

PART A: GENERAL TERMS AND CONDITIONS

1. Structure of these terms and conditions

1.1 These terms and conditions consist of a number of parts as follows:

- (a) This **Part A "General Terms and Conditions"**: applies to all Goods and Services provided by us to you, including where we sell and purchase brand new and/or used Goods from us.
- (b) The following Special Terms:
 - (i) **Part B "Special Terms: Hire of Goods"**: only applies if and when we hire plant, equipment and/or vehicle(s) to you, including but not limited to goods to move earth, soil, rocks, or compact soil including, without limitation, excavators and mini excavators, backhoes, skid steer loaders, wheel loaders, motor graders, tractors, articulated trucks, attachments, smooth drum rollers, padfoot rollers, multi-tyre rollers and any other items offered for hire by us from time to time.
 - (ii) **Part C "Special Terms: Supply of Spare Goods and Services"**: only applies if and when we supply you with spares, service, repair, or replacement parts, accessories and/or consumables supplied with respect to goods to move earth, soil, rocks, compact soil, any other goods or items supplied by us from time to time and/or the supply of any labour services with respect to such goods.
 - (iii) **Part D "Special Terms: Carriage and Transportation Services"**: only applies if and when we are transporting, loading, unloading, packing, handling, unpacking Supplied Items, towing a trailer and the provision of any advice or recommendations relating the provision of such services to you.

Therefore if you do not use one of our classes of goods or services then the relevant Special Terms will not be applicable. If you, at any stage, use any one or more our classes of goods or services set out above, then the relevant Special Terms will automatically apply to the relevant goods or services provided by us.

1.2 In the event of any inconsistency between the provisions contained in this Part A and the provisions contained in the Special Terms, the provisions contained in the Special Terms will prevail.

1.3 The terms and conditions contained with any commercial credit application you sign with us are deemed to be incorporated in these terms and conditions.

1.4 These terms and conditions will not apply if we enter into a contract with you for a specific project for a specific site with respect to the provision of our Goods and Services (**Project Terms**). Therefore the Project Terms will apply with respect to that specific project and these terms and conditions will apply where our Goods and Services are used by you for works which do not come under the Project Terms.

2. Definitions and interpretation

For the purpose of these terms and conditions:

A reference to "**we**" or "**us**" or "**our**" is a reference to Gear Select Pty Ltd (ABN 99 166 821 389) its related parties, successors and assigns.

A reference to "**you**" or "**your**" is a reference to the person as described on any quotation, authorisation, or as identified in the cover page of a credit application or other form or document as provided by us to you, including any person acting on behalf of and with your authority.

Authority means any federal, state or local government, department of any federal, state or local government, any court or administrative tribunal or statutory corporation or regulatory body.

Business Day means a day other than a Saturday, Sunday or a public holiday in New South Wales.

Consequential Loss means any loss or damage arising from a breach of contract or agreement (including breach of these terms and conditions), tort, or any other basis in law or equity including, but without limitation to, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, or any similar loss whether or not contemplated by the parties at the time of entering into these terms and conditions.

Delivery has the meaning ascribed to that term in clause 5.1.

Force Majeure Event means any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, pandemic, epidemic, Government order or other event beyond our reasonable control.

Goods means all goods, plant, equipment and/or vehicle(s) supplied by us to you (and where the context so permits will include any supply of Services as hereinafter defined) and are as described on the invoices, quotations, authorisations or any other form or document as provided by us to you.

GST means the goods and services tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IP Rights means patent, trademark, design, copyright or any other intellectual property right.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means all monies payable by you to us in accordance with these terms and conditions (including with respect to the Goods and/or the Services).

Services means any services supplied by us to you, and includes any advice or recommendations relating the provision of such services.

Special Terms means Part B, Part C or Part D of these terms and conditions (as the case may be).

Supplied Items means any goods or materials provided by you to us in order to allow us to provide Services.

