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## Buttsworth Engineering Pty Ltd T/A Buttsworth Industrial Supplies – Terms & Conditions of Trade

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### 1. Definitions

- 1.1 **"BIS"** means Buttsworth Engineering Pty Ltd T/A Buttsworth Industrial Supplies, its successors and assigns or any person acting on behalf of and with the authority of Buttsworth Engineering Pty Ltd T/A Buttsworth Industrial Supplies.
- 1.2 **"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.
- 1.3 **"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.
- 1.4 **"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 Customer does not wish to allow Cookies to operate in the background when using BIS' website, then the Customer 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.**
- 1.5 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting BIS to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors, and permitted assigns.
- 1.6 **"Goods"** means all Goods or Services supplied by BIS to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 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 Goods as agreed between BIS and the Customer in accordance with clause 6 below.

### 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 Customer places an order for or accepts delivery of the Goods.
- 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 Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with BIS and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, BIS reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by BIS in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on BIS' own knowledge and experience and shall be accepted without liability on the part of BIS. Where such advice or recommendations are not acted upon then BIS shall require the Customer or their agent to authorise commencement of the Services in writing. BIS shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.7 The Customer acknowledges and accepts that the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, BIS reserves the right to substitute comparable Goods (or components of the Goods) and vary the Price as per clause 6.2. In all such cases BIS will notify the Customer in advance of any such substitution, and also reserves the right to place the Customer's order and/or Services on hold, until such time as BIS and the Customer agree to such changes.
- 2.8 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. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that BIS 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 BIS 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 BIS in respect of the Services.
- 3.2 In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) ("**Customer Error**"). The Customer must pay for all Goods it orders from BIS notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take Delivery of such Goods. BIS is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

### 4. Change in Control

- 4.1 The Customer shall give BIS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by BIS as a result of the Customer's failure to comply with this clause.

**5. On-Line Ordering**

- 5.1 The Customer acknowledges and agrees that:
- (a) BIS does not guarantee the website's performance;
  - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by BIS;
  - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (d) there are inherent hazards in electronic distribution, and as such BIS cannot warrant against delays or errors in transmitting data between the Customer and BIS including orders, and you agree that to the maximum extent permitted by law, BIS will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
  - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by BIS and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
  - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, BIS shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 BIS reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of BIS' business, or violated these terms and conditions.

**6. Price and Payment**

- 6.1 At BIS' sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by BIS to the Customer upon placement of an order for Goods; or
  - (b) BIS' 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 BIS reserves the right to change the Price if a variation to BIS' quotation is requested. Variations will be charged for on the basis of BIS' quotation, and will be detailed in writing, and shown as variations on BIS' invoice. The Customer shall be required to respond to any variation submitted by BIS within ten (10) working days. Failure to do so will entitle BIS 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.
- 6.3 At BIS' sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by BIS or as notified to the Customer prior to the placement of an order for Goods.
- 6.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by BIS, which may be:
- (a) on delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with BIS' payment schedule;
  - (c) the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (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 Customer by BIS.
- 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 Customer and BIS.
- 6.6 BIS may in its discretion allocate any payment received from the Customer towards any invoice that BIS determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer BIS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by BIS, payment will be deemed to be allocated in such manner as preserves the maximum value of BIS' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by BIS 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 Customer must notify BIS in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as BIS investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in BIS placing the Customer's account into default and subject to default interest in accordance with clause 16.1.
- 6.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to BIS an amount equal to any GST BIS must pay for any supply by BIS under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

**7. Delivery of Goods**

- 7.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Goods at BIS' address; or
  - (b) BIS (or BIS' nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.2 The cost of Delivery will be payable by the Customer in accordance with the quotation provided by BIS to the Customer, or as otherwise notified to the Customer prior to the placement of an order for Goods.
- 7.3 BIS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 7.4 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 7.5 Any time specified by BIS for Delivery of the Goods is an estimate only and BIS will not be liable for any loss or damage incurred by the Customer because of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. If BIS is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then BIS shall be entitled to charge a reasonable fee for redelivery and/or storage.

**8. Risk**

- 8.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.

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- 8.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, BIS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by BIS is sufficient evidence of BIS' rights to receive the insurance proceeds without the need for any person dealing with BIS to make further enquiries.
- 8.3 If the Customer requests BIS to leave Goods outside BIS' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.
- 8.4 Where BIS is required to install the Goods the Customer warrants that the structure of the premises or equipment in or upon which these Goods are to be installed or erected is sound and will sustain the installation and work incidental thereto and BIS shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising in connection with the installation and work incidental thereto.
- 8.5 Where the Customer is to supply BIS with any design specifications (including, but not limited to CAD drawings) the Customer shall be responsible for providing accurate data. BIS shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Customer.

