

APPLICATION FOR A CREDIT ACCOUNT

() Public Co () Private Co () Sole Trader () Partnership () Trust () Government

ACN _____ ABN _____

Registered Name of Company _____

Trading Name _____

CFC Authorisation No. _____ Expiry Date _____

Business Address _____

Delivery Address _____

Postal Address _____

Telephone () _____ Fax () _____

Principal Contact _____ Email _____

Direct Tel. No. () _____ Mobile No. _____

Accounts Payable Contact _____ Email _____

Bank & Branch _____ BSB No. _____

A/c Name _____ A/c No. _____

Telephone _____

Directors / Proprietors / Sole Traders details (must be completed by each applicant)

Name _____ Name _____

Address _____ Address _____

Date of Birth _____ Date of Birth _____

Name _____ Name _____

Address _____ Address _____

Date of Birth _____ Date of Birth _____

Business Premises (please tick)

Owned ____ Value \$ _____ if encumbered, please give details _____

Leased ____ how long has lease run? _____ Rented ____ give details _____

No. of Employees _____

Amount of credit required monthly \$ _____

Sole Traders Only

Drivers Licence No. _____

Life Assurance Policy Company _____ Policy No. _____



Trade References

1. _____ Tel No. _____ Email: _____
 2. _____ Tel No. _____ Email: _____
 3. _____ Tel No. _____ Email: _____

Trading Terms: 30 days from end of month in which goods/services are purchased

I/we, the undersigned, hereby:

- Declare that the above facts are true and correct and acknowledge that it is upon such basis and within acknowledgements, declarations, warranties and guarantees that Jalva Pty Ltd t/as Refrigeration & Air Supplies (South Coast) [herein 'RAS'] provides credit,
- Acknowledge the trading terms of RAS as 30 days nett,
- Agree to be responsible for payment of all goods supplied at the Applicant's order (including orders placed by the Applicant's employees or agents),
- Acknowledge the right of RAS to charge interest at the rate of 2.5% per month (or part thereof) on overdue accounts,
- Acknowledge that credit facilities may be withdrawn without prior notice,
- Personally guarantee payment to RAS of monies due by the above Applicant,
- Indemnify RAS against any loss whatsoever resulting from non-payment of accounts, interest or change of ownership of address of Applicant, unless written advise of such change is received by RAS prior to the delivery of goods being made.
- Agree that RAS may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us (Section 18K 1(b) Privacy Act 1988),
- Agree to a credit provider being given a consumer report to collect overdue payments on commercial credit (Section 18K 1(h) Privacy Act 1988)

Acknowledge that the goods supplied shall remain the property of the Supplier until the Supplier receives payment for same. In the event of the Customer defaulting in any of the terms of this agreement for more than (14) days including the payment of any monies due under this agreement, then the Supplier shall have the right (without giving notice) to retake possession of the goods supplied to the customer by the Supplier and the Customer hereby authorises and allows the Supplier or its representative, servant, agent or employee to enter the premises upon which the goods are housed or stored for the purpose of retaking possession of same and the supplier shall not be liable for any costs, losses, damages, expenses or any other monies or losses suffered by the Customer as a result of the Supplier retaking possession of the goods.