The following interpretational rules apply to these terms and conditions:

- (a) The word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
- (b) The words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- (c) Time is a reference to the time in the State or Territory in which we provide you with our Goods and/or Services.
- (d) Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of these terms and conditions.
- (e) A rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of these terms and conditions or any part of it.

3. Acceptance

3.1 Any instructions received by us for the supply of Goods and/or Services and:

- (a) your acceptance of Goods and/or Services supplied; or
- (b) you signing these terms and conditions,

(whichever occurs first) will constitute acceptance of the terms and conditions set out in these terms and conditions.

3.2 Where more than one (1) party has entered into these terms and conditions with us, all parties will be jointly and severally liable.

3.3 Upon acceptance of these terms and conditions, these terms and conditions will be legally binding and can only be amended with our written consent. You waive any right you may have to assert that the fact that you indicating your acceptance of these terms and conditions electronically does not constitute actual acceptance.

3.4 You must give us not less than fourteen (14) days prior written notice of any proposed change of your ownership (including any change in your name, any change to the majority ownership in shares, sale of business and/or any other change in your details (including but not limited to, changes in your address, other contact details, or business practice). You will be liable for any loss incurred by us as a result of your failure to comply with this clause.

3.5 Goods and Services are supplied by us only on the terms and conditions set out in these terms and conditions to the exclusion of anything to the contrary in the terms of your order notwithstanding that any such order is placed on terms that purport to override any provision of these terms and conditions.

3.6 It is your sole responsibility to:

- (a) obtain any approvals, licences or permits necessary for you to perform your obligations under these terms and conditions, comply with any laws and to use any Goods; and
- (b) at all times comply with any and all laws in connection with your use of the Goods and/or our Services.

4. Price and payment

4.1 Subject to clause 4.2, the Price will be:

- (a) as indicated on invoices provided by us in respect of Goods and/or Services supplied;
- (b) our current price at the date of Delivery of the Goods or completion of the Services according to our current Price list (if any); or
- (c) our quoted Price as set out in any documents provided by us to you.

Where there is any discrepancy, the document as advised by us will prevail to the extent of any inconsistency.

4.2 We reserve the right to change the Price in the event of a variation which may arise due to, but is in no way limited to, the application of:

- (a) additional rates and charges that may apply to the supply of the Goods and/or Services and which are disclosed to you in writing prior to or at the time that you provide instructions for the supply of Goods and/or Services;
- (b) an increase as a consequence of variations in foreign currency rates of exchange and/or freight and insurance charges;
- (c) additional services required due to hidden or unidentifiable difficulties beyond our control;
- (d) new or amended laws;
- (e) increases in the cost of materials and/or labour; and
- (f) any other cause beyond our direct control,

and such variation will be shown as variations on an invoice. Payment for all variations must be made in full on the due date of the relevant invoice.

4.3 At our sole discretion and as notified by us to you, a non-refundable deposit may be required prior to us supplying any Goods and/or Services under these terms and conditions.

4.4 Time for payment of the Price will be of the essence and will be stated on the invoice issued by us. If no time is stated on an invoice issued by us, then payment will be due:

- (a) within the timeframe specified in the appropriate Special Terms; or
- (b) if not stated in the Special Terms, the credit application or the invoice then payment will be due on or prior to delivery (COD).

4.5 If you do not pay an invoice in full by the due date, we may charge the following:

- (a) interest, accrued and calculated monthly from the date when payment becomes due until the date of payment, on the total outstanding balance of the invoice at the 90-day Bank Bill Swap Rate published on the first business day of the relevant month plus two percent (2%); and
- (b) any costs and expenses incurred by us in recovering any unpaid amounts owed by you.

4.6 We will be under no obligation to provide or release any Goods or Supplied Items and/or provide any Services, unless all amounts owed by you are paid to us.

4.7 Payment must be made by cash, by cheque, or by credit, or by direct credit, or by any other method as agreed to between you and us. Some payment methods may be subject to administration fees, processing fees and surcharges and such fees and such charges will be disclosed to you as applicable and from time to time. In the event that your payment is dishonoured for any reason you will be liable for any dishonour fees incurred by us.

