

Springs Distribution Agents – Terms & Conditions of Trade

1. **Preamble**
- 1.1 All Goods, Equipment and/or Services of Timothy Investments Group Pty Ltd T/A Springs Distribution Agents, whether gratuitous or not, are supplied subject to these Conditions and:
 - (a) The provisions of Part I shall apply to the provision of all Goods and Services.
 - (b) The provisions of Part II shall only apply to the provision of Equipment Hire.
- PART I - GENERAL CLAUSES**
2. **Definitions**
- 2.1 "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.
- 2.2 "Agent" means Timothy Investments Group Pty Ltd T/A Springs Distribution Agents, its successors and assigns or any person acting on behalf of and with the authority of Timothy Investments Group Pty Ltd T/A Springs Distribution Agents.
- 2.3 "Customer" means the persons, entities or any person acting on behalf of and with the authority of the Customer requesting the Agent 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 a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Customer's executors, administrators, successors and permitted assigns.
- 2.4 "Goods" means all Goods or Services (including Equipment where applicable) supplied by the Agent to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods', 'Equipment' or 'Services' shall be interchangeable for the other).
- 2.5 "Services" means all Services (including business planning, research and development, marketing, finance, human resources, coaching, training, strategies and advice, application preparation to submit to the Export Market Development Grant ("EMDG") scheme etc.) provided by the Agent to the Customer at the Customer's request from time to time, and includes any goods, documents, designs, plans, programs, strategies, plans, materials, manuals or aids supplied, consumed, created or deposited incidentally by the Agent in the course of it conducting, or providing to the Customer, any Services.
- 2.6 "Equipment" means all Equipment including any accessories supplied on hire/loan by the Agent to the Customer (and where the context so permits shall include any supply of Services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by the Agent to the Customer.
- 2.7 "Documentation" means any documents, designs, drawings, plans or other documentation supplied, consumed, created or deposited incidentally by the Agent in the course of it conducting, or supplying to the Customer, any Services.
- 2.8 "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.
- 2.9 "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 ordering from the 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 ordering Goods via the website.**
- 2.10 "Business Day" means a day on which the major trading banks are open for normal business to be conducted, excluding a Saturday, Sunday or public holiday.
- 2.11 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between the Agent and the Customer in accordance with clause 8 below.
- 2.12 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
3. **Interpretation**
- 3.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
 - (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
 - (b) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction); and
 - (c) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation'; and
 - (d) a reference to dollars (\$), is a reference to Australian currency; and
 - (e) this Contract is not to be interpreted against the Agent merely because they prepared this Contract; and
 - (f) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Terms and Conditions of Trade; and
 - (ii) any schedules.
 - (g) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.
4. **Acceptance**
- 4.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts Delivery of the Goods.
- 4.2 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.
- 4.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 4.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Agent and it has been approved with a credit limit established for the account.
- 4.5 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Agent reserves the right to refuse Delivery.
- 4.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.
5. **Distribution of Goods via an Approved Distributor**
- 5.1 The Customer agrees that until they are authorised as a distributor by the Agent, (and hereinafter the Customer shall be referred to as "Distributor" for the purposes of this clause) the Distributor shall not be able to sell the Goods on as a Distributor for the Agent or represent to any third parties that the Distributor is in any way acting for the Agent. The Agent shall not accept responsibility or agree to be bound in any way by any contracts with third parties to whom the Distributor is a party.
- 5.2 Orders from a Distributor are accepted on the basis that:
 - (a) unless otherwise agreed by prior approval between the Agent and the Distributor, Goods may only be resold to consumers at retail level and may not be sold at wholesale level or to any other trader that is known or is suspected to be purchasing for resale, and
 - (b) Goods are to be sold for retail or displayed for sale at only the nominated locations advised by the Distributor to the Agent, and
 - (c) sale of Goods by mail order, internet or any other method outside of the traditional display and sell at the approved location is prohibited without prior written consent of the Agent, and
 - (d) Goods are to be displayed, presented and marketed in the manner that is in the best interest of the brand name.
