

# Aquagem Pty Ltd t/as Unidan Engineering & Mercedes-Benz Unimog Centre – Terms & Conditions of Trade

1. **Definitions**
- 1.1 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.2 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.3 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Service Provider's website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.4 **"Customer"** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Service Provider to provide the Services as specified in any proposal, quotation, order, invoice, or other documentation and:
  - (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
  - (b) if the Customer is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Customer is on behalf of or part of, a Trust, shall be bound in its own capacity as a trustee; and
  - (d) includes the Customer's executors, administrators, successors, and permitted assigns.
- 1.5 **"Goods"** means all Goods (including, but not limited to, any parts, or consumables) or Services supplied by the Service Provider to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.6 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.7 **"Price"** means the Price payable (plus any GST where applicable) for the Goods as agreed between the Service Provider and the Customer in accordance with clause 7 below.
- 1.8 **"Service Provider"** means Aquagem Pty Ltd ATF The DRM Trust T/A Unidan Engineering or Mercedes-Benz Unimog Centre, its successors and assigns or any person acting on behalf of and with the authority of Aquagem Pty Ltd ATF The DRM Trust T/A Unidan Engineering or Mercedes-Benz Unimog Centre.
2. **Acceptance**
- 2.1 The parties acknowledge and agree that:
  - (a) they have read and understood the terms and conditions contained in this Contract; and
  - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Service Provider and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods requested exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Service Provider reserves the right to refuse delivery.
- 2.6 Any advice, recommendation, information, assistance or service provided by the Service Provider in relation to Goods or Services supplied is given in good faith to the Customer, or the Customer's agent and is based on the Service Provider's own knowledge and experience and shall be accepted without liability on the part of the Service Provider. Where such advice or recommendations are not acted upon then the Service Provider shall require the Customer or their agent to authorise commencement of the Services in writing. The Service Provider shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the Services. Accordingly, the Service Provider offers no warranty in regard to the aforementioned.
- 2.7 These terms and conditions may be meant to be read in conjunction with the Service Provider's Hire Form, and where the context so permits, the terms 'Services' or 'Goods' shall include any supply of Equipment, as defined therein.
- 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Customer acknowledges and accepts that the Service Provider shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
  - (a) resulting from an inadvertent mistake made by the Service Provider in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Service Provider in respect of the Services.
- 3.2 In circumstances where the Customer is required to place an order for Goods, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct, order information such as, without limitation, measurements and quantity, when placing an order for Goods (whether they are made to order Goods or not) (**"Customer Error"**). The Customer must pay for all Goods it orders from the Service Provider notwithstanding that such Goods suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take Delivery of such Goods. The Service Provider is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.
4. **Change in Control**
- 4.1 The Customer shall give the Service Provider not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, change of trustees, or business practice). The Customer shall be liable for any loss incurred by the Service Provider as a result of the Customer's failure to comply with this clause.
5. **On-Line Ordering**
- 5.1 The Customer acknowledges and agrees that:
  - (a) the Service Provider does not guarantee the website's performance;
  - (b) display on the website does not guarantee the availability of any particular Goods; therefore, all orders placed through the website shall be subject to confirmation of acceptance by the Service Provider;
  - (c) on-line ordering may be unavailable from time to time for regularly scheduled maintenance and/or upgrades;
  - (d) there are inherent hazards in electronic distribution, and as such the Service Provider cannot warrant against delays or errors in transmitting data between the Customer and the Service Provider including orders, and you agree that to the maximum extent permitted by law, the Service Provider will not be liable for any losses which the Customer suffers as a result of online-ordering not being available or for delays or errors in transmitting orders;
  - (e) when making a transaction through the website, the Customer's information will pass through a secure server using SSL (secure sockets layer) encryption technology or any other similar technology as disclosed by the Service Provider and/or displayed on the website. The encryption process ensures that the Customer's information cannot be read by or altered by outside influences; and
  - (f) if the Customer is not the cardholder for any credit card being used to pay for the Goods, the Service Provider shall be entitled to reasonably assume that the Customer has received permission from the cardholder for use of the credit card for the transaction.
