

Hawkesbury Refrigeration Pty Ltd – Terms & Conditions of Trade

1. **Definitions**
- 1.1 "Contract" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "HR" means Hawkesbury Refrigeration Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Hawkesbury Refrigeration Pty Ltd.
- 1.3 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting HR to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
- (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
- (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
- (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.4 "Goods" means all Goods or Services supplied by HR to the Client at the Client's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).
- 1.5 "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.
- 1.6 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. If the Client does not wish to allow Cookies to operate in the background when using HR's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.
- 1.7 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between HR and the Client in accordance with clause 6 below.
- 1.8 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
2. **Acceptance**
- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with HR 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 Client's credit limit and/or the account exceeds the payment terms, HR reserves the right to refuse Delivery.
- 2.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
- 3.1 The Client acknowledges and accepts that HR 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 HR 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 HR 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 willful misconduct of HR, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
- 4.1 The Client shall give HR 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 numbers, change of trustees, or business practice). The Client shall be liable for any loss incurred by HR as a result of the Client's failure to comply with this clause.
5. **Specifications**
- 5.1 The Client acknowledges that:
- (a) all descriptive specifications, illustrations, drawings, data, dimensions and weights stated in HR's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Client shall not be entitled to rely on such information, and any use of such does not constitute a sale by description, and does not form part of the contract, unless expressly stated as such in writing by HR;
- (b) while HR may have provided information or figures to the Client regarding the performance of the Goods, the Client acknowledges that HR has given these in good faith and based on prescribed estimates which may be inaccurate due to factors out of HR's control (including, but not limited to, the location (geographical or otherwise) of the Goods);
- (c) some buildings may not have the optimum orientation for the installation of the Goods or components, and therefore understands and accepts that the Goods performance may be compromised in such situations. Notwithstanding the former, HR will use its best endeavours to install and position the Goods to maximise performance.
- 5.2 The Client shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 5.3 HR reserves the right to substitute comparable Goods (or components of the Goods), and in all such cases HR will notify the Client in advance of any such substitution.
6. **Price and Payment**
- 6.1 At HR's sole discretion the Price shall be either:
- (a) as indicated on any invoice provided by HR to the Client; or
- (b) HR's quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of fourteen (14) days.
- 6.2 HR reserves the right to change the Price if:
- (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 (including, but not limited to, poor weather conditions, limitations to accessing the site, hard rock barriers below the surface or iron reinforcing rods in concrete, obscured building defects, safety considerations, prerequisite work by any third party not being completed or hidden pipes and wiring in walls, etc.) which are only discovered on commencement of the Services; or
- (d) in the event of increases to HR in the cost of taxes, levies, materials and labour which are beyond HR's control.
- 6.3 Variations will be charged for on the basis of HR's quotation, and will be detailed in writing, and shown as variations on HR's invoice. The Client shall be required to respond to any variation submitted by HR within ten (10) working days. Failure to do so will entitle HR 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.
- 6.4 At HR's sole discretion, a deposit may be required.
- 6.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by HR, which may be:
- (a) on Delivery;
- (b) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (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 Client by HR.
- 6.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), by any other method as agreed to between the Client and HR.
- 6.7 HR may in its discretion allocate any payment received from the Client towards any invoice that HR determines and may do so at the time of receipt or at any time afterwards. On any default by the Client HR may re-allocate any payments previously received and allocated. In the absence of any payment allocation by HR, payment will be deemed to be allocated in such manner as preserves the maximum value of HR's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.8 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 HR nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to HR an amount equal to any GST HR must pay for any supply by HR under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
7. **Retentions**
- 7.1 At HR's sole discretion, payment of the Price shall be subject to retention by the Client of an amount (hereafter called the "retention money"), being equal to a percentage of the Price as agreed between the parties. The Client shall hold the retention money for the agreed period following completion of the Services during which time all Services are to be completed and/or all defects are to be remedied.