Name (please print) _____

Signature _____ Date _____

Name (please print) _____

Signature _____ Date _____

Name (please print) _____

Signature _____ Date _____

Name (please print) _____

Signature _____ Date _____

TERMS & CONDITIONS OF TRADE

1. Definitions

- 1.1. "Company" means Jalva Pty Ltd ACN 052 113 247 trading as Refrigeration & Air Supplies (South Coast), its successors and assigns or any person acting on behalf of and with the authority of Jalva Pty Ltd ACN 052 113 247 trading as Refrigeration & Air Supplies (South Coast).
- 1.2. "Consignment" means the business arrangement between the Company and the Customer.
- 1.3. "Customer" means the person/s buying the Goods from the Company as specified in any invoice, document, or order, and if there is more than one Customer is a reference to each Customer jointly and severally.
 - 1.3.1. if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - 1.3.2. if the Customer is a partnership, it shall bind each partner jointly and severally; and
 - 1.3.3. if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - 1.3.4. includes the Customer's executors, administrators, successors and permitted assigns;
 - 1.3.5. includes all related and/or associated companies and/or other entities.
- 1.4. "Delivery" means:
 - 1.4.1. the Customer, the Customer's nominated carrier or any other person, takes possession of the Goods at the Company's address; or
 - 1.4.2. the Company, or the Company's nominated carrier, delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 1.5. "Goods" means all Goods or Services supplied by the Company to the Customer (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6. "GST" means Goods and Services Tax (GST) as defined within the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.7. "Officeholders" means a director or secretary of a registered company.
- 1.8. "Price" means the Price payable for the Goods as agreed between the Company and the Customer in accordance with clause 3.
- 1.9. "Site" is the location nominated by the Customer where the Goods or Services are to be delivered or carried out by the Company.
- 1.10. "Supplier" means any supplier of Goods to the Company.

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 the Delivery of the Goods or Services from the Company.
- 2.2. These terms and conditions may only be amended with the Company's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.

3. Price and Payment

- 3.1. At the Company's sole discretion, the Price shall be either:
 - 3.1.1. as indicated on any invoice provided by the Company to the Customer; or
 - 3.1.2. the Company's quoted price (subject to clause 3.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days; or
 - 3.2. The Company reserves the right to change the Price in the event of a variation to the Company's quotation and any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties or as a result of increases to the Company in the cost of materials and labour or as a result of fluctuations in currency exchange rates) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3. At the Company's sole discretion, a deposit may be required.
- 3.4. Time for payment for the Goods or Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
 - 3.4.1. on Delivery of the Goods or Services;
 - 3.4.2. before Delivery of the Goods or Services;
 - 3.4.3. to certain approved Customers, at the Company's sole discretion, the date which is thirty (30) days following the end of the month in which a statement is sent to the Customer's email address or address for notices;
 - 3.4.4. the date specified on any invoice or other form as being the date for payment; or
 - 3.4.5. failing any notice to the contrary, the date which is seven (7) business days following the date of any invoice given to the Customer by the Company.
- 3.5. Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to two- and one-half percent (2.5%) of the Price), or by any other method as agreed to between the Customer and the Company.
- 3.6. Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Company an amount equal to any GST that the Company must pay, for any supply by the Company or its Supplier under this or any other agreement for the sale of the Goods.
- 3.7. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

4. Delivery of Goods

- 4.1. At the Company's sole discretion, the cost of Delivery is either included in the Price or is in addition to the Price.
- 4.2. The Delivery may be organised by either the Company or the Supplier.
- 4.3. Except where the Delivery Instructions provide for a particular method of delivery, the Company may in its sole discretion use whatever method of delivery it chooses.
- 4.4. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. In the event that the Customer is unable to take Delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 4.5. If a nominated address is unattended or if delivery cannot otherwise be effected or the Goods cannot be despatched due to any act, matter, or thing beyond the control of the Company, the Company at its sole discretion may leave the goods at the Purchaser's risk and expense or take such other steps as it considers appropriate.
- 4.6. The Company 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. Any time or date given by the Company to the Customer is an estimate only. The Customer must still accept Delivery of the Goods even if late, and the Company will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.
- 4.7. The Customer must take all reasonable steps to ensure that Delivery may be affected according to the delivery instructions of the Company, including, without limitation, by ensuring proper access is given to the Site.
- 4.8. Once in the hands of the carrier the Company has no liability for the Goods. The Company and Supplier shall not be liable for any loss, damage or personal injury whatsoever incurred in the transportation of the Goods to the Customer.
- 4.9. The Company and the Supplier also has no liability to the Customer for the Goods in the following circumstances:
 - 4.9.1. delay of the Goods
 - 4.9.2. cancellation of Delivery of the Goods
 - 4.9.3. unavailability of the Goods
- 4.10. The Company reserves the right to refuse to supply Goods and/or Services if the Customer is in default of any of its payment obligations under any one or more agreements with the Company including but not limited to these terms and conditions.
- 4.11. If a product becomes unavailable following a Purchase Order but prior to Delivery, the Customer's sole remedy is a refund, to the full extent permitted by law.
- 4.12. If an event occurs beyond the control of the Company and/or the Supplier that affects the manufacture or delivery of Goods, the Company may deliver part only of a Purchase Order, may suspend Delivery, may extend the time for delivery, or may cancel the Purchase Order.

