

L.E.N Enterprises Pty Ltd – Terms & Conditions of Trade

1.	<p>1.1 Definitions</p> <p>"Contractor" means L.E.N Enterprises Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of 7.3 1.1 L.E.N Enterprises Pty Ltd.</p> <p>"Client" means the person, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, 7.4 invoice or other document (including but not limited to:</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 7.5</p> <p>(c) if the Client is a part of a Trust, shall be bound in their capacity 7.6 as a trustee; and</p> <p>(d) includes the Client's executors, administrators, successors and permitted assigns.</p> <p>"Goods" means all Goods or Services supplied by the Contractor to 7.7 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>"Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, every party's intellectual property, operational 7.9 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 details, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history and pricing details.</p> <p>"Cookies" means small files which are stored on a user's computer. 8.1 They are designed to hold a modest amount of data (including 8.2 Personal Information) for use by a website and the information 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 provided on the website, prior to ordering Goods via the website. 9.1</p> <p>"Price" means the Price payable (plus any GST where applicable) 9.1 for the Contractor's supply of the Goods and the Client in accordance with clause 5 above.</p> <p>"GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).</p> <p>2. Acceptance</p> <p>The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if they 9.2 place an order on the Contractor's website or accept the Contractor's offer. 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>9.3 Any amendments or changes to the terms and conditions of this Contract may only be amended in writing by the consent of both 10.1 parties.</p> <p>The Client acknowledges that the supply of Goods on credit shall not have effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account.</p> <p>In the event that the supply of Goods requires exceed the Clients 10.2 credit limit and/or the Contractor's payment terms, the Contractor reserves the right to refuse Delivery.</p> <p>Electronic signatures shall be deemed to be accepted by either 10.3 party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW) or Section 14 of the Electronic Transactions (Queensland) Act 2001 (which is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p>3. Errors and Omissions</p> <p>The Client acknowledges and accepts that the Contractor 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 honest mistake made by the Contractor 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 Contractor in respect of the Services.</p> <p>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 Contractor, the Client shall not be entitled to treat this contract as repudiated nor render it invalid.</p> <p>4. Change in Control</p> <p>The Client shall give the Contractor not less than fourteen (14) days 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 trustee/s, or business practices). The Client shall be liable to the Contractor as a result of the Client's failure to comply with this clause.</p> <p>5. Price and Payment</p> <p>At the Contractor's sole discretion the Price shall be either:</p> <p>(a) as indicated on any invoice provided by the Contractor to the 11.1 Client or</p> <p>(b) the Contractor's quoted price (subject to clause 5.2) which will not be valid for the period specified in the quotation or otherwise for a 11.2 period of thirty (30) days.</p> <p>The Contractor reserves the right to change the Price if a variation to the Contractor's quotation is requested. Any variation from the price as scheduled in the Contractor's quotation shall be subject to, but not limited to, any variation as a result of fluctuations in currency exchange rates or increases to the Contractor in the cost of taxes, 11.3 levies, materials and labour or as a result of any unforeseen difficulties and charges for the Contractor on the basis of the Contractor's quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by the Contractor within ten (10) working days. Failure to do so will entitle the Contractor to proceed with the Contractor's Price. Payment for all variations must be made in full at the time of their completion.</p> <p>5.3 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 Contractor, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) by way of instalments/progress payments in accordance with the Contractor's payment schedule;</p> <p>(c) thirty (30) days after the end of the month in which a statement is posted to the Client's address or address for notices;</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 Contractor.</p> <p>5.4 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 Contractor.</p> <p>5.5 No allowance has been made in the Price for the deduction of 11.4 retentions. In the event that retentions are made, the Contractor reserves the right to treat retentions as placing the Client's account into default.</p> <p>The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the 11.5 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the 11.6 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the 11.7 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the 11.8 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the 11.9 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>5.10 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the 11.10 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.</p> <p>6. Delivery of Goods</p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that the Contractor has delivered the Goods to the Client's nominated address even if the Client is not present at the address.</p> <p>6.2 At the Contractor's sole discretion the cost of delivery is either included in the Price or the Client is required to pay for the cost of delivery.</p> <p>6.3 The Contractor may deliver the Goods in separate instalments. Each 12.2 separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.