

1. Definitions

- 1.1 **“Cargo”** means any vehicle, machinery, heavy equipment, shipping container, tractors, forklifts and scissor lifts, etc. to be moved from one place to another by way of the Contractor.
- 1.2 **“Client”** means the person/s, 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, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, Contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“Contractor”** means Retriever Towing (Sydney) Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Retriever Towing (Sydney) Pty Ltd.
- 1.6 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using the Contractor’s 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 making enquiries via the website.**
- 1.7 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.8 **“Price”** means the Price payable (plus any GST where applicable) for the Services as agreed between the Contractor and the Client in accordance with clause 6 of this Contract.
- 1.9 **“Services”** mean all Services (including, but not limited to, any onsite repairs and/or any parts consumed during the course of the Services) supplied by the Contractor to the Client at the Client’s request from time to time.

2. Acceptance

- 2.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Services provided by the Contractor.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Services on credit shall not take 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.
- 2.5 In the event that the supply of Services requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery.
- 2.6 The Contractor shall only be responsible for their performance to the party that contracts them to undertake the Services and shall not be responsible to any third party irrespective of their relationship to the Client.
- 2.7 Where the Client requesting or organising the Contractor to provide Services is acting with or on behalf of any third-party and that third-party is intended to be responsible for the payment (or any part thereof) of the Price then in the event that the third-party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Price as if they had contracted the Services on their own behalf.
- 2.8 The Client acknowledges and agrees that:
- (a) onsite repairs shall incur the Contractor’s current labour rates plus kilometres travelled; and
 - (b) in the event the Cargo requires towing, then any fees incurred for such towing shall be for the Client’s account and shall be treated as a variation in accordance with clause 6.2.
- 2.9 Any advice, recommendation, information or assistance provided by the Contractor in relation to the Services supplied (including, but not limited to, a particular course of action or the situation of the Cargo being perilous etc) is given in good faith to the Client, or the Client’s agent and is based on the Contractor’s own knowledge and experience and shall be accepted without liability on the part of the Contractor. Where such advice or recommendations are not acted upon then the Contractor shall require the Client or their agent to authorise commencement of the Services in writing. The Contractor shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.10 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Authorised Representatives

- 3.1 Unless otherwise limited as per clause 3.2 the Client agrees that should the Client introduce any third party to the Contractor as the Client’s duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services on the Client’s behalf and/or to request any variation to the Services on the Client’s behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies the Contractor in writing that said person is no longer the Client’s duly authorised representative).

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- 3.2 In the event that the Client's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise the Contractor in writing of the parameters of the limited authority granted to their representative.
- 3.3 The Client specifically acknowledges and accepts that they will be solely liable to the Contractor for all additional costs incurred by the Contractor (including the Contractor's profit margin) in providing any Services or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Errors and Omissions**
- 4.1 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):
- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.
- 4.2 In circumstances where the Client is required to place an order for the Services, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for the Services ("**Client Error**"). The Client must pay for all Services it orders from the Contractor notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. The Contractor is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.
- 5. Change in Control**
- 5.1 The Client shall give the Contractor not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by the Contractor as a result of the Client's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At the Contractor's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Contractor to the Client upon placement of an order for the Services; or
 - (b) the Contractor's quoted Price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2 The Contractor reserves the right to change the Price:
- (a) if a variation to the Contractor's quotation is requested; or
 - (b) as a result of a variation from the plan of scheduled Services or specifications of the Cargo (including, but not limited to, due to hidden or unidentifiable difficulties not evident prior to the commencement of the Services (e.g. onsite repairs required, any delay due to any action or inaction of the Client, or obstructed access to the site where the Cargo is located etc); or
 - (c) in the event of increases to the Contractor in the cost of labour or materials, fuel, storage or towing costs which are beyond the Contractor's control.
- 6.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. The Client shall be required to respond to any variation submitted by the Contractor within five (5) working days. Failure to do so will entitle the Contractor to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:
- (a) on delivery of the Services; or
 - (b) by way of instalments/progress payments in accordance with the Contractor's payment schedule; or
 - (c) seven (7) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (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.
- 6.5 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.
- 6.6 The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards.
- 6.7 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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Contractor in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Contractor investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Contractor placing the Client's account into default and subject to default interest in accordance with clause 18.1.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor under this or any other agreement for providing the Contractor's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.9 The Client acknowledges and agrees that the Client's obligations to the Contractor for the provision of Services shall not cease until:
- (a) the Client has paid the Contractor all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Contractor in respect of all Contracts between the Contractor and the Client.
- 6.10 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Services, and this Contract, shall continue.

