

## 1. Interpretation & Definitions

In these Terms and Conditions, unless otherwise explained: One gender includes all other genders and a singular term includes plural term and vice versa.

**"Confidential Information"** means any information relating to the business of the Contractor, its affiliated companies and subsidiaries, including but not limited to products, customer lists and intellectual property;

**"Customer"** means the Client as defined in Clause 1.01.1 in the Maintenance Agreement;

**"Goods"** means all goods and chattels and all services and charges associated with the supply, manufacture, construction or installation supplied to the Customer;

**"Contractor"** means your business and abn, its successors, assigns, related companies (within the meaning of the *Corporations Act 2001* (Commonwealth)), employees and agents; and

**"Party"** shall mean and refer to that party's successors and personal representatives and include bodies corporate or any other such entities.

## 2. Contract

- a) These terms and conditions constitute the basis for the grant of credit by the Contractor to the Customer, which credit is not to be granted until the Customer receives a copy of this agreement executed by the Contractor and until then, all goods must be paid for on delivery.
- b) The signatories to this agreement warrant that they are duly authorised to apply for credit for the Customer.

## 3. Business Use

The Customer warrants that it will only use the goods and services for its business.

## 4. Terms of Credit

The following terms apply once credit has been granted:

- a) The Customer shall make full payment of all accounts within 30 days of the date of the invoice.
- b) All prices quoted to the Customer by the Contractor are subject to change without notice.
- c) The Customer shall make payment for the goods notwithstanding any defects or deviations from the specifications that do not affect the performance of the goods.
- d) All monies payable by the Customer under this agreement shall be paid without any deductions.
- e) If the Customer defaults on payment then:
  - i. all monies due to the Contractor shall become due and payable and shall be paid by the Customer immediately on the Contractor's demand;

- i. the Contractor is entitled to charge interest on the overdue amount, at the rate of 12% or 2% above the Contractor's Bank's overdraft interest rate, whichever is greater, from the due date for payment;
- ii. the Customer shall be liable for all costs incurred in the recovery of monies due to the Contractor; and
- iii. the Contractor may enter any premises where goods may be stored and to re-possess the goods with an indemnity from the Customer for any claim and costs incurred by the Contractor in such action.

## 5. Retention of Title

- a) Until such time as full payment for the goods is received, the Contractor retains full title to such goods.
- b) The Contractor shall be entitled to re-possess and re-sell any goods if full payment for it is not received or if the Customer does anything or fails to do anything that would result in the Customer failing to comply with this agreement, ceasing to carry on the business, or making a scheme or compromising with its creditors.
- c) The Contractor shall not be responsible to the Customer for any damage caused by the Contractor to any vehicle, vessel or equipment in which the goods are installed or to which the goods are attached.

## 6. Risk

Risk in the goods passes to the Customer upon the delivery of the goods to the Customer or collection of the goods from the Contractor or its agents, whichever is earlier.

## 7. Warranty

- a) Any warranty or representation as to the merchantability or fitness of the goods for the purpose for which they are provided is hereby excluded to the extent that the applicable laws permit.
- b) The Contractor's liability for breach of any condition or warranty implied into this agreement by legislation is limited to the Contractor either replacing or repairing the goods, re-supplying the services, or the payment of the cost of replacement, repair or re-supply.

## 8. Rights & Remedies

Upon default by the Customer, the Contractor shall have all rights and remedies provided by law and this agreement and no delay or omission in exercising them shall operate as a waiver of the same.

#### **9. Force Majeure**

Should an event that is out of any party's control occur and result in a breach of this agreement, that party is relieved of that obligation to the extent and for the period that party is so unable to perform.

#### **10. Change of Ownership**

- a) The Customer shall notify the Contractor no later than 14 days prior to any proposed changes of the Customer's ownership, shareholding or trustee.
- b) The Customer shall remain liable for all accounts after such proposed changes unless the Contractor has acknowledged and accepted the proposed changes in writing.

#### **11. Privacy of Information**

- a) In this clause "personal information" means information about the Customer including but not limited to the Customer's financial circumstances, credit history and its use of the account with the Contractor.
- b) Subject to the *Privacy Act 1988* (Commonwealth), the Customer agrees that the Contractor may (if credit is given, this agreement continues until such time as the credit account provided is closed) obtain credit reports about the Customer from reporting agencies to assess its application for credit and obtain personal information from a business that provides commercial credit worthiness information, which includes, but is not limited to advice that a cheque drawn by it or a direct debit request to a bank has been dishonoured.

#### **12. Dispute Resolution**

- a) In the event of a dispute, both parties shall negotiate a resolution of the dispute in good faith for at least a period of 21 days from the date on which the dispute arises before taking any other action.
- b) In the event that the dispute cannot be resolved by negotiation, a party may refer the dispute to arbitration by notice to the other party and nominate an arbitrator, which nomination, if rejected or ignored for 7 days, shall entitle a party to refer to the dispute to an arbitrator appointed by the President of the Law Society.
- c) The *Commercial Arbitration Act 1985* shall apply except where it is inconsistent with this clause.

#### **13. Confidential Information**

- a) The Customer must keep the Confidential Information secure and confidential and use it only for the purpose for which it is disclosed.
- b) On demand, the Customer shall return the Confidential Information in its possession or control to the Contractor and delete such Confidential Information including any copies of it.

#### **14. Termination of Agreement**

A party may terminate this agreement immediately by notice to the other party if that other party:

- a) Fails to remedy an obligation under this agreement within 14 days of a notice requiring such remedy;
- b) Becomes insolvent, enters into a scheme with any creditors or seeks relief, takes advantage of, is subject to or regulated by the laws relating to bankruptcy;
- c) Being a partnership is dissolved.

#### **15. Effect of Termination**

Upon termination, a party shall cease to use anything belonging to the other party and return to the other party within 7 days all information belonging to that party, provided that the Contractor shall not be required to release any information until all monies due to the Contractor are paid in full.

#### **16. Notices**

Any notice to be served by a party on the other must be in writing.

#### **17. Governing Law**

This agreement is governed by the laws of Victoria and the parties shall submit to the jurisdiction of the courts of that State.

#### **18. Severability**

If any clause this agreement becomes unenforceable for any reason whatsoever, such clause shall be deemed to have been deleted from this agreement with the remaining clauses having full legal force and effect.

#### **19. Entire Agreement**

This agreement constitutes the entire agreement between the parties with respect to the subject matter of this agreement and contains all the representations, warranties, covenants and agreements of the parties in relation to the same as at the date of this agreement.