8. **Delivery**
- 8.1 Delivery of the Goods ("Delivery") is taken to occur at the time that:
- (a) the Client or the Client's nominated carrier takes possession of the Goods at HR's address; or
- (b) HR (or HR's nominated carrier) delivers the Goods to the Client's nominated address even if the Client is not present at the address.
- 8.2 Subject to clause 8.2 it is HR's responsibility to ensure that the Services start as soon as it is reasonably possible.
- 8.3 The Services' commencement date will be put back and/or the completion date extended by whatever time is reasonable in the event that HR claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond HR's control, including but not limited to any failure by the Client to:
- (a) make a selection; or
- (b) have the site ready for the Services; or
- (c) notify HR that the site is ready.
- 8.4 At HR's sole discretion, the cost of Delivery is either included in, or in addition to, the Price.
- 8.5 HR may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 8.6 Any time specified by HR for Delivery of the Goods is an estimate only and HR will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that HR is unable to supply the Goods as agreed solely due to any action or inaction of the Client, then HR 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 Client on Delivery and the Client must insure the Goods on or before Delivery.
- 9.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Client, HR is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by HR is sufficient evidence of HR's rights to receive the insurance proceeds without the need for any person dealing with HR to make further enquiries.
- 9.3 If the Client requests HR to leave Goods outside HR's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk.
- 9.4 HR shall upon installation ensure that all installed Goods meet current industry standards applicable to noise levels, however HR cannot guarantee that noise levels will remain constant post installation as the Goods may be impacted by many factors such as the weather, lack of maintenance, tampering etc.
- 9.5 Whilst the final location of the condensing unit is at the discretion of the Client, a charge will apply as a variation as per clause 6.2, if the Client requests the unit to not be located adjacent to the external wall, due to the underground piping required.
- 9.6 In the event that any of the equipment needs to be relocated due to complaints from neighbours or local authorities, then the Client shall be responsible for any and all costs involved.
- 9.7 The Client acknowledges and agrees that it is their responsibility to insure any Goods partly or completely installed on site, against theft or damage.
- 9.8 In the event that the electrical wiring is required to be re-positioned at the request of any third party contracted by the Client then the Client agrees to notify HR immediately upon any proposed changes. The Client agrees to indemnify HR against any additional costs incurred with such a relocation of electrical wiring. All such variances shall be invoiced in accordance with clause 6.2.
- 9.9 The Client warrants that any structures to which the Goods are to be affixed are able to withstand the installation of the Goods and that any electrical connections (including, but not limited to, meter boxes, main switches, circuit breakers, and electrical cable) are of suitable capacity to handle the Goods once installed. If for any reason (including the discovery of asbestos, defective or unsafe wiring or dangerous access to roofing) that HR, its employees or HR's reasonably form the opinion that the Client's premises is not safe for the installation of Goods to proceed then HR shall be entitled to delay installation of the Goods (in accordance with the provisions of clause 8.3 above) until HR is satisfied that it is safe for the installation to proceed.
10. **Access**
- 10.1 The Client shall ensure that HR has clear and free access to the work site at all times to enable them to undertake the Services. HR shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of HR.
11. **Compliance with Laws**
- 11.1 Both the Client and HR agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including work health and safety laws (WHS) relating to building/construction sites, and any other relevant safety standards or legislation, particularly those in relation to Asbestos/Hazardous materials and the safe removal and disposal of the same.
- 11.2 All work will be tested to ensure that it is electrically safe and is in accordance with the wiring rules and other standards applying to the electrical installation under the Electrical Safety Regulations 2002. All of the cabling work will comply with the Australian and New Zealand Wiring standards.
- 11.3 If during the course of installation when the Services are being conducted within and around switchboards that if the same is found defective or deemed to be unsafe by HR, then HR shall notify the Client immediately. The power if isolated will not be re-energised until such time as the existing condition has been rectified and made safe in accordance to the Electrical Safety Regulations 2002. The Client accepts and agrees that any costs associated with the rectification Services including any Goods and labour shall be to the Client's account.
