

## CREDIT ACCOUNT APPLICATION

**To Be Completed By Applicants** - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

<b>Client's Details:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:			
Full or Legal Name:			
Trading Name (if different from above):			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:		Fax No:	Mobile No:
<b>Personal Details:</b> <i>(please complete if you are an Individual)</i>			
D.O.B.:		Driver's Licence No:	
<b>Business Details:</b> <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>			
ABN:		ACN:	Date Established <i>(current owners)</i> :
Nature of Business:			
Paid Up Capital: \$		Estimated Monthly Purchases: \$	Credit Limit Required: \$
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :			
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>			
(1) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No:		Phone No:	Mobile No:
(2) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No:		Phone No:	Mobile No:
<b>Account Terms:</b> <input type="checkbox"/> 30 Days from EOM <input type="checkbox"/> 7 Days following invoice <input type="checkbox"/> Other:			
Purchase Order Required? <input type="checkbox"/> YES <input type="checkbox"/> NO		Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO	
Accounts Email Address:			
Accounts Contact:		Phone No:	
Bank and Branch:		Account No:	
<b>Trade References:</b> <i>(please provide companies that are willing to do trade references)</i>			
Name:		Address:	Phone / Fax / Email:
1.			
2.			
3.			

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Planet Timbers (WA) Pty Ltd T/A Planet Timbers which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. **I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.**

**SIGNED (CLIENT):** \_\_\_\_\_ **SIGNED (SUPPLIER):** \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

**WITNESS TO CLIENT'S SIGNATURE:**

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

**OFFICE USE ONLY**

Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

## Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Planet Timbers (WA) Pty Ltd T/A Planet Timbers and its successors and assigns ("the Supplier") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

 ("the Customer") [Insert Company Name In Box Provided]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

1. **GUARANTEE** the due and punctual payment to the Supplier of all monies which are now owing to the Supplier by the Customer and all further sums of money from time to time owing to the Supplier by the Customer in respect of goods and services supplied or to be supplied by the Supplier to the Customer or any other liability of the Customer to the Supplier, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Supplier, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to the Supplier the Guarantor will immediately on demand pay the relevant amount to the Supplier. In consideration of the Supplier agreeing to supply the goods and/or services to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to the Supplier registering any interest so charged. The Guarantor irrevocably appoints the Supplier and each director of the Supplier as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which the Supplier may reasonably require to:
  - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (b) register any other document required to be registered by the PPSA or any other law; or
  - (c) correct a defect in a statement referred to in clause 1(a) or 1(b).
2. **HOLD HARMLESS AND INDEMNIFY** the Supplier on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, the Supplier in connection with:
  - (a) the supply of goods and/or services to the Customer; or
  - (b) the recovery of monies owing to the Supplier by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Supplier's nominees contract default fee and legal costs; or
  - (c) monies paid by the Supplier with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the Supplier, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Supplier to the Customer.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

3. **I/We have received, read and understood the Supplier's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
4. This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to the Supplier by the Customer and all obligations herein have been fully paid satisfied and performed.
5. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Supplier's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to the Supplier, each Guarantor shall be a principal debtor and liable to the Supplier accordingly.
6. If any payment received or recovered by the Supplier is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Supplier shall each be restored to the position in which they would have been had no such payment been made.
7. The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
8. **I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Supplier.**
9. I/we irrevocably authorise the Supplier to obtain from any person or company any information which the Supplier may require for credit reference purposes. I/We further irrevocably authorise the Supplier to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Supplier as a result of this Guarantee and Indemnity being actioned by the Supplier.
10. The above information is to be used by the Supplier for all purposes in connection with the Supplier considering this Guarantee and Indemnity and the subsequent enforcement of the same.

<p><b>GUARANTOR-1</b>          SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>EXECUTED as a Deed this        day of        20____</p>
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<p><b>GUARANTOR-2</b>          SIGNED: _____</p> <p>FULL NAME: _____</p> <p>HOME ADDRESS: _____</p> <p>DATE OF BIRTH: _____</p> <p>SIGNATURE OF WITNESS: _____</p> <p>NAME OF WITNESS: _____</p> <p>OCCUPATION: _____</p> <p>PRESENT ADDRESS: _____</p> <p>EXECUTED as a Deed this        day of        20____</p>
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Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).  
 2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

