

## Savage Pest Control 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 “SPC” means Savage Pest Control Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Savage Pest Control Pty Ltd.
- 1.3 “Customer” means the person/s, entites or any person acting on behalf of and with the authority of the Customer requesting SPC 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.
- 1.4 “Goods” means all Goods or Services supplied by SPC to the Customer at the Customer’s request from time to time (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.5 “Building Owner” means the person(s), Strata Company, or Company etc. who actually own the building/property to be treated.
- 1.6 “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.
- 1.7 “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.**
- 1.8 “Price” means the Price payable (plus any GST where applicable) for the Goods as agreed between SPC and the Customer in accordance with clause 5 below.
- 1.9 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

### 2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with SPC and it has been approved with a credit limit established for the account.
- 2.5 In the event that the supply of Goods request exceeds the Customers credit limit and/or the account exceeds the payment terms, SPC reserves the right to refuse Delivery.
- 2.6 The Customer:
- (a) accepts that any:
    - (i) pest management program can be rendered ineffectual should the Customer:
      - (A) fail to implement SPC’s recommendations;
      - (B) make alterations to the building; and
      - (C) by introducing conducive or infested materials to the area.
    - (ii) proposal or recommendations provided to the Customer is for the Customer’s own use. Where a third party chooses to use the information provided to the Customer, they do so at their own risk and SPC shall not be held liable in any circumstance.
  - (b) agrees:
    - (i) that they are the Building Owner or have permission from the Building Owner prior to engaging SPC to carry out any Services; and
    - (ii) to advise the occupants of adjacent buildings/properties with common boundaries, of the intended treatment date and time along with any proposed method of treatment.
- 2.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that SPC 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 SPC 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 SPC 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 SPC; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

### 4. Change in Control

- 4.1 The Customer shall give SPC 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, or , change in trustees, business practice). The Customer shall be liable for any loss incurred by SPC as a result of the Customer’s failure to comply with this clause.

**5. Price and Payment**

- 5.1 At SPC's sole discretion, the Price shall be either:
- (a) as indicated on any invoice provided by SPC to the Customer; or
  - (b) the Price as at the date of delivery of the Goods according to SPC's current price list; or
  - (c) SPC's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.
- 5.2 SPC reserves the right to change the Price if a variation to SPC's quotation is requested. Any variation from the plan of scheduled Services or specifications (including, but not limited to, any variation as a result of additional Services required due to unforeseen circumstances such as limitations to accessing the site or parts of the premises, poor weather conditions, safety considerations, or as a result of any increase to SPC in the cost of materials) which are beyond SPC's control and will be charged for on the basis of SPC's quotation and will be shown as variations on the invoice. The Customer shall be required to respond to any variation submitted by SPC within ten (10) working days. Failure to do so will entitle SPC to add the cost of the variation to the Price. Payment for all variations must be made in full at their time of completion.
- 5.3 At SPC's sole discretion, a deposit may be required.
- 5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date/s determined by SPC, which may be:
- (a) on completion of the Services;
  - (b) by way of instalments in accordance with SPC's payment schedule;
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (d) the date specified on any invoice or other form as being the date for payment; or
  - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by SPC.
- 5.5 Payment may be made by cash, cheque (qualified only), 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 SPC.
- 5.6 SPC may in its discretion allocate any payment received from the Customer towards any invoice that SPC determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer SPC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by SPC, payment will be deemed to be allocated in such manner as preserves the maximum value of SPC's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.7 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 SPC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to SPC an amount equal to any GST SPC must pay for any supply by SPC under this or any other contract 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.

**6. Delivery of Goods**

- 6.1 Delivery ("**Delivery**") of the Goods is taken to occur at the time that SPC (or SPC's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 6.2 At SPC's sole discretion, the cost of delivery is either included in the Price.
- 6.3 Any time specified by SPC for delivery of the Goods is an estimate only and SPC will not be liable for any loss or damage incurred by the Customer 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 SPC is unable to supply the Goods as agreed solely due to any action or inaction of the Customer, then SPC shall be entitled to charge a reasonable fee for redelivery and/or storage.

