
Swift Group Industries Pty Ltd – Terms & Conditions of Trade

1. Definitions

- 1.1 “Supplier” means Swift Group Industries Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Swift Group Industries Pty Ltd.
- 1.2 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.3 “Incidental Items” means any goods, documents, designs, drawings or materials supplied, consumed, created or deposited incidentally by the Supplier in the course of it conducting, or supplying to the Client, any Services.
- 1.4 “Services” mean all Services supplied by the Supplier to the Client at the Client’s request from time to time.
- 1.5 “Price” means the price payable (plus any GST where applicable) for the Services as agreed between the Supplier and the Client in accordance with clause 7 of this contract.
- 1.6 “GST” means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by the Supplier.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
- 2.3 Where the Client is a tenant (and therefore not the owner of the site where Services are to be provided) then the Client warrants that the Client has obtained the full consent of the owner for the Supplier to provide the Services at the owner’s site. The Client acknowledges and agrees that they shall:
- (a) upon request from the Supplier provide evidence that they have such consent; and
 - (b) be personally liable for full payment of the Price for all Services provided under this agreement and to indemnify the Supplier against any claim made by the owner of the site (howsoever arising) in relation to the provision of any Services by the Supplier, except where such claim has arisen because of the negligence of the Supplier when providing the Services.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

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

4. Contract Term

- 4.1 Where this contract is for ongoing Services, the Contract Term will be specified in the Supplier’s quotation and will automatically renew on a weekly basis unless terminated by either party in accordance with clause 18.
- 4.2 The Client accepts and acknowledges that all fixed contracts are subject to periodic price reviews to allow for increases to the Supplier in the cost of labour and materials, which are beyond the control of the Supplier.

5. Authorised Representatives

- 5.1 The Client acknowledges that the Supplier shall (for the duration of the Services) liaise directly with one (1) authorised representative, and that once introduced as such to the Supplier, that person shall have the full authority of the Client to order any Services, and/or to request any variation thereto on the Client’s behalf. The Client accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier’s profit margin) in providing any Services, or variation/s requested thereto by the Client’s duly authorised representative.

6. Change in Control

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

7. Price and Payment

- 7.1 At the Supplier’s sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by the Supplier to the Client; or
 - (b) the Supplier’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 Unless specified by the Supplier in writing, the Price:
- (a) is inclusive of (1) single Service only and any additional services shall be treated as a separate contract or a variation to the Price; and
 - (b) is based on the existing condition (including cleanliness) and size of the site, as stated by the Client, or at the time of inspection by the Supplier. Any variation to the condition and/or size of the site will be treated as a variation to the Price, in accordance with clause 8.

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- 7.3 At the Supplier's sole discretion a twenty-five percent (25%) non-refundable deposit shall be required for any and all contracts that equal or exceed ten thousand dollars (\$10k) to cover the cost of equipment and materials.
- 7.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
- (a) on delivery of the Services;
 - (b) before delivery of the Services;
 - (c) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
 - (d) twenty-eight (28) days following the end of the month in which a statement is delivered to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Supplier.
- 7.5 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (Visa and MasterCard only, a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.
- 7.6 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
- 7.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any supply by the Supplier under this or any other agreement for providing the Supplier's Services. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