- 5.3 Any default of clauses 5.1 or 5.2 may at the Agent's sole discretion be subject to immediate and permanent closure of account facilities, with any account balances payable immediately on demand.
- 5.4 The Agent has sole discretion on which brands or Goods are made available to any approved Distributor and the Agent does not guarantee continuing supply of any specific brand or Goods.
6. **Errors and Omissions**
- 6.1 The Customer acknowledges and accepts that the Agent 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 Agent 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 Agent in respect of the Services.
- 6.2 In the event such an error and/or omission occurs in accordance with clause 6.1, and is not attributable to the negligence and/or willful misconduct of the Agent; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.
7. **Change in Control**
- 7.1 The Customer shall give the Agent 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 Agent as a result of the Customer's failure to comply with this clause.
8. **Price and Payment**
- 8.1 At the Agent's sole discretion, the Price shall be either:
 - (a) as indicated on any invoice provided by the Agent to the Customer; or
 - (b) the Price as at the date of delivery of the Goods according to the Agent's current price list.
- (c) The Agent's quoted price (subject to clause 8.2) which will be valid for the period stated in the quotation or otherwise for a period of seven (7) days.
- 8.2 The Agent 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) if during the course of the Services, the Goods cease to be available from the Agent's third party suppliers, then the Agent reserves the right to provide alternative Goods, subject to prior confirmation and agreement of both parties; or
 - (d) in the event of increases to the Agent in the cost of labour or materials (including but not limited to overseas transactions that may increase as a consequence of variations in foreign currency rates of exchange and/or international freight and insurance charges) which are beyond the Agent's control.
- 8.3 At the Agent's sole discretion, a non-refundable deposit may be required.
- 8.4 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 Agent, which may be:
 - (a) on or before Delivery of the Goods;
 - (b) thirty (30) days following the date of invoice;
 - (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 Agent.
- 8.5 **Any discounts applicable to the Price shall become null and void if payment is not made by the due date stated on the invoice or where the Customer is in default on the payment of previously issued invoices as payment shall be allocated as per clause 8.7.**
- 8.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Agent.
- 8.7 The Agent may in its discretion allocate any payment received from the Customer towards any invoice that the Agent determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Agent may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Agent, payment will be deemed to be allocated in such manner as preserves the maximum value of the Agent's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 8.8 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 Agent nor to withhold payment of any invoice because part of that invoice is in dispute.
- 8.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Customer must pay to the Agent an amount equal to any GST the Agent must pay for any supply by the Agent 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.
9. **Back Orders**
- 9.1 Where the Goods may be temporarily out of stock, the Agent shall advise the Customer within three (3) working days of such and may offer the Customer the option of:
 - (a) placing a back order; or
 - (b) accepting a substitute product.
- 9.2 Any Goods placed on back order will not be charged to the Customer until the Goods have been dispatched. The Price charged at this time shall be based on the Agent's current price list as per clause 8.1(b).
10. **Delivery of Goods**
- 10.1 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 Agent's address; or
 - (b) the Agent (or the Agent's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 10.2 At the Agent's sole discretion, the cost of Delivery is included in the Price.
- 10.3 The Agent 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.
- 10.4 Any time specified by the Agent for Delivery of the Goods is an estimate only. The Customer must take Delivery by receipt or collection of the Goods whenever they are tendered for Delivery. The Agent will not be liable for any loss or damage incurred by the Customer as a result of Delivery being late. In the event that the Customer is unable to take Delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery and/or storage.
11. **Risk**
- 11.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 11.2 If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Agent is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Agent is sufficient evidence of the Agent's rights to receive the insurance proceeds without the need for any person dealing with the Agent to make further enquiries.
- 11.3 If the Customer requests the Agent to leave Goods outside the Agent'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.
- 11.4 The Customer acknowledges that Goods supplied may:
 - (a) fade or change colour over time; and
 - (b) mark or stain if exposed to certain substances; and
 - (c) show variations of shade, colour and print design. Whilst the Agent will make every effort to match sales samples to the finished Goods the Agent accepts no liability where such samples differ to the finished Goods supplied.