4.8 Unless otherwise expressly stated, GST, delivery costs and other taxes and duties that may be applicable will be added to the Price.

4.9 You are not entitled to deduct, counterclaim or set off against any sums owed by you to us at any time.

5. Delivery of Goods

5.1 Delivery of Goods will be deemed to have taken place upon the earlier of:

- (a) you taking possession of the Goods at our premises;
- (b) if we are responsible for the delivery of the Goods, once those Goods are delivered to your nominated address; or

- (c) if a carrier is engaged and takes possession of the Goods from our premises for delivery to your nominated address, at the time the carrier takes possession of the Goods at our premises, in which event the carrier will be deemed to be your agent. This also applies where Goods are posted by us, that is, risk in the Goods passes to you once we have posted the Goods and delivery will be deemed to have occurred at the time we post the Goods.

5.2 The costs of Delivery are your responsibility and if we incur the costs of Delivery, those costs are in addition to the Price.

5.3 You are responsible for returning or re-delivering Goods to us at your cost for any reason under and in accordance with the terms of these terms and conditions, unless we otherwise agree in writing that it is not your responsibility (in which case we will incur the cost). If you require us to collect Goods from you for return, you will be liable for the costs we incur in that respect, unless we otherwise agree.

5.4 You must make all arrangements necessary to take Delivery of the Goods whenever they are tendered for Delivery, at your cost. This includes, but is not limited to:

- (a) ensuring that Delivery is taken safely and without risk to persons or property; and
- (b) you being solely responsible for the unloading the Goods.

5.5 In the event that you are unable to take Delivery of the Goods as arranged, then we will be entitled to recover from you reasonable fees and charges incurred by us at our discretion, including but not limited to, additional delivery and waiting fees, re-delivery fees and storage charges.

5.6 Delivery of the Goods to a third party nominated by you is deemed to be Delivery to you for the purposes of these terms and conditions.

5.7 We may deliver the Goods by separate instalments. Each separate instalment must be invoiced and paid in accordance with the provisions in these terms and conditions.

5.8 Our failure, or delay in delivering Goods will not constitute a breach of these terms and conditions by us and will not entitle either party to treat these terms and conditions as repudiated.

5.9 Any times or dates quoted for Delivery of Goods is an estimate only and we do not guarantee Delivery by quoted times and dates.

5.10 We will not be liable for any loss or damage whatsoever due to failure by us to deliver the Goods (or any of them) promptly or at all, including but not limited to, due to circumstances beyond our control or a Force Majeure Event.

6. Risk and insurance

6.1 All risk in the Goods passes to you on Delivery.

6.2 All risk in the Supplied Items at all times remains with you, including when the Supplied Items are in our possession and control. We will not be liable for any damage, loss or claim in relation to the Supplied Items, unless that damage, loss or claim is directly due to our negligent act or omission.

6.3 It is your responsibility to effect carrier/freight insurance and insurance with respect to the Goods when they are collected from our premises either by you or a carrier.

6.4 Where the Goods are delivered to an unattended location at your direction, then such Goods will be left at your sole risk and it will be your responsibility to ensure the Goods are insured adequately or at all.

6.5 If any of the Goods are damaged or destroyed following collection from our premises, we are entitled to receive all insurance proceeds up to the amount of the monies payable by you for the Goods. The production of these terms and conditions by us is sufficient evidence of our rights to receive the insurance proceeds without the need for any person dealing with us to make further enquiries.

7. Title

7.1 In the circumstance where you are purchasing Goods from us, ownership of Goods will not pass until:

- (a) you have paid us all amounts owing for the particular Goods (and, if applicable, any Services related to those Goods); and
- (b) you have met all other obligations due to us in respect of all contracts between us.