12. **Underground Locations**
- 12.1 Prior to HR commencing any Services the Client must advise HR of the precise location of all underground services on the site and clearly mark the same. The underground mains and services the Client must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.
- 12.2 Whilst HR will take all care to avoid damage to any underground services the Client agrees to indemnify HR in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 12.1.
13. **Title**
- 13.1 HR and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid HR all amounts owing to HR; and
- (b) the Client has met all of its other obligations to HR.
- 13.2 Receipt by HR 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.
- 13.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 13.1:
- (a) the Client is only a bailee of the Goods and must return the Goods to HR on request;
- (b) the Client holds the benefit of the Client's insurance of the Goods on trust for HR and must pay to HR the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Client sells, disposes or parts with possession of the Goods then the Client must hold the proceeds of any such act on trust for HR and must pay or deliver the proceeds to HR on demand;
- (d) the Client should not convert or process the Goods or intermix them with other goods but if the Client does so then the Client holds the resulting product on trust for the benefit of HR and must sell, dispose of or return the resulting product to HR as it so directs;
- (e) the Client irrevocably authorises HR to enter any premises where HR believes the Goods are kept and recover possession of the Goods;
- (f) HR may recover possession of any Goods in transit whether or not Delivery has occurred;
- (g) the Client shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of HR;
- (h) HR may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.
14. **Personal Property Securities Act 2009 ("PPSA")**
- 14.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 14.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Client to HR for Services – that have previously been supplied and that will be supplied in the future by HR to the Client.
- 14.3 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 HR 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 14.3(a)(i) or 14.3(a)(ii);
- (b) indemnify, and upon demand reimburse, HR 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 HR;

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- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of HR;
- (e) immediately advise HR of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 14.4 HR 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.
- 14.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 14.7 Unless otherwise agreed to in writing by HR, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Client must unconditionally ratify any actions taken by HR under clauses 14.3 to 14.5.
- 14.9 Subject to any express provisions to the contrary (including those contained in this clause 14), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 15. Security and Charge**
- 15.1 In consideration of HR agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Client indemnifies HR from and against all HR's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HR's rights under this clause.
- 15.3 The Client irrevocably appoints HR and each director of HR as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 15 including, but not limited to, signing any document on the Client's behalf.
- 16. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 16.1 The Client must inspect the Goods on Delivery and must within seven (7) days of Delivery notify HR in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow HR to inspect the Goods.
- 16.2 The warranty will cease from the date that is:
- (a) twelve (12) months for defective labour on the installation of new Goods;
- (b) three (3) months for repairs on existing Goods/units;
- after the Client takes delivery of the Goods/Services in accordance with clause 8 of the Terms and Conditions of Trade.
- 16.3 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.4 HR acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.5 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, HR makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. HR's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.6 If the Client is a consumer within the meaning of the CCA, HR's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.7 If HR is required to replace the Goods under this clause or the CCA, but is unable to do so, HR may refund any money the Client has paid for the Goods.
- 16.8 If the Client is not a consumer within the meaning of the CCA, HR's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by HR at HR's sole discretion;
- (b) limited to any warranty to which HR is entitled, if HR did not manufacture the Goods;
- (c) otherwise negated absolutely.
- 16.9 Subject to this clause 16, returns will only be accepted provided that:
- (a) the Client has complied with the provisions of clause 16.1; and
- (b) HR has agreed that the Goods are defective; and
- (c) the Goods are returned within a reasonable time at the Client's cost (if that cost is not significant); and
- (d) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 16.10 Notwithstanding clauses 16.1 to 16.9 but subject to the CCA, HR shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Client failing to properly maintain or store any Goods;
- (b) the Client using the Goods for any purpose other than that for which they were designed;
- (c) the Client continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
- (d) the Client failing to follow any instructions or guidelines provided by HR;
- (e) fair wear and tear, any accident, or act of God.