8. Variations and Additional Charges

- 8.1 The Supplier reserves the right to change the Price:
- (a) if a variation to the Services are requested (in writing) by the Client (including, but not limited to, any additional services, as offered by the Supplier in the quotation), or required upon inspection of the site by the Supplier (including, but not limited to, quantity and sizes of rooms, where the site includes stairs, unavailability of parking at the site or difficult/limited access to the site, the site is excessively unclean, carpet is heavily soiled and needs a premium/ultimate carpet cleaning service, animal stains or odours that require extra treatment or carpet underlay replacement, or where stains required extra treatments such as heat transfer methods or spot dye treatments); or
 - (b) in the event the site is not as was stated by the Client, or the Supplier suffers interruptions from any third party occupying the site which causes delays; or
 - (c) as a result of increases to the Supplier in the cost of personnel and/or Products (including where clause 4 applies), which are beyond the control of the Supplier.
- 8.2 At the Supplier's sole discretion:
- (a) a minimum charge shall be applicable to the Services; and
 - (b) a surcharge shall be applicable for Services scheduled on weekends; and
 - (c) an additional fee will be charged to the Client:
 - (i) if the site has no power; or
 - (ii) where the Supplier is required to collect keys to the site from a real estate agent; or
 - (iii) where the site is not located on the ground floor (e.g. for apartments); or
 - (iv) for the removal of chewing gum and blu tack.

9. Provision of Services

- 9.1 At the Supplier's sole discretion delivery of the Services shall take place when the Services are supplied to the Client at the Client's nominated address (even if the Client is not present at the address).
- 9.2 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 9.3 At the sole discretion of the Supplier, the delivery of the Services is included in the Price.
- 9.4 The Supplier's Services consist of carpet steam cleaning, carpet dry cleaning and encapsulation as its three (3) types of cleaning methods, and Services provided comply with Australian Standards. The Client and the Supplier agree that the site will comply with any work health and safety (WHS) laws, safety standards and legislation relevant to the Services.
- 9.5 The Services shall be provided within the Supplier's normal trading hours. Where the Client requests the Supplier to provide Services outside of these hours the Client shall be charged in accordance with the Supplier's current overtime rates, which are available on request.
- 9.6 It shall be the Client's responsibility to ensure any requested commencement / completion date is realistic and truthful in order for the Supplier to provide the Services by the requested deadline. The Supplier shall not be liable for any loss suffered by the Client where any requested date/s is inaccurate, unattainable or unreasonable.
- 9.7 Any time specified by the Supplier for delivery of the Services is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Services to be supplied at the time and place as was arranged between both parties. In the event that the Supplier is unable to supply the Services as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge a reasonable fee for re-supplying the Services at a later time and date.
- 9.8 In the event that parking or access to the site is limited, and the Supplier is required to pay for parking (e.g. in a city location), then the Supplier reserves the right to on-charge the Client for such costs.
- 9.9 The Supplier shall not be responsible for the:
- (a) disposal of health risk items, however, the removal of these sanitary items by the Supplier may (at the sole discretion of the Supplier) be charged to the Client in addition to the Price; and
 - (b) relocation of furniture or equipment heavier than fifteen kilograms (15kgs), as these types of activities pose a danger of injury, or could damage property and fittings. Any lifting and movement of furniture, appliances or equipment in excess of fifteen kilograms (15kgs) must be arranged and conducted by the Client prior to the commencement of the Services.

10. Risk

- 10.1 Irrespective of whether the Supplier retains ownership of any Incidental Items all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as the Supplier may repossess the Incidental Items in accordance with clause 12.3(f). The Client must insure all Incidental Items on or before delivery.
- 10.2 The Supplier reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Incidental Items as a result of the Client's failure to insure in accordance with clause 10.1.
- 10.3 Colour variations or spotting may occur due to the type of flooring (e.g. hard floors and carpet fibres), cleaning products or methods used (including those the Supplier provides) and/or any act of nature. Grout may be dislodged from surfaces whilst cleaning. Carpet threads may come out, edges may be damaged or loosening and shrinking may occur. The Supplier shall not be held responsible if the aforementioned instances take place.
- 10.4 The Supplier will endeavour to remove any existing staining and/or marks on carpet, however the Supplier does not offer any guarantee, and shall take no liability, in the event staining and/or marks are not completely removed.
- 10.5 The Supplier shall not be liable for any existing defects revealed by the Supplier during the provision of the Services. Any existing defects revealed shall be reported to the Client by the Supplier on completion of the Services.
- 10.6 The Supplier shall not be held responsible for any damage to the site caused by any third party (including, but not limited to, pets or tradesmen).
- 10.7 The Client acknowledges and agrees that vinyl will not fully seal a floor around the edges particularly around showers or baths; the Client also agrees water can get underneath and therefore bubble and/or discolour the vinyl. The Supplier shall not be held liable for any loss, damages or costs however arising due to their cleaning procedures.
- 10.8 The Client acknowledges and agrees that the Supplier shall not be liable for any loss, damages or costs however arising in the event that:
 - (a) a heavy or sharp object is dropped or falls on the vinyl, as vinyl will show scratches and will get cut as it is a soft and flexible; or
 - (b) an object is dragged across it as vinyl can rip and tear; or
 - (c) the vinyl discolours or bubbles in areas due to exposure to extreme heat (including, but not limited to, conservatories and floor to ceiling windows).