</p> <p>6.4 Any time or date given by the Contractor to the Client is an estimate only. The Client must accept delivery of the Goods even if late 12.3 and the Contractor will not be liable for any loss or damage incurred by the Client as a result of the delivery being late.</p> <p>7. Risk</p> <p>7.1 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. 13. If any of the Goods are damaged or destroyed following Delivery, the Client must immediately notify the Contractor in writing within 13.1 to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Contractor is sufficient evidence of the Contractor's rights to receive the insurance</p>	13.2	<p>proceeds without the need for any person dealing with the Contractor to make further enquiries.</p> <p>If the Client requests the Contractor to leave Goods outside the 13.2 Contractor'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>Whilst the final location of the consigning unit is at the discretion of the Contractor, a charge will apply as a variation to the Price 13.3 if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.</p> <p>The final location of the wall, window or floor unit must be 13.4 confirmed on site by the Client.</p> <p>The Client acknowledges and agrees that the Contractor does not guarantee any noise levels (external or internal) and the Contractor shall not be held liable for any loss, damages, or costs, however incurred, arising from the Contractor's operations.</p> <p>In the event that any of the equipment needs to be relocated due to 13.5 complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.</p> <p>The Client acknowledges and agrees that it is their responsibility to 13.6 insure any equipment party or completely installed on site, against theft or damage.</p> <p>In the event that the electrical wiring is required to be re-positioned 13.7 at the request of any third party contracted by the Client then the Client agrees to be responsible for the cost of any and all such proposed changes. The Client agrees to indemnify the Contractor against any additional costs incurred with such a relocation of electrical wiring. All such variations shall be invoiced in accordance with clause 5.2.</p> <p>Access</p> <p>The Client shall ensure that the Contractor has clear and free 13.8 access to the work site at all times to enable them to undertake the works. The Contractor 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 Contractor.</p> <p>Underground Locations</p> <p>13.9 Prior to the Contractor commencing any work the Client must advise the Contractor of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer drainage mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.</p> <p>Whilst the Contractor will take all care to avoid damage to any underground services the Client agrees to indemnify the Contractor in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 9.1.</p> <p>Title</p> <p>The Contractor and the Client agree that ownership of the Goods 14.1 shall not pass until:</p> <p>(a) the Client has paid the Contractor all amounts owing to the Contractor; and</p> <p>(b) the Client has met all of its other obligations to the Contractor.</p> <p>Receipt by the Contractor of any form of payment other than cash shall not constitute payment until that form of payment has been honoured, cleared or recognised.</p> <p>15.1 It is further agreed that:</p> <p>(a) until ownership of the Goods passes to the Client in accordance with clause 14, that the Client is only a bailee of the Goods and must return the Goods to the Contractor on request;</p> <p>(b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Contractor and must pay to the Contractor the full cost of any loss or damage to the Goods being stored, 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 otherwise part with possession of the Goods, the Client must notify the Contractor of any such act on trust for the Contractor and must pay or deliver the proceeds to the Contractor on demand;</p> <p>(d) the Client shall 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 Contractor and must sell, dispose of or return the resulting product to the Contractor as it so directs;</p> <p>(e) the Client irrevocably authorises the Contractor to enter any premises where the Contractor believes the Goods are kept and recover possession of the Goods;</p> <p>(f) the Contractor may recover possession of any Goods in transit whether or not the Client is the owner of the Goods;</p> <p>(g) the Client shall not charge or grant an encumbrance over the Goods nor grant or otherwise give away any interest in the Goods while they remain the property of the Contractor;</p> <p>(h) the Contractor may, at its sole discretion, choose to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.</p> <p>Personal Property Securities Act 2009 ("PPSA")</p> <p>In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions 16.1 constitute a security agreement for the purposes of the PPSA and 16.1 creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Contractor to the Client.</p> <p>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 Contractor may reasonably 16.2 require;</p> <p>(i) register a financing statement or financing charge statement on the PPSA or other 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) consent a statement in a statement referred to in clause 16.3 (a)(i) or 11.3(a)(ii);</p> <p>(b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or 16.4 financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing charge statement in respect of a 17.1 security interest without the prior written consent of the Contractor;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods in favour of a third party without the prior written consent of the Contractor;</p> <p>(e) immediately advise the Contractor 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>The Contractor and the Client agree that sections 48 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>The Client waives their rights to receive notices under sections 95, 119, 121(4), 130, 132(3)(b) and 132(4) of the PPSA.