7.2 It is further agreed that:

- (a) where practicable the Goods must be kept separate and identifiable until we have received payment and all other of your obligations are met;
 - (b) until such time as ownership of the Goods passes from us to you in accordance with these terms and conditions, we may at any time prior give notice in writing to you to return the Goods or any of them to us as a result of the breach of these terms and conditions by you. Upon such notice your rights to obtain ownership or any other interest in the Goods will cease;
 - (c) we will have the right of stopping the Goods in transit whether or not Delivery has been made if you are in default under these terms and conditions;
 - (d) if you fail to return the Goods to us then we or our agent may (as your invitee) enter upon and onto land and premises owned, occupied or used by you, or any premises where the Goods are situated and take possession of the Goods and you grant irrevocable authority to do so;
 - (e) you are only a bailee of the Goods and until such time as we have received payment in full for the Goods then you hold any proceeds from the sale or disposal of the Goods, up to and including the amount you owe to us for the Goods, on trust for us. You must not deal with our money in any way which may be adverse to us;
 - (f) if the Goods are affixed to other materials, the totality thereof will be the sole and exclusive property of us until payment has been made in full, unless the other materials or part thereof are or is the property of a party or parties other than you in which case the totality thereof will be deemed to be owned as tenants in common with such other party or parties in shares corresponding to the respective amounts paid or payable by you in respect of such other party or parties;
 - (g) you must not charge, or grant a security interest over, the Goods in any way whilst they remain our property; and
 - (h) we may commence proceedings to recover the Price notwithstanding that ownership of the Goods may not have passed to you.
- 8. Personal Property Securities Act 2009 ("PPSA")**
- 8.1 In this clause:
- (a) the terms 'attachment', 'financing statement', 'financing change statement', 'purchase money security interest' and 'security interest' have the meaning given to it by the PPSA; and
 - (b) the term 'security agreement' means the security agreement under the PPSA created between you and us pursuant to these terms and conditions.
- 8.2 You acknowledge and agree that these terms and conditions:
- (a) constitutes a security agreement for the purposes of the PPSA; and
 - (b) creates a security interest in:
 - (i) all Goods previously supplied by us to you (if any); and
 - (ii) all Goods that will be supplied in the future by us to you, including, without limitation, a purchase money security interest over the Goods and that the attachment of the security interest over the Goods has in no way been deferred or postponed.
- 8.3 You undertake 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 we 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 8.3(a)(i) or 8.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, us for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without our prior written consent;
 - (d) not to do anything that results in us having less than the security or priority granted by the PPSA that we assumed at the time of that perfection;
 - (e) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without our prior written consent; and
 - (f) immediately advise us of any material change in your business practices if you sell the Goods which would result in a change in the nature of proceeds derived from such sales.
- 8.4 The parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 8.5 You hereby waive your rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA. You waive your rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 8.6 Unless we otherwise agree in writing, you waive your right to receive a verification statement in accordance with section 157 of the PPSA.
- 8.7 You must unconditionally ratify any action taken by us under this clause in relation to the enforcement of the security interest.
- 9. Lien and storage charges**
- 9.1 If you fail to collect Goods and/or Supplied Items (**Relevant Items**) within fourteen (14) days of us providing you with notice to do so, then the Relevant Items may be warehoused or otherwise held at any place or places at our sole discretion at your expense and which will be payable by you until you comply with all of our requirements and conditions.
- 9.2 If you fail to collect the Relevant Items by the time referred to in clause 9.1, then without limiting our right to charge reasonable storage fees, we (at our absolute discretion) may dispose of the Relevant Items, including by sale or otherwise without any further notice to you. You:
- (a) cannot make any claim against us if we elect to exercise our rights under the preceding sentence; and
 - (b) must reimburse and indemnify us for all costs or claims incurred by us in connection with us exercising our rights under this clause.
- 9.3 In addition to any right of lien to which we may by law be entitled, we are entitled to a general lien on all Relevant Items in our possession for the unpaid price of any Goods and/or Services under these terms and conditions.
- 10. Warranty, defects and returns**
- 10.1 To the fullest extent permitted by law, our liability for any breach of these terms and conditions arising as a result of our negligence or for breach of any conditions or warranty implied in these terms and conditions or by law is limited to one (1) of the following at our option:
- (a) In the case of Goods - the replacement of the Goods or the supply of equivalent Goods limited to the initial invoice value; the repair of the Goods; the payment of the costs of replacing the Goods or of acquiring equivalent Goods; or the payment of the cost of having the Goods repaired.
 - (b) In the case of Services - the supplying of the services again or the payment of the cost of having the services supplied again.
- 10.2 To the extent that the limitations of liability in these terms and conditions do not apply, and to the extent permitted by Law, our total aggregate liability in respect of any other claim by you or a third party in connection with this contact will be limited to damages which under no circumstances must exceed the Price of the relevant Goods and/or Services.
- 10.3 To the full extent permitted by Law, all other warranties or liabilities imposed or implied whether by law or by statute are expressly excluded.
- 10.4 You assume all risk and liability resulting from the use of the Goods and/or the Services either alone or in conjunction with other goods or materials even if we had or should have had prior knowledge of use to which the Goods and/or Services would be put.
- 10.5 You must inspect the Services on completion or Goods on Delivery and must within the time specified in the relevant Special Terms to these terms and conditions (and if not specified in the Special Terms, then within seven (7) days of Delivery) (time being of the essence) notify us in writing of any alleged defect, shortage in quantity,

