
Koala Solar – Terms & Conditions of Trade

1. Definitions

- 1.1 "Supplier" means Cassar Solutions Pty Ltd T/A Koala Solar, its successors and assigns or any person acting on behalf of and with the authority of Cassar Solutions Pty Ltd T/A Koala Solar.
- 1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier 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 part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
- 1.3 "Goods" means all Goods or Services supplied by the Supplier to 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).
- 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 5 below.
- 1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Supplier.
- 2.3 The Client acknowledges that these terms and conditions are meant to be read in conjunction with the terms and conditions supplied by the utilities operator in relation to the installation of a Small Embedded Generator (SEG) (where an SEG is supplied as part of, or in conjunction with, any Services provided under this agreement). Under those terms and conditions, the Client is required (to ensure the SEG remains safe and functional) to regularly have the SEG inspected and maintained as specified in those terms and conditions. Whilst inspection and/or maintenance of the SEG is the Client's sole responsibility to arrange, the Supplier can provide such services at its usual rates if requested.
- 2.4 The Supplier will notify the Client's electricity distributor/retailer of the installation. The electricity distributor/retailer may then require the replacement of the Client's existing power meter, the cost of which shall be the Client's responsibility and is not included in any pricing specified under this contract.
- 2.5 The Supplier reserves the right to substitute comparable components that comprise the Goods in all such cases the Supplier will notify the Client in advance of any such substitution.
- 2.6 If the Supplier has been requested by the Client to diagnose a fault, that is not due to the installation, (including but not limited to WiFi not working, electrical fault etc) that requires investigation, disassembly and/or testing, all costs and where applicable, a **Call Out fee**, will be charged to the Client irrespective of whether or not the repair goes ahead unless otherwise agreed between the Supplier and the Client.
- 2.7 The Client acknowledges and accepts that:
- (a) it is the Client's responsibility to set up WiFi connections, in the event that the Supplier is requested to set up the connection then this would be at the Client's expense and will be invoiced as an extra; and
 - (b) if the Client's solar system stops working due to grid voltage and the Client requests the Supplier to investigate and repair the system, all costs for the Services will be borne by the Client.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Supplier 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 Supplier 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 Supplier in respect of the Services.
- 3.2 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 wilful misconduct of the Supplier; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give the Supplier 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, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.

5. Price and Payment

- 5.1 At the Supplier's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Client; or
 - (b) the Supplier's quoted price (subject to clause 6.1) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 5.2 At the Supplier's sole discretion, a non-refundable deposit may be required.
- 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 Supplier, which may be:
- (a) on completion of the Services and/ or on the day of installation;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) 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 Supplier.
- 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 Supplier.