# Planet Timbers – Terms & Conditions of Trade

1. **Definitions**
    - 1.1 "Supplier" means Planet Timbers (WA) Pty Ltd T/A Planet Timbers, its successors and assigns or any person acting on behalf of and with the authority of Planet Timbers (WA) Pty Ltd T/A Planet Timbers.
    - 1.2 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer 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 Customer, is a reference to each Customer jointly and severally; and
      - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
      - (c) includes the Customer's executors, administrators, successors and permitted assigns.
    - 1.3 "Goods" means all Goods or Services supplied by the Supplier 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).
    - 1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Supplier and the Customer in accordance with clause 6 below.
    - 1.5 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
  2. **Acceptance**
    - 2.1 The Customer is taken to have exclusively accepted and is 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 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 Customer and the Supplier.
    - 2.3 These terms and conditions may be meant to be read in conjunction with the Supplier's Hire Form, and:
      - (a) where the context so permits, the terms 'Goods' or 'Services' shall include any supply of Equipment, as defined therein; and
      - (b) if there are any inconsistencies between the two documents then the terms and conditions contained therein shall prevail.
    - 2.4 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 2003 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 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 willful misconduct of the Supplier, the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.
  4. **Change in Control**
    - 4.1 The Customer shall give the Supplier 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 numbers, changes of trustees or business practice). The Customer shall be liable for any loss incurred by the Supplier as a result of the Customer's failure to comply with this clause.
  5. **Credit Card Information**
    - 5.1 The Supplier will:
      - (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Supplier;
      - (b) not disclose the Customer's credit card details to any third party;
      - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause **Error! Reference source not found.**) or where required by law.
    - 5.2 The Customer expressly agrees that, if pursuant to this contract, there are:
      - (a) any unpaid charges;
      - (b) other amounts due and outstanding by the Customer;
      - (c) any Equipment (or any part of them) supplied on hire that are lost or damaged;
      - (d) any other additional charges are due from the Customer which were not known at the time of the return of the Equipment,The Supplier is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this contract.
  6. **Price and Payment**
    - 6.1 At the Supplier's sole discretion, the Price shall be either:
      - (a) as indicated on any invoice provided by the Supplier to the Customer; or
      - (b) the Price as at the date of delivery of the Goods according to the Supplier's current price list; or
      - (c) the Supplier's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
    - 6.2 The Supplier reserves the right to change the Price if a variation to the Supplier's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as limitations to accessing the worksite, availability of machinery, safety considerations, prerequisite work by any third party not being completed or as a result of any increase to the Supplier in the cost of Goods (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) and labour) will be charged for on the basis of the Supplier's quotation and will be shown as variations on the invoice. The Customer 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.
    - 6.3 At the Supplier's sole discretion, a deposit may be required.
    - 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 the Supplier, which may be:
      - (a) before delivery of the Goods;
      - (b) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
      - (c) thirty (30) days following 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 the Supplier.
    - 6.5 Payment may be made by cash, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Supplier.
    - 6.6 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 the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
    - 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer 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 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 the Supplier's address; or
      - (b) the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
    - 7.2 At the Supplier's sole discretion, the cost of delivery is in addition to the Price.
    - 7.3 The Supplier 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 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 Customer 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 Customer, then the Supplier 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.
    - 8.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, 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.
  - 8.3 If the Customer requests the Supplier to leave Goods outside the Supplier's 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 The Customer acknowledges that Goods supplied may exhibit variations in shade tone, colour, texture, veining, surface and finish, and may fade or change colour over time. The Supplier will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur.
  - 8.5 The Customer acknowledges that Goods supplied may:
    - (a) fade or change colour over time; 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 or scratching.
  - 8.6 The Supplier will not accept responsibility for any damage to the floor due to microenvironments caused by air-conditioning, heating or large expanses of glass windows without curtains or blinds.
  - 8.7 Whilst the Supplier will take all due care to avoid contamination of the finished surface, the Supplier accepts no responsibility for contamination by natural contaminants such as dust or hair which may be present at the worksite.
  - 8.8 The Supplier will only inspect or view a timber floor from a standing position, as this is generally how you will be living on it. Minor marks or slight imperfections in the floor finish that can only be viewed from a crouching or kneeling position will not be considered defects.
9. **Customer's Responsibilities**

It is the Customer's responsibility to:

