
MCDS Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 “Contract” means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.1 “MCDS” means MCDS Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Bight Industrial Group Pty Ltd.
- 1.2 “Client” means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting MCDS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Goods” means all Goods or Services supplied by MCDS to the Client at the Client’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.4 “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.
- 1.5 “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 Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.6 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between MCDS and the Client in accordance with clause 5 below.
- 1.7 “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 Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 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 Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with MCDS and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Clients credit limit and/or the account exceeds the payment terms, MCDS reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that MCDS 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 MCDS 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 MCDS in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of MCDS; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give MCDS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client’s details (including but not limited to, changes in the Client’s name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by MCDS as a result of the Client’s failure to comply with this clause.

5. Price and Payment

- 5.1 At MCDS’ sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by MCDS to the Client; or
 - (b) the Price as at the date of delivery of the Services according to MCDS’ current price list; or
 - (c) MCDS’ quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 MCDS reserves the right to change the Price if a variation to MCDS’ 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 availability of raw materials, change of design or scope, fluctuations in metal prices, state of item to be modified, degree of complexity of the work, obscured defects found on closer inspection, or as a result of any increase to MCDS in the cost of materials and labour) will be charged for on the basis MCDS’ quotation and will be shown as variations on the invoice. The Client shall be required to respond to any variation submitted by MCDS within ten (10) working days. Failure to do so will entitle MCDS 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.

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- 5.3 At MCDS' sole discretion, a non-refundable deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by MCDS, which may be:
- (a) on Delivery of the Goods;
 - (b) by way of instalments/progress payments in accordance with MCDS' payment schedule;
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client'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 Client by MCDS.
- 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and MCDS.
- 5.6 MCDS may in its discretion allocate any payment received from the Client towards any invoice that MCDS determines and may do so at the time of receipt or at any time afterwards. On any default by the Client MCDS may re-allocate any payments previously received and allocated. In the absence of any payment allocation by MCDS, payment will be deemed to be allocated in such manner as preserves the maximum value of MCDS' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.7 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by MCDS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to MCDS an amount equal to any GST MCDS must pay for any supply by MCDS under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6. Delivery of Goods

- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at MCDS' address; or
 - (b) MCDS (or MCDS' nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 6.2 At MCDS' sole discretion, the cost of Delivery is in addition to the Price.
- 6.3 MCDS 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.
- 6.4 Any time specified by MCDS for Delivery of the Goods is an estimate only and MCDS will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that MCDS is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then MCDS shall be entitled to charge a reasonable fee for redelivery and/or storage.

7. Risk

- 7.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, MCDS is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by MCDS is sufficient evidence of MCDS' rights to receive the insurance proceeds without the need for any person dealing with MCDS to make further enquiries.
- 7.3 If the Client requests MCDS to leave Goods outside MCDS' premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.
- 7.4 MCDS shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Client. The Client acknowledges and agrees that in the event that any of this information provided by the Client is inaccurate, MCDS accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.5 Where the Client is to supply MCDS with any design specifications (including, but not limited to CAD drawings) the Client shall be responsible for providing accurate data. MCDS shall not be liable whatsoever for any errors in the Goods that are caused by incorrect or inaccurate data being supplied by the Client.
- 7.6 The Client warrants that any structures, equipment, machinery or vehicle to which the Goods are to be affixed are able to withstand the installation of the Goods and are of suitable capacity to handle the Goods once installed.
- 7.7 The Client acknowledges that where an anodised surface finish has been selected, slight colour variation may occur between the main unit frame and any installation trims used due to the difference in aluminium or other alloys available and manufacturing standards and tolerances shall not deem to be a defect in the Goods.
- 7.8 The Client acknowledges and agree that where MCDS has performed temporary repairs or welding of joins or metal tears, that:
- (a) MCDS offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (b) MCDS will immediately advise the Client of the fault and shall provide the Client with an estimate for the full repair; and
 - (c) MCDS shall not be held liable for any losses or damages resulting from the welded items being misused.
- 7.9 The Client acknowledges that water tanks construction, fabricated or modified are suitable for water only and MCDS shall reserve the right to dismiss any warranty claim where other liquids have been stored or used in the tank.
- 7.10 The Client 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. Specifications

- 8.1 The Client acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in MCDS' or supplier's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not

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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 MCDS.