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- 5.5 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other contract for the sale of the Goods. 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. Variations**
- 6.1 The Supplier reserves the right to change the Price:
- (a) if a variation to the Goods which are to be supplied is requested; or
 - (b) if a variation to the Services originally scheduled (including any applicable plans, or specifications) is requested; or
 - (c) if during the course of the Services, the Goods are not or cease to be available from the Supplier's third party suppliers, then the Supplier reserves the right to provide alternative Goods (or components of the Goods), subject to prior confirmation and agreement of both parties; or
 - (d) where the value of any Renewable Energy Certificate's (REC's) and/or Smallscale Technology Certificates (STC's) upon which the sale Price is dependant, changes as REC's and/or STC's are traded on the open market and the price varies from time to time; or
 - (e) where there is any change to any monies available to the Client from the Australian Federal Government's Renewable Energy Target Program (RET Program), (if applicable) or any other Commonwealth, State or Local Government rebates or incentives; or
 - (f) where additional Services are required due to the discovery of hidden or unidentifiable difficulties (including, but not limited to, inclement weather, limitations to accessing the site, obscured site/building defects, safety considerations/health hazards, Client and/or site requirements, prerequisite work by any third party not being completed, or hidden pipes, cables or wiring etc.) which are only discovered on commencement of the Services; or
 - (g) in the event of increases to the Supplier in the cost of labour or materials which are beyond the Supplier's control.
- 6.2 Variations will be charged for on the basis of the Supplier's quotation, and will be detailed in writing, and shown as variations on the Supplier's invoice. The Client shall be required to respond to any variation submitted by the Supplier within ten (10) working days. Failure to do so will entitle the Supplier 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.
- 7. Rebates and Incentives**
- 7.1 The Client authorises the Supplier to apply in the Client's name for any grant, rebate or any other benefit (hereafter referred to as a Rebate) available, (*if applicable*) from the Commonwealth, State Government, or any local state Solar Feed Tariff Schemes in relation to the installation of a solar system and to receive payment of that Rebate on the Client's behalf.
- 7.2 The Client agrees to sign any necessary documents, provide any necessary information and take any necessary action the Supplier may require, to enable the Supplier to obtain payment of a Rebate.
- 7.3 If the Supplier receives payment of a Rebate, the Supplier will apply that payment in or towards satisfaction of the Price.
- 7.4 The Supplier is not responsible for any failure to obtain a Rebate and the Client shall remain liable to the Supplier for the whole of the Price and any other amounts due to the Supplier which are not paid in full.
- 7.5 The Client unconditionally assigns all Renewable Energy Certificates (RECs) and/or Smallscale Technology Certificates (STC's) to which the Client is entitled in respect of the Services to the Supplier unless otherwise negotiated.
- 7.6 The Client acknowledges that, in certain circumstances, the Commonwealth Government, State Government or local government council (as applicable) may require repayment of a Rebate by the Client and in such circumstances the Supplier will have no liability to the Client.
- 8. Delivery**
- 8.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.2 Subject to clause 8.3 it is the Supplier's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.3 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Supplier claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond the Supplier's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
 - (b) have the site ready for the Services; or
 - (c) notify Services that the site is ready.
- 8.4 At the Supplier's sole discretion, the cost of delivery is included in the Price.
- 8.5 Any time specified by the Supplier for delivery of the Goods is an estimate only and the Supplier 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 Goods to be delivered at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 9. Risk**
- 9.1 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.
- 9.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- 9.3 The Client acknowledges and agrees that it is their responsibility to insure any equipment partly or completely installed on site, against theft or damage.