11. Client's Responsibilities

- 11.1 The Client acknowledges and agrees that it is their responsibility to:
 - (a) report any existing damage to the Supplier prior to the commencement of the Services. The Supplier cannot be held responsible for any existing damage, wear and tear or stains that cannot be removed using the Supplier's cleaning methods; and
 - (b) ensure that the Supplier has clear and free access to the site at all times to enable them to provide the Services. The Supplier shall not be liable for any loss or damage to the site, unless due to the negligence of the Supplier. In the event of a lock-out, or where the Supplier is turned away or otherwise unable to enter the site due to any action, or inaction of the Client, the Client will be required to pay the full Price for the Services; and
 - (c) ensure that the site is reasonably ready for the Supplier to commence the Services, with minimal tradespersons and works in progress; and
 - (d) have all areas clean and clear to enable the Services to be provided in accordance with any specified schedule; and
 - (e) secure or remove any fragile, delicate, breakable or valuable items, including cash, jewellery, works of art or antiques from those areas that require the Services. The Supplier is unable to accept liability for items of this type that have not been reasonably secured by the Client; and
 - (f) fulfil any special conditions / requirements that may affect the Supplier providing the Services at the site (including, but not limited to, health and safety equipment and/or work site inductions); and
 - (g) provide the Supplier with an adequate free source of water and power at all times to enable the Supplier to provide the Services.
- 11.2 In the event provision of the Services is delayed due to inadequate access to the site, or water and power facilities, then the Supplier reserves the right to charge a reasonable fee for re-providing the Services at a later time and date in accordance with clause 8.

12. Title

- 12.1 The Supplier and the Client agree that where it is intended that the ownership of Incidental Items is to pass to the Client that such ownership shall not pass until:
 - (a) the Client has paid the Supplier all amounts owing for the Services; and
 - (b) the Client has met all other obligations due by the Client to the Supplier in respect of all contracts between the Supplier and the Client.
- 12.2 Receipt by the Supplier 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 and until then the Supplier's ownership or rights in respect of the Incidental Items shall continue.
- 12.3 It is further agreed that, until ownership of the Incidental Items passes to the Client in accordance with clause 12.1:
 - (a) the Client is only a bailee of the Incidental Items and must return the Incidental Items to the Supplier immediately upon request by the Supplier;
 - (b) the Client holds the benefit of the Client's insurance of the Incidental Items on trust for the Supplier and must pay to the Supplier the proceeds of any insurance in the event of the Incidental Items being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Incidental Items. If the Client sells, disposes or parts with possession of the Incidental Items then the Client must hold the proceeds of sale of the Incidental Items on trust for the Supplier and must pay or deliver the proceeds to the Supplier on demand.
 - (d) the Client should not convert or process the Incidental Items or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of the Supplier and must dispose of or return the resulting product to the Supplier as the Supplier so directs.
 - (e) the Client shall not charge or grant an encumbrance over the Incidental Items nor grant nor otherwise give away any interest in the Incidental Items while they remain the property of the Supplier;
 - (f) the Client irrevocably authorises the Supplier to enter any premises where the Supplier believes the Incidental Items are kept and recover possession of the Incidental Items.