7. Provision of the Services

- 7.1 Any time specified by the Contractor for delivery of the Services is an estimate only and the Contractor will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Contractor is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Contractor shall be entitled to charge a reasonable fee for re-supplying the Services and/or storage.

8. Risk

- 8.1 The Client shall ensure that the Contractor has clear and free access to the Cargo to enable them to provide the Services. The Contractor shall not be liable for any loss or damage to any site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Contractor.
- 8.2 It is the responsibility of the Client to ensure that access to the Cargo is suitable to accept the weight of laden trucks. The Client agrees to indemnify the Contractor against all costs incurred by the Contractor in recovering such vehicles in the event they become bogged or otherwise immovable as a result of unsuitable access.
- 8.3 Subject to clause 10, in the event that a police officer or authorised enforcement officer directs the Contractor to tow and store the Cargo, the owner of the Cargo is liable to pay the fees and charges for towage and storage.
- 8.4 The Client acknowledges and agrees that it is the Client's responsibility to remove all personal/valuable items from the Cargo prior to the Contractor carrying out their Services. The Contractor shall not be liable in the event of any apparent loss or damage to personal/valuable items left in the Cargo.

9. Towing Risk

- 9.1 Should any further damage occur to the Cargo whilst not physically secured to the Contractor's vehicle on a public roadway then the Contractor shall accept no liability for the same, unless such damage is due to the negligence of the Contractor.
- 9.2 If applicable, the Client acknowledges and accepts that:
- (a) it is not always possible for the Contractor to be aware of the total extent of any damage to the Cargo and that further damage may occur when attempting to either move, lift upright or prepare the Cargo for towing. Whilst the Contractor will take all due care to avoid such damage the Contractor shall accept no liability for the same and the Client agrees to indemnify the Contractor against any claims howsoever arising should such damage occur;
 - (b) braking systems and mechanical components (including, but not limited to, air fittings from air tanks, valves or lines, interconnecting air supply and service brake lines) may be removed during towing and must be inspected for serviceability before putting the towed Cargo back into use; and
 - (c) the Contractor may, where necessary:
 - (i) remove the drive shaft and axle(s) from the differential to ensure safe towing;
 - (ii) collect oil from the Cargo to be towed. All oil and fluid levels must be checked before putting the Cargo back into use; and
 - (iii) remove any equipment from the Cargo to reduce overall height, length or width of the load.
- 9.3 The Contractor shall not accept any liability or responsibility for:
- (a) any additional load with the Cargo. Securing such load is the responsibility of the owner/driver; and
 - (b) the safety of the Cargo if the owner/driver travels with the Contractor either to or from the site.
- 9.4 Where recovery of the Cargo is off-road, or where the recovery is deemed by the Contractor to be extreme, the Client agrees to indemnify the Contractor against any damage to the Contractor's equipment, added costs (including the salvage of the salvage vehicle or the requirement for additional equipment such as a crane etc) and the replacement costs of any equipment of the Contractor that is lost or damaged shall be charged to the Client.

10. Storage

- 10.1 All Cargo that is to be stored under this Contract shall be checked into and out of storage and if the Client (or the Client's representative) is not present at the time of receipt or delivery of said Cargo, as the case may be, then the Contractor's record shall be accepted as final.
- 10.2 The Client shall immediately notify the Contractor of any change regarding the ownership of any Cargo which is stored on the Client's behalf under this Contract.
- 10.3 The Contractor reserves the right, at any time, to require the removal of any Cargo held in storage on the Client's behalf by giving not less than one (1) weeks' notice to the Client that they wish them to do so.
- 10.4 The Client shall on request by the Contractor provide samples of the signature(s) of any person(s) entitled to uplift the Cargo from storage.
- 10.5 The Client agrees to give the Contractor at least forty-eight (48) hours' notice of their intent to remove the Cargo from storage. In the event the Client fails to give such notice then the Contractor may at its sole discretion agree to facilitate the immediate removal of the Cargo but shall be entitled to charge the Client an additional fee for so doing.
- 10.6 An inward receipt in relation to Cargo stored by the Contractor shall not constitute a document of title to that Cargo, or be negotiable, nor shall any right of the Client storing the Cargo be assignable.
- 10.7 The Client shall be liable to the Contractor on demand and at any rate before removal of the Cargo from storage, for all charges or fees in connection handling, loading or unloading, re-packing and/or delivery of the Cargo, as the case may require, in addition to any storage fees.

11. Compliance With Laws

- 11.1 The Client and the Contractor shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.
- 11.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 11.3 The Client agrees that the site will comply with any work health and safety (WHS) laws and any other relevant safety standards or legislation.