9. Compliance with Laws

- 9.1 The Client and MCDS 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.
- 9.2 The Client shall obtain (at the expense of the Client) all licenses and approvals that may be required for the Services.
- 9.3 The Client agrees that the site will comply with any work health and safety (WHS) laws relating to building/construction sites and any other relevant safety standards or legislation.

10. Title

- 10.1 MCDS and the Client agree that ownership of the Goods shall not pass until:
 - (a) the Client has paid MCDS all amounts owing to MCDS; and
 - (b) the Client has met all of its other obligations to MCDS.
- 10.2 Receipt by MCDS 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.
- 10.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 10.1:
 - (a) the Client is only a bailee of the Goods and must return the Goods to MCDS on request;
 - (b) the Client holds the benefit of the Client's insurance of the Goods on trust for MCDS and must pay to MCDS the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for MCDS and must pay or deliver the proceeds to MCDS on demand;
 - (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of MCDS and must sell, dispose of or return the resulting product to MCDS as it so directs;
 - (e) the Client irrevocably authorises MCDS to enter any premises where MCDS believes the Goods are kept and recover possession of the Goods;
 - (f) MCDS may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of MCDS;
 - (h) MCDS may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

11. Personal Property Securities Act 2009 ("PPSA")

- 11.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 11.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to MCDS for Services – that have previously been supplied and that will be supplied in the future by MCDS to the Client.
- 11.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MCDS 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 11.3(a)(i) or 11.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, MCDS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of MCDS;
 - (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 MCDS;
 - (e) immediately advise MCDS 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.
- 11.4 MCDS and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 11.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 11.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 11.7 Unless otherwise agreed to in writing by MCDS, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 11.8 The Client must unconditionally ratify any actions taken by MCDS under clauses 11.3 to 11.5.
- 11.9 Subject to any express provisions to the contrary (including those contained in this clause 11), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

12. Security and Charge

- 12.1 In consideration of MCDS agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 12.2 The Client indemnifies MCDS from and against all MCDS' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MCDS' rights under this clause.
- 12.3 The Client irrevocably appoints MCDS and each director of MCDS as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 12 including, but not limited to, signing any document on the Client's behalf.

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

- 13.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify MCDS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow MCDS to inspect the Goods.
- 13.2 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**).
- 13.3 MCDS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 13.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MCDS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. MCDS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 13.5 If the Client is a consumer within the meaning of the CCA, MCDS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 13.6 If MCDS is required to replace the Goods under this clause or the CCA, but is unable to do so, MCDS may refund any money the Client has paid for the Goods.
- 13.7 If the Client is not a consumer within the meaning of the CCA, MCDS' liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by MCDS at MCDS' sole discretion;
 - (b) limited to any warranty to which MCDS is entitled, if MCDS did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 13.8 Subject to this clause 13, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 13.1; and
 - (b) MCDS has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 13.9 Notwithstanding clauses 13.1 to 13.8 but subject to the CCA, MCDS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
 - (b) the Client using the Goods for any purpose other than that for which they were designed;
 - (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Client failing to follow any instructions or guidelines provided by MCDS;
 - (e) fair wear and tear, any accident, or act of God.
- 13.10 MCDS may in its absolute discretion accept non-defective Goods for return in which case MCDS may require the Client to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 13.11 Notwithstanding anything contained in this clause if MCDS is required by a law to accept a return then MCDS will only accept a return on the conditions imposed by that law.
- 13.12 Subject to clause 13.1, customised, or non-stocklist items or Goods made or ordered to the Client's specifications are not acceptable for credit or return.