damage or failure to comply with the description, specification or quote.

- 10.6 You must afford us an opportunity to inspect the Goods or Services (as the case may be) within a reasonable time following notification under clause 10.5 if you believe the Services or Goods (as the case may be) are defective in any way. If you fail to comply with these provisions the Services and/or the Goods will be deemed to be free from any defect or damage.
- 10.7 Within a reasonable time after inspection of the Goods and/or Services by us, we will make a written determination as to the outcome of the inspection and will inform you of the outcome.
- 10.8 Nothing in these terms and conditions excludes, restricts or modifies any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by any Law which cannot lawfully be excluded or limited.
- 10.9 We acknowledge that the Goods and Services may come with guarantees that cannot be excluded under the Australian Consumer Law. If so (and if the Australian Consumer Law applies to you as a consumer):
- with respect to Goods, you are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the Goods repaired or replaced if the Goods fail to be of acceptable quality and the failure does not amount to a major failure. However, where Goods are defective due to your requirements or specifications, we will not be liable; and
 - with respect to Services, for major failures you are entitled to cancel your service contract with us and to a refund for the unused portion, or to compensation for its reduced value as well as for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, you are entitled to have problems with the Service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.
- 10.10 To the fullest extent permitted by law, we are under no obligation to accept any returns, including for change of mind or the Goods and/or the Services not being fit for the purpose or use as intended by you. In that respect, you acknowledge and agree that you have made your own enquiries and undertaken your own due diligence with respect to the Goods and/or Services provided by us and satisfied yourself in that regard.

11. Default and consequences of default

11.1 If you:

- default in payment of any invoice when due;
- default in the performance of any obligation imposed on you under these terms and conditions; and/or
- breach any warranty or representation contained in these terms and conditions,

you indemnify us from and against all liability, claims, losses, damages, costs and fines and disbursements incurred by us in connection with that default (including, without limitation, pursuing the debt including legal costs on a solicitor and own client basis and our collection agency costs). For the avoidance of doubt, we do not have to incur an expense or cost before claiming the benefit of the indemnity provided under this clause.

11.2 Without prejudice to any other remedies we may have, if at any time you are in breach of any obligation (including those relating to payment) we may:

- suspend or terminate the supply of Goods and/or the Services to you and any of our other obligations under these terms and conditions. We will not be liable to you for any loss or damage you suffer because we have exercised our rights under this clause;
- preclude you from participating in any special deals, discounts, bonus payments, redemptions, rebates and all other incentive programs (if any); and
- terminate your credit account and require the payment of cash prior to or upon Delivery for any further Goods and/or Services.

