

Sport Group Asia Pacific – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.2 "Contract"** means the terms and conditions contained herein, together with any quotation, purchase order, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 "Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Seller's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.4 "Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Seller to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
- (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
- (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.5 "Goods"** means all Goods or Services supplied by the Seller 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).
- 1.6 "Price"** means the Price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 6 below.
- 1.7 "Seller"** means Sport Group Asia Pacific entities, its successors and assigns or any person acting on behalf of and with the authority of Sport Group Asia Pacific entities.
- 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** In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3** Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4** The Customer acknowledges and accepts that:
- (a) the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Seller and it has been approved with a credit limit established for the account;
- (b) in the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Seller reserves the right to refuse Delivery;
- (c) in the event that a purchase order has been issued by the Customer, the Seller may, at their discretion, accept or reject the purchase order and agrees to notify the Customer of their decision in writing within a reasonable timeframe (of no longer than fifteen (15) days);
- (d) a purchase order for standard Goods (Goods as displayed on the Seller's current price list) or non-standard Goods shall only be deemed as being accepted once the Seller issues an acknowledgement of the order in writing; and
- (e) once the purchase order has been accepted by the Seller, the Customer must sign and return the order acknowledgement to the Seller. The Seller may, at their discretion, suspend or delay Delivery of the Goods until the Seller receives the signed order acknowledgement from the Customer.
- 2.5** Where the Seller gives any advice, recommendation, information, assistance or service provided by the Seller in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on the Seller's own knowledge and experience and shall be accepted without liability on the part of the Seller. Where such advice or recommendations are not acted upon then the Seller shall require the Customer or their agent to authorise commencement of the Services in writing. The Seller shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services.
- 2.6** None of the Seller's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of Sport Group Asia Pacific entities in writing nor is the Seller bound by any such unauthorised statements.
- 2.7** The Customer accepts that the Seller's quotation is based on normal working hours and conditions and make the most economical use of labour. Any work required outside these parameters may attract an additional charge and shall be treated as a variation as per clause 6.3.
- 3. Authorised Representatives**
- 3.1** Unless otherwise limited as per clause 3.2 the Customer agrees that should the Customer introduce any third party to the Seller as the Customer's duly authorised representative, that once introduced that person shall have the full authority of the Customer as agreed to by the Customer, and the Customer shall be responsible to request any variation to the Services on the Customer's behalf (such authority to continue until all requested Services have been completed or the Customer otherwise notifies the Seller in writing that said person is no longer the Customer's duly authorised representative).
- 3.2** In the event that the Customer's duly authorised representative as per clause 3.1 is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Seller in writing of the parameters of the limited authority granted to their representative.
- 3.3** The Customer expressly acknowledges and accepts that they will be solely liable to the Seller for all additional costs incurred by the Seller (including the Seller's profit margin) in providing any Services, Goods or variations requested by the Customer's duly authorised representative (subject always to the limitations imposed under clause 3.2 (if any)).
- 4. Errors and Omissions**
- 4.1** The Customer acknowledges and accepts that the Seller 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 Seller 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 Seller in respect of the Services.
- 4.2** In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Seller, the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4.3** In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether or not they are made to order Goods), (**"Customer Error"**). The Customer must pay for all Goods it orders from the Seller notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Goods. The Seller is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.
- 5. Change in Control**
- 5.1** The Customer shall give the Seller 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, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Seller as a result of the Customer's failure to comply with this clause.
- 6. Price and Payment**
- 6.1** At the Seller's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by the Seller to the Customer; or the Price as at the date of order according to the Seller's current price list. The price list is available on request and are subject to changes without notice; or
- (b) the Seller's quoted price (subject to clause 6.3) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 6.2** Unless otherwise stated, all prices quoted by the Seller are based on customs duty, freight and foreign exchange rates applicable at the date of the quotation.
- 6.3** The Seller 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) where additional Services are required due to the discovery of hidden or unidentified difficulties (including, but not limited to, poor weather, limitations to accessing the worksite, obscured building/worksite defects, incorrect measurements, plans and/or specifications provided by the Customer, availability of machinery, prerequisite work by any third party not being completed, hard rock or other barriers below the surface, other latent soil conditions, hidden underground pipes and wiring, non-availability of raw materials, etc.) which are only discovered on commencement of the Services; or
- (d) as a result of an increase in the Seller's costs due to changes in statutory, government, or local body charges, taxes, levies, etc. with respect to the Services due to relevant industry action (e.g. worksite allowance and severance pay), or CPI (Consumer Price Index), which are outside the control of the Seller; or
- (e) in the event that overseas transactions increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges or increases to the Seller in the cost of labour or Goods which are beyond the Seller's control.
- 6.4** Variations will be charged for on the basis of the Seller's quotation, and will be detailed in writing to be shown as variations on the Seller's invoice. The Customer shall be required to respond to any variation submitted by the Seller within five (5) working days. Failure to do so will entitle the Seller 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.