14. Intellectual Property

- 14.1 Where MCDS has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of MCDS. Under no circumstances may such designs, drawings and documents be used without the express written approval of MCDS.
- 14.2 The Client warrants that all designs, specifications or instructions given to MCDS will not cause MCDS to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify MCDS against any action taken by a third party against MCDS in respect of any such infringement.
- 14.3 The Client agrees that MCDS may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which MCDS has created for the Client.

15. Default and Consequences of Default

- 15.1 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 MCDS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 If the Client owes MCDS any money the Client shall indemnify MCDS from and against all costs and disbursements incurred by MCDS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MCDS' contract default fee, and bank dishonour fees).
- 15.3 Further to any other rights or remedies MCDS may have under this Contract, if a Client has made payment to MCDS, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by

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MCDS under this clause 15 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

- 15.4 Without prejudice to MCDS' other remedies at law MCDS shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to MCDS shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to MCDS becomes overdue, or in MCDS' opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by MCDS;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

16. Cancellation

- 16.1 Without prejudice to any other remedies MCDS may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions MCDS may suspend or terminate the supply of Goods to the Client. MCDS will not be liable to the Client for any loss or damage the Client suffers because MCDS has exercised its rights under this clause.
- 16.2 MCDS may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice MCDS shall repay to the Client any money paid by the Client for the Goods. MCDS shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by MCDS as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 16.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.

17. Privacy Policy

- 17.1 All emails, documents, images or other recorded information held or used by MCDS is Personal Information, as defined and referred to in clause 17.3, and therefore considered Confidential Information. MCDS 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 IIIC 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"). MCDS acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by MCDS that may result in serious harm to the Client, MCDS will notify the Client 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 Client by written consent, unless subject to an operation of law.
- 17.2 Notwithstanding clause 17.1, privacy limitations will extend to MCDS in respect of Cookies where transactions for purchases/orders transpire directly from MCDS' website. MCDS 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 Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to MCDS when MCDS sends an email to the Client, so MCDS may collect and review that information ("collectively Personal Information")
- In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via MCDS' website.
- 17.3 The Client agrees for MCDS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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) about the Client in relation to credit provided by MCDS.
- 17.4 The Client agrees that MCDS may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 17.5 The Client consents to MCDS being given a consumer credit report to collect overdue payment on commercial credit.
- 17.6 The Client agrees that personal credit information provided may be used and retained by MCDS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 17.7 MCDS may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 17.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 17.3 above;
 - (b) name of the credit provider and that MCDS is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;

- (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and MCDS has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of MCDS, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 17.9 The Client shall have the right to request (by e-mail) from MCDS:
- (a) a copy of the Personal Information about the Client retained by MCDS and the right to request that MCDS correct any incorrect Personal Information; and
 - (b) that MCDS does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 17.10 MCDS will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 17.11 The Client can make a privacy complaint by contacting MCDS via e-mail. MCDS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 18. Unpaid Seller's Rights**
- 18.1 Where the Client has left any item with MCDS for repair, modification, exchange or for MCDS to perform any other service in relation to the item and MCDS has not received or been tendered the whole of any monies owing to it by the Client, MCDS shall have, until all monies owing to MCDS 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.
- 18.2 The lien of MCDS shall continue despite the commencement of proceedings, or judgment for any monies owing to MCDS having been obtained against the Client.
- 19. Service of Notices**
- 19.1 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.
- 19.2 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.
- 20. Trusts**
- 20.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not MCDS may have notice of the Trust, the Client covenants with MCDS as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of MCDS (MCDS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 21. Building and Construction Industry Security of Payments Act 1999**
- 21.1 At MCDS' sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 21.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 22. General**
- 22.1 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.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in which MCDS has its principal place of business, and are subject to the jurisdiction of the Port Macquarie Courts in that state.

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- 22.3 Subject to clause 13, MCDS shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by MCDS of these terms and conditions (alternatively MCDS' liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.4 MCDS may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 22.5 The Client cannot licence or assign without the written approval of MCDS.
- 22.6 MCDS may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of MCDS' sub-contractors without the authority of MCDS.
- 22.7 The Client agrees that MCDS may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for MCDS to provide Goods to the Client.
- 22.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.9 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.