- 5.2 The Service Provider reserves the right to terminate the Customer's order if it learns that you have provided false or misleading information, interfered with other users or the administration of the Service Provider's business, or violated these terms and conditions.
6. **Credit Card Information**
- 6.1 The Service Provider will:
  - (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Service Provider;
  - (b) not disclose the Customer's credit card details to any third party; and
  - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 19) or where required by law.
- 6.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, any Equipment (or any part of them) supplied on hire that are lost or damaged or any other additional charges are due from the Customer which were not known at the time of the return of the Equipment, the Service Provider is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.
7. **Price and Payment**
- 7.1 At the Service Provider's sole discretion, the Price shall be either:
  - (a) as indicated on any invoice provided by the Service Provider to the Customer upon placement of an order for Goods; or
  - (b) the Price as at the date of Delivery of the Goods according to the Service Provider's current price list, as previously disclosed to the Customer upon the Customer's placement of an order for Goods; or
  - (c) the Service Provider's estimated Price (subject to clause 7.2) which shall not be deemed binding upon the Service Provider as the actual Price can only be determined upon completion of the Services; or
  - (d) the Service Provider's quoted Price (subject to clause 7.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 7.2 The Service Provider reserves the right to change the Price:
  - (a) if a variation to the Goods which are to be supplied is requested; or
  - (b) if a variation to the Services originally scheduled (including any applicable plans or specifications) is requested; or
  - (c) where additional Services are required due to the discovery of hidden or unidentifiable difficulties which are only discovered on commencement of the Services; or
  - (d) in the event of increases to the Service Provider in the cost of labour or Goods which are beyond the Service Provider's control.
- 7.3 Customs fees incurred at any point during delivery shall be forwarded to the Customer, and the Service Provider reserves the right to invoice the Customer for any customs fees incurred after despatch.
- 7.4 The Customer acknowledges and accepts that payment for variations are to be made as follows:
  - (a) for variations up to ten thousand dollars (\$10,000), the payment for the variation amount will be due upon completion of the Services; or
  - (b) for variations over ten thousand dollars (\$10,000) the payment of sixty percent (60%) of the variation amount will be payable immediately, with balance payable on completion of the Services.
- 7.5 Variations will be charged for on the basis of the Service Provider's quotation, and will be detailed in writing, and shown as variations on the Service Provider's invoice. The Customer shall be required to respond to any variation submitted by the Service Provider within ten (10) working days. Failure to do so will entitle the Service Provider 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.
- 7.6 Where the Service Provider is requested to store the Customer's vehicle, or where the vehicle is not collected within twenty-four (24) hours of advice to the Customer that it is ready for collection, then the Service Provider (at its sole discretion) may charge a fee of two-hundred and fifty dollars (\$250.00) per week for storage.
- 7.7 At the Service Provider's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Goods, in accordance with any quotation provided by the Service Provider or as notified to the Customer prior to the placement of an order for Goods.
- 7.8 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by the Service Provider, which may be:
  - (a) prior to delivery of the Goods;
  - (b) by way of instalments/progress payments in accordance with the Service Provider's payment schedule;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Service Provider.
- 7.9 The Price does not include on road costs of vehicles and it is the responsibility of the Customer to obtain vehicle registration.
- 7.10 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (Visa, MasterCard and American Express only) (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Service Provider.
- 7.11 The Service Provider may in its discretion allocate any payment received from the Customer towards any invoice that the Service Provider determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Service Provider may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Service Provider, payment will be deemed to be allocated in such manner as preserves the maximum value of the Service Provider's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 7.12 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 Service Provider nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Service Provider in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Service Provider investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Service Provider placing the Customer's account into default and subject to default interest in accordance with clause 17.1.
- 7.13 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Service Provider an amount equal to any GST the Service Provider must pay for any supply by the Service Provider under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set-off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
8. **Delivery of Goods**
- 8.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:
  - (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Service Provider's address; or
  - (b) the Service Provider (or the Service Provider's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 8.2 The cost of Delivery will be payable by the Customer in accordance with the quotation provided by the Service Provider to the Customer or as otherwise notified to the Customer prior to the placement of an order for Goods.
- 8.3 The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery.