11.3 Without prejudice to our other remedies at law, we will be entitled to cancel all or any part of any order of yours which remains unfulfilled and all amounts owing to us will, whether or not due for payment, become immediately payable in the event that:

- any money payable to us becomes overdue, or in our opinion, you will be unable to meet your payments as they fall due; or
- you become insolvent, convene a meeting with your creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of your creditors; or
- a receiver, manager, administrator, liquidator (provisional or otherwise), trustee in bankruptcy or similar person is appointed in respect of you or any asset of yours.

12. Cancellation, variations and delays

12.1 We may terminate these terms and conditions or cancel Delivery of Goods and/or Services at any time before the Goods are completed or the Services are delivered by giving you written notice if:

- you are in default under clause 11, in which case all costs incurred by us in that respect will be immediately due and payable by you; or
- we are of the opinion that we cannot fulfil the relevant order, in which case we will provide a refund of the monies paid by you in connection with that order, and for the avoidance of doubt no further monies will be refunded on any account.

12.2 If you cancel or alter an order for Goods and/or Services, or any part of an order, then without prejudice to any other rights we have against you, we may charge you any costs incurred by us in fulfilling the order, including materials already acquired for the order together with the cost of any labour and tooling and losses incurred by us in reselling or otherwise disposing of the relevant items.

12.3 Whilst we will take all reasonable measures to ensure that orders are completed by the agreed time, you cannot make any claim (of any nature) as a result of:

- any delays in us completing the order whether within our control or otherwise; or
- the non-availability of any Goods and consequently our refusal or failure to provide those Goods to you.

13. Intellectual property

13.1 We are not liable to you for any infringement or unauthorised use of any IP Rights arising out of performance of these terms and conditions. If any dispute or claim arises with respect to any such matter then we may terminate these terms and conditions by notice to you without any liability on our part.

13.2 All IP Rights in connection with the provision of the Goods and/or the Services, always remains our sole property. You must not do anything which adversely affects our ownership of those IP Rights.

14. Privacy

14.1 You acknowledge and agree that your personal information may be used and handled in accordance with our Privacy Policy and that you have read and agreed to that policy located at <http://www.gearselect.com.au/wp-content/uploads/2021/12/Gear-Select-Privacy-Policy-2019.pdf>.

14.2 You agree and consent for us to obtain from a credit reporting agency a credit report containing personal credit information about you in relation to credit provided by us.

14.3 You agree that we may exchange information about you with those credit providers either named as trade referees by you or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- to assess an application by you;
- to notify other credit providers of a default by you;
- to exchange information with other credit providers as to the status of this credit account, where you are in default with other credit providers; and/or
- to assess your creditworthiness.

You understand that the information exchanged can include anything about your creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988* (Cth).

14.4 You consent to us being given a consumer credit report to collect overdue payment on commercial credit.

14.5 You agree that personal credit information provided may be used and retained by us for the following purposes (and for other purposes as agreed between you and us as required by law from time to time):