  - (a) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation; and
  - (b) remove all existing floor coverings, tacks and staples; and
  - (c) fully disclose any information that may affect the Supplier's installation procedures (including, but not limited to, disclosing known breaks or tears in the membrane, extensions of existing slabs, thickened beams, curing compounds that may have been used, or the use of concrete over 25mpa); and
  - (d) ensure the sub-floor is adequately ventilated and is structurally sound; and
  - (e) ensure that the levels of the sub-floor are satisfactory as the floor coverings can only follow the contours of the sub-floor and will not correct unevenness; and
  - (f) remove all fragile items such as glassware, crockery, pot plants, furniture and ornaments. Breakages and damages are the responsibility of the Customer. All care taken but no responsibility accepted by the Supplier in this regard; and
  - (g) provide adequate dust sheets to protect the Customer's furniture and décor. The Supplier will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by any sanding process. Flaking or crumbling walls should be temporarily covered by the Customer, until the coatings are dry; and
  - (h) extinguish all naked flames prior to coating including, but not limited to, pilot lights, heaters etc.; and
  - (i) supply power to within eight (8) metres of the project; and
  - (j) ensure that full and final lighting as designed for the completed project is fully operational prior to sanding works commencing, and are made available for use at no cost for the duration of the project. Any costs incurred by the Supplier will be invoiced to the Customer should this requirement not be met; and
  - (k) make the premises available on the agreed date and time. If installation is interrupted by the failure of the Customer to adhere to the installation schedule agreed to between the Supplier and the Customer, any additional costs will be invoiced to the Customer as an extra.
- 9.2 The Supplier is not insured to remove furniture or fittings and will not do so, nor is the Supplier licensed to move gas or electrical appliances.
10. **Product Specifications**
  - 10.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Supplier's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer 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.
11. **Installation**
  - 11.1 The Customer warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and any substructures are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos) that the Supplier, its employees or contractors reasonably form the opinion that the Customer's premises is not safe for the installation of Goods to proceed then the Supplier shall be entitled to delay installation of the Goods until the Supplier is satisfied
12. **Access**
  - 12.1 The Customer shall ensure that the Supplier has clear and free access to the work worksite at all times to enable them to deliver the Goods/provide the Services. The Supplier shall not be liable for any loss or damage to the worksite (including, without limitation, damage to pathways, driveways and concrete or paved or grassed areas) unless due to the negligence of the Supplier.
13. **Compliance with Laws**
  - 13.1 The Customer 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.
  - 13.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
  - 13.3 The Customer agrees that the site will comply with any occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation.
14. **Title**
  - 14.1 The Supplier and the Customer agree that ownership of the Goods shall not pass until:
    - (a) The Customer has paid the Supplier all amounts owing to the Supplier; and
    - (b) The Customer 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 Customer in accordance with clause 14.1:
    - (a) The Customer is only a bailee of the Goods and must return the Goods to the Supplier on request.
    - (b) The Customer holds the benefit of the Customer'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 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 the Supplier and must pay or deliver the proceeds to the Supplier 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 the Supplier and must sell, dispose of or return the resulting product to the Supplier as it so directs.
    - (e) The Customer 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 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 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 Customer.
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 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 and/or collateral (account) – being a monetary obligation of the Customer to the Supplier for Services – that have previously been supplied and that will be supplied in the future by the Supplier to the Customer.
  - 15.3 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 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

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- 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 Customer 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 Customer 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 Customer 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 Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 15.8 The Customer 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 Customer 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 Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 16.2 The Customer 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 Customer irrevocably appoints the Supplier and each director of the Supplier as the Customer'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 Customer's behalf.
- 17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 17.1 The Customer 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 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 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 Customer 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 Customer has paid for the Goods.
- 17.7 If the Customer 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 Customer 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 Customer 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 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.
- 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 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 the Supplier;
- (e) fair wear and tear, any accident, or act of God.
- 17.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer 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 Customer acknowledges and agrees that the Supplier has agreed to provide the Customer 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 Customer 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 Customer, 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 Customer 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 Customer's order and the Customer 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 Customer 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 Customer.
- 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 Customer owes the Supplier any money the Customer 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 Customer has made payment to the Supplier, 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 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 Customer'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 Customer 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 Customer will be unable to make a payment when it falls due;
- (b) the Customer has exceeded any applicable credit limit provided by the Supplier;
- (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.
- 20. Cancellation**
- 20.1 Without prejudice to any other remedies the Supplier may have, if at any time the Customer 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 Customer. The Supplier will not be liable to the Customer for any loss or damage the Customer 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 Customer. On giving such notice the Supplier shall repay to the Customer any money paid by the Customer 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 Customer cancels delivery of Goods the Customer 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 Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Act 1988**
- 21.1 The Customer 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 Customer in relation to credit provided by the Supplier.
- 21.2 The Customer agrees that the Supplier 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.
- 21.3 The Customer consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4 The Customer 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 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.
- 21.5 The Supplier 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.
- 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 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, 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 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 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).
- 21.7 The Customer shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the information about the Customer 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 Customer for the purpose of direct marketing.
- 21.8 The Supplier will destroy personal information upon the Customer'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 Customer 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 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).
- 22. Service of Notices**
- 22.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 22.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 23. Trusts**
- 23.1 If the Customer 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 Customer covenants with the Supplier as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer 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 Customer against the Trust or 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 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 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 property.
- 24. General**
- 24.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable 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 Western Australia, the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Perth Courts in Western Australia.
- 24.3 Subject to clause 17, the Supplier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer 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 Customer's consent.
- 24.5 The Customer 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 Customer 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.
- 24.7 The Customer agrees that the Supplier may amend these terms and conditions by notifying 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 the Supplier to provide Goods to the Customer.
- 24.8 Neither party shall be liable for any liability 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.