake possession of the Products; and
  - (c) To keep or resell any of the Products repossessed.
- 19.2 The Customer hereby grants full leave and irrevocable license without any liability to the Supplier and any person authorised by the Supplier to enter any premises by any means where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.
- 20. Liability**
- 20.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, acceptability, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 20.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Supplier for failure of a statutory guarantee under the ACL.
- 20.3 If the Customer on-supplies the goods to consumer and:
- (1) the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Supplier's liability to the Customer;
  - (2) the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of the Supplier's liability to the Customer;
  - (3) howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 20.4 If clause 12.2 or 12.3 do not apply, then other than as stated in the Terms or any written warranty statement the Supplier is not liable to the Customer in any way arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 20.5 The Supplier is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including, but not limited to, loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 20.6 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 21. Acknowledgments**
- 21.1 The Customer acknowledges that:
- (1) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Supplier in relation to the goods or services or their use or application;
  - (2) it has not made known, either expressly or by implication, to the Supplier any purposes for which it requires the goods or services, and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by the Supplier.
- 22. Privacy**
- 22.1 The Supplier is bound by the Privacy Amendment (Private Sector) Act 2000. All personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed, transferred and destroyed in accordance with the National Privacy Principles ("NPP").
- 22.2 The Supplier requires that the Customer comply with the NPP's in connection with any personal information supplied to it by the Supplier in connection with this Agreement.
- 23. Warranties, Disclaimer and Limitation of Liability**
- 23.1 Except as expressly provided in by these Terms or as sent out in the Supplier's acceptance and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, merchantability or fitness for purpose of any Products provided under this agreement is given or assumed by the Supplier and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are, subject to clauses 23.2 and 23.3, hereby excluded.
- 23.2 The Supplier acknowledges that certain legislation in Australia, including the Australian Consumer Law provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in these terms and conditions excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) which cannot lawfully be excluded, restricted or modified.
- 23.3 Notwithstanding clause 23.1, if this agreement constitutes a supply of Products to which the exclusion in cannot apply then to the full extent permitted by law, the liability of the Supplier in respect of a breach of a guarantee, condition or warranty implied by legislation (other than any non-excludable implied guarantees, conditions or warranties), including liability for any consequential loss which the Customer or any other entity or person may sustain or incur, will be limited, at the Supplier's option, to:
- (1) If the breach relates to supply of Products:
    - (i) Replacement of the Products; or
    - (ii) The provision of a refund or;
    - (iii) Repair of the Products;
    - (iv) The payment to the Customer of the reasonable cost of having the Products repaired or replaced.
  - (2) If the breach relates to services:
    - (i) Re-supply of the service; or
    - (ii) The provision of a refund; or
    - (iii) The payment to the Customer of the reasonable cost of having the service re-supplied.
- 23.4 The Customer acknowledges and agrees that in entering into this agreement it has not relied in any way on the Supplier's representations and that it has satisfied itself as to the suitability of the Product for the Customer's purposes.
- 23.5 To the full extent permitted by law the Supplier will not be liable to the Customer for any aesthetic change, loss or damage (including loss of profits or any other indirect or consequential loss or damage) arising directly or indirectly from:

- (1) The supply or use by the Customer of any Product; or
- (2) Delayed or non-delivery of the Products for any reason including but not limited to loss, damage, theft of the Products whilst in transit
- (3) Any breach by the
- (4) of its obligations under this agreement.

**24. Vienna Sales Convention**

24.1 The application of the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention 1980 is excluded.

**25. Force Majeure**

25.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, including without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war, performance by the party of that obligation is suspended during the time, but only to the extent that compliance is prevented or delayed by the event.

**26. Waiver**

26.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right, and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

26.2 A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

**27. Set-off**

27.1 The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Supplier.

**28. Assignment**

28.1 The Customer may not assign or subcontract any contract for the purchase of Products or its rights or obligations under this agreement.

**29. Privacy consent**

29.1 The Supplier may give information to third parties about the Customer, its guarantors, directors or proprietors for the following purposes:

- (1) To obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
- (2) To allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
- (3) For registration on the PPSR or other public records or registers; and
- (4) To obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

**30. Waiver of terms of agreement**

30.1 The failure or indulgences by the Supplier to exercise, or delay in exercising, any right, power or privilege available to it under this agreement will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Supplier shall be entitled to require strict compliance at all times.

**31. Proper Law**

31.1 The agreement is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia

**32. Miscellaneous**

32.1 The law of New South Wales from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

32.2 If a clause is unenforceable, it must be read down to be enforceable or, if it cannot be read down, the term must be severed from the Terms, without affecting the enforceability of the remaining terms.

32.3 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.