- 8.4 Any time specified by the Service Provider for Delivery of the Goods is an estimate only and the Service Provider will not be liable for any loss or damage incurred by the Customer because 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. If the Service Provider is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then the Service Provider shall be entitled to charge a reasonable fee for redelivery and/or storage.
9. **Risk**
- 9.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery or collection and the Customer must insure the Goods on or before Delivery or collection.
- 9.2 If any of the Goods are damaged or destroyed following Delivery or collection but prior to ownership passing to the Customer, the Service Provider is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Service Provider is sufficient evidence of the Service Provider's rights to receive the insurance proceeds without the need for any person dealing with the Service Provider to make further enquiries.
- 9.3 If the Customer requests the Service Provider to leave Goods outside the Service Provider'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.
10. **Customer's Responsibility and Acknowledgment**
- 10.1 The Customer acknowledges and accepts that:
  - (a) if in the opinion of the Service Provider that the Customer's request for modifications are in deemed to be unsuitable and unsafe to proceed with, then the Service Provider reserves the right to halt the Services until such time as the Customer authorises the Service Provider in writing to proceed with the modifications and accepts that the Service Provider shall not be responsible for any defects in the Services, any loss or damage to the vehicle (or any part thereof), however arising from the modifications instructions supplied by the Customer;
  - (b) any modifications carried out by the Service Provider to the Customer's vehicle engine to increase power may result in lessening the overall life of the engine due to additional strain on associated components, the Service Provider does not accept any liability in the event of any damage caused as a direct or indirect result of power increase modifications;
  - (c) whilst the Service Provider shall endeavour to modify the vehicle to the exact specifications or instructions of the Customer, the Service Provider can offer no guarantee that any technique used will provide the exact effect desired by the Customer;
  - (d) the Service Provider can only provide its Services on a vehicle in its current state as supplied to the Service Provider, therefore the Service Provider shall not accept any responsibility for the workmanship of any third party that has worked on a Customer's vehicle prior to Services being undertaken by the Service Provider;
  - (e) the Service Provider, its employees, agents or contractors may test drive or carry out tests of the vehicle at the Service Provider's discretion and may collect or deliver the vehicle to a third party supplier, and the Service Provider will not be liable to the Customer for any damage which occurs to or is caused by the vehicle during such driving, testing, collection or delivery unless it arises from the reckless or wilful conduct of the Service Provider, its employees, agents, or contractors;
  - (f) it is the Customer's responsibility to remove all personal/valuable items from the vehicle prior to the Service Provider carrying out their Services. The Service Provider shall not be liable in the event of any apparent loss or damage to personal/valuable items left in the vehicle; and
  - (g) the Service Provider is only responsible for parts that are replaced by the Service Provider and does not at any stage accept any liability in respect of previous services and/or materials supplied by any other third party that subsequently fail and found to be the source of the failure. The Customer agrees to indemnify the Service Provider against any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 10.2 Subject to clause 10.1(e), neither the Service Provider, nor its employees, agents or contractors will be responsible for the loss of, any damage of any kind whatsoever and however caused to the vehicle or any property (including, but without limiting the generality thereof, any perishable items) in or upon the vehicle, or any trailer attached thereto and whether such property belongs to the Customer or a third party while the same is in the possession or under control of the Service Provider, its employees, agents or contractors and the Customer hereby indemnifies the Service Provider against any claim for such loss or damage.
- 10.3 Where the Customer has:
  - (a) supplied products for the Service Provider to complete the Services, the Customer acknowledges that it accepts responsibility for the suitability of purpose and use for their products and the intended use and any faults inherent in those products. However, if in the Service Provider's opinion, it is believed that the materials supplied are non-conforming products and will not conform with state and/or federal regulations, then the Service Provider shall be entitled, without prejudice, to halt the Services until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 7.2; and
  - (b) left a vehicle with the Service Provider for repair, restoration, or for the Service Provider to perform any other Services in relation to the item, it shall be at the sole risk of the Customer. The Service Provider shall not be liable for any loss or damage to any vehicle whilst in the care of the Service Provider, it shall be the responsibility of the Customer to ensure the vehicle is adequately insured, or at all (including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks) whilst stored on the Service Provider's premises regardless of whether the vehicle is registered or unregistered.