</p> <p>The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>Unless otherwise agreed to in writing by the Contractor, the Client waives their right to rescind a verification statement in accordance with section 157 of the PPSA.</p> <p>The Client must unconditionally ratify any actions taken by the 17.2 Contractor under clauses 11.3 to 11.5.</p> <p>Subsequent to any variation to the contract (including those contained in this clause 11) 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>Security and Charge</p> <p>In consideration of the Contractor 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 amounts due to the Contractor).</p> <p>The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's 17.3 rights under this clause.</p> <p>The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.</p> <p>Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</p> <p>The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Contractor in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description quote. The Client must notify any other alleged defects in the Goods as soon as reasonably possible after</p>	17.4	<p>any such defect becomes evident. Upon such notification the Client must allow the Contractor to inspect the Goods.</p> <p>Under applicable State, Territory and Commonwealth Law 17.5 (including the CCA), certain statutory implied warranties and guarantees (including, without limitation the statutory 17.6 guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).</p> <p>Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods.</p> <p>The Contractor's liability in respect of these warranties is 17.7 limited to the future cost of repair or replacement of the Goods. If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.</p> <p>If the Contractor is required to replace the Goods under this clause 17.8 or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Goods.</p> <p>If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any expressly stated or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;</p> <p>(b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the absolutely;</p> <p>(c) otherwise negotiated absolutely.</p> <p>Subject to this clause 13, returns will only be accepted provided that:</p> <p>(a) the Client has complied with the provisions of clause 13.1; and</p> <p>(b) the Contractor 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 such a condition to that in which they were delivered as is possible.</p> <p>Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused to the Goods by the Client or any other person:</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 using the Goods for any purpose other than that for which they were designed;</p> <p>(d) the Client failing to follow any instructions or guidelines 17.10 (a) fear wear and tear, any accident, or act of God.</p> <p>Notwithstanding anything contained in this clause if the Contractor is required by a law to accept a return then the Contractor will only 17.11 accept a return on the conditions imposed by that law.</p> <p>Intellectual Property</p> <p>Where the Contractor has designed, drawn or developed Goods for the Client under the copyright in any designs and drawings and documents shall remain the property of the Contractor. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Contractor.</p> <p>18. Default and Consequences of Default</p> <p>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 (or part of a month) and shall be compounded monthly and shall compound monthly as well as after as well as before judgment.</p> <p>If the Client owes the Contractor any money the Client shall indemnify the Contractor against all costs and expenses (including disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs 19.1 on a solicitor and own client basis, the Contractor's contract default 19.1 fee, and bank/dishonour fees).</p> <p>If the Client does not immediately remedy the Contractor may have under this contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be 19.2 liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor. It is further stated that 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>Without prejudice to the Contractor's other remedies at law the 20. Contractor may, at its sole discretion, suspend or stop the delivery of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable to the Contractor.</p> <p>(a) if the Client is liable to the Contractor becomes overdue, or if the Contractor'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 Contractor;</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 20.2 assets;</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>21. Cancellation</p> <p>Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to the PPSA) under this contract, the Contractor may, at its sole discretion, suspend or terminate the supply of Goods to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this contract.</p> <p>The Contractor 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 Contractor shall be entitled to recover the amount payable by the Client for the Goods. The Contractor 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 Contractor as a 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 not be accepted once production has commenced, or an order has been placed.</p> <p>22. Privacy Policy</p> <p>The Client understands that the Contractor collects, stores and uses 22.1 the Client's Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information in accordance with the Contractor's Privacy Policy, including the Part III C of the Act being Privacy Amendment (Notifiable Breaches) Act 2017 (NDB) and any statutory requirements, where 22.2 relevant in a European Economic Area ("EEA"), under the EU Data Privacy Regulation (General Data Protection Regulation ("GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in 22.3 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 17.1, privacy limitations will extend to the Contractor in respect of Cookies where transactions for Goods are processed by the Contractor. The Contractor may collect and use the Client's Personal Information for the purposes of the Contractor's business. The Contractor agrees to display reference to such Cookies and/or 22.4 similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal 22.5 information such as:</p> <p>(a) IP address, browser, email client type and other similar details; 22.6</p> <p>(b) tracking website usage and traffic; and</p> <p>(c) reports are available to the Contractor when the Contractor sends an email request to the Client on the Contractor's behalf 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 22.7 collection of Personal Information by selecting the option to enable / disable the website prior to proceeding with a purchase/order via the Contractor's website.