**7. Risk**

- 7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.
- 7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, SPC is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by SPC is sufficient evidence of SPC's rights to receive the insurance proceeds without the need for any person dealing with SPC to make further enquiries.
- 7.3 If the Customer requests SPC to leave Goods outside SPC'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.
- 7.4 The Customer accepts that SPC shall not be held liable for any damages, costs or losses that may occur as a result of any past, current or future pest activity.
- 7.5 SPC shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer. The Customer acknowledges and agrees that in the event that any of this information provided by the Customer is inaccurate, SPC accepts no responsibility for any loss, damages, or costs however resulting from these inaccurate plans, specifications or other information.
- 7.6 SPC offers no guarantee against infestation in areas that are unexposed or inaccessible to visual inspection. Further, SPC shall not be liable for any loss or damage or costs incurred as a result of infestations that existed in areas or in structural members which were not accessible for visual inspection at the time of delivery of the Services.
- 7.7 SPC cannot and does not offer to make judgements on or report on the extent of any structural damage, it the Customer's responsibility to seek information of this type from a qualified licensed builder.
- 7.8 Where the Services are preventative/remedial subterranean termite or borer work, it is specifically acknowledged by the Customer that no inspection or report is made on damage or activity to the building unless expressly stated otherwise in writing by SPC.
- 7.9 In the event a mister is used on internal pest control, then it is the Customer's responsibility to ensure any fish tank is covered and any power connection to it is switched off.

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- 7.10 SPC shall not be held liable for any loss, damages or costs howsoever arising from the Customer's failure to comply with this clause; it shall be the Customer's responsibility to:
- (a) advise SPC of any pets or personnel or family/staff allergies or other concerns; and
  - (b) remove or protect any people, animals, birds or fish during the treatment period; and
  - (c) cover all food items and utensils; and
  - (d) ensure the premises are properly ventilated after treatment, by leaving any air conditioners on 'vent mode' (so they circulate outside air into the building) for a period of at least four (4) hours after the treatment or after re-occupying. and
  - (e) cover all bird aviaries with plastic sheets prior to external Services commencing; and
  - (f) empty and remove all pet bowls from any area that Services are to commence; and
  - (g) cover external fish ponds with plastic prior to external Services commencing.

### 8. Specifications, Treatment Details and Control Agents

- 8.1 The Customer acknowledges that all descriptive specifications, illustrations, drawings, data, dimensions, ratings and weights stated in SPC's or manufacturer's fact sheets, price lists or advertising material, are approximate only and are given by way of identification only. The Customer 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 SPC.
- 8.2 The Customer shall be responsible for ensuring that the Goods ordered are suitable for their intended use.
- 8.3 Whilst SPC shall take care and follow application procedures, the Customer accepts that staining of timbers, fabrics, wall coverings, floor coverings and any other items may occur. SPC shall not be held liable for any such damage occurring.
- 8.4 SPC shall use only control agents that are approved by the Australia Pesticides and Veterinary Medicines Authority (APVMA) and registered for use in the relevant State or Territory or in accordance with any permit issued by APVMA or State Authority.

### 9. Customer's Responsibilities

- 9.1 The Customer:
- (a) accepts that:
    - (i) any person who is particularly sensitive or who suffers from allergic reactions should as a matter of precaution, remain out of the premises for a period of twenty-four (24) hours and not return until after the premises have been fully ventilated;
    - (ii) treatments are not to be performed around water tanks that are not fully sealed or any water catchment areas. The Customer must advise SPC of any water tank locations.
  - (b) shall indemnify SPC from any situation where the Customer has failed to observe any advice (being verbal or written) provided by SPC or licensed operator at the time of the Services;
  - (a) acknowledges and agrees that it is their responsibility to fulfil any special conditions / requirements that may affect SPC providing the Services at the site (including, but not limited to, health and safety equipment and/or worksite inductions (where applicable)).
- 9.2 The Customer and any other person or animal must avoid contact with the treated surfaces until the control agent has dried, should the Customer suspect anyone has come into contact with a treated area and has been affected in anyway, they shall contact the **Poisons Information Centre on 13 11 26** and have this notice with you.