### 9. Access

- 9.1 The Customer shall ensure that BIS has clear and free access to the site at all times to enable them to undertake the Services. BIS shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of BIS.

### 10. Compliance with Laws

- 10.1 The Customer and BIS 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, including any work health and safety laws (WHS) relating or any other relevant safety standards or legislation pertaining to the Services.
- 10.2 Where the Customer has supplied products for BIS to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in BIS' opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or territory regulations, then BIS shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 6.2.
- 10.3 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.

### 11. Title

- 11.1 BIS and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid BIS all amounts owing to BIS; and
  - (b) the Customer has met all of its other obligations to BIS.
- 11.2 Receipt by BIS 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.
- 11.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 11.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to BIS on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for BIS and must pay to BIS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer 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 Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for BIS and must pay or deliver the proceeds to BIS on demand;
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of BIS and must sell, dispose of or return the resulting product to BIS as it so directs;
  - (e) the Customer irrevocably authorises BIS to enter any premises where BIS believes the Goods are kept and recover possession of the Goods;
  - (f) BIS may recover possession of any Goods in transit whether or not Delivery has occurred;
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of BIS; and
  - (h) BIS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 12. Personal Property Securities Act 2009 ("PPSA")

- 12.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 12.2 Upon assenting to these terms and conditions in writing the Customer 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 Goods that have previously been supplied and that will be supplied in the future by BIS to the Customer, and the proceeds from such Goods.
- 12.3 The Customer 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 BIS 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 12.3(a)(i) or 12.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, BIS 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 Goods charged thereby;

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- (c) not register a financing change statement in respect of a security interest without the prior written consent of BIS;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of BIS;
  - (e) immediately advise BIS of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 12.4 BIS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by BIS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by BIS under clauses 12.3 to 12.5.
- 12.9 Subject to any express provisions to the contrary (including those contained in this clause 12), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 13. Security and Charge**
- 13.1 In consideration of BIS agreeing to supply the Goods and/or provide its Services, the Customer grants BIS a security interest by way of a floating charge (registerable by BIS 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 Customer or owned by the Customer in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit BIS to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).
- 13.2 The Customer indemnifies BIS from and against all BIS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising BIS' rights under this clause.
- 13.3 In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 11.1, 12.2 and 13.1 as applicable, is deemed insufficient by BIS to secure the repayment of monies owed by the Customer to BIS, the Customer hereby grants BIS 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 Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 14.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify BIS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow BIS to inspect the Goods.
- 14.2 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**).
- 14.3 BIS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 14.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, BIS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. BIS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 14.5 If the Customer is a consumer within the meaning of the CCA, BIS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 14.6 If BIS is required to replace the Goods under this clause or the CCA, but is unable to do so, BIS may refund any money the Customer has paid for the Goods.
- 14.7 If the Customer is not a consumer within the meaning of the CCA, BIS' liability for any defect or damage in the Goods is:
  - (a) limited to the value of any express warranty or warranty card provided to the Customer by BIS at BIS' sole discretion;
  - (b) limited to any warranty to which BIS is entitled, if BIS did not manufacture the Goods;
  - (c) otherwise negated absolutely.
- 14.8 Subject to this clause 14, returns will only be accepted provided that:
  - (a) the Customer has complied with the provisions of clause 14.1; and
  - (b) BIS has agreed that the Goods are defective; and
  - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
  - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 14.9 Notwithstanding clauses 14.1 to 14.8 but subject to the CCA, BIS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
  - (a) the Customer failing to properly maintain or store any Goods;
  - (b) the Customer using the Goods for any purpose other than that for which they were designed;
  - (c) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
  - (d) the Customer failing to follow any instructions or guidelines provided by BIS;
  - (e) fair wear and tear, any accident, or act of God.
- 14.10 BIS may in its absolute discretion accept non-defective Goods for return in which case BIS may require the Customer to pay handling fees of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 14.11 Notwithstanding anything contained in this clause if BIS is required by a law to accept a return, then BIS will only accept a return on the conditions imposed by that law.
- 14.12 Subject to clause 14.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.

**15. Intellectual Property**

- 15.1 Where BIS has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of BIS. Under no circumstances may such designs, drawings and documents be used without the express written approval of BIS.
- 15.2 The Customer warrants that all designs, specifications, or instructions given to BIS will not cause BIS to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify BIS against any action taken by a third party against BIS in respect of any such infringement.
- 15.3 The Customer agrees that BIS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which BIS has created for the Customer.

