

Basic Steel & Apex Home Improvements – Terms & Conditions of Trade

1. Definitions

- 1.1 “Supplier” means Akers Steel Constructions Pty Ltd T/A Apex Home Improvements (SA), Basic Steel and its successors and assigns or any person acting on behalf of and with the authority of Akers Steel Constructions Pty Ltd T/A Apex Home Improvements (SA) and Basic Steel.
- 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 Service 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 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 Service Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999”

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. This shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Supplier
- 2.3 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.
- 2.4 Goods are supplied by the Supplier only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client’s order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.5 Any advice, recommendation, information, assistance or service provided by the Supplier in relation to Goods or Services supplied is given in good faith. This information from the Supplier is based on the Suppliers won knowledge and experience and shall be accepted without liability on the part of the Supplier and it shall be their responsibility of the client to confirm the accuracy and reliability of the same in light of the use to which The Client makes or intends to make of the Goods or Services.

3. Error 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 administering 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 or contact phone number/s, change of trustees, 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 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 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 Service originally scheduled (including any applicable plans or specifications) is requested; or
- (c) Where additional Service are required due to the discovery of hidden unidentifiable difficulties or unforeseen objects (including, but not limited to, limitations to accessing the site, uneven surface, poor weather conditions, obscured site defects which require remedial work, or prerequisite work by any third party not being completed) which are only discovered on commencement of the Series; or
- (d) In the event of increases to the Supplier in the cost of labour or materials which are beyond the Supplier's control

5.3 The Supplier may submit a details payment claim at intervals not less than monthly for work performed up to the end of each month. The value of the work so performed shall include the reasonable value of authorised variations and the value of materials delivered to the site but not installed.

5.4 Variation will be charged for on the basis of the Supplier's quotation, and will be details 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 day in writing or by email. Failure to do so will entitle the Supplier to add the cost of the variation to the Pirce. Payment for all variations must be made in full at the time of confirmation by the Client and or on completion.

5.5 At the Supplier's sole discretion, a non-refundable deposit may be required.

5.6 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) Placing order / lodgement of council application
- (b) Before or on Delivery of Goods
- (c) By way of Progress payments in accordance with the Supplier's payment schedule
- (d) Seven (7) days following the end of the month in which a statement is delivered to the Client's address, email address or address for notices
- (e) The date specified on any invoice or other form as being the date for payment; or
- (f) 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.

5.7 No allowance has been made in the Price for the deduction or retentions. In the event that retentions are made, the Supplier reserves the right to treat all retentions as placing the client's account into default.

5.8 Payment may be made by cheque, bank cheque, electronic – on-line banking, credit cart, or by any other method as agreed to between the Client and the Supplier.

5.9 The client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.

5.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay the the Supplier an amount equal to any GST the Supplier must pay for any supply but the Supplier under this or any

other contract for the sale of goods. The Client must pay GST, without deduction or set off any other amounts, at the same time and on the same basis as the Client pays the Price.

6. Delivery of Goods

- 6.1 Delivery ('Delivery') of the Goods is taken to occur at the time that:
- (a) The Client or the Client's nominated carrier takes possession of the Goods at the Supplier's address; or
 - (b) The Supplier (or the Supplier's nominated carrier) delivers the Goods of the Client's nominated address even if the Client is not present at the address;
 - (c) Where sub-clauses (a) and (b) have not occurred as arranged or the Client has been notified of the agreed date for pick-up which has subsequently lapsed all risk for the Goods shall pass of the Client.
- 6.2 At the Supplier's sole discretion, the cost of the delivery is in addition to the Price.
- 6.3 Any time specified by the Supplier for delivery of the Goods is an estimate only. The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. The Supplier will not be liable for any loss or damage incurred by the client as a result of the delivery being late. In the event that the Client is unable to take delivery of the Goods as arranged by the Supplier shall be entitled to charge a reasonable fee for redelivery.
- 6.4 "Supplier" means Akers Steel Constructions Pty Ltd T/A Apex Home Improvements (SA), its successors and assigns or any person acting on behalf of and with the authority of Akers Steel Constructions Pty Ltd T/A Apex Home Improvements (SA).
- 6.5 "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 Service as specified in any proposal, quotation, order, invoice or other documentation, and:
- (d) If there is more than one Client, is a reference to each Client jointly and severally; and
 - (e) If the client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (f) Includes the Client's executors, administrators, successors and permitted assigns.
- 6.6 "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).
- 6.7 "Price" means the Price payable (plus GST where applicable) for the Goods as agreed between the Supplier and the Client in accordance with clause 5 below.

"GST" means Goods and Service Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999"

7. Access

- 7.1 The Client shall ensure that the supplier has a clear and free access to the work site at all times to enable them to undertake the Services. The supplier shall not be liable for any loss or damage to the site including without limitation, damage to pathways, driveways and concreted, paved or grassed areas, unless due to the negligence of the Supplier.
- 7.2 It is the responsibility of the client to ensure that access is suitable to accept the weight of laden trucks, front end loaders or other earth moving equipment as may be deemed necessary by the supplier.

8. Risk

- 8.1 Risk of damage to or loss of the Goods passes to the client on delivery (at the time specified in clause 6.1) and the client must insure the goods on or before delivery.
- 8.2 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 the suppliers' rights to receive the insurance proceeds without the need for any person dealing with the supplier to make further enquiries.
- 8.3 If the client requests the supplier to leave goods outside the suppliers' premises for collection or to deliver the goods to an unattended location, then such goods shall be left at the client's sole risk.