</p> <p>The Client agrees for the Contractor to obtain from a credit reporting body an credit report in relation to the Client's credit information (e.g. name, address, D.O.B, occupation, driver's license details, 22.8 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 22.9 Client in relation to credit provided by the Contractor.</p> <p>The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess the creditworthiness of 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 another credit provider; and/or</p>	22.9	<p>(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.</p> <p>The Client consents to the Contractor being given a consumer credit report to assist in the Contractor's assessment of credit.</p> <p>The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):</p> <p>(a) to assess the creditworthiness of the Client; 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 relation to the Goods.</p> <p>The Contractor may give 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 17.3 above;</p> <p>(b) name of the credit provider and that the Contractor 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 or commercial credit (e.g. date of commencement/termination of Contractor credit account and the amount requested);</p> <p>(f) details 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 retrospectively by the Contractor; and</p> <p>(g) whether the Client has ever been declared bankrupt or otherwise discharged and all details surrounding that discharge (e.g. dates of payments).</p> <p>Notwithstanding to the opinion of the Contractor, 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>The Client shall have the right to request (by e-mail) from the Contractor:</p> <p>(a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any inaccuracies in the information; and</p> <p>(b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.</p> <p>The Contractor will destroy Personal Information upon the Client's request and will ensure that the Client's Personal Information is not used to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.</p> <p>The Client can make a privacy complaint by contacting the Office of the Information Commissioner at 1300 30 30 00 or by writing 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 response to the complaint, the Client may lodge a complaint to the Information Commissioner at www.oaic.gov.au.</p> <p>18. Building and Construction Industry Security of Payments Act 1999 (NSW) (BIPSA)</p> <p>At the Contractor'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 Payments Act 1999 may apply.</p> <p>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 Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.</p> <p>Building Industry Fairness (Security of Payment) Act 2017</p> <p>At the Contractor's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.</p> <p>Nothing in this contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017, except to the extent permitted by the Act where applicable.</p> <p>Service of Notices</p> <p>Any written notice 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>Any notice that is posted shall be deemed to have been served, unless the Client provides written notice to the Contractor by the ordinary course of post, the notice would have been delivered.</p> <p>21. Trusts</p> <p>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 Contractor may have notice of the Trust, the Client consents with the Contractor as follows:</p> <p>(a) the Client shall be deemed to have authorised the Contractor to 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 contract 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 incur any liability to any other action which might prejudice that right of indemnity;</p> <p>(c) the Client will not without consent in writing of the Contractor (the Contractor will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:</p> <p>(i) the resignation, retirement or removal 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>General</p> <p>The Client agrees to indemnify the Contractor for any loss or damage which the Contractor may incur as a result of the Client's breach of 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>These terms and conditions and any contract to which they apply shall be governed by the laws of either New South Wales or Queensland in which state the Goods and/or Services were provided by the Contractor to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrate's or higher Court then jurisdiction will be subject to the courts of New South Wales in which the Contractor has its principal place of business.</p> <p>Subject to clause 13 the Contractor 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 Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods supplied).</p> <p>The Contractor may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent. The Client cannot licence or assign without the written approval of the Contractor.</p> <p>The Contractor may elect to subcontract 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 an instruction to any of the Contractor's sub-contractors without the authority of the Contractor.</p> <p>The Client agrees that the Contractor 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 written request for the Contractor to provide Goods to the Client. No other 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>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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