12. **Title**
- 12.1 The Agent and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid the Agent all amounts owing to the Agent; and
 - (b) the Customer has met all of its other obligations to the Agent.
- 12.2 Receipt by the Agent 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 Agent on request;
 - (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Agent and must pay to the Agent 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 Agent and must pay or deliver the proceeds to the Agent 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 Agent and must sell, dispose of or return the resulting product to the Agent as it so directs;
 - (e) the Customer irrevocably authorises the Agent to enter any premises where the Agent believes the Goods are kept and recover possession of the Goods;
 - (f) the Agent may recover possession of any Goods in transit whether or not Delivery has occurred;
 - (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 Agent;
 - (h) the Agent 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 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 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/Equipment and/or collateral (account) – being a monetary obligation of the Customer to the Agent for Services – that have previously been supplied and that will be supplied in the future by the Agent to the Customer.
- 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 Agent 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 Agent 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 Agent;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Equipment and/or collateral (account) in favour of a third party without the prior written consent of the Agent;
 - (e) immediately advise the Agent of any material change in its business practices of selling the Goods/Equipment which would result in a change in the nature of proceeds derived from such sales.
- 13.4 The Agent 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 Agent, 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 Agent 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 Agent agreeing to supply the Goods or Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Customer indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under this clause.
- 14.3 The Customer irrevocably appoints the Agent and each director of the Agent as the Customer'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 Customer's behalf.
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 Agent 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 Agent 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 statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

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- 15.3 The Agent 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 Agent makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Agent'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 Agent's liability is limited to the extent permitted by section 64A of Schedule 2.
- 15.6 If the Agent is required to replace the Goods under this clause or the CCA, but is unable to do so, the Agent 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 Agent'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 Agent at the Agent's sole discretion;
 - limited to any warranty to which the Agent is entitled, if the Agent 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 Agent has agreed that the Goods are defective; and
 - the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - the Goods are returned in as close a condition to that in which they were delivered as is possible.
- 15.9 Notwithstanding clauses 15.1 to 15.8 but subject to the CCA, the Agent 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 Agent;
 - fair wear and tear, any accident, or act of God.
- 15.10 The Agent may in its absolute discretion accept non-defective Goods for return in which case the Agent may require the Customer to pay handling fees of up to ten percent (10%) of the value of the returned Goods plus any freight costs.
- 15.11 Notwithstanding anything contained in this clause if the Agent is required by a law to accept a return then the Agent will only accept a return on the conditions imposed by that law.
- 15.12 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 Agent has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of the Agent. Under no circumstances may such designs, drawings and documents be used without the express written approval of the Agent.
- 16.2 The Customer warrants that all designs, specifications or instructions given to the Agent will not cause the Agent to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify the Agent against any action taken by a third party against the Agent in respect of any such infringement.
- 16.3 The Customer agrees that the Agent may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which the Agent 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 Agent'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 Agent any money the Customer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Agent's contract default fee, and bank dishonour fees).
- 17.3 Further to any other rights or remedies the Agent may have under this Contract, if a Customer has made payment to the Agent, 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 Agent 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 Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable if:
- any money payable to the Agent becomes overdue, or in the Agent'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 Agent;
 - 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 Agent may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Agent may suspend or terminate the supply of Goods to the Customer. The Agent will not be liable to the Customer for any loss or damage the Customer suffers because the Agent has exercised its rights under this clause.
- 18.2 The Agent may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Agent shall repay to the Customer any money paid by the Customer for the Goods. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 18.3 In the event that the Customer cancels Delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by the Agent as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 18.4 Cancellation of orders for Goods made to the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.
- 19. Privacy Policy**
- 19.1 All emails, documents, images or other recorded information held or used by the Agent is Personal Information, as defined and referred to in clause 19.3, and therefore considered Confidential Information. The Agent 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 Agent acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customers Personal Information, held by the Agent that may result in serious harm to the Customer, the Agent 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 Agent in respect of Cookies where transactions for purchases/orders transpire directly from the Agent's website. The Agent 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 Agent when the Agent sends an email to the Customer, so the Agent may collect and review that information ("collectively Personal Information").