- 10.4 In the event the Customer requests the Service Provider to work on a vehicle, and leaves the vehicle and/or the keys at the Service Provider's premises whilst the site is unattended, then the Service Provider shall not be responsible for the security of the vehicle or the keys, and shall not be held liable for any loss, damages or costs howsoever resulting.
11. **Compliance with Laws**
- 11.1 The Customer and the Service Provider 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.
12. **Title**
- 12.1 The Service Provider and the Customer agree that ownership of the Goods shall not pass until:
  - (a) the Customer has paid the Service Provider all amounts owing to the Service Provider; and
  - (b) the Customer has met all of its other obligations to the Service Provider.
- 12.2 Receipt by the Service Provider 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.
- 12.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 12.1:
  - (a) the Customer is only a bailee of the Goods and must return the Goods to the Service Provider on request;
  - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Service Provider and must pay to the Service Provider the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
  - (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Service Provider and must pay or deliver the proceeds to the Service Provider on demand;
  - (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Service Provider and must sell, dispose of or return the resulting product to the Service Provider as it so directs;
  - (e) the Customer irrevocably authorises the Service Provider to enter any premises where the Service Provider believes the Goods are kept and recover possession of the Goods;
  - (f) the Service Provider may recover possession of any Goods in transit whether or not the Customer has received them;
  - (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Service Provider; and
  - (h) the Service Provider may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.
13. **Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 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 Service Provider to the Customer, and the proceeds from such Goods.
- 13.3 The Customer undertakes to:
  - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Service Provider may reasonably require to:
    - (i) register a financing statement or financing charge 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 13.3(a)(i) or 13.3(a)(ii);

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

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- (b) indemnify, and upon demand reimburse, the Service Provider 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 the Service Provider;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods or the proceeds of such Goods in favour of a third party without the prior written consent of the Service Provider;
- (e) immediately advise the Service Provider of any material change in its business practices of selling the Goods which would result in a change in proceeds derived from such sales.
- 13.4 The Service Provider 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.
- 13.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by the Service Provider, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Customer must unconditionally ratify any actions taken by the Service Provider under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 14. Security and Charge**
- 14.1 In consideration of the Service Provider agreeing to supply the Goods and/or provide its Services, the Customer grants the Service Provider a security interest by way of a floating charge (registerable by the Service Provider pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Customer or owned by the Customer in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Goods and/or Services under this Contract and/or permit the Service Provider to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).
- 14.2 The Customer indemnifies the Service Provider from and against all the Service Provider's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Service Provider's rights under this clause.
- 14.3 In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 12, 13, 2 and 14, 1 as applicable, is deemed insufficient by the Service Provider to secure the repayment of monies owed by the Customer to the Service Provider, the Customer hereby grants the Service Provider a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and/or land owned by the Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 15.1 The Customer must inspect the Goods on Delivery and must within seven (7) days of Delivery notify the Service Provider 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 Service Provider to inspect the Goods.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation, the implied warranties under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 The Service Provider acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 15.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Service Provider makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Service Provider's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Customer is a consumer within the meaning of the CCA, the Service Provider's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Service Provider is required to replace the Goods under this clause or the CCA, but is unable to do so, the Service Provider may refund any money the Customer has paid for the Goods.
- 15.7 If the Customer is not a consumer within the meaning of the CCA, the Service Provider's liability for any defect or damage in the Goods is:
- limited to the value of any express warranty or warranty card provided to the Customer by the Service Provider at the Service Provider's sole discretion;
  - limited to any warranty to which the Service Provider is entitled, if the Service Provider did not manufacture the Goods;
  - otherwise negated absolutely.
- 15.8 Subject to this clause 15, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 15.1; and
  - the Service Provider has agreed that the Goods are defective; and
  - the Goods are returned at the Customer's cost (i.e. back to base warranty); and
  - the Goods are returned in as close a condition to that in which they were delivered or collected as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, the Service Provider shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- the Customer failing to properly maintain or store any Goods;
  - the Customer using the Goods for any purpose other than that for which they were designed;
  - 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;
  - the Customer failing to follow any instructions or guidelines provided by the Service Provider;
  - fair wear and tear, any accident, or act of God.