**16. Default and Consequences of Default**

- 16.1 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 BIS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 16.2 If the Customer owes BIS any money, the Customer shall indemnify BIS from and against all costs and disbursements:  
(a) incurred; and/or  
(b) which would be incurred and/or  
(c) for which by the Customer would be liable;  
in regard to legal costs on a solicitor and own client basis incurred in exercising BIS' rights under these terms and conditions, internal administration fees, BIS' 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.
- 16.3 Further to any other rights or remedies BIS may have under this Contract, if a Customer has made payment to BIS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by BIS under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 16.4 Without prejudice to BIS' other remedies at law BIS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to BIS shall, whether or not due for payment, become immediately payable if:  
(a) any money payable to BIS becomes overdue, or in BIS' opinion the Customer will be unable to make a payment when it falls due;  
(b) the Customer has exceeded any applicable credit limit provided by BIS;  
(c) the Customer 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 Customer or any asset of the Customer.

**17. Cancellation**

- 17.1 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 or purchase of Goods and/or 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.
- 17.2 If BIS, due to reasons beyond BIS' reasonable control, is unable to deliver any Goods and/or Services to the Customer, BIS may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice BIS shall repay to the Customer any money paid by the Customer for the Goods and/or Services. BIS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 17.3 The Customer may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Customer cancels Delivery in accordance with this clause 17.3, the Customer will not be liable for the payment of any costs of BIS, except where a deposit is payable in accordance with clause 6.3. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.
- 17.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.

**18. Privacy Policy**

- 18.1 All emails, documents, images, or other recorded information held or used by BIS is Personal Information, as defined and referred to in clause 18.3, and therefore considered Confidential Information. BIS 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"). BIS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by BIS that may result in serious harm to the Customer, BIS will notify the Customer 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 Customer by written consent, unless subject to an operation of law.
- 18.2 Notwithstanding clause 18.1, privacy limitations will extend to BIS in respect of Cookies where the Customer utilises BIS' website to make enquiries. BIS 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 Customer's:  
(a) IP address, browser, email client type and other similar details;  
(b) tracking website usage and traffic; and  
(c) reports are available to BIS when BIS sends an email to the Customer, so BIS may collect and review that information ("collectively Personal Information")

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- If the Customer consents to BIS' use of Cookies on BIS' website and later wishes to withdraw that consent, the Customer may manage and control BIS' privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 18.3 The Customer agrees that BIS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 18.4 The Customer consents to BIS being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 18.5 The Customer agrees that personal credit information provided may be used and retained by BIS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 18.6 BIS may give information about the Customer 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 Customer including credit history.
- 18.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 18.3 above;
  - (b) name of the credit provider and that BIS is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer'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 BIS 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 Customer no longer has any overdue accounts and BIS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of BIS, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 18.8 The Customer shall have the right to request (by e-mail) from BIS:
- (a) a copy of the Personal Information about the Customer retained by BIS and the right to request that BIS correct any incorrect Personal Information; and
  - (b) that BIS does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 18.9 BIS will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 18.10 The Customer can make a privacy complaint by contacting BIS via e-mail. BIS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 19. Unpaid Seller's Rights**
- 19.1 Where the Customer has left any item with BIS for repair, modification, exchange or for BIS to perform any other service in relation to the item and BIS has not received or been tendered the whole of any monies owing to it by the Customer, BIS shall have, until all monies owing to BIS 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.
- 19.2 The lien of BIS shall continue despite the commencement of proceedings, or judgment for any monies owing to BIS having been obtained against the Customer.
- 20. Service of Notices**
- 20.1 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.
- 20.2 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.

**21. Trusts**

- 21.1 If the Customer 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 BIS may have notice of the Trust, the Customer covenants with BIS as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
  - (b) the Customer 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 Customer against the Trust, the trustees and the trust fund. The Customer 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 Customer will not during the term of the Contract without consent in writing of BIS (BIS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer 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.

**22. General**

- 22.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 22.2 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.
- 22.3 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 courts in Penrith, New South Wales. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 22.4 BIS may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 22.5 The Customer cannot licence or assign without the written approval of BIS.
- 22.6 BIS 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 Customer agrees and understands that they have no authority to give any instruction to any of BIS' sub-contractors without the authority of BIS.
- 22.7 The Customer agrees that BIS may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for BIS to provide Goods to the Customer.
- 22.8 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 or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to BIS, once the parties agree that the Force Majeure event has ceased.
- 22.9 Both parties warrant that they have the power to enter 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.
- 22.10 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.
- 22.11 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.