12. Insurance

- 12.1 The Contractor shall take out, and maintain at its own expense, at all times during the Contract, Public Liability Insurance of no less than five million dollars (\$5M).

13. Personal Property Securities Act 2009 (“PPSA”)

- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Contractor for Services – that have previously been provided and that will be provided in the future by the Contractor to the Client.
- 13.3 The Client undertakes to:
- (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 require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Contractor for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Services charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Contractor;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of the Contractor.
- 13.4 The Contractor and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of the Contractor agreeing to provide its Services, the Client grants the Contractor a security interest by way of a floating charge (registerable by the Contractor pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Services under this Contract and/or permit the Contractor to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 14.2 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 rights under this clause.
- 14.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 13.2 and 14.1 as applicable, is deemed insufficient by the Contractor to secure the repayment of monies owed by the Client to the Contractor, the Client hereby grants the Contractor a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

15. Defects, Warranties and the Competition and Consumer Act 2010 (“CCA”)

- 15.1 The Client must inspect the Contractor's Services on completion of the Services and must within seven (7) days notify the Contractor in writing of any evident defect in the Services provided (including the Contractor's workmanship) or of any other failure by the Contractor to comply with the description of, or quote for, the Services which the Contractor was to supply. The Client must notify any other alleged defect in the Contractor's Services as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Contractor to review the Services that were provided.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 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 Services. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 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.
- 15.6 If the Contractor is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Contractor may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

- 15.7 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defective Services is:
- (a) limited to the value of any express warranty provided to the Client by the Contractor at the Contractor's sole discretion;
 - (b) otherwise negated absolutely.
- 15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, the Contractor shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) interference with the Services by the Client or any third party without the Contractor's prior approval;
 - (b) the Client failing to follow any instructions or guidelines provided by the Contractor; or
 - (c) fair wear and tear, any accident, or act of God.

16. Limitation to Liabilities

- 16.1 The Contractor has no liability to the Client for loss or damage to the extent that the loss or damage:
- (a) arises from an event outside of the Contractor's control;
 - (b) is unavoidable damage to a third-party vehicle or property during the provision of Services;
 - (c) that occurs after delivery; and
 - (d) resulting from any act or omission by the Client, including a breach of the Client's obligation under this Contract.

17. Confidentiality

- 17.1 The Client agrees to keep confidential, and not to disclose to any third party without the prior written consent of the Contractor, any information, data, designs, specifications, drawings, reports or other documents provided, made available, or brought into existence, by the Contractor for the purpose of providing the Services, and shall take reasonable precautions to maintain the secrecy and confidentiality, and prevent disclosure, of all such information.

18. Default and Consequences of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes the Contractor any money, the Client shall indemnify the Contractor from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under these terms and conditions, internal administration fees, the Contractor's Contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 18.3 Further to any other rights or remedies 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 liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 18.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

- 19.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply of Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 19.2 If the Contractor, due to reasons beyond the Contractor's reasonable control, is unable to deliver any Services to the Client, the Contractor may cancel any Contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice, the Contractor shall repay to the Client any money paid by the Client for the Services. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 The Client may cancel delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 19.3, the Client will not be liable for the payment of any costs of the Contractor. Failure by the Client to otherwise accept delivery of the Services shall place the Client in breach of this Contract.

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The 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 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.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")
- If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the website.
- 20.3 The Client agrees for the Contractor to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Contractor.
- 20.4 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:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 20.5 The Client consents to the Contractor being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 20.6 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):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 20.7 The Contractor may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided the Contractor is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.9 The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and
 - (b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.10 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 21. Unpaid Seller's Rights**
- 21.1 Where the Client has left any item with the Contractor for repair, modification, exchange or for the Contractor to perform any other service in relation to the item and the Contractor has not received or been tendered the whole of any monies owing to it by the Client, the Contractor shall have, until all monies owing to the Contractor are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.

- 21.2 The lien of the Contractor shall continue despite the commencement of proceedings, or judgment for any monies owing to the Contractor having been obtained against the Client.

22. Service of Notices

- 22.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (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;
 - (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

23. Trusts

- 23.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Contractor may have notice of the Trust, the Client covenants with the Contractor as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract 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:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.

24. General

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the Parramatta Courts in that state.
- 24.3 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 provided the assignment does not cause detriment to the Client.
- 24.4 The Client cannot licence or assign without the written approval of the Contractor.
- 24.5 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 24.6 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 further request for the Contractor to provide Services to the Client.
- 24.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments, including but not limited to, any Government imposed border lockdowns, etc, ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Client to make a payment to the Contractor, once the parties agree that the Force Majeure event has ceased.
- 24.8 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.
- 24.9 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 24.10 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.