13. Personal Property Securities Act 2009 (“PPSA”)

- 13.1 In this clause financing statement, financing change 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 Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all Incidental Items previously supplied by the Supplier to the Client;
 - (b) all Incidental Items will be supplied in the future by the Supplier to the Client; and
 - (c) all the Client’s present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Supplier for Services – that have previously been provided and that will be provided in the future by the Supplier to the Client.
- 13.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Supplier 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 Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items in favour of a third party without the prior written consent of the Supplier.
- 13.4 The Supplier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client 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 Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by the Supplier 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 Supplier agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies the Supplier from and against all the Supplier’s costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier’s rights under this clause.
- 14.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client’s true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client’s behalf.

15. Defects, Warranties and the Competition and Consumer Act 2010 (CCA)

- 15.1 The Client must inspect the Supplier’s Services on completion of the Services and must within seven (7) days notify the Supplier in writing of any evident defect in the Services or Incidental Items provided (including the Supplier’s workmanship) or of any other failure by the Supplier to comply with the description of, or quote for, the Services which the Supplier was to supply. The Client must notify any other alleged defect in the Supplier’s Services or Incidental Items as soon as is reasonably possible after any such defect becomes evident. Upon such notification the Client must allow the Supplier to review the Services or Incidental Items that were provided.
- 15.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 15.3 The Supplier 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 Supplier makes no warranties or other representations under these terms and conditions including, but not limited to, the quality or suitability of the Services. The Supplier’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 15.5 If the Client is a consumer within the meaning of the CCA, the Supplier’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Supplier is required to rectify, re-supply, or pay the cost of re-supplying the Services under this clause or the CCA, but is unable to do so, then the Supplier may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services and Incidental Items which have been provided to the Client which were not defective.
- 15.7 If the Client is not a consumer within the meaning of the CCA, the Supplier’s liability for any defective Services or Incidental Items is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier’s sole discretion;
 - (b) otherwise negated absolutely.
- 15.8 Notwithstanding clauses 15.1 to 15.7 but subject to the CCA, the Supplier shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Incidental Items;
 - (b) the Client using the Incidental Items for any purpose other than that for which they were designed;

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- (c) the Client continuing to use any Incidental Items after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) interference with the Services by the Client or any third party without the Supplier's prior approval;
- (e) the Client failing to follow any instructions or guidelines provided by the Supplier;
- (f) fair wear and tear, any accident, or act of God.

16. Intellectual Property

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

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 Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 17.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Supplier may have under this contract, if a Client has made payment to the Supplier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Supplier under this clause 17 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 17.4 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable if:
 - (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Supplier;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

18. Cancellation

- 18.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Supplier may suspend or terminate the supply of Services to the Client. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier has exercised its rights under this clause.
- 18.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are commenced by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any money paid by the Client for the Services. The Supplier shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Supplier as a direct result of the cancellation (including, but not limited to, any loss of profits).

19. Privacy Act 1988

- 19.1 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.
- 19.2 The Client agrees that the Supplier may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 19.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 19.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 19.5 The Supplier may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.

- 19.6 The information given to the CRB may include:
- (a) personal information as outlined in 19.1 above;
 - (b) name of the credit provider and that the Supplier is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Supplier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Supplier, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 19.7 The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
 - (b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.
- 19.8 The Supplier will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.
- 19.9 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

20. Trusts

- 20.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Supplier may have notice of the Trust, the Client covenants with the Supplier as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of the Supplier (the Supplier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

21. General

- 21.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 21.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Brisbane Courts in that state.
- 21.3 Subject to clause 15 the Supplier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price of the Services).
- 21.4 The Supplier may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.
- 21.5 The Client cannot licence or assign without the written approval of the Supplier.
- 21.6 The Supplier may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Supplier's sub-contractors without the authority of the Supplier.
- 21.7 The Client agrees that the Supplier may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Supplier to provide Goods to the Client.
- 21.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 21.9 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.