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

- 5.1. The Customer must inspect the Goods on Delivery and must within one (1) business day of Delivery notify the Company 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 Company to inspect the Goods.
- 5.2. The Customer is not entitled to reject Goods if:
 - 5.2.1. the Customer has not complied with the provisions of clause 5.1;
 - 5.2.2. the Goods have been lost, destroyed, or disposed of by the Customer;
 - 5.2.3. the Goods were damaged after being delivered to the Customer for reasons not related to their state or condition at the time of supply; or
 - 5.2.4. the Goods have been attached, fixed to, incorporated in, any real or personal property and they cannot be detached or isolated without damaging them.

- 5.3. 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).
- 5.4. If the Customer is a consumer within the meaning of the CCA, the Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 5.5. The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 5.6. Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods.
- 5.7. If the Customer takes action under the CCA the Company is not liable for any acts, defaults, representations, omissions, conduct or negligence of its dealings with the Customer including but not limited to whether the Goods are fit for purpose and relies upon this clause and these terms and conditions to fullest extent permitted by law.
- 5.8. If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is:
- 5.8.1. limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods;
- 5.8.2. otherwise negated absolutely.
- 5.9. Subject to this clause 5.2, returns will only be accepted provided that:
- 5.9.1. the Company has agreed that the Goods are defective; and
- 5.9.2. the Goods are returned within a reasonable time at the Customer's cost; and
- 5.9.3. the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 5.10. Notwithstanding clauses 5.1 to 5.9 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- 5.10.1. the Customer failing to properly maintain or store any Goods;
- 5.10.2. the Customer using the Goods for any purpose other than that for which they were designed;
- 5.10.3. 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;
- 5.10.4. the Customer failing to follow any instructions or guidelines provided by the Company;
- 5.10.5. fair wear and tear, any accident, or an act of God.
- 5.11. The Company may in its absolute discretion accept non-defective Goods for return in which case the Company 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.
- 5.12. Notwithstanding anything contained in this clause if the Company is required by a law to accept a return, then the Company will only accept a return on the conditions imposed by that law.
- 5.13. The Company is not liable for any losses, damages, costs, or expenses (including consequential loss) and is not liable for any damage to articles to which its Goods are attached or with which they are used.
- 5.14. Except as otherwise expressly provided in these conditions, all statements, representations, provisions, conditions, promises, undertakings, covenants and other provisions, express or implied (and whether implied by law or otherwise) relating to any quotations or tenders submitted by the Company, orders accepted by the Company, Goods (whether as to their quality or merchantability, fitness for any purpose, correspondence with any description or sample or otherwise) and for Services or their supply, being provisions which might otherwise form part of these terms and conditions or any agreement to be collateral to form part of any agreement that is collateral to these terms and conditions of sale or any agreement, are hereby excluded in their entirety and are of no effect whatsoever.
- 5.15. The Customer agrees that:
- 5.15.1. the Customer has ensured that the materials specified and accepted by the Customer are the correct type, size quantity, colour, finish quality and standard, and conform in every detail with the Customer's requirements; and
- 5.15.2. the accuracy of specifications, diagrams, plans and drawings are the Customer's exclusive responsibility, and the Customer does not rely on the Company's skill or judgement in this respect and the Company is entitled to rely on such documents but shall not be liable for any consequent error by the Company or the consequences of any error thereby arising.

6. Waiver and Indemnity

- 6.1. The Customer agrees, to the extent permitted by law, to indemnify and hold the Company, its directors, officers, affiliates, agents, contractors and licensors harmless with respect to any claims arising out of the Customer's breach of this agreement, the Customer's misuse of the Goods, or, to the extent permitted by law, any action taken by the Company or the Supplier as part of its investigation or suspected violation of this agreement or as a result of its finding or decision that a violation of this agreement has occurred.