- In order to enable / disable the collection of Personal Information by way of Cookies, 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 proceeding with a purchase/order via the Agent's website.
- 19.3 The Customer agrees for the Agent to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Agent.
- 19.4 The Customer agrees that the Agent 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.
- 19.5 The Customer consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit.
- 19.6 The Customer agrees that personal credit information provided may be used and retained by the Agent 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.
- 19.7 The Agent 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;
 - the information given to the CRB may include:
- Personal Information as outlined in 19.3 above;
 - name of the credit provider and that the Agent 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, 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 Agent has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - information that, in the opinion of the Agent, the Customer has committed a serious credit infringement;
 - 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 Agent:
- a copy of the Personal Information about the Customer retained by the Agent and the right to request that the Agent correct any incorrect Personal Information; and
 - that the Agent does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 19.9 The Agent will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfill 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 Agent via e-mail. The Agent 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 20. Service of Notices**
- 20.1 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.
- 20.2 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.
- 21. Trusts**
- 21.1 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 ("Trust") then whether or not the Agent may have notice of the Trust, the Customer covenants with the Agent as follows:
- the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - the Customer has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - the Customer will not without consent in writing of the Agent (the Agent 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 property.
- 22. General**
- 22.1 The Agent and the Customer will negotiate in good faith and use their reasonable efforts to settle any dispute that may arise out of, or relate to, this Contract, or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations, the dispute shall be referred to the representatives nominated by each party who will meet in good faith in order to attempt to resolve the dispute. Nothing shall restrict either party's freedom to commence legal proceedings to preserve any legal right or remedy or protect and proprietary or trade secret right.
- 22.2 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia the state in which the Agent has its principal place of business, and are subject to the jurisdiction of the Perth Courts in that state.
- 22.4 Subject to clause 15, the Agent shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Agent of these terms and conditions (alternatively the Agent's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 22.5 The Agent may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.
- 22.6 The Customer cannot licence or assign without the written approval of the Agent.
- 22.7 The Agent 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 Agent's sub-contractors without the authority of the Agent.
- 22.8 The Customer agrees that the Agent 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 Agent to provide Goods, Equipment or Services to the Customer.
- 22.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 22.10 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.

PART II – EQUIPMENT SERVICES

23. Display Stands, Headers, & Title Cards

- 23.1 Display stands, Headers, Title Cards and associated equipment ("Equipment") shall at all times remain the property of the Agent and are returnable on demand by the Agent, in the event that the conditions in clause 23.2 are not met. In the event that the Equipment is not returned to the Agent in the condition in which it was delivered the Agent retains the right to charge the cost of repair or replacement of the Equipment.
- 23.2 The Customer shall:
- keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment and the Customer accepts full responsibility for the safekeeping of the Equipment and indemnifies the Agent for all loss theft or damage to the Equipment howsoever caused and without limiting the generality of the foregoing whether or not such loss theft or damage is attributable to any negligence failure or omission of the Customer;
 - the display stand is only to be used to display of Goods provided by the Agent or any of the Agent's associated companies; and
 - the display stand is to be kept stocked to the agreed minimum levels at all times; and
 - the Customer is responsible for the upkeep of the stand and agrees to take all due care to ensure that the display stand is not damaged or marked in any way; and
 - they shall immediately advise the Agent if for any reason they opt to remove the display stand from display.
- (f) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (g) comply with all work health and safety laws relating to the Equipment and its operation;
- 23.3 The Customer may opt to return the stand to the Agent at any time, but may not throw it away, or give it to any other party, unless with the express permission of the Agent.
- 23.4 Only to the extent that the hire of the Equipment exceeds a two (2) year hire period with the right of renewal shall clause 13 apply as a security agreement in the form of a PPS Lease in respect of Section 20 of the PPSA, in all other matters this clause 13 will apply generally for the purposes of the PPSA.