- 6.5** The Seller may at their discretion, as a condition of acceptance of a purchase order, require the Customer to provide:
- (a) a cash deposit before the Delivery of the Goods; or
- (b) a personal guarantee as to payment; or
- (c) bank guarantees as to payment.
- 6.6** 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 Seller, which may be:
- (a) on or before Delivery of the Goods;
- (b) by way of instalments/progress payments in accordance with the Seller'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 Seller.
- 6.7** Payment may be made by 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 Seller.
- 6.8** The Seller may in its discretion allocate any payment received from the Customer towards any invoice that the Seller delivers and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Seller may re-allocate any payments previously received and allocated.
- 6.9** 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 Seller nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute then the Customer must notify the Seller in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Seller investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Seller placing the Customer's account into default and subject to default interest in accordance with clause 20.1.
- 7. Provision of the Services**
- 7.1** Subject to clause 7.2 it is the Seller's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 7.2** The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that the Seller claims an extension of time (by giving the Customer written notice) where completion is delayed by an event beyond the Seller's control, including but not limited to any event as per clause 26 or any failure by the Customer to:
- (a) make a selection; or
- (b) have the worksite ready for the Services; or
- (c) notify the Seller that the worksite is ready.
- 7.3** 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 Seller's address; or
- (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 7.4** At the Seller's sole discretion, the cost of Delivery is either included or is in addition to the Price.
- 7.5** The Seller 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.
- 7.6** The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 7.7** Any time specified by the Seller for Delivery of the Goods is an estimate only and the Seller 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 Seller is unable to supply the Goods as agreed to by the Customer due to any act or inaction of the Customer, then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage (including but not limited to, storage costs, insurance, demurrage, handling and other charges associated with such storage).
- 8. Specifications**
- 8.1** The Customer acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in the Seller'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 Seller; and
- (b) while the Seller may have provided information or figures to the Customer regarding the performance of the Goods, the Customer acknowledges that the Seller has given these in good faith and are estimates based on industry prescribed estimates.
- 9. Risk**
- 9.1** 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.
- 9.2** If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 9.3** If the Customer requests the Seller to leave Goods outside the Seller'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.
- 9.4** The Seller shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, the Seller accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information. The Customer acknowledges and accepts that Goods supplied may exhibit variations in shade, colour, texture, surface and finish which may:
- (a) fade or change colour over time;
- (b) expand, contract or distort as a result of exposure to heat, cold, weather;
- (c) mark or stain if exposed to certain substances; and
- (d) be damaged or disfigured by impact or scratching.
- 9.5** The Seller 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.
- 9.6** Where the Seller is to supply the Goods only, the Seller shall not be liable whatsoever for any defect or damage resulting from incorrect or faulty installation carried out by any other third party. The Customer acknowledges and agrees to indemnify the Seller against any third-party claims, loss or damage in respect of that installation.
- 9.7** If the Customer instructs the Seller to rectify any damage caused by any other tradesman, then it will become a variation to the original quotation and will be charged at the Seller's normal hourly rate.
- 9.8** In the event that the Seller is to both supply and install Goods then:
- (a) the Seller shall maintain a contract works insurance policy until the Services are completed. Upon completion of the Services all risk for the Services shall immediately pass to the Customer;
- (b) it shall be the Customer's responsibility to:
- (i) have all areas clean and clear to enable scheduled work to be completed in accordance with the schedule of installation;
- (ii) ensure adequate working areas, including fence lines shall be free from obstruction and other trades;
- (iii) organise and be liable for all costs associated with protecting the surface and shall take all reasonable precautions to protect against destruction or damage by way of vandalism. In the event that the surface is destroyed or damaged due to vandalism then the cost of repair or replacement shall be borne by the Customer.
- (c) the Customer acknowledges and accepts that:
- (i) the Seller will conduct any soil/sub-base testing specified in the scope of Services. If the tests indicate that the installation does not meet the required standard, then upon agreement between both parties, the Seller will take any actions deemed necessary to make the worksite compliant to enable the Services to proceed, any additional costs incurred by the Seller will be borne by the Customer, unless otherwise agreed;
- (ii) approval of the exact location of the Services will be assumed by the Seller on the commencement of the Services, unless written instructions are given by the customer to make variations before further work proceeds;
- 9.9** the Seller is only responsible for the section of Services that is patched or relevelled by the Seller and does not at any stage accept any liability in respect of previous services and/or goods supplied by any other third party that subsequently fail and found to be the source of the failure, the Customer agrees to indemnify the Seller against any loss or damage to the Goods, or caused by the Goods, or any part thereof howsoever arising. Furthermore, the Seller only offers a limited guarantee where a surface is merely patched or relevelled. This shall not include any areas around or under any remedial patches. The Seller will not accept any liability in the event of any ponding or undulations in the synthetic surfacing, laid over the top of a base course that has been patched or relevelled, patching and releveling will not eliminate uneven surfaces and ponding.