- 16.11 Notwithstanding anything contained in this clause if HR is required by a law to accept a return then HR will only accept a return on the conditions imposed by that law.
- 17. Intellectual Property**
- 17.1 Where HR has designed, drawn or developed Goods for the Client, then the copyright in any designs and drawings and documents shall remain the property of HR. Under no circumstances may such designs, drawings and documents be used without the express written approval of HR.
- 17.2 The Client warrants that all designs, specifications or instructions given to HR will not cause HR to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify HR against any action taken by a third party against HR in respect of any such infringement.
- 17.3 The Client agrees that HR may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which HR has created for the Client.
- 18. Default and Consequences of Default**
- 18.1 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 HR's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes HR any money the Client shall indemnify HR from and against all costs and disbursements incurred by HR in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HR's contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies HR may have under this Contract, if a Client has made payment to HR, 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 HR under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 18.4 Without prejudice to HR's other remedies at law HR shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to HR shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to HR becomes overdue, or in HR'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 HR;
- (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.
- 19. Cancellation**
- 19.1 Without prejudice to any other remedies HR may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions HR may suspend or terminate the supply of Goods to the Client. HR will not be liable to the Client for any loss or damage the Client suffers because HR has exercised its rights under this clause.
- 19.2 HR may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice HR shall repay to the Client any money paid by the Client for the Goods. HR shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by HR as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 19.4 Cancellation of orders for Goods made to the Client's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 20. Privacy Policy**
- All emails, documents, images or other recorded information held or used by HR is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. HR 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"). HR acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by HR that may result in serious harm to the Client, HR will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- Notwithstanding clause 20.1, privacy limitations will extend to HR in respect of Cookies where the Client utilises HR's website to make enquiries. HR agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to HR when HR sends an email to the Client, so HR may collect and review that information ("collectively Personal Information").
- If the Client consents to HR's use of Cookies on HR's website and later wishes to withdraw that consent, the Client may manage and control HR's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client agrees that HR 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.
- 20.4 The Client consents to HR being given a consumer credit report to collect overdue payment on commercial credit.
- 20.5 The Client agrees that personal credit information provided may be used and retained by HR for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (d) enabling the collection of amounts outstanding in relation to the Goods.
- 20.6 HR 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.
- 20.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
- (b) name of the credit provider and that HR 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 HR has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of HR, 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).
- 20.8 The Client shall have the right to request (by e-mail) from HR:
- (a) a copy of the Personal Information about the Client retained by HR and the right to request that HR correct any incorrect Personal Information; and
- (b) that HR does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.9 HR will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.10 The Client can make a privacy complaint by contacting HR via e-mail. HR 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.
- 21. Dispute Resolution**
- 21.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
- (a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
- (b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.
- 22. Building and Construction Industry Security of Payments Act 1999**
- 22.1 At HR's sole discretion, if there are any disputes or claims for unpaid Goods then the provisions of the Building and Construction Industry Security of Payments Act 1999 may apply.
- 22.2 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Building and Construction Industry Security of Payments Act 1999 of New South Wales, except to the extent permitted by the Act where applicable.
- 23. Service of Notices**
- 23.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 23.2 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.
- 24. Trusts**
- 24.1 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 HR may have notice of the Trust, the Client covenants with HR 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 HR (HR 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.
- 25. General**
- 25.1 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.
- 25.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the New South Wales, the state in which HR has its principal place of business, and are subject to the jurisdiction of the Courts in that state.
- 25.3 Subject to clause 16, HR 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 HR of these terms and conditions (alternatively HR's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 25.4 HR may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 25.5 The Client cannot licence or assign without the written approval of HR.
- 25.6 HR 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 HR's sub-contractors without the authority of HR.
- 25.7 The Client agrees that HR may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for HR to provide Goods to the Client.
- 25.8 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.
- 25.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.