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- 9.4 Where the Client has supplied materials for the Supplier to complete the Services, the Client acknowledges that he accepts responsibility for the suitability of purpose, quality and any faults inherent in the materials. The Supplier shall not be responsible for any defects in the materials, any loss or damage to the materials (or any part thereof), howsoever arising from the use of materials supplied by the Client.
- 9.5 The Client acknowledges that the Supplier is only responsible for Goods that are supplied/repared by the Supplier, and in the event that other parts, subsequently fail, the Client agrees to indemnify the Supplier against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising.
- 9.6 The Supplier accepts no responsibility for any damage or performance related problems with any Goods where they have not been used and/or maintained in accordance with the Supplier's and/or the manufacturers' recommendations.
- 9.7 The Client warrants that no other tradesmen interfere with any Services and/or Goods supplied under this contract. The Supplier shall not be liable for any costs, damages or loss however arising from the Client's failure to comply with this clause.
- 9.8 The Supplier accepts no responsibility for:
- (a) any damage or defects in any Goods caused by movement and/or interference of the said Goods;
 - (b) painting, re-decorating, re-sealing, carpentry or any other Services required for the restoration or making good of any surface/area where any Services have been carried out.
- 9.9 The Client acknowledges that they shall:
- (a) not be entitled to withhold any payment due under this contract because of any delay in the connection of, or the supply of electricity to the Goods by an electrical distributor or any other third party;
 - (b) provide and have erected scaffolding to enable the Services to be undertaken (where in the Supplier's opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed;
 - (c) remove any furniture or personal items from the vicinity of the Services, and agrees that the Supplier shall not be liable for any damage caused to those items through the Client's failure to comply with this clause;
 - (d) be wholly responsible for the removal of rubbish from or clean-up of the worksite; and
 - (e) supply electricity, temporary lighting, toilet, eating and first aid facilities, if so required.
- 10. Access and Installation**
- 10.1 The Client shall ensure that the Supplier has clear and free access to the worksite at all times to enable them to undertake the Services (including carrying out site inspections, gain signatures for required documents, and for the Delivery and installation of the Goods). The Supplier 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 the Supplier.
- 10.2 The Client acknowledges and agrees:
- (a) that if there is no cavity access the conduits will be placed on the surface of the walls; and
 - (b) that a near map (panel layout) is a guide only and is subject to change on the day of installation; and
 - (c) to be present at the worksite when and as reasonably requested by the Supplier and its employees, contractors and/or agents.
- 10.3 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If, for any reason (including the discovery of asbestos, defective or unsafe wiring, or dangerous access to roofing or risk), the Supplier reasonably forms the opinion that the Client's premises is not safe for the installation of Goods to proceed then the Supplier shall be entitled to delay installation of the Goods (in accordance with clause 8.3) until the Supplier is satisfied that it is safe for the installation to proceed.
- 10.4 In the event asbestos or any other toxic substances are discovered at the property, that it is the Client's responsibility to ensure the safe removal of the same. The Client further agrees to indemnify the Supplier against any costs incurred by the Supplier as a consequence of such discovery. Under no circumstances will the Supplier handle removal of asbestos product.
- 10.5 Whilst all due care will be taken by the Supplier, tiles may be broken or damaged during the course of the installation. It is the Client's responsibility to provide the replacement tile/s on the day of the installation, the Supplier will not return to replace the tile/s should the Client fail to adhere to this clause.
- 10.6 The Supplier shall upon installation ensure that all Goods are to be installed in a manner that is fully compliant with the Clean Energy Council Design and Install guidelines and requirements applicable to CEC accredited installers and all other industry standards. If, for any reason, the Client specifically requires the Goods to be installed in any way which goes against the Supplier's recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to the Supplier. Accordingly, the Supplier offers no warranty in regards to the aforementioned.
- 10.7 Whilst the final location of the inverter and solar panels is at the discretion of the Client, a charge will apply as a variation as per clause 6.1, if the Client requests the inverter and/or panels to be installed in a different location other than that agreed upon by both parties.
- 10.8 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify the Supplier immediately upon any proposed changes. The Client agrees to indemnify the Supplier against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.1.
- 10.9 The Client acknowledges and accepts that:
- (a) the mains power is required to be isolated in order for the Supplier to complete the final connection of the solar main switch, the Client agrees to indemnify the Supplier in respect of all and any liability claims, loss, damage, costs and fines if a power surge is to occur when the power is turned back on; and
 - (b) the performance of the Goods may be affected by the actions of third parties and environmental conditions including, without limitation, the number of hours of sunlight, cloud cover, weather patterns, the location of the Goods and the location of surrounding structures and flora; and
 - (c) some buildings may not have the optimum orientation for the installation of the Goods or components and therefore understands and accepts that the Goods performance may be compromised in such situations. Notwithstanding the former the Supplier will use its best endeavours to install and position the Goods to maximise orientation and exposure to direct sunlight.

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- 10.10 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 11. Plans and Specifications**
- 11.1 The Supplier shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, the Supplier accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 11.2 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in the Supplier's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by the Supplier;
 - (b) while the Supplier may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that the Supplier has given these in good faith, and are estimates based on Clean Energy Council (CEC) prescribed estimates. The energy generation may be less than estimates due to factors out of the Supplier's control (including, but not limited to, hours of sunlight, cloud cover, weather patterns, the location (geographical or otherwise) of the Goods and the location of surrounding structures and flora;
 - (c) the energy generation may be less than estimates due to factors out of the Supplier control (including, but not limited to, hours of sunlight, cloud cover, weather patterns, the location (geographical or otherwise) of the Services and the location of surrounding structures and flora;
 - (d) some buildings may not have the optimum orientation for the installation of the Goods or components, and therefore understands and accepts that the Goods performance may be compromised in such situations.
- 11.3 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 12. Hidden Services**
- 12.1 Prior to the Supplier commencing any work the Client must advise the Supplier of the precise location of all hidden services on the site and clearly mark the same (including but not limited to any mains/services in wall cavities). The mains & services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst the Supplier will take all care to avoid damage to any services the Client agrees to indemnify the Supplier 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 12.1.
- 13. Compliance with Laws**
- 13.1 The Client and the Supplier 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 occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
- 13.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 13.3 Any live services or services undertaken near live conductors where it is safe to do so shall be dealt with in accordance with Australian and New Zealand Wiring standards being "Safe working on Low Voltage Electrical Installations, relevant Commonwealth and Statutory Acts and Work Place Regulations". The Supplier's live services procedures are designed to eliminate risk of injury to the Supplier's employees, damage to the Client's installations and unexpected power disconnections. It may in some cases require disconnection and isolation of the installation to undertake such Services for which additional charges may be applicable. This shall be invoiced in accordance with clause 6.1.
- 13.4 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by the Supplier, then the Supplier shall notify the Client immediately. The power, if isolated, will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be the responsibility of the Client and will be shown as a variation on the invoice.
- 14. Title**
- 14.1 The Supplier and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid the Supplier all amounts owing to the Supplier; and
 - (b) the Client has met all of its other obligations to the Supplier.
- 14.2 Receipt by the Supplier 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.
- 14.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 14.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to the Supplier on request.
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
 - (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 parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - (d) the Client should 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 Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
 - (e) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Goods are kept and recover possession of the Goods.