### 10. Access

- 10.1 The Customer shall ensure that SPC has clear and free access to the work site at all times to enable them to undertake the Services. SPC shall not be liable for any loss or damage to the site (including, without limitation, damage to walls, ceiling, pathways, driveways and concreted or paved or grassed areas or gardens) unless due to the negligence of SPC.

### 11. Underground Locations

- 11.1 Prior to SPC commencing any work the Customer must advise SPC of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Customer 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.
- 11.2 Whilst SPC will take all care to avoid damage to any underground services the Customer agrees to indemnify SPC 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 7.1.

### 12. Compliance with Laws

- 12.1 The Customer and SPC shall comply with the provisions of all statutes, regulations and bylaws of government (Pest Management Act 2001, Pest Management Regulation 2003 and subsequent amendments), local and other public authorities that may be applicable to the Services including any Australian Standards that may apply.
- 12.2 The Customer shall obtain (at the expense of the Customer) all licenses and approvals that may be required for the Services.
- 12.3 The Customer agrees that the site will comply with any work health and safety (WHS) laws relating to work sites and any other relevant safety standards or legislation.

### 13. Title

- 13.1 SPC and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid SPC all amounts owing to SPC; and
  - (b) the Customer has met all of its other obligations to SPC.
- 13.2 Receipt by SPC 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 Customer in accordance with clause 13.1:
- (a) the Customer is only a bailee of the Goods and must return the Goods to SPC on request.

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- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for SPC and must pay to SPC 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 SPC and must pay or deliver the proceeds to SPC 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 SPC and must sell, dispose of or return the resulting product to SPC as it so directs.
- (e) the Customer irrevocably authorises SPC to enter any premises where SPC believes the Goods are kept and recover possession of the Goods.
- (f) SPC 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 SPC.
- (h) SPC may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

### 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 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 and/or collateral (account) – being a monetary obligation of the Customer to SPC for Services – that have previously been supplied and that will be supplied in the future by SPC to the Customer.
- 14.3 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 SPC 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, SPC 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 SPC;
  - (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 SPC;
  - (e) immediately advise SPC 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 SPC 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.
- 14.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 14.6 The Customer 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 SPC, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 14.8 The Customer must unconditionally ratify any actions taken by SPC 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 SPC agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 15.2 The Customer indemnifies SPC from and against all SPC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising SPC's rights under this clause.
- 15.3 The Customer irrevocably appoints SPC and each director of SPC as the Customer's true and lawful attorney/s 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 Customer's behalf.

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

- 16.1 The Customer must inspect all Goods on delivery (or the Services on completion) and must within seven (7) days of delivery notify SPC 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 SPC to inspect the Goods.
- 16.2 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**).
- 16.3 SPC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