- 8.4 The supplier shall be entitled to rely on the accuracy of any plans, specifications and other information by the client, and the supplier shall not be liable for any error, fault or defect caused by inaccuracies in the same. Further the client agrees that it shall not rely on the supplier having ascertained the suitability of the goods (or the particular specifications of those goods) for any particular purpose unless this has been confirmed by the supplier in writing.
- 8.5 The Client acknowledges that Goods supplied:
- a) May exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. Whilst the supplier will make every effort to match batches of product supplied, sales samples to the finished goods, in order to minimise such variations, the supplier shall not be liable in any way whatsoever where such variations occur; and
 - b) Expand, contract or distort as a result of exposure to heat, cold, weather; and
 - c) Mark or stain if exposed to certain substances; and
 - d) Be damaged or disfigured by impact of scratching.
- 8.6 The client 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 the supplier shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation.
- 8.7 The supplier shall not be liable for any defect or damage resulting from incorrect or faulty installation carried out by any other third party.
- 8.8 The client acknowledges that the supplier is only responsible for the goods that are supplied by the supplier and does not at any stage accept any liability in respect of components supplied by any other third party that subsequently fail and are found to be the source of the failure, the client agrees to indemnify the supplier against any loss or damage to the goods, or caused thereby, or any part thereof howsoever arising.

9. Fencing

- 9.1 The client must be on site to supervise the marking out of the fence line, placement of boundary pegs and during the installation of the fence. If the client fails to comply with this clause, then the supplier accepts no responsibility for installation decisions that need to be made by the supplier in the client's absence.
- 9.2 The client acknowledges that it is their responsibility to remove any existing fence (including existing footings), trees, vines and shrubs to allow the supplier the supplier clear access along the proposed fence line prior to commencement of work by the supplier unless otherwise agreed in writing between the supplier and the client. Under no circumstances will the supplier handle removal of asbestos products.
- 9.3 The client shall provide the supplier with a suitable free power source.
- 9.4 Whilst the supplier will take all due care during installation the supplier will not accept any responsibility for tiles or pavers damaged during installation.
- 9.5 Where fencing is installed on a retaining wall the supplier shall not be liable for any movement in the fence due to consolidation, or the movement of soil or any other component of the retaining wall.
- 9.6 The supplier shall not be responsible for digging land out under fence lines nor removal of soil from the work site.
- 9.7 The supplier reserves the right to touch-up all products supplied and installed on the work site to rectify minor blemishes or damage to paintwork.

10. Underground Locations

- 10.1** Unless otherwise agreed in writing between the client and the supplier it shall be the client's responsibility to advise the precise location of all underground services on the site and clearly mark the same. The underground mains and services the client must identify, include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optics cables, oil pumping mains, and any other services that may be on site.

10.2 If the client requests the supplier to engage a service locator the this shall be in addition to the price and “Dial Before You Dig” must be consulted and any potential underground services marked on site.

10.3 Whilst the supplier will take all care to avoid damage to any underground 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 10.1.

11. Third Party Contractors

11.1 Third party contractors suggested by the Supplier are by means of a lead only and the Supplier shall not be liable or responsible for any workmanship, damage, injury, or any other event caused directly or indirectly by such contractors as they are in no way connected to the Supplier.

12. Insurance

12.1 The Supplier shall have public liability insurance of at least five million dollars (\$5m). It is the Client's responsibility to ensure that they are similarly insured.

13. Title

13.1 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.

13.2 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.

13.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause

- 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.
- 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.

14. Finance / payment

14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the ppsA.

14.2 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.

14.3 The Client undertakes to:

- a) 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 14.3(a)(i) or 14.3(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.
- 14.4 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.
- 14.5 The Client waives their rights to receive notices under sections 95, 118, 121 (4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 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.
- 14.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
15. Security and Charge
- 15.1 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).
- 15.2 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.
- 15.3 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 15 including, but not limited to, signing any document on the Client's behalf
16. Compliance with Laws
- 16.1 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.
- 16.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 16.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.
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 (NonExcluded 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
- 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:
- 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 In the case of second-hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second-hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Supplier as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that the Supplier has agreed to provide the Client with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 17.10.
- 17.11 The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Client to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs.
- 17.12 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.

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.
- 18.2 The Client warrants that all designs, specifications or instructions given to the Supplier will not cause the Supplier to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify the Supplier against any action taken by a third party against the Supplier in respect of any such infringement.
- 18.3 The Client agrees that the Supplier may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Supplier has created for the Client.

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).
- 20.4** Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

21. Dispute Resolution

- 21.1** If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:

22. Privacy Act 1988

- 22.1** The Client agrees for the Supplier to obtain credit from a applications, credit reporting credit body history) (CRB) about a credit the Client report in containing relation to credit personal provided credit by information the Supplier. (e.g., name, address, D.O.B, occupation, previous
- 22.2** 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.

22.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.

22.4 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
- 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.

22.5 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.

22.6 The information given to the CRB may include:

- a) personal information as outlined in 22.1 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).

22.7 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.

22.8 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.

22.9 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.

23. Building and Construction Industry Security of Payments Act 2009

23.1 At the Suppliers sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 2009 may apply.

23.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 2009 of South Australia, except to the extent permitted by the Act where applicable.

24. General

- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of South Australia in which the Supplier has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 24.3 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).
- 24.4 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.
- 24.5 The Client cannot licence or assign without the written approval of the Supplier.
- 24.6 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 subcontractors without the authority of the Supplier.
- 24.7 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.
- 24.8 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.
- 24.9 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.