- 15.10 In the case of second-hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second-hand Goods prior to Delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by the Service Provider as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that the Service Provider has agreed to provide the Customer with the second-hand Goods and calculated the Price of the second-hand Goods in reliance of this clause 15.10.
- 15.11 The Service Provider may in its absolute discretion accept non-defective Goods for return in which case the Service Provider may require the Customer to pay handling fees of up to fifteen percent (15%) of the value of the returned Goods plus any freight costs. Goods must be returned in their original packaging with proof of purchase within thirty (30) days of invoice date.
- 15.12 Notwithstanding anything contained in this clause if the Service Provider is required by a law to accept a return, then the Service Provider will only accept a return on the conditions imposed by that law.
- 15.13 Subject to clause 15.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.
- 16. Intellectual Property**
- 16.1 Where the Service Provider has designed, drawn or developed Goods for the Customer, then the copyright in any Goods, designs and drawings shall remain the property of the Service Provider. Under no circumstances may such Goods, designs, drawings and documents be used or replicated without the express written approval of the Service Provider.
- 16.2 The Customer warrants that all designs, specifications, or instructions given to the Service Provider will not cause the Service Provider to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Service Provider against any action taken by a third party against the Service Provider in respect of any such infringement.
- 16.3 The Customer agrees that the Service Provider may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Service Provider has created for the Customer.
- 17. Default and Consequences of Default**
- 17.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the Service Provider's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Customer owes the Service Provider any money, the Customer shall indemnify the Service Provider from and against all costs and disbursements:
- incurred; and/or
  - which would be incurred and/or
  - for which the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising the Service Provider's rights under these terms and conditions, including administration fees, the Service Provider's Contract fees owing for breach of these terms and conditions, including, but not limited to, contracting default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 17.3 Further to any other rights or remedies the Service Provider may have under this Contract, if a Customer has made payment to the Service Provider, 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 Service Provider under this clause 17 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.
- 17.4 Without prejudice to the Service Provider's other remedies at law the Service Provider shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Service Provider shall, whether or not due for payment, become immediately payable if:
- any money payable to the Service Provider becomes overdue, or in the Service Provider's opinion the Customer will be unable to make a payment when it falls due;
  - the Customer has exceeded any applicable credit limit provided by the Service Provider;
  - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions (**"the Breaching Party"**) the other party may suspend or terminate the supply or purchase of Goods and/or Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 18.2 If the Service Provider, due to reasons beyond the Service Provider's reasonable control, is unable to deliver any Goods and/or Services to the Customer, the Service Provider may cancel any Contract to which these terms and conditions apply or cancel Delivery of Goods and/or Services at any time before the Goods and/or Services are delivered by giving written notice to the Customer. On giving such notice the Service Provider shall repay to the Customer any money paid by the Customer for the Goods and/or Services. The Service Provider shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 The Customer may cancel Delivery of the Goods and/or Services by written notice served within forty-eight (48) hours of placement of the order. If the Customer cancels Delivery in accordance with this clause 18.3, the Customer will not be liable for the payment of any costs of the Service Provider, except where a deposit is payable in accordance with clause 7.7. Failure by the Customer to otherwise accept Delivery of the Goods and/or Services shall place the Customer in breach of this Contract.
- 18.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Policy**
- 19.1 All email documents, images, or other recorded information held or used by the Service Provider is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. The Service Provider acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Service Provider acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Service Provider that may result in serious harm to the Customer, the Service Provider will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.
- 19.2 Notwithstanding clause 19.1, privacy limitations will extend to the Service Provider in respect of Cookies where the Customer utilises the Service Provider's website to make enquiries. The Service Provider agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable) such technology allows the collection of Personal Information such as the Customer's:
- IP address, browser, email client type and other similar details;
  - tracking website usage and traffic; and
  - reports are available to the Service Provider when the Service Provider sends an email to the Customer, so the Service Provider may collect and review that information ("collectively Personal Information")
- If the Customer consents to the Service Provider's use of Cookies on the Service Provider's website and later wishes to withdraw that consent, the Customer may manage and control the Service Provider's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 19.3 The Customer agrees that the Service Provider may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- to assess an application by the Customer; and/or
  - to notify other credit providers of a default by the Customer; and/or
  - 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
  - to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 19.4 The Customer consents to the Service Provider being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 19.5 The Customer agrees that personal credit information provided may be used and retained by the Service Provider for the following purposes (and for other agreed purposes or required by):
- the provision of Goods; and/or
  - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - enabling the collection of amounts outstanding in relation to the Goods.