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- 16.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, SPC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. SPC's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.5 If the Customer is a consumer within the meaning of the CCA, SPC's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.6 If SPC is required to replace the Goods under this clause or the CCA, but is unable to do so, SPC may refund any money the Customer has paid for the Goods.
- 16.7 If the Customer is not a consumer within the meaning of the CCA, SPC'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 SPC at SPC's sole discretion;
  - limited to any warranty to which SPC is entitled, if SPC did not manufacture the Goods;
  - otherwise negated absolutely.
- 16.8 Subject to this clause 16, returns will only be accepted provided that:
- the Customer has complied with the provisions of clause 16.1; and
  - SPC 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.
- 16.9 Notwithstanding clauses 16.1 to 16.8 but subject to the CCA, SPC 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 SPC;
  - fair wear and tear, any accident, or act of God.
- 16.10 In the case of second hand Goods, unless the Customer is a consumer under the CCA, the Customer acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by SPC as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Customer acknowledges and agrees that SPC has agreed to provide the Customer with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 16.10.
- 16.11 Notwithstanding anything contained in this clause if SPC is required by a law to accept a return then SPC will only accept a return on the conditions imposed by that law.
- 16.12 Subject to clause 16.1, customised, or non-stocklist items or Goods made or ordered to the Customer's specifications are not acceptable for credit or return.
- 17. Intellectual Property**
- 17.1 Where SPC has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of SPC. Under no circumstances may such designs, drawings and documents be used without the express written approval of SPC.
- 17.2 The Customer warrants that all designs, specifications or instructions given to SPC will not cause SPC to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify SPC against any action taken by a third party against SPC in respect of any such infringement.
- 17.3 The Customer agrees that SPC may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which SPC has created for the Customer.
- 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 SPC's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Customer owes SPC any money the Customer shall indemnify SPC from and against all costs and disbursements incurred by SPC in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, SPC's contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies SPC may have under this contract, if a Customer has made payment to SPC, 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 SPC under this clause 18 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.
- 18.4 Without prejudice to SPC's other remedies at law SPC shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to SPC shall, whether or not due for payment, become immediately payable if:
- any money payable to SPC becomes overdue, or in SPC'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 SPC;
  - 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.

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### 19. Cancellation

- 19.1 Without prejudice to any other remedies SPC may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions SPC may suspend or terminate the supply of Goods to the Customer. SPC will not be liable to the Customer for any loss or damage the Customer suffers because SPC has exercised its rights under this clause.
- 19.2 SPC 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 SPC shall repay to the Customer any money paid by the Customer for the Goods. SPC shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 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 SPC 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 Customer'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

- 20.1 All emails, documents, images or other recorded information held or used by SPC is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. SPC 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 IIIC 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"). SPC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by SPC that may result in serious harm to the Customer, SPC 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.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to SPC in respect of Cookies where transactions for purchases/orders transpire directly from SPC's website. SPC 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:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to SPC when SPC sends an email to the Customer, so SPC 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 SPC's website.
- 20.3 The Customer agrees for SPC 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 SPC.
- 20.4 The Customer agrees that SPC may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) 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
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 20.5 The Customer consents to SPC being given a consumer credit report to collect overdue payment on commercial credit.
- 20.6 The Customer agrees that personal credit information provided may be used and retained by SPC 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 Customer'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 Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 20.7 SPC may give information about the Customer 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 Customer including credit history.
- 20.8 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 SPC is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) 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);
  - (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 Customer no longer has any overdue accounts and SPC has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of SPC, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

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- 20.9 The Customer shall have the right to request (by e-mail) from SPC:
- (a) a copy of the Personal Information about the Customer retained by SPC and the right to request that SPC correct any incorrect Personal Information; and
  - (b) that SPC does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 20.10 SPC 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 fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.11 The Customer can make a privacy complaint by contacting SPC via e-mail. SPC 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](http://www.oaic.gov.au).

### 21. Service of Notices

- 21.1 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.
- 21.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 22. Trusts

- 22.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not SPC may have notice of the Trust, the Customer covenants with SPC as follows:
- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
  - (b) 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;
  - (c) The Customer will not without consent in writing of SPC (SPC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer 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.

### 23. General

- 23.1 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.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which SPC has its principal place of business, and are subject to the jurisdiction of the Ipswich Courts in Queensland.
- 23.3 Subject to clause 16 SPC 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 SPC of these terms and conditions (alternatively SPC's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 SPC may licence and/or assign all or any part of its rights and/or obligations under this contract without the Customer's consent.
- 23.5 The Customer cannot licence or assign without the written approval of SPC.
- 23.6 SPC 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 SPC's sub-contractors without the authority of SPC.
- 23.7 The Customer agrees that SPC 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 SPC to provide Goods to the Customer.
- 23.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 23.9 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.