- 10. Worksite Access and Condition**
- 10.1** It is the intention of the Seller and agreed by the Customer that:
- (a) the Customer shall ensure that the Seller has clear and free access to the worksite at all times to enable them to undertake the Services (including carrying out worksite inspections, gain signatures for required documents, and for the delivery and installation of the Goods). The Seller shall not be liable for any loss or damage to the worksite (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller; and
- (b) it is the Customer's responsibility to provide the Seller, while at the worksite, with adequate access to available water, electricity, toilet and washing facilities.
- 10.2** The Customer agrees to be present at the worksite when and as reasonably requested by the Seller and its employees, contractors and/or agents.
- 10.3** Where the Seller requires that Goods, tools etc. required for the Services be stored at the worksite, the Customer shall supply the Seller a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the Customer's responsibility.
- 11. Underground Locations**
- 11.1** Prior to the Seller commencing any work the Customer must advise the Seller of the precise location of all underground services on the worksite and clearly mark the same. The underground mains and services the Customer 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 the worksite.
- 11.2** Whilst the Seller will take all care to avoid damage to any underground services the Customer agrees to indemnify the Seller 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 11.1.
- 12. Surplus Goods**
- 12.1** Unless otherwise stated elsewhere in this Contract:
- (a) demolished Goods remain the Customer's property; and
- (b) Goods which the Seller brings to the worksite which are surplus remain the property of the Seller.
- 13. Compliance with Laws**
- 13.1** The Customer and the Seller 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 (OHS) relating or any other relevant safety standards or legislation pertaining to the Services.
- 13.2** Both parties acknowledge and agree:
- (a) to comply with the local government laws and regulations, in respect of all workmanship and products to be supplied under the Services; and
- (b) that Services will be provided in accordance with any current relevant international and local standards applicable.
- 13.3** Where the Customer has supplied products for the Seller to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the Intended Use and any faults inherent in those products. However, if in the Seller's opinion, it is believed that the materials supplied are Non-Conforming products and will not conform with state and/or territory regulations, then the Seller shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be incurred in accordance with clause 6.3.
- 13.4** The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 14. Title**
- 14.1** The Seller and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Seller all amounts owing to the Seller; and
- (b) the Customer has met all of its other obligations to the Seller.
- 14.2** Receipt by the Seller of 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 Seller on request;
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Seller and must pay to the Seller 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 Seller and must pay or deliver the proceeds to the Seller 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 Seller and must sell, dispose of or return the resulting product to the Seller as it so directs; the Customer irrevocably authorises the Seller to enforce this premise where the Seller believes the Goods are kept and recover possession of the Goods;
- (e) the Seller may recover possession of any Goods in transit whether or not Delivery has occurred;
- (f) 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 Seller;
- (g) the Seller may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
- 15. Security and Charge**
- 15.1** In consideration of the Seller 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, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Seller's security interest over the Customer on the PPSPA (Personal Property and Securities Act) or equivalent local legislation 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).
- 15.2** The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

Please note that a larger print version of these terms and conditions is available from the Seller on request.

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- 15.3 The Customer irrevocably appoints the Seller and each director of the Seller as the Customer's true and lawful attorneys 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 Customer's behalf.
- 16. Defects, Warranties and Returns and Competition**
- 16.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Seller 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 Seller to inspect the Goods.
- 16.2 Except as expressly set out in these terms and conditions, the Seller makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.3 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 16.1; and
 - (b) the Seller has agreed that the Goods are defective; and
 - (c) the Goods are returned to the Seller's warehouse 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 including a dispatch note stating the Seller's original invoice number and reason for return.
- 16.4 Notwithstanding clauses 16.1 to 16.8, the Seller 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 Seller;
 - (e) fair wear and tear, any accident, or act of God.
- 16.5 The Seller may in its absolute discretion accept non-defective Goods for return in which case the Seller 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.
- 16.6 Notwithstanding anything contained in this clause if the Seller is required by a law to accept a return then the Seller will only accept a return on the conditions imposed by that law.
- 16.7 Subject to clause 16.1, customised, or non-stockist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.
- 17. Intellectual Property**
- 17.1 Where the Seller 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 Seller. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Seller.
- 17.2 The Customer warrants that all designs, specifications or instructions given to the Seller will not cause the Seller to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Seller against any action taken by a third party against the Seller in respect of any such infringement.
- 17.3 The Customer agrees that the Seller may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Seller has created for the Customer.
- 18. Confidentiality**
- 18.1 Each party agrees to treat all information and ideas communicated to it by the other confidentially and agree not to divulge it to any third party, without the other party's written consent. The parties will not copy any such information supplied and will either return it or destroy it (together with any copies thereof) on request of the other party.