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- (f) the Supplier may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Client 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 the Supplier.
- (h) the Supplier may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

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

- 15.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 15.2 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 Goods and/or collateral (account) – being a monetary obligation of the Client to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Client.
- 15.3 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 Supplier 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 15.3(a)(i) or 15.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Supplier 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;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Supplier;
 - (e) immediately advise the Supplier 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.
- 15.4 The Supplier 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.
- 15.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 15.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 15.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 15.3 to 15.5.
- 15.9 Subject to any express provisions to the contrary (including those contained in this clause 15) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

16. Security and Charge

- 16.1 In consideration of the Supplier 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 money).
- 16.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 16.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 16 including, but not limited to, signing any document on the Client's behalf.

17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 17.1 The Client must inspect the Goods on delivery and must within seven (7) days of delivery notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to inspect the Goods.
- 17.2 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**).
- 17.3 The Supplier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Supplier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.5 If the Client is a consumer within the meaning of the CCA, the Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.6 If the Supplier is required to replace the Goods under this clause or the CCA, but is unable to do so, the Supplier may refund any money the Client has paid for the Goods.
- 17.7 If the Client is not a consumer within the meaning of the CCA, the Supplier's 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 Client by the Supplier at the Supplier's sole discretion;
 - (b) limited to any warranty to which the Supplier is entitled, if the Supplier did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 17.8 Subject to this clause 17, returns will only be accepted provided that:

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- (a) the Client has complied with the provisions of clause 17.1; and
 - (b) the Supplier has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client'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.
- 17.9 Notwithstanding clauses 17.1 to 17.8 but subject to the CCA, the Supplier 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 Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client 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 Client failing to follow any instructions or guidelines provided by the Supplier;
 - (e) fair wear and tear, any accident, or act of God.
- 17.10 Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 17.11 Subject to clause 17.1, customised, or non-stocklist items or Incidental Items made or ordered to the Client's specifications are not acceptable for credit or return.
- 18. Intellectual Property**
- 18.1 Where the Supplier has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of the Supplier. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Supplier.
- 19. Default and Consequences of Default**
- 19.1 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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier, 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 Supplier under this clause 19 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.
- 19.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier'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 Supplier;
 - (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.
- 20. Cancellation**
- 20.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Goods to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 20.2 The Supplier 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 Supplier shall repay to the Client any money paid by the Client for the Goods. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 20.3 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 Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 21. Privacy Act 1988**
- 21.1 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.
- 21.2 The Client agrees that the Supplier 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.
- 21.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or

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- (b) analysing, verifying and/or checking the Client'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 Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 21.5 The Supplier 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.
- 21.6 The information given to the CRB may include:
- (a) personal information as outlined in 21.1 above;
 - (b) name of the credit provider and that the Supplier 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, 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 Supplier 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 Supplier, 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).
- 21.7 The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
 - (b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.
- 21.8 The Supplier 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.
- 21.9 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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.
- 22. Construction Contracts Act 2004**
- 22.1 At the Supplier's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Construction Contracts Act 2004 may apply.
- 22.2 Nothing in this contract is intended to have the effect of contracting out of any provisions of the Construction Contracts Act 2004 of Western Australia, except to the extent permitted by the Act where applicable.
- 23. Service of Notices**
- 23.1 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.
- 23.2 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.
- 24. Trusts**
- 24.1 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 ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust 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 or 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 without consent in writing of the Supplier (the Supplier 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 property.
- 25. General**
- 25.1 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.

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- 25.3 Subject to clause 17, the Supplier 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of the Supplier.
- 25.6 The Supplier 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 Supplier's sub-contractors without the authority of the Supplier.
- 25.7 The Client agrees that the Supplier may amend these terms and conditions by notifying 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 Supplier to provide Goods to the Client.
- 25.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.9 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.