- (a) the provision of Goods and/or Services;
 - (b) the marketing of Goods and/or Services by us, our agents or distributors;
 - (c) analysing, verifying and/or checking your credit, payment and/or status in relation to the provision of Goods and/or Services;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by you; and/or
 - (e) enabling the daily operation of your account and/or the collection of amounts outstanding in your account in relation to the Goods and/or Services.
- 14.6 We may give information about you to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about you; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about you.
- 14.7 The information given to the credit reporting agency may include:
- (a) personal particulars (your name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning your application for credit or commercial credit and the amount requested;
 - (c) advice that we are a current credit provider to you;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that your overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in our opinion, you have committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with your credit obligations);
 - (g) advice that a cheque drawn by the have been dishonoured more than once; and/or
 - (h) that credit provided to you by us has been paid or otherwise discharged.
- 14.8 Without restriction, we may provide any personal information, credit reports and any other information relating to you to any insurer of ours and you irrevocably consent to the disclosure of such information.
- 15. Dispute resolution**
- 15.1 If a party believes there is a dispute in relation to or in connection with these terms and conditions (**Dispute**), the following will apply:
- (a) That party must give notice in writing to the other party stating that there is a Dispute and what the party believes the Dispute to be, what the party wants to achieve and what the party believes will settle the Dispute.
 - (b) Within fourteen (14) days of the issue of the notice referred to in paragraph (a) (or any such other period as agreed by the parties in writing), each party must nominate a representative and those representatives must meet in order to resolve the Dispute by negotiation in good faith.
 - (c) If the Dispute cannot be resolved by the representatives within fourteen (14) days of first meeting to resolve the Dispute (or any such other period as agreed by the parties in writing), the parties will be free to commence legal proceedings or to take any other means available to settle the Dispute.
- 15.2 A party does not need to comply with this clause 15 in the following circumstances:
- (a) A party can commence legal proceedings or other form of enforcement action when urgent interlocutory relief is required to restrain a breach or threatened breach of these terms and conditions.
 - (b) In addition to any other rights we have under these terms and conditions, we can commence legal proceedings or take other form of enforcement action against you for any monies owed by you to us under these terms and conditions.

16. Force Majeure

If a Force Majeure Event occurs:

- (a) we are not liable for any failure or delay in performing our obligations imposed on us under these terms and conditions; and
- (b) our obligations under these terms and conditions are suspended, to the extent to which they are affected by, and for the duration of, the Force Majeure Event.

17. Trustee

17.1 This clause applies if you are a trustee of a trust.

17.2 You agree that even though you enter into this contact with us as trustee of the trust, you will also be liable personally for the performance and observance of every covenant to be observed and performed by you expressed or implied in these terms and conditions.

17.3 You warrant your complete, valid and unfettered power to enter into these terms and conditions.

18. General provisions

18.1 Any notice or communication under these terms and conditions must be in writing and delivered to a party's last notified principal place of business or email address. A notice will be treated as having been given on:

- (a) if delivered to the principal place of business:
 - (i) the day of delivery if a Business Day, otherwise on the next Business Day; or
 - (ii) if sent via pre-paid mail, on the third Business Day after posting; and
- (b) if transmitted by email, on the day of transmission if a Business Day, otherwise on the next Business Day.

18.2 Each order that you place is, a representation by you made at the time that you are, and will remain in the future, solvent and able to pay all of your debts as and when they fall due.

18.3 If any provision of these terms and conditions is held to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.

18.4 These terms and conditions will be governed by the laws of New South Wales, Australia and are subject to the exclusive jurisdiction of the courts of New South Wales. The parties may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

18.5 We will not be under any liability whatsoever to you for any Consequential Loss.

18.6 We may license or sub-contract all or any part of our rights and obligations without your consent. In addition, we may assign or novate any or all of our rights and obligations under these terms and conditions to a third party by providing you with notice.

18.7 You agree that we may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which we notify you of such change. Except where we supply further Goods and/or Services to you and you accept such Goods or Services, you will be under no obligation to accept such changes with respect to those Goods and/or Services already supplied.

18.8 No modification amendments or other variation of these terms and conditions will be valid and binding on us unless made in writing and duly executed by and on our behalf.

- 18.9 Each party must keep these terms and conditions and related information confidential, except to the extent it is in the public domain through no fault of a party or if required to be disclosed by law.
- 18.10 Our failure to enforce any provision of this contract will not be treated as a waiver of that provision, nor will it affect our right to subsequently enforce that provision.
- 18.11 You acknowledge that we not have made any representation or other inducement to you to enter into these terms and conditions and you have not entered into these terms and conditions in

reliance on any representations or inducements except for those representations contained in these terms and conditions.

- 18.12 If any part of these terms and conditions become void or unenforceable for any reason then that part will be severed with the intent that all remaining parts will continue to be in full force and effect and be unaffected by the severance of any other parts.
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