- 19.6 The Service Provider may give information about the Customer to a CRB for the following purposes:
- to obtain a consumer credit report;
  - allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 19.7 The information given to the CRB may include:
- Personal Information as outlined in 19.3 above;
  - name of the credit provider and that the Service Provider is a current credit provider to the Customer;
  - whether the credit provider is a licensee;
  - type of consumer credit;
  - details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - advice of consumer credit defaults (provided the Service Provider is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and the Service Provider has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - information that, in the opinion of the Service Provider, the Customer has committed a serious credit infringement;
- (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.8 The Customer shall have the right to request (by e-mail) from the Service Provider: (a) a copy of the Personal Information about the Customer retained by the Service Provider and the right to request that the Service Provider correct any incorrect Personal Information; and (b) that the Service Provider does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 19.9 The Service Provider will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 19.10 The Customer can make a privacy complaint by contacting the Service Provider via e-mail. The Service Provider will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to reach a decision on the complaint within thirty (30) days of receipt of the complaint. If the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 20. Unpaid Seller's Rights**
- 20.1 Where the Customer has left any item with the Service Provider for repair, modification, exchange or for the Service Provider to perform any other service in relation to the item and the Service Provider has not received or been tendered the whole of any monies owing to it by the Customer, the Service Provider shall have, until all monies owing to the Service Provider are paid:
- a lien on the item; and
  - 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.
- 20.2 The lien of the Service Provider shall continue despite the commencement of proceedings, or judgment for any monies owing to the Service Provider having been obtained against the Customer.
- 21. Service of Notices**
- 21.1 Any written notice given under this Contract shall be deemed to have been given and received:
- by handing the notice to the other party, in person;
  - by leaving it at the address of the other party as stated in this Contract;
  - by sending it by registered post to the address of the other party as stated in this Contract;
  - 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;
  - if sent by email to the other party's last known email address.
- 21.2 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.
- 22. Trusts**
- 22.1 If the Customer at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Service Provider may have notice of the Trust, the Customer covenants with the Service Provider as follows:
- the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
  - the Customer has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be 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, the trustees and the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or other party to any other action which might prejudice that right of indemnity;
  - the Customer will not during the term of the Contract without consent in writing of the Service Provider (the Service Provider will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - the removal, replacement or retirement of the Customer as trustee of the Trust;
    - any alteration to or variation of the terms of the Trust;
    - any advancement or distribution of capital of the Trust; or
    - any resettlement of the trust fund or trust property.
- 23. General**
- 23.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.
- 23.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.3 These terms and conditions and any Contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the Gold Coast Courts in Queensland. These terms prevail over all terms and conditions of the Customer (even if they form part of the Customer's purchase order).
- 23.4 The Service Provider may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 23.5 The Customer cannot licence or assign without the written approval of the Service Provider.
- 23.6 The Service Provider may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Service Provider's sub-contractors without the authority of the Service Provider.
- 23.7 The Customer agrees that the Service Provider may amend their general terms and conditions for subsequent future Contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Service Provider to provide Goods to the Customer.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments or embargo, including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc., ("Force Majeure") or other event beyond the reasonable control of either party. This clause does not apply to a failure by the Customer to make a payment to the Service Provider, once the parties agree that the Force Majeure event has ceased.
- 23.9 Both parties warrant that they have the power to enter 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.
- 23.10 This Contract and any subsequent agreement between the Service Provider and the Customer, shall constitute as the entire agreement between the Service Provider and the Customer, and the Customer hereby acknowledges that no reliance is placed on any representation made by the Service Provider that is not embodied in this Contract.
- 23.11 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and Delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 23.12 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.

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