7. Risk

- 7.1. 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.
- 7.2. If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 7.3. If the Customer requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.

8. Title

- 8.1. The Company and the Customer agree that ownership of the Goods shall not pass until:
- 8.1.1. the Customer has paid the Company all amounts owing to the Company; and
- 8.1.2. the Customer has met all its other obligations to the Company.
- 8.2. Receipt by the Company 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.
- 8.3. It is further agreed that:
- 8.3.1. until ownership of the Goods passes to the Customer in accordance with clause 8.1 that the Customer is only a bailee of the Goods and must return the Goods to the Company on request;
- 8.3.2. the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged, or destroyed;
- 8.3.3. 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 Company and must pay or deliver the proceeds to the Company on demand;
- 8.3.4. 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 Company and must sell, dispose of, or return the resulting product to the Company as it so directs;
- 8.3.5. the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods;
- 8.3.6. the Company may recover possession of any Goods in transit whether or not Delivery has occurred;
- 8.3.7. 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 Company;
- 8.3.8. the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

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

- 9.1. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 9.2. Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that have previously been supplied and that will be supplied in the future by the Company to the Customer.
- 9.3. The Customer undertakes to:
- 9.3.1. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the Company may reasonably require to:
- (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (b) register any other document required to be registered by the PPSA; or
- (c) correct a defect in a statement referred to in clause 9.3.1(a) or 9.3.1(b);
- (d) indemnify, and upon demand reimburse, the Company 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;
- (e) not register a financing change statement in respect of a security interest without the prior written consent of the Company;

- (f) 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 the prior written consent of the Company;
- (g) immediately advise the Company 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.
- 9.4. The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 9.5. The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 9.6. The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 9.7. Unless otherwise agreed to in writing by the Company, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 9.8. The Customer must unconditionally ratify any actions taken by the Company under clauses 9.3 to 9.5.
- 9.9. Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

10. Security and Charge

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

11. Intellectual Property

- 11.1. Where the Company or the Supplier has designed, drawn, or developed Goods for use by the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Company. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Company or the Supplier.
- 11.2. The Customer warrants that all designs, specifications or instructions given to the Company, or the Supplier will not cause the Company or the Supplier to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Company and the Supplier against any action taken by a third party against the Company and the Supplier in respect of any such infringement.
- 11.3. The ownership of all rights, including Intellectual Property rights, in any Confidential Information, remain the property the Company and the Supplier, and no licence or other right to the Confidential Information is granted or implied.
- 11.4. The Customer agrees that it will not acquire any ownership or other rights (including Intellectual Property and moral rights) over any Confidential Information provided to it by the Company and the Supplier.
- 11.5. The materials displayed on the Company's website including without limitation all editorial materials, information, photographs, illustrations, artwork and other graphic materials, names, logos, and trademarks, are property of the Company and are protected by copyright, trademark, and other intellectual property laws. Any such content may be displayed and printed solely for the Customer's personal, non-commercial use within the Customer's organisation.
- 11.6. The Customer agrees not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, or circulate any such material to any third party without the express prior written consent of the Company.

12. Default and Consequences of Default

- 12.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of five and a half percent (5.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 12.2. If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's collection agency costs, and bank dishonour fees).
- 12.3. Further to any other rights or remedies the Company may have under this contract, if a Customer has made payment to the Company, 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 Company under this clause 12 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.
- 12.4. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company and/or the Supplier may suspend or terminate the supply of Goods to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because either the Company or Supplier has exercised its rights under this clause.
- 12.5. Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due.

13. Customer Restructure

- 13.1. The Customer shall notify the Company in writing of any changes in its structure or management including:
 - 13.1.1. any change in director, shareholder and/or management;
 - 13.1.2. any change in partnership;
 - 13.1.3. any change in trusteeship; and
 - 13.1.4. any change in the Customer company who the Company has contracted with; within seven (7) days of each change.
- 13.2. Until such notice is received the Customer guarantees the performance of all obligations passing to any third party and fully indemnifies the Company against all loss (including legal costs on an indemnity basis).