- 19. Default and Consequences of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, on the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Seller'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 Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Seller's contract default fee, and bank dishonour fees).
- 19.3 Further to any other rights or remedies the Seller may have under this Contract, if a Customer has made payment to the Seller, 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 Seller 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 Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Seller becomes overdue, or in the Seller'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 Seller;
 - (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. Termination**
- 20.1 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment or where the Customer fails to remedy the breach within five (5) days of receiving the written notice under these terms and conditions the Seller may suspend or terminate the supply of Goods to the Customer. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- 20.2 The Seller 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 Seller shall repay to the Customer any money paid by the Customer for the Goods. The Seller 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 Seller 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-stockist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 21. Privacy Policy**
- 21.1 All emails, documents, images or other recorded information held or used by the Seller is Personal Information, as defined and referred to in clause 21.3, and therefore considered Confidential Information. The Seller acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Seller acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Seller that may result in serious harm to the Customer, the Seller will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 21.2 Notwithstanding clause 21.1, privacy limitations will extend to the Seller in respect of Cookies where the Customer utilises the Seller's website to make enquiries. The Seller agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Seller when the Seller sends an email to the Customer, so the Seller may collect and review that information ("collectively Personal Information").
- If the Customer consents to the Seller's use of Cookies on the Seller's website and later wishes to withdraw that consent, the Customer may manage and control the
- Seller's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 21.3 The Customer agrees that the Seller 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.
- 21.4 The Customer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit.
- 21.5 The Customer agrees that personal credit information provided may be used and retained by the Seller 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 provided by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 21.6 The Seller may give information about the Customer to a Credit Reporting Body (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.
- 21.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 21.3 above;
 - (b) name of the credit provider and that the Seller 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 Seller 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 Seller, the Customer has committed a serious credit infringement.
- 21.8 The Customer shall have the right to request (by e-mail) from the Seller:
- (a) a copy of the Personal Information about the Customer retained by the Seller and the right to request that the Seller correct any incorrect Personal Information; and
 - (b) that the Seller does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 21.9 The Seller 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. The Customer can make a privacy complaint by contacting the Seller via e-mail. The Seller 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.
- 22. Unpaid Seller's Rights**
- 22.1 Where the Customer has left any item with the Seller for repair, modification, exchange or for the Seller to perform any other service in relation to the item and the Seller has not received or been tendered the whole of any monies owing to it by the Customer, the Seller shall have, until all monies owing to the Seller are paid:
- (a) a lien on the item; and
 - (b) the right to retain or sell the item, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods.
- 22.2 The lien of the Seller shall continue despite the commencement of proceedings, or judgment for any monies owing to the Seller having been obtained against the Customer.
- 23. Other Applicable Legislation**
- 23.1 At the Seller's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of legislation in each country of operation will apply.
- 24. Service of Notices**
- 24.1 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.
- 24.2 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.
- 25. Trusts**
- 25.1 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 Seller may have notice of the Trust, the Customer covenants with the Seller 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 Seller (the Seller 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.
- 26. Force Majeure**
- 26.1 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") or other event beyond the reasonable control of either party.
- 26.2 Furthermore, unless the performance by either party of its obligations, under this Contract, is delayed by the occurrence of a "Force Majeure" event as per clause 26.1, for a period of more than three (3) months (and such delay is excused under the foregoing provisions), no "Force Majeure" event shall excuse permanent non-performance, but shall excuse only delays in performance and only to the extent that such delays are directly attributable to such a clause. Should any "Force Majeure" event delay performance for a period of more than three (3) months, either party may terminate and cancel this Contract upon providing written notice within thirty (30) days to the other party. Neither party shall be liable or responsible for any costs or damages attributable to failure or delay in performance arising out of any "Force Majeure" event.
- 27. General**
- 27.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall before to pursue other dispute resolution avenues.
- 27.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 27.3 These terms and conditions and any contract to which they apply shall be governed by the laws of the country of operation and are subject to the jurisdiction of the courts in that jurisdiction. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 27.4 Subject to clause 16, the Seller 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 Seller of these terms and conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 27.5 The Seller may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 27.6 The Customer cannot licence or assign without the written approval of the Seller.
- 27.7 The Seller 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 Seller's sub-contractors without the authority of the Seller.
- 27.8 The Customer agrees that the Seller may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Seller to provide Goods to the Customer.
- 27.9 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.
- 27.10 This Contract constitutes the entire agreement between the Seller and the Customer, and the Customer hereby acknowledges that no reliance is placed on any representation made by the Seller that is not embodied in this Contract.
- 27.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract and they will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transaction under this Contract.

THIS PART IS INTENTIONALLY LEFT BLANK

Please note that a larger print version of these terms and conditions is available from the Seller on request.