14. Trusts

- 14.1. If the Customer at any time upon or subsequent to entering into the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Company may have notice of the Trust, the Customer covenants with the Company as follows:
 - 14.1.1. the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - 14.1.2. 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;
 - 14.1.3. the Customer will not without consent in writing of the Company (Company will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - a) the removal, replacement, or retirement of the Customer as trustee of the Trust;
 - b) any alteration to or variation of the terms of the Trust;
 - c) any advancement or distribution of capital of the Trust; or
 - d) any resettlement of the trust property.

15. Personal Guarantee

- 15.1. Should the Customer not reimburse the Company for Goods supplied, the Officeholders of the Customer agree to personally guarantee payment to the Company of the monies owed by the Customer.

16. Cancellation

- 16.1. Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company and/or the Supplier may suspend or terminate the supply of Goods to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 16.2. The Company 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 Company shall repay to the Customer any money paid by the Customer for the Goods. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.3. 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 Company as a direct result of the cancellation (including, but not limited to, any loss of profits).

17. Privacy Policy

- 17.1. The Company 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 III C of the Act being *Privacy Amendment (Notifiable Data Breaches) Act 2017* and any statutory requirements.
- 17.2. The Customer agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.
- 17.3. The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- 17.3.1. to assess an application by the Customer; and/or
- 17.3.2. to notify other credit providers of a default by the Customer; and/or
- 17.3.3. 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
- 17.3.4. to assess the creditworthiness of the Customer.
- 17.4. The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the *Privacy Act 1988*.

18. Website Access and Use

- 18.1. While the Company endeavours to take reasonable care in preparing and maintaining the information on the Company's website the Company does not warrant the accuracy, reliability, adequacy, or completeness of any of the content on the Company's website. The Customer acknowledges and accepts that the content on the Company's website may include technical inaccuracies and typographical errors. The Company's website is subject to change at any time without notice and may not necessarily be up to date or accurate at the time you view it.
- 18.2. To the extent permitted by law, the Company disclaims all liability for loss directly or indirectly arising from your use of or reliance on the Company website and the content within it.
- 18.3. The Company does not guarantee that access to the Company's website will be uninterrupted or that it is free from viruses or anything else which may damage any computer which accesses the Company's website.
- 18.4. The Customer is responsible for maintaining the confidentiality of any passwords used by the customer to access the Company's website and must not disclose such passwords to any unauthorised third parties.
- 18.5. The Company's website may contain links to other websites operated, controlled, or produced by third parties. Unless otherwise indicated, the Company does not control, endorse, sponsor, or approve any such third-party websites or their content nor does the Company provide any warranty or take any responsibility whatsoever for any aspect of those websites or their content.
- 18.6. The Customer must not use the Company website in any way that causes, or may cause, damage to the website or impairment of the availability or accessibility of the website; or in any way which is unlawful, illegal, fraudulent, or harmful, or in connection with any unlawful, illegal, fraudulent, or harmful purpose or activity.
- 18.7. The Customer must not use the Company website to copy, store, host, transmit, send, use, publish or distribute any material which consists of (or is linked to) any spyware, computer virus, Trojan horse, worm, keystroke logger, rootkit, or other malicious software.
- 18.8. The Customer must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to the Company's website without the Company's express prior written consent.
- 18.9. The Customer must not use the Company's website to transmit or send commercial communications or use the Company's website for any purposes related to marketing without the Company's express written consent.

19. Service of Notices

- 19.1 Any written notice given under this contract shall be deemed to have been given and received:
- 19.1.1 by handing the notice to the other party, in person;
- 19.1.2 by leaving it at the address of the other party as stated in this contract;
- 19.1.3 by sending it by registered post to the address of the other party as stated in this contract;
- 19.1.4 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. General

- 20.1. The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company'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.
- 20.2. These terms and conditions and any contract to which they apply shall be governed by the laws of the state of New South Wales and are subject to the jurisdiction of the courts in that state.
- 20.3. The Company 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 Company of these terms and conditions (alternatively the Company and the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 20.4. 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 Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 20.5. The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 20.6. The Customer agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to provide Goods.
- 20.7. The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it has capacity, it is not insolvent or bankrupt and that this agreement creates binding and valid legal obligations on it.